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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

September 5, 2001
Jefferson City, Missouri
Volume 4

11 In the Matter of the Joint)
Application of Gateway Pipeline)
12 Company, Inc., Missouri Gas Company)
and Missouri Pipeline Company and) Case No. GM-2001-585
13 the Acquisition by Gateway Pipeline)
Company of the Outstanding Shares of)
14 UtiliCorp Pipeline Systems, Inc.)

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KEITH THORNBURG, Presiding,
REGULATORY LAW JUDGE.

KELVIN SIMMONS, Chair,
SHEILA LUMPE
CONNIE MURRAY,
STEVE GAW,
COMMISSIONERS.

REPORTED BY:
23 KELLENE K. FEDDERSEN, CSR, RPR
24 ASSOCIATED COURT REPORTERS, INC.

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1 APPEARANCES:

2 PAUL A. BOUDREAU, Attorney at Law
JAMES C. SWEARENGEN, Attorney at Law
3 Brydon, Swearengen & England, P.C.
312 East Capitol
4 P.O. Box 456
Jefferson City, Missouri 65102-0456
5 (573) 635-7166

6 FOR: UtiliCorp United, Inc.
Missouri Pipeline Company.
7 Missouri Gas Company.

8 JEFFREY A. KEEVIL, Attorney at Law
Stewart & Keevil
9 1001 Cherry Street, Suite 302
Columbia, Missouri 65201
10 (573) 499-0635

11 FOR: Gateway Pipeline Company.

12 THOMAS M. BYRNE, Attorney at Law
13 P.O. Box 66149
1901 Chouteau Avenue
14 St. Louis, Missouri 63103
(314) 554-2237

15 FOR: Union Electric Company, d/b/a AmerenUE.

16 MICHAEL C. PENDERGAST, Attorney at Law
17 720 Olive Street
St. Louis, Missouri 63101
18 (314) 342-0532

19 FOR: Laclede Gas Company.

20 MARK W. COMLEY, Attorney at Law
Newman, Comley & Ruth
21 601 Monroe, Suite 301
P.O. Box 537
22 Jefferson City, Missouri 65102
(573) 634-2266

23 FOR: Laclede Gas Company.

24

25

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1 MARY ANN (GARR) YOUNG, Attorney at Law
William D. Steinmeier, P.C.
2 2031 Tower Drive
P.O. Box 104595
3 Jefferson City, Missouri 65110
(573) 734-8109

4
FOR: CMS Panhandle Eastern Pipeline Company.

5 RUTH O'NEILL, Legal Counsel
6 P.O. Box 7800
Jefferson City, Missouri 65102-780
7 (573) 751-4857

8 FOR: Office of the Public Counsel
and the Public.

9 LERA L. SHEMAWELL, Associate Counsel
10 P.O. Box 360
Jefferson City, Missouri 65102
11 (573) 751-3234

12 FOR: Staff of the Missouri Public
Service Commission.

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P R O C E E D I N G S

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

JUDGE THORNBURG: At this time we'll go on the
record.

We're convening on-the-record hearing today in
the Case No. GM-2001-585. The style of the case is In the
Matter of the Joint Application of Gateway Pipeline, Inc.,
Missouri Gas Company and Missouri Pipeline Company and the
Acquisition by Gateway Pipeline of the Outstanding Shares of
UtiliCorp Pipeline Systems, Inc.

What I'd like to do today is begin with
entries of appearance, then we'll deal with any preliminary
matters, and I wanted to take up Gateway's motion to clarify
a previous Order on classification of certain information
that's been produced in discovery. Then we'll take a break
and reconvene with opening statements.

As I noted, if anyone is going to need more
than about ten minutes, you might give me heads up on that.
We'll probably take the opening statements, I'd anticipate
going with UtiliCorp, Gateway, Staff, Public Counsel, then
Ameren, Laclede and Panhandle. And we'll have a break
before we do that so you'll have a chance to organize your
thoughts.

So at this time we'll take entries of

1 appearance, and we'll start with UtiliCorp.

2 MR. BOUDREAU: Yes. Thank you. Appearing on
3 behalf of UtiliCorp United, Inc. and joint applicants
4 Missouri Pipeline Company and Missouri Gas Company, let the
5 record reflect the appearance of Paul Boudreau and Jim
6 Swearengen, the law firm of Brydon, Swearengen & England,
7 Post Office Box 456, Jefferson City, Missouri 65102.

8 JUDGE THORNBURG: Thank you, Mr. Boudreau.
9 For Gateway, Mr. Keevil.

10 MR. KEEVIL: Yes. Appearing on behalf of
11 Gateway Pipeline Company, Jeffrey A. Keevil of the law firm
12 Stewart & Keevil, LLC. Our address is 1001 Cherry Street,
13 Suite 302, Columbia, Missouri 65201.

14 JUDGE THORNBURG: Thank you. For Staff.

15 MS. SHEMWELL: Good morning, your Honor.
16 Thank you. Lera Shemwell appearing on behalf of the Staff
17 of the Missouri Public Service Commission, Post Office
18 Box 360, Jefferson City, Missouri 65102. Thank you, your
19 Honor.

20 JUDGE THORNBURG: For the Office of the Public
21 Counsel.

22 MS. O'NEILL: Thank you. Good morning. My
23 name is Ruth O'Neill for the Office of the Public Counsel
24 and the Public of the state of Missouri. My address is
25 P.O. Box 7800, Jefferson City, Missouri 65102.

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1 JUDGE THORNBURG: Thank you. For AmerenUE.

2 MR. BYRNE: Yes, your Honor. I'm Thomas M.
3 Byrne appearing on behalf of Union Electric Company, doing
4 business as AmerenUE. My address is 1901 Chouteau Avenue,
5 that's C-h-o-u-t-e-a-u, St. Louis, Missouri 63103.

6 JUDGE THORNBURG: Did you say your last name
7 was Byrne?

8 MR. BYRNE: Byrne.

9 JUDGE THORNBURG: Laclede Gas.

10 MR. COMLEY: Appearing on behalf of Laclede
11 Gas Company, Mark W. Comley, Newman, Comley and Ruth,
12 601 Monroe Street, Suite 301, Jefferson City, Missouri;
13 Michael C. Pendergast, Associate General Counsel, Laclede
14 Gas Company, 720 Olive, St. Louis, Missouri.

15 Also appearing but not here today is Joseph T.
16 Clemmon of the same office in Laclede's offices at 720 Olive
17 in St. Louis, Missouri.

18 JUDGE THORNBURG: Thank you. And for
19 Panhandle.

20 MS. YOUNG: Thank you, Judge. Appearing on
21 behalf of CMS Panhandle Eastern Pipeline Company, please
22 reflect the entry of appearance of Mary Ann Young and
23 William D. Steinmeier of the law firm of Steinmeier, P.C.
24 Our address is P.O. Box 104595, Jefferson City, Missouri
25 65110. Thank you.

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1 JUDGE THORNBURG: Thank you. Is there any
2 party we've overlooked? I don't see any. So we'll get
3 ready to proceed here.

4 I wanted to note when we proceed with the
5 testimony today, we have several companies involved, and if
6 you abbreviate those names, make sure you identify them
7 first as Missouri Gas Company or what have you, and then if
8 you want to use initials, that will be fine.

9 And then I also wanted to take up, Gateway had
10 asked for clarification on the classification of certain
11 information that was produced here. I want to know if
12 anyone's going to file a written response to that request
13 for clarification? I can go ahead and proceed with that
14 otherwise. I don't see anybody suggesting that.

15 Mr. Keevil, I think I have a circulation order
16 that I'm going to have the Commission look at to clarify
17 that. I don't anticipate any issue with clarifying that.
18 When the Commission restated the Data Request, we did
19 bracket out the information on the financial information.

20 MR. KEEVIL: Yes. You did it correctly in the
21 Order, Judge. I just wanted that clarified that for
22 purposes if anybody planned to introduce the DR at this
23 hearing, that the request portion is proprietary or that
24 portion that you redacted from the Order would be still
25 proprietary because that came from the other response which

1 you found to be proprietary, whereas the response in the
2 Order you declassified. I thought the way you redacted it
3 was fine. I have no objection with that.

4 JUDGE THORNBURG: If anyone -- okay. An Order
5 will come out consistent with that to clarify that, and also
6 I'll advise the parties that, with respect to that Data
7 Request, you shouldn't reveal any more than the Commission
8 revealed in the Order.

9 A great deal of the hearing today is likely to
10 be in-camera if we get very much into the details. I'm
11 going to ask the attorneys to let me know at any point where
12 they feel the hearing will need to go in-camera for the
13 questions you have.

14 It could be a little bit awkward because so
15 much of the information was deemed, at least if not highly
16 confidential, it was deemed proprietary. So that could be a
17 little awkward. I'd like to do as much as we can on the
18 public record, and at the same time, I don't want to be
19 going in and out of camera every five minutes either. So
20 we'll just see how that develops today.

21 Are there any other matters anyone wanted to
22 bring to my attention? Yes.

23 MR. PENDERGAST: Yes, your Honor. I just
24 wanted to bring to your attention that we've discussed this
25 with the parties prior to today, but in agreeing to the

1 order of witnesses, we indicated to the other parties that
2 our witness, because of a prior engagement today, would not
3 be available until tomorrow morning.

4 My anticipation is that we probably won't get
5 to him anyway, but if we do, I just wanted to give you
6 advance notice that he would not be available until tomorrow
7 morning.

8 JUDGE THORNBURG: Okay. I don't have any
9 problem moving things around, and if you talked to all the
10 other parties, I'm sure that's going to be fine.

11 MS. SHEMWELL: We had scheduled, your Honor,
12 in the hopes that we wouldn't reach Mr. Pflaum until the
13 second day anyway. That was kind of the way we set up the
14 schedule.

15 JUDGE THORNBURG: I was hoping we'd get
16 through everybody but the Staff witnesses today.

17 MS. SHEMWELL: Sorry.

18 JUDGE THORNBURG: All right. If anyone
19 anticipates that there's any particular witness on the list
20 that's going to take an extensive amount of time on
21 cross-examination, you might want to let me know that, too.
22 We do want to finish by Thursday.

23 Okay. At this point we'll take a break, and
24 we haven't been on the record very long, so if we could just
25 take a break until about ten after and we'll start with our

1 first witness. Thank you.

2 MR. BYRNE: Opening statements.

3 JUDGE THORNBURG: Opening statements. I
4 apologize.

5 (A BREAK WAS TAKEN.)

6 JUDGE THORNBURG: At this time we'll proceed
7 with opening statements, and the first up would be
8 UtiliCorp.

9 MR. BOUDREAU: May it please the Commission?
10 Good morning. My name is Paul Boudreau. I'm here with my
11 partner -- well, he was here a minute ago at any rate -- Jim
12 Swaengen. We're representing UtiliCorp United, Inc. and
13 two of the joint applicants, Missouri Pipeline Company and
14 Missouri Gas Company.

15 The transaction that's before you is the
16 acquisition of the capital stock by Gateway Pipeline Company
17 of UtiliCorp Pipeline Systems. UtiliCorp Pipeline Systems
18 is a wholly-owned subsidiary of UtiliCorp, and that company,
19 UtiliCorp Pipeline Systems, owns all the capital stock of
20 the two pipeline companies in question, Missouri Pipeline
21 Company, which will sometimes be referred to as MPC, and
22 Missouri Gas Company, which will sometimes be referred to as
23 MGC. So if you hear me referring to those abbreviations,
24 that's my reference.

25 UtiliCorp Pipeline Systems also owns some

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1 assets, and it's a short length of pipe, and you'll hear
2 some references to the Trans-Mississippi Pipeline, which is
3 a length of pipe that crosses underneath the Mississippi
4 River from Missouri to Illinois. So that's the general
5 structure of the agreement.

6 Basically, what's at stake here or what's at
7 issue here is a Stock Purchase Agreement whereby Gateway
8 Pipeline Company acquires the capital stock of the parent
9 company of the two pipeline companies that also owns some
10 assets.

11 There's a chart that accompanies Mr. Kreul's
12 testimony which if you need a picture diagram, which is
13 sometimes very helpful in transactions of this nature, you
14 can refer to that.

15 This has a rather long and tangled procedural
16 history, but I'll keep it fairly short. Initially we filed
17 a Joint Application which basically asked for either a
18 declaration that the transaction at issue wasn't
19 jurisdictional and that it was the acquisition of the
20 capital stock of an unregulated parent company or, in the
21 alternative, we submitted the transaction for approval of
22 this Commission.

23 Subsequently, the Commission asserted
24 jurisdiction over the transaction, and so we're before you
25 now on the merits of the Joint Application.

1 The procedural posture of the case seems to me
2 to be something of a hybrid, but I'm not sure it makes a
3 whole lot of difference. As I pointed out initially, it's a
4 stock acquisition transaction, but there's some language
5 that's been used by some of the parties that it has aspects
6 of an asset acquisition. The actual transaction, the
7 transactional document is a Stock Acquisition -- Stock
8 Acquisition Agreement. But for the convenience of the
9 parties, sometimes they've talked about UtiliCorp selling
10 the pipeline assets.

11 I can work with that dialog, but technically
12 speaking we're talking about a stock transaction. The
13 standard doesn't change, though. In the end it's a
14 difference that I don't think makes a difference for the
15 purposes of the legal analysis that we have to go through
16 here today.

17 And what I'd like to do, I think it's
18 important in a case like this where a lot's being said and
19 there's a lot of different issues roiling around is to talk
20 about what is it that you have to do, what is it that we
21 need to present to you today. And I think it's helpful to
22 start with what the legal standard is, then I'll move to the
23 specific facts of the case, and then I'll turn it over to my
24 colleagues for their comments as well.

25 The standard for approval of this transaction

1 by the Commission I don't think is in dispute. It is one
2 with which I think this Commission is very familiar. That
3 is, the Commission is required by law to approve this Joint
4 Application unless an objecting party can demonstrate that
5 doing so would be detrimental to the public interest.

6 There are two principal cases with which I
7 think you are all familiar, State ex rel City of St. Louis
8 vs. Public Service commission, 73 SW2nd 393, and that was a
9 Missouri Supreme Court case, and there was a more recent
10 Court of Appeals case, State ex rel Fee Fee Trunk Sewer vs.
11 Litz. That's 596 SW2nd 466. Of course, we will be briefing
12 these as well as other cases.

13 It is important to note that this standard was
14 adopted in recognition of the compelling constitutional
15 right of a property owner, in this case my client UtiliCorp,
16 to sell its property free of unreasonable regulatory
17 restraints, and in doing so the Missouri Supreme Court has
18 already balanced the interests of shareholders and
19 ratepayers in terms of coming up with a standard of review.

20 The application of the standard in any
21 particular case is also well known. In 1971 in a case
22 involving the acquisition of the capital stock of Missouri
23 Natural Gas Company by Laclede Gas Company, the Commission
24 determined that all that needs to be shown is that the
25 status quo will be maintained.

1 The Commission found that no -- excuse me.
2 The Commission found that that standard was met by a showing
3 that there would be no change in rates and no deterioration
4 in service. The citation in that case, by the way, is 16
5 Missouri PSC New Series 334.

6 Clearly the new owner is not required to show
7 that it can operate the acquired properties or company
8 better than the current owner.

9 The Commission has applied this standard as
10 recently as December 28th, 2000 in its Case No. EM-2000-369
11 when it approved the joint application of UtiliCorp and the
12 Empire District Electric Company to undertake a merger.

13 In that same case, the Commission specifically
14 addressed the burdens of proof or the allocations of various
15 burdens, and specifically the Commission addressed which
16 party has the burden of proof and the burden of going
17 forward with the evidence.

18 The Commission found that the ultimate burden
19 of proof to demonstrate that a transaction is not
20 detrimental to the public interest is on the joint
21 applicants. Once those parties have put forth a prima facie
22 case, however, the burden of going forward with the evidence
23 falls to the party asserting that a specific detriment
24 exists.

25 In other words, the joint applicants are not

1 required to disprove any of the allegations in this case of
2 Staff, OPC, Laclede or any other adverse party. To the
3 contrary, those parties must present sufficient evidence to
4 support their specific concerns.

5 Finally, there's the question of whether the
6 mere possibility of a future adverse consequence is
7 sufficient to make a showing that a transaction is
8 detrimental to the public interest. The answer is no.

9 In March of 2000, in the context of the joint
10 application of Missouri American Water Company to acquire
11 all of the capital stock of United Missouri Water, Inc.,
12 this Commission specifically determined that such a showing
13 requires convincing proof of a direct and present public
14 detriment. Thus, it found that the possibility that a
15 utility may in the future seek to recover acquisition
16 premium from ratepayers was found to be insufficient
17 evidence of a public detriment. That was Case No.
18 WM-2000-222.

19 The fact is that the standard for approval of
20 the transaction at hand is really quite low. The Commission
21 has entertained many such applications over the years, and
22 to my knowledge, the Commission has never failed to approve
23 a transaction, nor has it imposed onerous conditions of such
24 a nature that it caused a transaction to fail to close.

25 Now, let's talk about the case at hand real

1 quickly. There's clearly no deficiency in the positive case
2 that's been filed by the joint applicants. No one has even
3 alleged that the joint applicants have failed to comply with
4 any of the Commission's filing requirements or rules. The
5 joint applicants have made their prima facie showing of no
6 detriment.

7 None of the parties opposing the transaction
8 have shown that the Commission's approval of the sale of
9 UPL, and that's the abbreviation we're using for United
10 Pipeline -- or UtiliCorp Pipeline Systems. Excuse me --
11 that the approval of the sale of UPL common stock by
12 UtiliCorp to Gateway will cause any direct and present
13 detriment to the public interest.

14 The rate schedules of the two pipeline
15 companies, MPC and MGC, will not change as a consequence of
16 this transaction. No such change has even been requested.

17 Secondly, no evidence has been presented that
18 the pipelines will be operated in an unsafe manner by its
19 new owners. I believe that Staff witness Kottwitz states
20 that Gateway has agreed to his three safety recommendations,
21 and I think that's been confirmed in Gateway's testimony.

22 Third, no evidence that -- there's no evidence
23 that Gateway does not have the operational expertise to
24 provide reliable service to existing shippers, and that
25 aspect will be addressed by Gateway witness Mr. Ries.

1 Everything else that is being discussed is
2 frankly just a distraction. They are issues that are not
3 germane to the question that's before you. If you keep in
4 mind that the mere possibility that an event may or may not
5 occur at some undetermined time in the future if the joint
6 application is approved is not competent and substantial
7 evidence of a detriment, then the necessary outcome of this
8 case I think will become pretty quickly apparent.

9 Not one of the parties opposing the
10 transaction has identified any scenario that may occur after
11 the transaction is closed that cannot already occur. The
12 possibility of losses on operations? Well, there's plenty
13 of testimony from witnesses that the current operations are
14 unprofitable now.

15 How about the possibility that the owner may
16 seek abandonment of operations? My client can do that now.
17 Possibility of a rate increase. There's nothing that
18 prevents MPC or MGC from filing a rate -- or request for a
19 rate increase or change in the rate schedules tomorrow.

20 How about the possibility of additional
21 shippers on existing facilities? MPC and MGC can seek to
22 increase its customer base now. How about the possibility
23 of a physical connection between MPC facilities with TMP,
24 the Trans-Mississippi Pipeline? There's nothing that
25 prohibits MPC from pursuing that option now.

1 How about the possibility of a request being
2 filed for recovery of acquisition premium associated with
3 UtiliCorp's acquisition of the Trans-Mississippi Pipeline
4 assets back in 1994 or thereabouts? UtiliCorp can do that
5 now. These are all possibilities that can occur now.

6 How about the possibility of FERC asserting
7 jurisdiction? Assuming that there's a connection between
8 the two pipelines, and that's even an issue, that can be
9 pursued, that's a scenario that's possible now.

10 How about the possibility of a new owner
11 seeking to have a restriction on the -- seeking to have a
12 restriction on bypass of LDCs or local distribution
13 companies removed from the certificate? My client can do
14 that now. It's on the certificate. They can do that now,
15 as well as the new owner. They'd still have to come to the
16 Commission.

17 All of these things are already possible.
18 Disapproval of this transaction will not eliminate them.
19 The bottom line in this case is when all the dust has
20 settled, nothing is really going to change.

21 MPC and MGC provide safe and reliable shipping
22 service now, and they will continue to do so using the same
23 field employees and facilities. MPC and MGC will operate
24 under existing rate schedules and other tariff provisions.
25 They will have the same rights and responsibilities as they

1 have now. They will continue to be regulated by the
2 Commission as they are now. That is the long and the short
3 of this case.

4 Now, I understand that the Commission as a
5 practical matter wants to become comfortable with the new
6 owners. Mr. Ries will have the primary operational
7 responsibility for the company after the transaction is
8 closed, and if you have any concerns with his abilities or
9 goals, I'd encourage you to discuss those with him today.
10 I'm confident that each of you will come away impressed with
11 his experience, his knowledge and his judgment.

12 If you have any concerns about the financial
13 viability of the new owner, I believe that one simple fact
14 should pretty much put that to rest, and that's BankOne
15 Capital Markets, Inc. This is a sophisticated lending
16 institution which has committed to finance the acquisition.
17 This is a company that specializes in analyzing business
18 prospects of its prospective borrowers, as you can imagine,
19 because it's that money that's at risk.

20 If this lending institution had any concerns
21 about Gateway's ability to operate the pipelines
22 profitability and to generate adequate revenues to meet its
23 financial obligations, it would certainly not have done so.

24 Let me conclude with this. None of the
25 parties opposing this transaction have offered any evidence

1 that there will be any present adverse impact on rates or
2 customer service coming about as a direct consequence of the
3 Commission's approval of this transaction. Consequently, I
4 would suggest to you that it should be approved without
5 further delay, preferably before the onset of the heating
6 season which is nearly upon us.

7 Thank you.

8 JUDGE THORNBURG: Thank you. Our next opening
9 statement will be Gateway Pipeline Company, Mr. Keevil.

10 MR. KEEVIL: May it please the Commission? My
11 name is Jeff Keevil. I'm representing Gateway Pipeline
12 Company. I'm going to keep this fairly short because I
13 think Mr. Boudreau did a very thorough and good job
14 presenting the history of the case and the current status of
15 the case to you.

16 Just a couple of things that he mentioned that
17 I would like to reemphasize basically. He mentioned the
18 standard for approval -- or for consideration of the case
19 set forth in the Missouri-American case back in March of
20 2000 which required that in order to not approve the
21 transaction, that there must be compelling evidence that a
22 direct and present public detriment will occur.

23 Those aren't my words. Those aren't Mr.
24 Boudreau's words. Those are the Commission's words from
25 Missouri-American Order, and that was based on the Missouri

1 Supreme Court in the City of St. Louis case which

2 Mr. Boudreau also cited.

3 Now, from looking at the filings in this case,
4 you probably noticed there have been lots of witnesses who
5 filed testimony, most of them on the Staff side. But if you
6 read their testimony closely, virtually all of these
7 witnesses, Staff's, Public Counsel and the intervenors,
8 raise issues which are either not requested by Gateway, such
9 as the acquisition adjustment issue, or issues which are
10 only properly raised in a rate case as this Commission has
11 previously found, or issues involving conditions which
12 currently exist under UtiliCorp's ownership, as Mr. Boudreau
13 mentioned.

14 And when the other witnesses have come close
15 to raising a proper issue, we believe they've only presented
16 you with part of the picture, and in our rebuttal testimony
17 we've tried to clear that picture up for you and provide you
18 with the full picture.

19 The bottom line is that there is no evidence
20 of a direct and present public detriment which would be
21 occasioned by this transaction, or for that matter we don't
22 believe there's any evidence of any detriment whatsoever.

23 Gateway is operationally, managerially and
24 financially qualified to purchase and operate these
25 pipelines, and in that regard I would mention that Mr. Ries,

1 who Mr. Boudreau mentioned, is testifying on behalf of
2 Gateway. He'll be on the witness stand today. He has over
3 25 years of experience in the pipeline industry.

4 The plans, if the transaction goes through,
5 are for the current field employees of the pipelines to
6 continue in their capacity. So there is -- there should be
7 absolutely no question whatsoever about the qualifications
8 to operate or manage the pipeline.

9 I would also mention that Dr. Jeff Makholm
10 will also be presenting testimony today regarding issues
11 which he's addressed in his rebuttal testimony.

12 One thing that I would mention, I don't know
13 that Mr. Boudreau mentioned it or not, an issue has arisen
14 in the case when the other parties filed their rebuttal
15 testimony regarding a condition which was placed on the
16 Missouri Pipeline Company certificate, and the issue
17 basically is, is Missouri Pipeline Company prohibited from
18 physically connecting its pipeline assets or its pipeline
19 with what Mr. Boudreau referred to as the TMP pipeline
20 assets which cross the river into Illinois if those assets
21 are owned by an entity other than Missouri Pipeline Company
22 or Missouri Gas Company?

23 We believe that it is not so prohibited. As
24 Mr. Boudreau indicated, UtiliCorp does not believe it is
25 prohibited. But because the issue has arisen in the

1 rebuttal testimony of other parties, we believe the
2 Commission needs to clarify that MPC is not currently
3 prohibited from connecting with those pipeline assets which
4 cross the river into Illinois if those assets are owned by
5 an entity other than Missouri Pipeline Company.

6 If, God forbid, you disagree with us on the
7 interpretation of that condition, we would ask that that
8 condition be removed.

9 With that, like I said, Mr. Ries and
10 Mr. Makholm will be taking the stand today. If you have any
11 questions for them, please feel free to ask. I'm sure you
12 will. And thank you very much.

13 JUDGE THORNBURG: Thank you. For the Staff,
14 Ms. Shemwell.

15 MS. SHEMWELL: Good morning, and thank you
16 your Honor. May it please the Commission? I apologize, I
17 don't have much voice today.

18 A decision by the Commission in this case on
19 whether or not this transaction is not detrimental to the
20 public interest involves weighing many considerations. We
21 do not believe that the considerations all have to be
22 immediate and definite in order to be conditions for the
23 Commission to consider.

24 However, and let me note that Staff agrees
25 that a property owner should be able to sell their

1 properties. That's sort of the American way. But a
2 monopoly utility has responsibilities to his captive
3 customers. The Legislature has balanced those interests of
4 the public and the utility, and that is why the Legislature
5 has required that a utility come to the Commission for
6 approval before selling such assets. The utility does have
7 responsibilities to the public.

8 In order to approve this proposed transaction,
9 the Commission must determine that the transaction is not
10 detrimental to the public interest. In this case, Staff has
11 shown that the proposed purchase creates an immediate
12 detriment because this is already a financially stressed
13 system, and Gateway's purchase immediately increases the
14 economic pressures on the system, placing the assets
15 immediately at greater financial risk.

16 Gateway will have a higher cost of service
17 because its cost of service, its equity will be higher. The
18 cost of service, its debt, is higher. It immediately loses
19 any economies of scale that the larger UtiliCorp might
20 experience in operating this system, meaning that there's
21 much greater pressure on the system to be profitable.
22 However, Gateway has no formal plans to increase
23 profitability or make the system profitable.

24 In addition, another potential risk and
25 immediate financial risk is that the assets could be pledged

1 by MoGas in a double leverage situation. All of these
2 factors act immediately to place these assets at greater
3 financial risk, creating a definite, direct and immediate
4 public detriment.

5 We do not believe that FERC jurisdiction over
6 these properties and loss of Missouri jurisdiction is a
7 situation that exists currently. UtiliCorp has agreed to
8 the condition placed upon the prior owners that they not
9 connect Missouri Pipeline with Trans-Mississippi Pipeline,
10 that I will probably be referring to as TMP. They have
11 agreed to that restriction.

12 They could come before the Commission to ask
13 that that restriction be raised, but they haven't done so in
14 the past six years, so it would seem unlikely.

15 Gateway, however, has made no secret of the
16 fact that it intends to open this Trans-Mississippi
17 Pipeline, and it is, of course, an interstate pipeline
18 because it goes from Missouri into Illinois.

19 MR. KEEVIL: Excuse me, Judge. She's getting
20 into Gateway business plans. That's been kept proprietary
21 up to this point. Neither Mr. Boudreau nor I got into
22 specifics plans on the TMP.

23 MS. SHEMWELL: Should we close?

24 JUDGE THORNBURG: Well, your request is to
25 interpret that a certain way or remove it. I think you

1 opened that up already.

2 MR. KEEVIL: Oh, certainly she can talk about
3 TMP, but when she gets into specific Gateway plans regarding
4 use of TMP, that's something entirely different.

5 JUDGE THORNBURG: Can you refrain from the use
6 of TMP and stay --

7 MS. SHEMWELL: I'm just going to discuss the
8 possibility of FERC jurisdiction that might result, and I
9 think that that's also been made public.

10 JUDGE THORNBURG: Mr. Keevil, I think the
11 issues of FERC jurisdiction, those would be legal issues.

12 MR. KEEVIL: That's fine, as long as she
13 doesn't divulge, like I said, Gateway business plans. And
14 could we do something about that part of the transcript?

15 JUDGE THORNBURG: I'll have to see that. We
16 can ask the court reporter if we can get that portion of the
17 opening statement reproduced, and I'll make the request now.
18 Could you get us that small portion of the transcript by
19 tomorrow morning and we'll address that?

20 THE REPORTER: Sure.

21 JUDGE THORNBURG: Thank you. You may proceed.

22 MS. SHEMWELL: Thank you, your Honor. I'll
23 try to be cautious.

24 I will again note, and I don't think that this
25 is proprietary or HC, that TMP does cross state lines and,

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1 therefore, could certainly qualify and may very well be FERC
2 jurisdictional. That creates the very real and immediate
3 possibility that -- Jeff, I'm concerned. Am I getting into
4 HC again here -- were the connection to be made, the entire
5 pipeline could become FERC jurisdictional.

6 In his opening statement Mr. Boudreau
7 suggested that while UtiliCorp could do many of the things
8 that Staff has speculated Gateway might do, Staff feels that
9 Gateway, for example, is much more likely to pursue the
10 connection, it's much more likely to raise rates. We feel
11 that that does create an immediate detriment.

12 The problem with increasing rates when this
13 system is not financially viable is that there is a lot of
14 competition from propane in the area. Staff has addressed
15 this issue of financial viability.

16 If rates are raised, more people were likely
17 to go back to propane or other sources of heating, which
18 creates loss of customers, which creates the need for higher
19 rates. We feel that this increases the possibility of the
20 system having greater financial difficulties and perhaps an
21 abandonment of service in the area.

22 One of Staff's primary concerns that it has
23 expressed throughout this case is the lack of plans. Staff
24 wondered why Gateway would want to purchase a system that
25 was already having financial difficulties. But when you

1 couple that with the fact that Gateway has not submitted
2 business plans, they have not submitted a feasibility study,
3 a market study or any kind of plan to make this system
4 financially viable, that increased Staff concerns
5 enormously.

6 The bottom line issues are that the loss of
7 Missouri Commission jurisdiction immediately becomes a very
8 real possibility when currently there is very little
9 possibility of that. The already significant financial risk
10 of these assets increases immediately because of Gateway's
11 higher costs coupled with Gateway's inability to absorb the
12 losses and continue operation.

13 When you combine these immediate detriments to
14 the public with the other issues already faced and the fact
15 again that Gateway has no plans to deal with these
16 detriments, the very real -- and the very real possibility
17 that any conditions placed on the purchase to deal with the
18 detriments would be circumvented by FERC jurisdiction, you
19 come to the inescapable conclusion that this transaction is,
20 in fact, detrimental to the public interest.

21 The bottom line is that virtually everything
22 will change with this transaction, and Staff will show that
23 in their testimony.

24 Thank you.

25 JUDGE THORNBURG: Thank you. For the Office

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1 of the Public Counsel, Ms. O'Neill.

2 MS. O'NEILL: Thank you, your Honor. May it
3 please the Commission?

4 Although there are many considerations, as
5 Ms. Shemwell has just aptly demonstrated to this Commission
6 in this case, the basic issue is very simple. Should the
7 Commission approve the sale of, whether we classify it as
8 stock or assets, because we believe both are at issue here,
9 of UtiliCorp Pipeline Systems, or UPL, because that means
10 the sale of two Missouri regulated interstate pipelines to
11 Gateway Pipeline? And the answer to that question, of
12 course, depends on whether this Commission believes that
13 that sale would be detrimental to the public interest of the
14 people of Missouri.

15 Public Counsel believes for a number of
16 reasons that this transaction would be detrimental to the
17 public interest and that the Commission should deny the
18 application.

19 The Commission has correctly asserted
20 jurisdiction in this case because there are important public
21 issues at stake for customers of regulated utilities in
22 Missouri. UtiliCorp is a Missouri regulated utility with
23 long ties to this state. Gateway is an unregulated entity
24 who's a new player, a new company with basically no ties to
25 Missouri other than these pipelines that it seeks to

1 purchase.

2 Public Counsel, the Staff and the intervenors
3 in this case have legitimate concerns about this proposed
4 transaction. The applicants have not shown that it's a
5 financially viable situation now or that it will be
6 financially viable after the completion of this transaction.

7 All we have are vague, unsupported assertions
8 regarding debt and equity ratios. All efforts by Public
9 Counsel and Staff to determine whether the asserted ratios
10 have any basis in fact have been rebuffed by Gateway.

11 Gateway basically right now is just a shell.
12 It has an agreement to purchase UPL pending this
13 Commission's approval. It has some commitments from
14 financial lenders and it has an equity investor, MoGas
15 Energy, also an unregulated foreign corporation. MoGas
16 Energy, LLC has three investors, Mr. Ries, who's a witness
17 in this proceeding, Dennis Langley and a corporation called
18 TCW.

19 According to the scant information that we've
20 received from Gateway and which the Commission will have
21 before it in making this decision, MoGas' sole holding is
22 Gateway, and Gateway at this point in time has no holdings
23 at all.

24 Gateway and the other joint applicants have
25 the burden of establishing to this Commission that the

1 transaction will not be detrimental to the public interest.
2 They have not established the lack of detriment in filed
3 testimony. They have not made the prima facie case that
4 Mr. Boudreau discussed regarding lack of detriment.

5 Rather, Gateway in particular has been evasive
6 from the moment that this application was filed. Gateway
7 filed this application without naming UtiliCorp as the
8 ultimate owner of the stock it sought to purchase. Gateway
9 asked this Commission to decline jurisdiction over this
10 transaction because neither UPL or Gateway were regulated.
11 We're glad that we're here today for this hearing instead of
12 having that initial argument carry the day.

13 Gateway's not been forthcoming with
14 information of all types in this case. They've devoted much
15 of their rebuttal testimony to proclaiming that the
16 legitimate concerns of Public Counsel, the Staff and the
17 intervenors in this case is simply irrelevant, and then to
18 that claim of irrelevance add the Commission should just
19 trust them to do good things, be good business people and
20 operate this business without a detriment to the public.

21 The public in this case includes captive
22 customers to these pipelines, captive customers who may
23 suffer if there's a detriment and actually will suffer if
24 there's a detriment to the public interest, and we believe a
25 detriment will occur.

1 Gateway is acting like an unregulated company
2 in an unregulated line of business, but they're here in a
3 regulated arena, and this Commission has the duty to
4 determine based on the facts it finds from the evidence
5 submitted in this case whether the applicants have
6 established that the proposed transaction would not be
7 detrimental to the public interest.

8 And that's the first point, and Public Counsel
9 believes that in making that determination you will never
10 get to the point of whether or not there's been evidence
11 submitted that shows a detriment to refute a prima facie
12 case. We believe there's plenty of evidence in the record
13 to establish those detriments, but we don't believe the
14 prima facie case has been made.

15 If allowed to acquire Missouri Pipeline and
16 Missouri Gas Company, or MPC and MGC as we've been calling
17 them, Gateway is also going to acquire an obligation to
18 provide safe, adequate and reliable service to the
19 pipeline's customers at just and reasonable rates.

20 To allow this transaction to occur without any
21 evidence that Gateway, which has no actual assets at
22 present, has the financial ability to meet this obligation
23 would be contrary to the public interest.

24 Public Counsel recognizes that the no
25 detriment standard applies to actual present detriment.

1 However, Public Counsel believe that the Commission has an
2 obligation to the people of Missouri, and that obligation is
3 carried out through reasonable regulation, reasonable
4 oversight. That obligation is to determine detriment by
5 looking beyond just the snapshot of the corporation as they
6 look today versus a snapshot as they will look one second
7 after the transaction is completed.

8 These regulated pipelines are an ongoing
9 enterprise with ongoing duties to the public. Gateway has
10 the burden of establishing that granting this application
11 will not be detrimental to the public interest on an ongoing
12 basis.

13 Gateway's been unduly secretive about its
14 plans for these pipelines, but after its actions the
15 Commission should have a reasonable idea of what's planned
16 after the purchase.

17 Although it did not request it as part of the
18 application, one of the issues that's come up prior to this
19 hearing and which will be addressed during this hearing is
20 whether this Commission should lift a restriction that's
21 contained in MPC's original Certificate of Convenience and
22 Necessity, the restriction that I think you've heard a
23 little bit about and you'll hear more about, I believe,
24 during these hearings regarding the separation between TMP
25 and MPC.

1 All parties except for Gateway agree that
2 without a waiver of this condition Gateway cannot connect
3 MPC to the currently unused pipeline which it's also
4 planning to acquire at a substantial premium in this case.
5 Should this condition be waived? Public Counsel's position
6 is that it should not.

7 Whatever this Commission decides regarding
8 whether it would approve the transaction, the Commission
9 should not in this proceeding grant a waiver of that
10 restriction. The restriction has always been a part of
11 MPC's certificate. The only mitigating factor in this whole
12 case and the only factor which lessens the detriment to the
13 public interest is that restriction to the MPC certificate.

14 More importantly, however, Gateway has failed
15 to present any evidence which would support this
16 supplemental request to remove the restriction from the
17 certificate. Gateway has the burden of bringing forward
18 evidence to support removing this restriction and the burden
19 to persuade this Commission that removing the restriction is
20 an appropriate action to take at this time.

21 However, Gateway has steadfastly refused to
22 provide any evidence in its application or in its prefiled
23 testimony on which the Commission could rely to support
24 removing this restriction.

25 In contrast, the Commission has evidence

1 particularly in some of Staff's prefiled testimony
2 explaining how removing this restriction would be
3 detrimental to the public interest.

4 The application filed by Gateway does not
5 include a request to remove the interconnection restriction
6 in MPC's certificate. The Commission should not waive the
7 restriction at this time. The Commission should not even
8 consider waiving this restriction at any time except in the
9 context of a formal application for a waiver either from MPC
10 or whoever actually owns MPC at the time that that
11 application is filed.

12 Public Counsel opposes Gateway's application
13 in this case. We oppose the waiver of any restriction to
14 MPC certificates in this case, especially in the absence of
15 a specific application from MPC or its actual owners
16 supported by evidence to remove this restriction. Likewise,
17 Public Counsel would oppose the waiver of any other
18 restrictions in MPC and MGC's certificates or tariffs as
19 part of this proceeding.

20 UtiliCorp stated that its understanding of
21 this transaction was that there would be no change to the
22 customers of these pipelines as a result of this
23 transaction, that this transaction would be transparent. So
24 any change in the certificates, rates, tariffs or rules that
25 apply to these pipelines in this proceeding would be

1 inappropriate.

2 This application is detrimental to the public
3 interest for the reasons that are set forth in our prefiled
4 testimony and that of Staff, and I think you'll hear on
5 cross-examination further things from Staff and Public
6 Counsel witnesses and from also prefiled testimony of
7 Iacleda and other intervenors in this case.

8 The detriment to the public's based on several
9 factors, and you've heard most of them from Ms. Shemwell. I
10 won't repeat them now. The detriment becomes even greater
11 if this Commission grants the waiver of restrictions on
12 MPC's certificate.

13 For these reasons, we will ask you to deny the
14 application in its entirety, and if the application is
15 granted, we will continue to ask that that waiver not be
16 granted at this time.

17 Thank you.

18 JUDGE THORNBURG: Thank you. Mr. Byrne for
19 AmerenUE.

20 MR. BYRNE: May it please the Commission? My
21 name is Tom Byrne and I am the attorney representing
22 AmerenUE in this proceeding.

23 AmerenUE is a firm transportation customer of
24 Missouri Pipeline Company. The gas supplies that we receive
25 from Missouri Pipeline Company provide critical support for

1 our Wentzville service area distribution system on peak
2 days. So we have a pretty significant interest in this
3 case.

4 AmerenUE has filed rebuttal and
5 cross-surrebuttal testimony expressing several concerns
6 about this proposed transaction. We have not stated that we
7 oppose this transaction basically for two reasons.

8 First of all, we believe as a general matter
9 utilities should be permitted to sell or otherwise dispose
10 of their assets absent compelling evidence of public
11 detriment. The Commission should not routinely reject
12 applications of this kind.

13 Secondly, Ameren has been unable to determine
14 to its satisfaction whether such compelling evidence exists
15 in this case primarily due to the fact that our witness,
16 Julie Heins, is an AmerenUE employee and she has not had
17 access to all of the highly confidential information that
18 has been submitted in this proceeding in the form of
19 testimony and Data Request responses.

20 Nonetheless, AmerenUE has identified in
21 testimony a number of concerns that this transaction raises
22 and that the Commission must take into consideration in
23 deciding this case.

24 One concern that AmerenUE has raised in
25 testimony is Gateway's ability to insure that the

1 operational reliability of the pipeline systems are
2 maintained, and I think this concern has been somewhat
3 ameliorated by Gateway's agreement, as was pointed out in
4 the applicant's opening statement, to adopt the operational
5 conditions that were proposed in Staff witness Kottwitz's
6 testimony.

7 However, our other concerns that we expressed
8 in our testimony have only increased as this proceeding has
9 continued. One concern that we have is that Gateway may not
10 have financial resources sufficient to operate the pipelines
11 it's proposing to acquire over the long run.

12 Although AmerenUE has not conducted an
13 independent analysis of Gateway's finances, we are
14 particularly concerned that the other parties who have had
15 access to Gateway's highly confidential information and who
16 have conducted such analyses have raised serious questions
17 about Gateway's financial viability. If Gateway does not
18 have the financial resources to operate these pipelines over
19 the long run, the Commission must deny this application.

20 Our third and fourth concerns relate to the
21 stability of rates and services under Gateway's ownership.
22 These concerns have also grown as this proceeding has
23 progressed. Customers have enjoyed very stable rates during
24 the period that Missouri Pipeline Company has operated. In
25 addition, the quality of its service that we receive from

1 Missouri Pipeline Company has been high, both in terms of
2 MPC providing sufficient personnel on staff to handle
3 nominations and other customer service issues, as well as in
4 terms of MPC providing reliable service that can be counted
5 on on the coldest winter days.

6 If this level of reliability is jeopardized by
7 this transaction, again, the transaction should not be
8 approved.

9 Finally, AmerenUE is concerned that this
10 transaction might close during the winter period. I think
11 Gateway and UtiliCorp have also raised this issue, and it
12 could disrupt or at least jeopardize service during those
13 coldest days.

14 Consequently, we recommend that if this
15 transaction is approved, the applicants be required to close
16 the transaction either before October 15th or after
17 April 1st to prevent the possibility of those problems.

18 Laclede witness Pflaum has proposed seven
19 conditions that should be imposed on Gateway if this
20 transaction is approved, and AmerenUE has supported the
21 adoption of those conditions if the transaction's approved.

22 Three of these conditions are particularly
23 critical from AmerenUE's standpoint. First, the Commission
24 should continue the prohibition against Missouri Pipeline
25 Company bypassing their customers to directly serve end

1 users. If this condition is not retained, Missouri Pipeline
2 Company will have the opportunity to cherry pick the most
3 desirable industrial and commercial customers of AmerenUE
4 and other distribution companies and municipalities, leaving
5 the remaining customers to shoulder significantly increased
6 costs.

7 Second, Missouri Pipeline Company should be
8 required to provide firm customers with a right of first
9 refusal to retain their capacity at the end of their
10 contract term provided that they match the highest rate and
11 term of service offered by a new shipper.

12 This condition will eliminate any possibility
13 that at the end of a contract term Missouri Pipeline Company
14 will take the capacity away from firm customers such as
15 AmerenUE and Laclede and municipalities who need service
16 from Missouri Pipeline Company to meet critical needs of
17 residential customers and are willing to pay for that
18 service.

19 Finally, AmerenUE supports Mr. Pflaum's
20 proposed condition that would require Missouri Pipeline
21 Company to submit plans showing that the addition of any new
22 customers or changes in the operation of the system will not
23 impose additional costs or impair service to existing
24 customers.

25 For example, AmerenUE has minimum pressure

1 requirements, and I believe Laclede may also have minimum
2 pressure requirements which need to be maintained, and they
3 should submit plans showing that those pressure requirements
4 will be maintained if they add new customers.

5 So anyway, in summary, if this application is
6 approved, we recommend that the Commission impose the
7 conditions proposed by Laclede witness Pflaum.

8 Thank you.

9 JUDGE THORNBURG: Thank you. Ms. Young for
10 CMS Panhandle Eastern.

11 MS. YOUNG: Thank you, Judge. May it please
12 the Commission? I'm Mary Ann Young. I'm appearing today on
13 behalf of CMS Panhandle Eastern Pipeline Company, which I'll
14 refer to as Panhandle.

15 And just very briefly, Panhandle's primary
16 interest in this case is the safety and efficiency of
17 interconnection between Panhandle and its transportation
18 customers not be diminished as a result of this transaction.
19 A secondary interest is that rates and charges not increase
20 as a result of this transaction.

21 As Panhandle has presented no witnesses in the
22 case and does not intend to conduct cross-examination, I
23 would request to be excused from the remainder of the
24 proceedings with the understanding that Panhandle will be
25 bound by the briefing schedule set and any rulings that are

1 taken during the course of the hearing.

2 JUDGE THORNBURG: Thank you. You may be
3 excused. Thank you.

4 Are there any parties I've overlooked? I'm
5 sorry. Laclede Gas. I jumped one down on the list. I
6 apologize.

7 MR. PENDERGAST: Thank you, your Honor. If it
8 please the Commission?

9 As indicated in our Position Statement,
10 Laclede Gas Company recommends that the Commission not
11 approve the proposed acquisition that is at issue in this
12 proceeding. As the largest user on the MPC system, we have
13 not arrived at this recommendation lightly.

14 Like the applicants in this case, Laclede
15 fully endorses the principle that public utilities, like
16 other firms, should be permitted to exercise their property
17 rights, including the rights to sell their assets without
18 unreasonable interference, and we're not here today in an
19 effort to try and erect unreasonable barriers to the
20 exercise of those rights. After all, Laclede may want to go
21 ahead and exercise those rights at some point in the future
22 itself.

23 But like any other right, property rights are
24 not absolute. I may want to sell my home. I have a right
25 to sell my home, but I don't have a right to sell my home

1 for use as a lead smelting facility. There are always
2 restrictions on what you can do with any right.

3 And any public utility that constructs or
4 acquires assets that are used and useful in the rendering of
5 public utility service does so with the expectation and the
6 knowledge beforehand that if the time ever arrives when it
7 wants to sell those facilities, that sale will have to be
8 made on the condition that it is not detrimental to the
9 public interest.

10 And Laclede would submit that that particular
11 showing has not been made. In fact, the showing has been
12 made that it will be detrimental to the public interest.

13 You've seen a lot of evidence in the prefiled
14 testimony and you've heard some comments alluded to today
15 about how the proposed transaction won't have any impact on
16 existing service, and there has been significant evidence
17 that has been submitted in the way of pro forma figures and
18 assertions regarding that, and there have even been
19 assertions made that this proposed acquisition will be in
20 the public interest because it will facilitate pipeline
21 competition and open up additional sources of gas that will
22 benefit Missouri consumers.

23 Those claims have been made before, however,
24 and by one of the same principals that will own a major
25 stake in Gateway. Specifically, Mr. Langley who's a major

1 equity investor in Gateway was also the president of Bishop
2 Corporation and the CEO of Kansas Pipeline which together
3 with its affiliates also promised to bring the benefits of
4 competition to both Missouri and Kansas consumers. After
5 more than a decade, however, consumers are still waiting for
6 those benefits to appear.

7 As Dr. Christopher Pflaum discusses in his
8 rebuttal testimony, what those consumers have received
9 instead is pipeline service that turned out to be tens of
10 millions of dollars higher in cost than what was available
11 from other alternative suppliers, interruptions in service
12 during the winter heating season, claims to recover tens of
13 millions of dollars in costs that were never incurred or
14 acquired by the pipeline, pleas to regulators to grant
15 extraordinary levels of rate relief or else face a bankrupt
16 public pipeline, and a seemingly endless series of
17 litigation at this Commission, Kansas Corporation
18 Commission, the courts of Kansas and Missouri and the
19 Federal Regulatory Commission, among others.

20 Obviously that raises concerns for Laclede,
21 but you don't have to just take our word for the fact that
22 those concerns are real. Before this acquisition was ever
23 proposed this Commission itself submitted testimony before
24 the Federal Energy Regulatory Commission in which it
25 identified many of the same concerns regarding the Gateway

1 owner's previous track record, those concerns being those
2 discussed in Dr. Pflaum's testimony.

3 As the excerpt from that recent FERC Order,
4 initial decision in that FERC case noted, and I quote,
5 according to MoPSC witness Morrissey, various actions by
6 KPC's previous owners and managers have negatively affected
7 the KPC's rates, its relationships with its customers, its
8 regulatory affairs and its business operations.

9 MoPSC witness Morrissey contends that, quote,
10 various acquisitions and changes in KPC's ownership have
11 produced increased costs that have not resulted in
12 corresponding benefits to ratepayers, and the KPC's owners
13 and managers have repeatedly made decisions which have been
14 to their benefit while being detrimental to its ratepayers,
15 close quote.

16 It goes on to say, Moreover, the lack of
17 adequate internal controls has allowed KPC's operating
18 expenses to exceed reasonable levels, which has resulted in
19 KPC's cost of service being driven to a level where it is
20 not competitive with other pipelines. MoPSC believes that
21 above market prices have prevented KPC from increasing its
22 market share and have eroded its current market. The
23 increased prices have further caused dissension among KPC's
24 customers and state regulatory bodies, thereby triggering
25 contractual disputes and prudence reviews.

1 MoPSC states that all these factors are the
2 result of KPC's own inefficient management. Commission
3 policy requires that under such circumstances KPC's owners,
4 not its customers, must bear the burden of shouldering the
5 costs that results from KPC's increased business risk.

6 Laclede would submit that Ms. Morrissey and
7 this Commission were correct in their assessment of KPC.
8 Laclede would further submit that in light of this track
9 record, it is impossible for this Commission to find that
10 yet another pipeline system should be entrusted to those who
11 have compiled that track record.

12 Simply put, the proposed transaction is
13 detrimental to the public interest and it should be
14 disapproved. If for some reason the Commission should
15 conclude otherwise, however, as Mr. Byrne indicated,
16 Dr. Pflaum has proposed on behalf of Laclede and all users
17 of the MPC and MGC systems seven conditions, and those are
18 located at pages 14 to 15 of his rebuttal testimony.

19 Laclede would respectfully request that those
20 conditions be approved in the event that the Commission
21 determines that the transaction should be approved.
22 Mr. Byrne has already indicated to you what most of those
23 conditions are.

24 And if in the face of the concerns that we
25 have raised regarding this proposed transaction and its

1 detrimental effects on consumers the Commission nevertheless
2 finds that it should go forward with the transaction, we
3 believe these are the minimum measures that have to be
4 adopted to try and avoid at least some of the problems that
5 have been experienced in the past.

6 Thank you very much.

7 JUDGE THORNBURG: Thank you, Mr. Pendergast.
8 Sorry I overlooked you.

9 Are there any other parties? Seeing none. At
10 this time we'll recess 'til 10:15, and when we reconvene
11 we'll start with the cross-examination of witnesses, and the
12 first witness up will be Richard Kreul. Thank you.

13 (A BREAK WAS TAKEN.)

14 JUDGE THORNBURG: Mr. Boudreau, you may
15 proceed.

16 MR. BOUDREAU: Thank you, your Honor. I'd
17 like to call Mr. Richard Kreul to the stand, please.

18 (Witness sworn.)

19 RICHARD C. KREUL testified as follows:

20 DIRECT EXAMINATION BY MR. BOUDREAU:

21 Q. Good morning. Would you state your name for
22 the record, please.

23 A. Richard Kreul.

24 Q. By whom are you employed, sir, and in what
25 capacity?

1 A. UtiliCorp United. I'm Vice President of
2 Energy Delivery, but also in that capacity I'm President of
3 UtiliCorp Pipeline Systems, President of Missouri Pipeline
4 and President of Missouri Gas.

5 Q. Missouri Gas Company?

6 A. Missouri Gas Company, yes.

7 Q. Are you the same Richard Kreul that caused to
8 be prepared and filed direct testimony comprised of nine
9 numbered pages and five attached schedules that is
10 specifically Schedules RCK-1 through 5?

11 A. Yes, I am.

12 Q. And I believe that with respect to
13 Schedule RCK-4 there were a number of highly confidential
14 designated pages that were filed along with your direct
15 testimony; is that correct, sir?

16 A. That's correct.

17 Q. And that direct testimony has been previously
18 marked for identification as Exhibit No. 1; is that correct?

19 A. I'm not sure. I wasn't here when the exhibits
20 were being marked.

21 Q. Are you also --

22 JUDGE THORNBURG: That is correct.

23 MR. BOUDREAU: Thank you.

24 BY MR. BOUDREAU:

25 Q. Are you also the same Richard C. Kreul that

1 caused to be filed with the Commission surrebuttal testimony
2 comprised of ten numbered pages on or about August 24th,
3 2001?

4 A. Yes.

5 Q. Was that testimony, both the direct and the
6 surrebuttal testimony, prepared by you or under your direct
7 supervision?

8 A. Yes, it was.

9 Q. If I were to ask you -- or do you have any
10 corrections or other comments that you need to make about
11 that testimony at this time?

12 A. No, I do not.

13 Q. If I were to ask you the same questions as are
14 contained in both the direct and your surrebuttal testimony,
15 would your answers here today be substantially the same?

16 A. Yes, they would.

17 Q. Are they true and correct to the best of your
18 information, knowledge and belief?

19 A. Yes, they are.

20 MR. BOUDREAU: At this time, your Honor, I
21 would like to offer Exhibits 1, Exhibit 2HC, which is the
22 highly confidential pages out of one of his schedules to his
23 direct testimony, and Exhibit 3, which is his surrebuttal
24 testimony, and tender the witness for cross-examination.

25 JUDGE THORNBURG: Are there any objections to

1 these exhibits?

2 MS. O'NEILL: No objection.

3 JUDGE THORNBURG: Hearing none, these exhibits
4 will be received. That's Exhibit No. 1, the direct
5 testimony of Richard Kreul, Exhibit No. 2, which is highly
6 confidential, which is RCK Schedule 4.

7 MR. BOUDREAU: They're selected pages out of
8 that schedule.

9 JUDGE THORNBURG: Selected pages. And then
10 Exhibit No. 3, which is the surrebuttal of Richard Kreul,
11 and those will be received.

12 (EXHIBIT NOS. 1, 2HC AND 3 WERE RECEIVED INTO
13 EVIDENCE.)

14 MR. BOUDREAU: Thank you, your Honor.

15 JUDGE THORNBURG: Now, we're going to proceed
16 in the order that was suggested by the parties and was filed
17 by the Staff on August 29th. First order in the cross will
18 be by Gateway.

19 MR. KEEVIL: Judge, I just have a couple of
20 questions based on some things I heard during the other
21 parties' opening statements earlier this morning.

22 CROSS-EXAMINATION BY MR. KEEVIL:

23 Q. Good morning, Mr. Kreul.

24 A. Good morning.

25 Q. I believe I heard this morning during the

1 opening statements of Staff, or perhaps it was Public
2 Counsel, that because UtiliCorp has owned these pipelines
3 for some time now and not taken certain actions that Staff
4 and Public Counsel fear Gateway will take if Gateway
5 acquires them, that they at least believe that's a reason
6 the Commission should not approve this transaction.

7 So the question that I would have for you, if
8 this transaction is not approved by the Commission and
9 UtiliCorp retains ownership of the pipeline companies, what
10 would -- would UtiliCorp look at raising rates on the
11 pipeline?

12 A. That's always an option. We had a rate case
13 in '92. I suppose that's always an option for us to come in
14 and ask for different rates.

15 Q. I believe some of the other things that either
16 Staff or Public Counsel mentioned that Gateway would do,
17 implying that UtiliCorp would never do, is attempt to
18 increase throughput on the pipelines through various means,
19 possibly connect the MPC pipeline with the TMP under the
20 river assets. Would UtiliCorp look at those options?

21 A. Certainly. We have done that in the past and
22 were very close to actually filing with FERC an application
23 to put TMP into service and interconnecting with Missouri
24 Pipeline. It turned out at that time that we could not find
25 a pipeline on the Illinois side to provide firm service for

1 our customers, so it really had no value. If that were --
2 if that were to change, we'd surely look at that again.

3 Q. Are you aware of whether any pipelines on the
4 Illinois side have expressed interest in expanding west?

5 A. Yes. As a matter of fact, Natural Gas
6 Pipeline, NGPL, just recently announced that they were
7 building into the East St. Louis area, and that's going to
8 do one of two -- actually, it's going to do two things.

9 One, it'll bring a new supply of gas into the
10 area, but what they have announced is that they are -- their
11 anchor, so to speak, or their major customer at this point
12 is Illinois Power, and I think it's reasonable to believe
13 that Illinois Power will probably turn back some of their
14 capacity on MRT.

15 So actually there'll be two pipelines, I
16 think, that will have capacity, additional capacity, and we
17 would surely consider interconnecting with them.

18 Q. I believe I also heard during the opening
19 statements Ms. O'Neill from OPC say that all parties except
20 Gateway agree that Missouri Pipeline Company cannot be
21 connected to TMP Pipeline currently, and by the way she said
22 that, that seemed to mean to me that UtiliCorp agreed with
23 that. Is that your understanding?

24 A. Well, it's my understanding that we are
25 restricted to connecting with that pipeline and operating it

1 as Missouri Pipeline. Back in '89 when the original line
2 was put in service, we were requested and required to
3 disconnect because, my belief, that the Commission was
4 afraid that we were going -- or actually would have the
5 opportunity to serve an area of Missouri which we were not
6 certificated to serve, and that would be the last six miles
7 of that pipe going up to the river.

8 So they required us to disconnect since we did
9 not -- we were not going to be certificated to serve that
10 area.

11 Q. If the pipeline under the river was owned by
12 an entity other than Missouri Pipeline Company and was being
13 used simply as a pipeline rather than an LDC-type situation,
14 your understanding is that UtiliCorp or MPC can connect to
15 that if it's owned by another entity regardless currently
16 under UtiliCorp ownership?

17 A. That is my understanding.

18 MR. KEEVIL: Thank you, Mr. Kreul.

19 JUDGE THORNBURG: Next up was Panhandle. Is
20 that Ms. Young? And she's asked to be excused. So we'll
21 pass over Panhandle, and the next company up would be
22 AmerenUE.

23 MR. BYRNE: I just have a couple of questions,
24 Mr. Kreul.

25 JUDGE THORNBURG: I'm sorry. Mr. Byrne,

1 you'll have to do your questioning from the podium.

2 MR. BYRNE: I'm sorry.

3 CROSS-EXAMINATION BY MR. BYRNE:

4 Q. Good morning, Mr. Kreul.

5 A. Good morning.

6 Q. How long has UtiliCorp owned these pipelines?

7 A. Since January of '95.

8 Q. Okay. And during that period of time -- well,
9 when was the last time that, if ever, they changed the rates
10 for transportation service?

11 A. They being UtiliCorp?

12 Q. Yeah.

13 A. UtiliCorp. Since the pipelines have been
14 under the ownership of UtiliCorp, we have not had a rate
15 case.

16 Q. Okay. And during that period of time, have
17 you ever failed to provide firm service to customers?

18 A. No, we have not.

19 Q. Have you ever failed to provide -- to meet the
20 pressure requirements of customers who receive service from
21 you?

22 A. Not to my knowledge, no.

23 Q. And have you always had a full-time employee
24 dedicated to taking nominations and handling operational
25 issues?

1 A. Well, we have an employee that does that, but
2 she does other things, too. If you're speaking of Donna
3 Shackelford, that is part of her responsibility, but she
4 does other things, not only for Missouri Pipeline/Missouri
5 Gas, but for UtiliCorp.

6 MR. BYRNE: Thank you very much.

7 THE WITNESS: You're welcome.

8 JUDGE THORNBURG: Thank you. Laclede Gas.

9 CROSS-EXAMINATION BY MR. PENDERGAST:

10 Q. Good morning, Mr. Kreul.

11 A. Good morning.

12 Q. I'd like to ask you a few questions about the
13 process that UtiliCorp went through in arriving at the
14 agreement to sell MPC and MGC to Gateway.

15 Are you familiar with UtiliCorp United's
16 response to Data Request No. MGC-3808 that was submitted by
17 Staff witness Roberta McKiddy?

18 A. I am not, no.

19 MR. PENDERGAST: If I could approach the
20 witness?

21 JUDGE THORNBURG: You may approach the
22 witness.

23 MR. PENDERGAST: Thank you.

24 BY MR. PENDERGAST:

25 Q. Does that refresh your memory, Mr. Kreul?

1 A. To be honest, I don't recall seeing this, but
2 I may have through the process. This was back in June, so
3 it's been a few days.

4 Q. But that is a Data Request Response provided
5 by UtiliCorp?

6 A. Yes, it is.

7 Q. Okay. And did that ask UtiliCorp for any
8 evaluation studies that were performed in connection with
9 the proposed transaction?

10 A. Yes, it does.

11 Q. And could you please read what the response of
12 UtiliCorp was?

13 A. UtiliCorp United, Inc., UtiliCorp Pipeline
14 Systems, Missouri Pipeline and Missouri Gas Company have
15 performed no valuation analysis such as that contemplated in
16 this Data Information Request. None of these parties are
17 aware whether Gateway Pipeline Company has performed such an
18 analysis. The companies that are being sold in subject
19 transaction were not considered strategic.

20 Moreover, reported earnings were not
21 consistent with expectations. Based on these factors, it is
22 the desire of seller to dispose of these assets as -- at as
23 high a value as possible. Through arm's -- through arm's
24 length negotiations over the course of many months a
25 transaction value was ultimately reached that was mutually

1 agreeable to the interests of all parties involved.

2 Q. Thank you. Can you tell me what UtiliCorp
3 meant when it said that the companies are not considered
4 strategic?

5 A. Yeah. Missouri Pipeline and Missouri Gas are
6 the only intrastate pipelines owned and operated by
7 UtiliCorp, and, as such, over the past few years we have
8 determined that they just simply aren't strategic. We'd
9 rather not be in that business. We'd rather do other
10 things. And as a result of that, have been actively
11 pursuing the sale of these two companies.

12 Q. So the intrastate pipeline business is simply
13 a business that UtiliCorp has decided it does not want to be
14 in and that's why those facilities were no longer considered
15 strategic?

16 A. That's correct.

17 Q. You also indicated that reported earnings were
18 not consistent with expectations. Can you tell me what
19 UtiliCorp meant by that?

20 A. Well, they have certain hurdle rates where
21 they would like to see a return on their investment. Simply
22 put, these two companies were not reaching those hurdle
23 rates.

24 Q. By how much were they falling short?

25 A. I don't know.

1 Q. Can you tell me whether or not UtiliCorp
2 considered any options for improving the earnings
3 performance of MGC and MPC?

4 A. We always are on the look for improving the
5 performance. The only way we would see improving
6 performance would be increased throughput. We think that
7 we -- from an operation and maintenance cost, they're as
8 good as they're going to be. We feel like we're running a
9 very efficient operation.

10 So any improvement in the performance would be
11 on the revenue side, and we've always pursued new
12 opportunities, particularly those which would not inquire or
13 require additional investment.

14 Q. Okay. So when you say that it's very
15 efficiently run now and that there weren't -- you're
16 suggesting there aren't additional opportunities for making
17 it even more efficient?

18 A. Not from an operational standpoint. Only on
19 the revenue side.

20 Q. Okay. And speaking of the revenue side, did
21 UtiliCorp contemplate filing a rate case for MPC or MGC?

22 A. They have not, no.

23 Q. And if not, why not?

24 A. Again, our focus has been actually divestiture
25 of the two companies and have not looked at anything else.

1 Q. Okay. But I thought you said that you were
2 divesting the companies because, among other reasons, their
3 earnings performance, and I guess I'm asking you, was there
4 ever any contemplation by UtiliCorp that it would attempt to
5 improve that earnings performance by filing a rate case?

6 A. Simply filing a rate case I don't think would
7 improve the performance. Many of our rates are currently
8 discounted, and just because the rates would be increased
9 doesn't necessarily mean that we'd get additional revenue.

10 Q. Okay. So are you suggesting there that if you
11 had increased your rates, you would have lost throughput and
12 lost load because there are other competitive alternatives
13 that exist?

14 A. No.

15 Q. Then what are you suggesting?

16 A. I think your question was if we had a rate
17 case and improved the maximum allowed rates, would that
18 decrease throughput, and it would not.

19 Q. No, not -- well, it would not decrease
20 throughput, that's your testimony?

21 A. That is my testimony.

22 Q. Okay. And why would it not result in
23 additional revenue under those circumstances to UtiliCorp?

24 A. Like I said earlier, most of our rates are
25 discounted from the maximum allowable rate.

1 Q. For what terms, do you know?

2 A. They vary.

3 Q. And they are discounted because of what
4 reason?

5 A. What we feel to meet competition.

6 Q. To meet competition. So once again, if you
7 were to try and increase rates either through a rate case or
8 by simply raising the discounted rates that are currently
9 offered under contracts to existing users, are you concerned
10 that you would lose throughput?

11 A. Again, that would be a case-by-case basis. It
12 surely is a consideration and a concern. That's why you do
13 discount to meet competition. But to blanketly say that
14 raising rates would lose throughput, no, I don't think that
15 would be the case.

16 Q. You indicated that because of the strategic
17 considerations to the earnings situation that you decided to
18 divest yourself of these properties and that you focused on
19 obtaining the greatest possible value for them; is that
20 correct?

21 A. That's correct.

22 Q. Okay. Was that your primary objective as you
23 went through the process of attempting to find a buyer and
24 negotiating with that buyer?

25 A. And the primary objective being?

1 Q. To get the highest possible value for the
2 assets.
3 A. Yes, surely, but we -- yes.
4 Q. Okay. Were there any other objectives?
5 A. None that I can think of.
6 Q. Okay. Well, is that to suggest that in
7 determining the buyer and negotiating with that buyer the
8 terms of the acquisition, that you did not conduct an
9 investigation of the fitness of the buyer to run and operate
10 the system?
11 A. We did not.
12 Q. Did you consider that to be an irrelevant
13 consideration?
14 A. No. Again, we just didn't consider it.
15 Q. And UtiliCorp will continue to have
16 distribution facilities, will it not, that will be served by
17 MGC and MPC?
18 A. Yes, they will be.
19 Q. And was UtiliCorp even aware as late as June
20 of this year as to who the principal owners of Gateway were?
21 A. Not all of them. I was not aware of TCW,
22 Trade Company of the West. I was aware of Dave Ries and was
23 aware of Dennis Langley.
24 Q. And when you say you were aware of
25 Mr. Langley, did UtiliCorp respond in a Data Request that it

1 had heard that he might be a principal owner as opposed to
2 it knew he was?

3 A. Oh, I'm not sure the level of confidence of
4 what we knew, but his name had been mentioned somewhere.

5 MR. PENDERGAST: Could I approach the witness?

6 JUDGE THORNBURG: Yes, you may. I'd ask that
7 you let Mr. Boudreau see another page if you're going to
8 show the witness a different page. You may approach.

9 MR. PENDERGAST: Thank you.

10 BY MR. PENDERGAST:

11 Q. Mr. Kreul, would you just please read the
12 question that's been asked there and just the first
13 paragraph of the response.

14 MR. KEEVIL: Judge, what are they reading from
15 here? Has that been identified?

16 MR. PENDERGAST: Excuse me.

17 BY MR. PENDERGAST:

18 Q. Would you please identify the document I've
19 just handed you?

20 A. UtiliCorp United Case No. GM-2001-585, Data
21 Request No. OPC-R10.

22 Q. Okay.

23 A. Please provide all information in the
24 possession or control of UtiliCorp regarding the
25 relationship between Gateway Pipeline Company, Inc. and

1 Dennis Langley, including but not limited to Mr. Langley's
2 interest in any parent company of UtiliCorp, including but
3 not limited to MoGas Energy, LLC.

4 Response. UtiliCorp has no written
5 documentation regarding any relationship between Gateway
6 Pipeline Company and Dennis Langley. It is our
7 understanding through oral discussions with representatives
8 of Gateway that Mr. Langley may be an equity investor in
9 Gateway.

10 Q. Okay. And do you know for a fact now that he
11 is an equity investor in Gateway?

12 A. To be honest, I've not seen any information
13 stating that. I believe that to be the case, but as I
14 understand it, that was highly confidential information that
15 I was not privy to.

16 Q. Well, were you involved in the proposed -- or
17 in the negotiations over the proposed restructuring?

18 A. Yes.

19 Q. Okay. And during that process, was the
20 identity of the ultimate owners kept secret from you?

21 A. It wasn't kept secret. I think it was common
22 knowledge, but to what extent, what involvement was not
23 revealed. Mr. Langley was not involved in any of the
24 negotiations. I've only seen Mr. Langley one time since
25 we've been through this episode in the last year.

1 Q. Okay. And so to this date, you're still not
2 certain what his status is?

3 A. I am not certain just what his status is,
4 that's correct.

5 Q. What is the current peak day capacity on the
6 MPC system?

7 A. It's approximately or nominally 85,000 Mcf a
8 day.

9 Q. And can you tell me what the current firm peak
10 day subscription is on the MPSC system?

11 A. Not exactly. It's in the 82 to 85 range.

12 Q. So very close to the peak capacity?

13 A. Very close, yes.

14 Q. So without additional cost or investment,
15 would it be fair to say that it would be difficult to
16 increase firm subscription that also increased firm peak day
17 demand on the system?

18 A. Not necessarily. It depends upon where those
19 customers would be located on the system, and that's why
20 nominally it's 85,000. We could probably do more than that
21 if a customer was closer to the source of gas, that being
22 Panhandle Eastern. We could do more if we had another
23 interconnect with Williams Pipeline or with a company or a
24 pipeline coming across from Illinois without us spending any
25 appreciable amount of capital.

1 Q. And if the customer were located further away?

2 A. It would be difficult to get any more.

3 Q. Thank you.

4 You mentioned earlier in response to a
5 question by Mr. Keevil that UtiliCorp had considered
6 activating the Trans-Mississippi facilities?

7 A. That's correct.

8 Q. And you had actually prepared a FERC filing;
9 is that correct?

10 A. We were drafting a filing. I don't remember
11 to what extent that filing was, but yes, we had gone down
12 that road quite a bit.

13 Q. Okay. Now, was that at a time when the
14 ownership of those facilities was still considered
15 strategic?

16 A. No. They were still -- they were not
17 considered strategic at the time, but the arrangement that
18 we were trying to make would be there would be no capital
19 investment in that. We were going -- we were trying to
20 interconnect with MRT, and MRT was going to spend the
21 capital money required to provide the interconnect.

22 Q. Okay. Is doing something of that nature still
23 a part of UtiliCorp's strategic plan?

24 A. Well, again, the plan hasn't changed over the
25 years. It's still not a strategic operation of ours. But

1 again, with the addition of NGPL, we would surely consider
2 interconnecting with NGPL in some fashion, or MRT, and
3 bringing additional source of gas across the river to our
4 customers.

5 Q. So if the Commission were to adopt Laclede's
6 recommendation that it condition any approval of this
7 transaction on not permitting Gateway to acquire the
8 Trans-Mississippi facilities, it would be your testimony
9 that UtiliCorp retaining those facilities and being
10 completely separate from Gateway would have an interest in
11 perhaps pursuing an interstate arrangement?

12 A. Yes, it would be.

13 MR. PENDERGAST: Thank you. I have no further
14 questions.

15 JUDGE THORNBURG: Office of the Public
16 Counsel.

17 MS. O'NEILL: Thank you.

18 CROSS-EXAMINATION BY MS. O'NEILL:

19 Q. Good morning, Mr. Kreul.

20 A. Good morning.

21 Q. Mr. Kreul, you have provided some testimony
22 here today regarding some plans that UtiliCorp had
23 considered regarding this Trans-Mississippi Pipeline that
24 goes under the river and some things regarding FERC; is that
25 correct?

1 A. That's correct.

2 Q. Do you have a copy of your prefiled rebuttal
3 testimony there in front of you?

4 A. I do.

5 Q. And that is Exhibit -- what's in evidence as
6 Exhibits 3; is that correct?

7 A. That is correct.

8 Q. And would you turn to page 6 of that
9 Exhibit 3, please.

10 A. Okay.

11 Q. On page 6 at lines 3 and 4, is there a
12 question that reads, Does MPC's certificate contain a
13 restriction that there be no physical connection with
14 certain facilities crossing beneath the Mississippi River?

15 A. That's the question, yes.

16 Q. And could you read the answer to that
17 question?

18 A. Yes. In case GA-89-126 the Commission
19 required MPC's predecessor in interest to maintain a
20 physical separation of certain of its facilities located
21 beneath the Mississippi River. UtiliCorp did not distribute
22 that -- or dispute that condition when it thereafter
23 acquired the assets of that company pursuant to Commission's
24 Order, Case No. GM-94-252.

25 Q. And at lines 10 and 11 of that testimony, is

1 there a question that asks, Will that condition be removed
2 by virtue of the Commission approving the joint application
3 in this case?

4 A. That's the question, yes.

5 Q. And what was your answer to that question?

6 A. No. The restrictive language associated with
7 MPC's certificate would remain after the close of the
8 transaction.

9 Q. So from this testimony -- in this testimony
10 you're recognizing that restriction still exists on MPC to
11 this day; is that correct?

12 A. That's correct. I would say --

13 Q. That's correct?

14 A. My opinion of that restriction is that --

15 Q. Thank you for answering the question,
16 Mr. Kreul.

17 MR. BOUDREAU: Your Honor, I believe he ought
18 to be able to explain his answer.

19 JUDGE THORNBURG: Okay. Mr. Boudreau, the
20 witness had answered the question. I'll direct the witness.
21 If you have a follow-up question, you may answer it, but he
22 responded to the question and that's it. You make a note
23 for redirect if you want.

24 MR. BOUDREAU: Thank you. I'm doing it right
25 now.

1 BY MS. O'NEILL:

2 Q. Mr. Kreul, on page 3 of Exhibit 3, at line 16
3 and 17, you acknowledge, don't you, that the Joint
4 Application in this case does not make any mention of or
5 contemplate any changes in the tariffs of the two regulated
6 subsidiary companies; is that correct?

7 A. That is my testimony.

8 MS. O'NEILL: Thank you. Nothing further.

9 JUDGE THORNBURG: Okay. Ms. Shemwell.

10 MS. SHEMWELL: Thank you.

11 CROSS-EXAMINATION BY MS. SHEMWELL:

12 Q. Good morning, Mr. Kreul.

13 A. Good morning.

14 Q. I'm Lera Shemwell. I represent the Staff.

15 Mr. Kreul, you said you're president of these
16 two companies, MPC and MGC?

17 A. That's correct.

18 Q. Have you tried to make this pipeline
19 profitable?

20 A. Yes, we have.

21 Q. Have you marketed natural gas in the area?

22 A. No, we have not.

23 Q. Have you encouraged conversions from propane?

24 A. Not directly, no.

25 Q. Have you approached any local municipals about

1 offering natural gas service?

2 A. Yes, we have.

3 Q. Have you been successful?

4 A. Yes, we have.

5 Q. Where would that be?

6 A. We serve the cities of St. James, of Cuba,
7 Waynesville, Richland, St. Robert. I think those are the
8 municipalities that we serve.

9 Q. What other cities are there in the area where
10 you could economically provide natural gas service? Let me
11 back up just a second. I'm sorry.

12 If you decide to serve in an area, who
13 installs the gas pipeline in the city?

14 A. It depends upon -- if it's a municipality,
15 it's the city that would provide that. If the city has
16 given those rights to a local distribution company, as the
17 City of Sullivan has, then an LDC would provide that
18 service.

19 Q. Are there any cities out there waiting for
20 natural gas service where the pipes to the homes are already
21 installed?

22 A. No, not that I'm aware of.

23 Q. You've indicated that you're operating this
24 pipeline efficiently, which means that you've examined the
25 costs and I guess trimmed those costs as necessary or

1 appropriate?

2 A. Actually, we've not done trimming. We've
3 operated under the scenario for as many years as I remember
4 as I've been part of -- at least for the last five or six or
5 seven years. So no trimming has been undertaken per se.

6 Q. How many people does it take to operate this
7 system safely and provide satisfactory customer service?

8 A. Well, we currently have seven, eight
9 employees. In my opinion, we've operated safely and not had
10 any customer complaints.

11 Q. How many conversions from alternative fuels to
12 natural gas were there? How many customers converted in the
13 last year?

14 A. Along our pipeline?

15 Q. Yes.

16 A. I don't know. Again, we serve the cities and
17 municipalities, and it's -- or the LDCs and the
18 municipalities. They're the ones that are going out and
19 converting customers.

20 Q. What's your biggest competition for service in
21 the area, let's say outside the St. Louis area?

22 A. Propane.

23 Q. Would you -- have you prohibited Gateway from
24 talking to your current customers?

25 A. I don't think so. What I've asked them to do

1 if they are talking to customers, let us know that they're
2 doing that and give us at least the privilege of being at
3 that same meeting.

4 Q. Have you asked them not to talk to prospective
5 customers?

6 A. I don't recall.

7 Q. Is UtiliCorp subsidizing MPC by charging your
8 eastern district customers higher rates?

9 A. That's a loaded question. I'm not aware of us
10 charging our customers higher rates.

11 Q. From your earlier testimony, I was under the
12 impression that you think that the -- or you believe that
13 the condition that MPC not connect to the Trans-Mississippi
14 Pipeline remains on MPC. I believe that was the testimony
15 you covered with Mr. Pendergast.

16 Is it your testimony that that restriction
17 from connecting does not apply to TMP?

18 A. No, it does not. If TMP were to be put into
19 service as a separate company, particularly bringing gas
20 from Illinois into Missouri, it's my opinion that we do not
21 need regulatory approval to provide that interconnect as --
22 I mean, that's no different than providing, getting an
23 interconnect with Williams Pipeline where we actually cross
24 into St. Peters County -- St. Charles County. No different
25 than we are -- we have had discussions in the past about

1 another company building up from the south out of
2 Springfield and providing service on the south end of the
3 system. In my opinion, we don't need regulatory approval to
4 interconnect with such entity if that were to happen.

5 So no, I don't think it -- if TMP were put in
6 service as a different company from Missouri Pipeline, we
7 would not require regulatory approval. If MPC were to want
8 to put that pipe into service as MPC, yes, it would require
9 regulatory approval.

10 Q. How far is the physical separation between the
11 two?

12 A. Eighteen inches.

13 Q. So it's not a significant investment to make
14 that connection?

15 A. That's correct.

16 Q. If you couldn't make that connection, what
17 value would TMP be to you?

18 A. No value. We've owned TMP for ten years.

19 Q. And you said you completed a FERC application.
20 So you agree that TMP would be a FERC jurisdictional
21 pipeline?

22 A. Well, a portion of that pipe would be because
23 you are going from Illinois into Missouri. That pipe is six
24 or seven miles long. That doesn't mean the entire pipe has
25 to be FERC jurisdiction. It could only be a portion, and we

1 could roll the other piece into Missouri Pipeline if
2 Missouri Pipeline wanted to serve some customers along the
3 way. But a portion would be FERC jurisdictional as I
4 understand the law.

5 Q. Would there be a potential for serving --
6 let's just speculate that you tie into MRT or NGPL, one of
7 those. I think it's pretty common knowledge that NGPL is
8 coming into East St. Louis. Would there be the opportunity
9 to serve Illinois customers?

10 A. I can't imagine any case where that would be.
11 Because of the additional capacity in Illinois, MRT and NGPL
12 are going to be duking it out amongst themselves going for
13 those customers. I can't imagine how Missouri Pipeline
14 would be competitive with that. It may be the case, but I
15 just -- the little bit I know about that, I can't imagine
16 that being the case.

17 Q. You talked about bringing additional sources
18 in. I think Staff witness Lock indicated that your ACA
19 rates are higher especially on the southern portion because
20 you use three transportation companies. It starts with
21 Panhandle and then you have Missouri Pipeline and then
22 Missouri Gas Company. So with the three companies, that the
23 transportation rate is higher because of that.

24 A. Well, again, we don't -- Missouri Pipeline or
25 Missouri Gas, we don't have ACA rates.

1 Q. I understand that, but he was saying that the
2 rates are higher for customers in that area because of the
3 three.

4 A. Okay.

5 Q. If you add the fourth piece, which would be
6 Trans-Mississippi Pipeline and then NGPL or MRT or whoever,
7 and then you add the Trans-Mississippi and then the two
8 other pipelines, how is the addition of that, the rates for
9 TMP going to make it more competitive when you're adding a
10 fourth transporter?

11 A. Well, first of all, if you were to bring in
12 gas from Illinois, you would eliminate Panhandle Eastern,
13 which is very expensive. Their maximum rates are
14 approximately 40, 45 cents. So their rates are very
15 expensive, and if you were to build across the -- or to
16 interconnect with the pipeline coming from the east,
17 transportation rates are cut in half. The interstate pieces
18 are cut in half.

19 Gulf Coast Gas and Mid-Continent, both change.
20 The cost of gas itself fluctuates, and you could even be
21 more competitive there, too.

22 So again, all the pieces, if you were to bring
23 gas from Illinois into Missouri through Trans-Mississippi,
24 gas delivered to the customer would be less. I mean, that
25 would be the business proposition.

1 Q. Aren't you assuming, then, that NGPL or
2 whoever you tied in with would have to be lower than
3 Panhandle?

4 A. They are.

5 Q. NGPL is lower than --

6 A. Their rates are lower today, yeah. Their
7 maximum rates are lower today.

8 Q. Of course, we don't know what their rates are
9 going to be, do we, once they run that pipe into --

10 A. I don't know what -- I don't know what those
11 are, but I sure know what MRT's rates are, and we're only a
12 thousand feet away from them in Illinois. I can't imagine
13 MRT's rates changing a whole lot.

14 Q. Why haven't you already done this?

15 A. NGPL just announced not too long ago about
16 their expansion. That was not available to us.

17 Q. But you just indicated that you're a thousand
18 feet from MRT.

19 A. MRT didn't have any firm capacity available.
20 We would need firm capacity for our customers.

21 MS. SHEMWELL: Thank you, sir. That's all I
22 have.

23 JUDGE THORNBURG: Thank you. I believe that's
24 all the cross by the parties. Chair Simmons, did you have
25 some questions for this witness?

1 CHAIRMAN SIMMONS: I do. Thank you.

2 QUESTIONS BY CHAIRMAN SIMMONS:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. I don't have a lot of questions, but I think
6 that there was a line of questioning that was -- line of
7 questions just raised by Ms. Shemwell considering FERC
8 jurisdiction. I'd kind of like to get your thoughts on
9 that.

10 A. Okay.

11 Q. Do you believe that if this transaction were
12 to take place as far as Gateway Pipeline being able to
13 acquire the stock, that the Commission loses jurisdiction to
14 the FERC with this transaction once it's completed?

15 A. No, I do not.

16 Q. Would it be your thought that, if this
17 transaction were to take place, that all of the conditions
18 that had been laid out as previously discussed in -- I
19 believe as it relates to Laclede's, that their testimony had
20 at least seven conditions that were laid out.

21 If this Commission were to adopt those seven
22 conditions, do you believe that any of that would be
23 preempted if there were FERC jurisdiction? And I know I
24 just heard you say no, but if the case were such that there
25 was FERC jurisdiction, how would we deal with the seven

1 conditions?

2 A. I'm sorry, your Honor. I don't recall what
3 those seven conditions were.

4 Q. Okay. Did you not review any of the testimony
5 that --

6 A. I did. I just don't --

7 Q. Don't recall?

8 A. Don't recall. I'm sorry.

9 Q. In your surrebuttal testimony, I believe it is
10 on page 7, line 22, you talk about the Commission has
11 customarily imposed a condition that its approval of merger
12 acquisition is not binding for ratemaking purposes.

13 When you talk about that customarily imposed
14 condition, could you tell me either a cite or either a case,
15 or when you talk about customarily, what do you mean by
16 that?

17 A. Well, again, it's my belief -- and I'm sorry,
18 I'm not an attorney, so I don't know the whole law like
19 others in the room probably do.

20 But it's my opinion, again, this is a stock
21 transaction, and Gateway is buying the stock of UtiliCorp
22 Pipeline, which includes Missouri Pipeline, Missouri Gas and
23 whatever goes with that stock, and that would be the
24 authority to serve in the areas that Missouri Pipeline,
25 Missouri Gas operate in, the rates, the tariffs, everything

1 that goes with that.

2 And again, I'm not that familiar with what has
3 happened in the past, but I don't think I've -- I don't know
4 of a case, as limited as my knowledge is, of any case where
5 a stock transaction was approved and then other requirements
6 were tagged to it.

7 CHAIRMAN SIMMONS: That's all the questions I
8 have. Thank you, sir.

9 THE WITNESS: You're welcome.

10 JUDGE THORNBURG: Commissioner Murray.

11 COMMISSIONER MURRAY: Thank you.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good morning.

14 A. Good morning.

15 Q. I just have a few questions for you. In
16 answering some questions here earlier, you indicated that
17 you had not contemplated a rate case for MPC or MGC, and I
18 believe that you stated, because most of the rates are
19 discounted, that would not have resulted in an increased
20 revenue?

21 A. That's correct.

22 Q. Does that mean that most of the customers that
23 are served are served under contract?

24 A. Yes, that is. All customers that are served
25 we do have a transportation agreement with them, yes.

1 Q. And with the sale as it is proposed here, is
2 Gateway assuming those contracts as they exist?

3 A. That's correct. Yes, they are.

4 Q. So it's bound to honor those contracts until
5 the --

6 A. The term's up, yes, ma'am.

7 Q. And at the end of the terms, they become month
8 to month; is that correct?

9 A. Our typical firm transportation is a certain
10 term, and then you have a -- after that term you have a
11 six-month notice, either party can cancel given a six-month
12 notice. That's after the initial term of any of those
13 agreements.

14 Q. Okay. And your firm customers, do they have
15 the right to resell?

16 A. Yes, they do. We have a few of our shippers
17 or customers actually move the gas to the point to the city
18 gate, and then they sell at that point to their customer.
19 Like, for example, we may have a marketer that would move
20 gas across Panhandle Eastern, across Missouri Pipeline to a
21 city, to one of the Laclede city gates, which -- at which
22 point they make the sale to Anheuser Bush, and then Anheuser
23 Bush moves it on Laclede to their meter. So we have more
24 customers than just gas companies per se, the LDC or the
25 municipal.

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

3 THE WITNESS: You're welcome.

4 JUDGE THORNBURG: Commissioner Lumpe.

5 COMMISSIONER LUMPE: Yes.

6 QUESTIONS BY COMMISSIONER LUMPE:

7 Q. Mr. Kreul, from whom did UtiliCorp purchase
8 these pipelines?

9 A. They purchased it from Edisol Resources. They
10 were the holding company of Vesta Natural Gas. Vesta
11 Natural Gas was the parent of Missouri Pipeline and Missouri
12 Gas.

13 Q. And at that time it was part of their
14 strategic plan to have intrastate pipelines such as this and
15 now they've changed their strategic plan or --

16 A. Apparently so, yes, ma'am.

17 Q. Okay. Will UPL still exist under Gateway,
18 under the chart here, is there still going to be a UPL as
19 well as MPC and MGC?

20 A. That's probably a better question for
21 Mr. Ries, but it's my understanding, though, once the sale
22 happens, UPL is sold, but then Gateway has agreed to change
23 the name so Gateway does not have a subsidiary with
24 UtiliCorp tagged onto it.

25 Q. So there may or may not be a UPL and I should

1 ask Mr. Ries?

2 A. Yes, ma'am.

3 Q. Okay. Because you said you were president of
4 UPL, MPC and MGC. What happens to you?

5 A. I resign from those offices, but I will stay
6 with UtiliCorp. I do a lot of other things.

7 Q. Okay. So this wasn't your sole position?

8 A. No, ma'am, or my wife would be in the front
9 row watching what's going on.

10 Q. Somebody might have an interest in that.

11 A. Yes, ma'am.

12 Q. There was a question from, I think, maybe
13 Mr. Pendergast about selling at the highest possible value,
14 that the goal was to sell at the highest possible value?

15 A. Yes, ma'am.

16 Q. Refresh my memory. Did you sell at book
17 value? Was there any premium?

18 A. There is no premium. We are selling Missouri
19 Pipeline/Missouri Gas at book value.

20 Q. And that was the highest possible value you
21 could get?

22 A. Yes, ma'am, it is.

23 Q. Were there other possible buyers, I mean, or
24 was this entity newly created the only entity out there
25 interested in this?

1 A. We've had numerous discussions with other
2 entities over the past few years but, again, never felt like
3 we got the price we really needed to make this transaction,
4 and through negotiations with Gateway we reached that price.

5 Q. And on bypass, UtiliCorp has not tried to
6 bypass or go around the city gate and pick up companies?

7 A. Missouri Pipeline and Missouri Gas are
8 restricted from doing that, and that restriction would
9 continue with Gateway.

10 Q. All right. So they couldn't bypass either?

11 A. No, ma'am, they could not.

12 Q. There's mention of this other entity, if
13 another entity owned TMP. Would that other entity be
14 Gateway?

15 A. Gateway -- again, it's probably a better
16 question for Mr. Ries.

17 Q. Question for Gateway?

18 A. Yeah.

19 Q. You're not aware of who that --

20 A. I don't know --

21 Q. -- potential other entity might be?

22 A. I am not privy to Gateway's business plan.

23 Q. Okay. So I can ask them about their business
24 plan.

25 COMMISSIONER LUMPE: I think those are all the

1 questions. I thank you, Mr. Kreul.

2 THE WITNESS: You're welcome.

3 JUDGE THORNBURG: Commissioner Gaw.

4 COMMISSIONER GAW: Thank you, Judge.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. Good morning, Mr. Kreul.

7 A. Good morning.

8 Q. Let me go through a few things with you.

9 First of all, the employees who would be going with the
10 company, and it's clear now that you're not, would you tell
11 me about how many employees are anticipated to be continuing
12 to be employees of the entities that are being transferred?

13 A. Yeah. Subject to check, I think eight.

14 Q. Without saying subject to check, is that your
15 best estimate?

16 A. Well, if you give me a few minutes, I think
17 that's actually in the sales agreement.

18 Q. If you could, that would be great.

19 A. Seven.

20 Q. Seven employees. And what do those employees
21 do? What is their -- what are their duties in general?

22 A. These are the, our folks -- we have two
23 offices in eastern Missouri. One is in St. Peters, and one
24 is in Rolla. There's two employees in Rolla and five in
25 St. Peters, and they do the actual physical operation. They

1 go out and, I mean, things from painting valve sites to
2 locating our line if we're going to have construction around
3 our line to changing odorant in our odorant tanks, just a
4 variety of things, right of way clearing, managing
5 contractors who do that for us. So there's a variety of
6 things they do.

7 Q. So these seven employees are basically
8 assigned to field; would that be correct?

9 A. That's correct, yes.

10 Q. Who does the bookwork and everything else that
11 would go along with running the businesses of the three
12 entities?

13 A. We have actually two employees in Kansas City
14 in the UtiliCorp offices that part of their duties is
15 customer relations contracts and that sort of thing, and
16 then the day-to-day what we call nominating, nominations on
17 the pipe, arranging the flow of gas on a day-to-day basis.
18 Those two employees will stay with UtiliCorp. They will not
19 be a part of this.

20 Q. So they will assumably have to be replaced
21 with employees who would do those duties as well in the new
22 arrangement; is that correct?

23 A. Surely their functions will have to be
24 replaced, that's correct.

25 Q. How about the bookwork itself, the accounting

1 and the receiving of revenues and paying of expenses?

2 A. UtiliCorp the corporation does that for us,
3 and then their costs are charged to the pipelines. So we
4 lean on the accounting group of UtiliCorp to do that. We
5 don't have accountants per se on the payroll of Missouri
6 Pipeline.

7 Q. When that is done, is there some sort of
8 payment by UPL or its two subsidiaries to its parent
9 UtiliCorp for those services? Is that how that works?

10 A. Yes.

11 Q. So assumably those functions will have to be
12 replaced as well?

13 A. Surely they will.

14 Q. The contact with the customers of MPC and MGC
15 in regard to negotiating the contracts that you mentioned
16 earlier and other things, who would principally be involved
17 in that?

18 A. That would be one of the two people that I
19 mentioned earlier in Kansas City and myself. I get involved
20 in particular with the larger customers.

21 Q. All right. So again, those -- that would
22 change as well, at least as far as your relationship is
23 concerned?

24 A. That's correct.

25 Q. But the other individual, as you understand

1 it, does continue to work for the entities?

2 A. No. The individual in Kansas City will no
3 longer -- he will not be a part.

4 Q. So basically both of you would be out of the
5 picture after this transfer?

6 A. That's correct, out of the picture with
7 Missouri Pipeline.

8 Q. Yes. I don't mean to erase you from
9 existence.

10 A. I appreciate that.

11 Q. Thank you, Mr. Kreul.

12 Now, some of the customers, as I understand
13 it, of MPC and MGC are affiliates of UtiliCorp --

14 A. That's correct.

15 Q. -- is that correct?

16 A. Yes.

17 Q. Who are they?

18 A. Missouri Public Service, which is a division
19 of UtiliCorp, is an LDC on our pipe in the cities of
20 Owensville, Salem and Rolla, and we provide service to them.

21 Q. And you will continue to do that? That's not
22 a part of this transfer?

23 A. The pipeline will continue, yes, sir. The
24 pipeline will continue to provide that service.

25 Q. I guess I was on the other end. UtiliCorp

1 continues to own that LDC?

2 A. Yes, sir.

3 Q. That's not affected by this transfer?

4 A. Not at all.

5 Q. Is there another source of gas besides, I
6 think you said MPC for your division?

7 A. Not in this area, no. This is the only source
8 of gas.

9 Q. So you're dependent upon this supply?

10 A. Yes, we are.

11 Q. And you have read some of the testimony
12 regarding the risks that have been raised by Office of the
13 Public Counsel and Staff and others regarding the potential
14 risk that may occur to customers of MPC and MGC; is that
15 correct?

16 A. I have read that, yes.

17 Q. You would be, as UtiliCorp, among those in
18 that position if this transfer took place, would you not?

19 A. Ourselves and all the municipals down the
20 pipe. There's a number of customers that we serve, yeah,
21 all in the same scenario.

22 Q. That you would continue to be a part of as
23 UtiliCorp?

24 A. Yes, sir.

25 Q. How are you assessing those risks from

1 UtiliCorp's standpoint as a continuing customer of MPC and
2 MGC?

3 A. We're not -- if I could put my LDC hat on --

4 Q. Yes, please do.

5 A. -- which I rarely do. We're not concerned.

6 Again, if we have any problems with Gateway after the
7 transaction, we always can come back to this body and
8 resolve those concerns. I mean, that's the situation as it
9 is today. We have never had any complaints with our
10 customers, nor do I expect Gateway will. But if that were
11 to be the case, they can always bring that to this body for
12 resolution.

13 Q. Okay. Mr. Kreul, one of the things I'm trying
14 to get through here has to do with the current status of
15 revenues, net revenues to MPC and MGC as a result of their
16 current business, and it's my understanding -- and I realize
17 this is over-general, so I'll have to ask you to help me.
18 It's my understanding that the companies really are not
19 making money right now in general. Is that correct?

20 A. That's correct. For the most part, it's a
21 break even.

22 Q. So the easy answer to that initially, assuming
23 that, as I heard you before, there isn't really any way of
24 increasing efficiencies at least up to this point in time?

25 A. Not from the -- particularly in the field

1 operations, I don't think there is, and I think because the
2 employees are moving over and they're a part of the sales
3 agreement, I don't think those costs, there's any room for
4 reduction. There is probably a good opportunity maybe on
5 the corporate costs that hit our books.

6 Q. All right.

7 A. My guess is that Gateway will have fewer costs
8 than we do as UtiliCorp.

9 Q. And explain that for me. It's a little off
10 where I was going, but I'd like to --

11 A. A good example -- I'm sure there's many. I
12 can't think of them, but I'm sure there are. UtiliCorp's a
13 publicly traded company and we have investor relations and
14 we have people that manage that, and those costs, some of
15 those costs are allocated back to the pipeline, as are all
16 other parts of the business.

17 So I think -- I think there's an opportunity
18 for Gateway particularly on the what we'd call
19 administration, let's call it administration, those costs to
20 be reduced.

21 Q. All right. You wouldn't have any idea what
22 kind of reduction we could expect there, would you?

23 A. No.

24 Q. All right. Do you know whether or not we
25 have -- whether UtiliCorp has filed any evidence on those

1 costs in this proceeding that you're referring to?

2 A. I don't recall if we have or not.

3 Q. All right. Continuing along this path, if you
4 could potentially recover some efficiencies there, initially
5 I would have assumed that the other possibility would be the
6 possibility of a rate increase, but it's my understanding
7 and what you just testified to a little earlier that that is
8 not necessarily as far as UtiliCorp is concerned a solution;
9 is that correct?

10 A. That is correct.

11 Q. And that has to do with the fact that your
12 customers are mainly on contract at set rates that are under
13 what you're authorized to charge; is that correct?

14 A. Yes, sir.

15 Q. And I also heard you testify to something, I
16 believe, that had to do with one of the main factors of that
17 being competition; is that correct?

18 A. Yes.

19 Q. What competition are you referring to?

20 A. Really two forms of competition. One is MRT
21 in the St. Louis area. They're the pipeline that comes in
22 from the south, Gulf Coast Gas coming in from the south, and
23 90 percent of the St. Louis area moves gas on MRT. We would
24 surely want to capture as much of that as we could and move
25 that from MRT to us. But even MRT, I mean, we can't

1 discount our rates far enough to get any more. I think
2 we're where we need to be.

3 Propane is another -- is our competition down
4 the pipe. We built this pipe in '92-'93, and prior to us
5 there was no gas. We're displacing propane. But again, if
6 your -- Joe Brown has a propane tank in his backyard, you're
7 going to want something a little less expensive or at least
8 competitive. You may not like the sight of the ugly propane
9 tank, so you want that removed and you're willing to pay an
10 extra dime.

11 But for the most part you have to be pretty
12 close. If you add up the pieces, Panhandle, Missouri
13 Pipeline, Missouri Gas and the cost of gas, in some cases
14 you're not cheaper than propane. So we have to discount.

15 Q. All right. And so once you discount, how
16 close do you generally get to the propane cost?

17 A. Actually, we meet or maybe exceed propane just
18 a little bit, because we have experience where folks are
19 willing to convert just because of the convenience of
20 natural gas. You don't have the tank in the backyard. You
21 don't have to make sure it's full going into the winter,
22 that sort of thing. So you have to at least meet the price
23 is our experience.

24 Q. Based upon that, then, looking down the road,
25 if UtiliCorp were to continue the ownership of this system,

1 and I want you for the moment to ignore the Mississippi
2 River portion of this case, do you see the revenue stream of
3 this system changing in any significant way if UtiliCorp
4 were to continue to own this system?

5 A. Without the river crossing, no.

6 Q. All right. Let's go to that, because that --
7 a few lights came on a while ago, I think, when I was
8 listening to you.

9 When you go to the Mississippi River crossing,
10 tell me what that adds in potential again as far as revenue
11 is concerned to this system.

12 A. First and foremost, it brings cheaper gas into
13 our pipe for our customers, and again, for particularly
14 propane customers for example, if it's cheaper gas delivered
15 into our pipe than delivered off the Panhandle, if we're
16 still competing with the price of propane, then our
17 discounts may not necessarily need to be as much as they are
18 today if we have cheaper gas into the pipe. Another
19 opportunity --

20 Q. You may have to -- if I could stop you there.
21 Please explain that to me, because I'm not sure I -- I'm not
22 sure I understood what you were saying.

23 A. Okay. Just hypothetically, and these numbers
24 will be --

25 Q. Please.

1 A. -- easy math. Say the delivered cost -- say
2 propane's a dollar a gallon, and that's approximately \$11 an
3 MMBtu. That's the target we have to reach to win that
4 customer. And if you add all the costs that go into
5 delivering that gas, LDC charge, again, just for this
6 example let's say that's \$3. Now delivered to the LDC needs
7 to be \$8 to win that customer.

8 If Panhandle -- okay. Say gas is \$4, again
9 for easy math. Transportation rate needs to be \$4, because
10 you've got \$4 gas and then the delta being \$4. Okay. If we
11 can bring gas into the pipe where the gas is maybe \$4 but
12 the transportation off of MRT or NGPL is 50 cents cheaper,
13 then that 50 cents goes -- we can lessen our discounts
14 50 cents, still serving the customer at the same price to
15 compete with propane.

16 Q. All right. And also thereby increase your net
17 revenue to this system that we're discussing?

18 A. That's correct.

19 Q. And the end customer is still receiving gas at
20 the same price they were before under your hypothetical
21 scenario?

22 A. Well, at least they have a choice. What may
23 happen is, now you have a choice, Panhandle may decide to
24 discount to keep that customer. Right now there's no
25 competition for Panhandle. We're a captive customer. They

1 fail to see any need to discount.

2 Q. All right. So that potentially changes the
3 dynamic of the system as well?

4 A. It does.

5 Q. The restriction that exists on the connection
6 of the Mississippi River pipeline to the system here,
7 currently UPL owns that Mississippi River crossing; is that
8 correct?

9 A. That's correct.

10 Q. And that pipeline is, did you say, 18 inches
11 from -- is it MPC or MGC's line?

12 A. MPC. We actually cut a piece of pipe out. I
13 don't know if it's 18 inches or three feet, but it's this
14 far (indicating). So it is physically disconnected.

15 Q. So that disconnection was done approximately
16 when, do you know?

17 A. In 1989.

18 Q. 1989. So it predates UtiliCorp's ownership?

19 A. Yes, it does.

20 Q. The restriction that's there, does it in your
21 opinion -- well, let me give you the scenario which I think
22 was given to you earlier. If UtiliCorp were to sell MPC and
23 MGC stock -- I should specify.

24 If UPL would sell that stock to Gateway and
25 keep the UPL system, would the restriction that currently

1 exists prevent an agreement to connect those two pipes
2 together?

3 A. It would not prevent it, no.

4 Q. So the only restriction, the only reason that
5 this restriction currently is preventing it, in your
6 opinion, has to do with the affiliate relationship between
7 UPL and MPC and MGC --

8 A. No. Actually --

9 Q. -- or is it something more significant?

10 A. Well, in '89 when that line was put in
11 service, first of all, it was an Amoco line that we
12 converted, we purchased from Amoco and converted it.

13 Q. It was an oil line?

14 A. It was an oil line that we cleaned and
15 converted. That's why there's this piece of pipe there. It
16 goes into the refinery in Alton, Illinois. And at the time
17 in '89, the concern was Missouri Pipeline Company intrastate
18 company would have this piece of pipe into Illinois. So we
19 agreed -- we were required to actually disconnect, Missouri
20 Pipeline disconnect from that piece of pipe.

21 Okay. So again, that's my understanding of
22 what that requirement was there for, so Missouri Pipeline
23 Company could not serve along that six miles of pipe from
24 West Alton, Missouri, to the river and into Illinois.

25 Q. So you're saying so that the gas didn't flow

1 west to east?

2 A. It did not flow west to east. It did not flow
3 anyway, yeah, west to east. It would not have any customers
4 along that pipe.

5 Q. Yes.

6 A. We were not certificated to serve that area.

7 Q. But the restriction that exists -- I'm trying
8 to understand, because if I got your testimony correctly, if
9 UPL continued under the ownership of UtiliCorp but the two
10 subsidiaries were sold off, that connection you believe
11 could be made even with the restriction that exists?

12 A. That's correct.

13 Q. So what I'm trying to understand is, and what
14 I -- my question a while ago, which I still have, is if you
15 sell the system as is proposed, UPL's stock is being sold to
16 Gateway under this proposal. The reason why that
17 restriction continues to be a problem as far as the
18 connection is concerned has to do with the affiliate
19 relationship, the stock ownership of UPL in MPC and MGC; is
20 that correct?

21 A. No, sir.

22 Q. All right. I'm needing additional help, then.

23 A. Well, again, Missouri Pipeline stops at that
24 disconnect.

25 Q. Yes, I understand.

1 A. So if we were to interconnect with and provide
2 any service along there as an intrastate pipe, we'd have to
3 come in front of this regulatory body. We back -- I'm not
4 sure when it was. We were looking to put that line in
5 service as an interstate pipeline underneath the UPL
6 umbrella. It was going to be called Trans-Mississippi
7 Pipeline Company.

8 Q. I see.

9 A. That's why you hear Trans-Mississippi or TMP.
10 We did not -- we don't believe that that requires regulatory
11 approval for us from this body to get that line service
12 moving gas from Illinois into Missouri, nor does it require
13 regulatory approval for that TMP interstate pipeline to
14 interconnect with MPC intrastate.

15 It does not change MPC's intrastate status.
16 Gas is still coming from Illinois into Missouri just like
17 Panhandle Eastern. That gas is coming from Oklahoma into
18 Missouri. So nothing really changes from the dynamics of
19 the regulatory scheme in my view.

20 Q. All right.

21 A. So it's not an affiliate issue. I mean,
22 it's -- TMP, a subsidiary of UPL, can interconnect with MPC,
23 a subsidiary of UPL.

24 Q. And they can do that today?

25 A. That's my belief, yes, sir.

1 Q. But they would have to come here to get the
2 restriction removed or not, in your opinion?

3 A. Again, there's -- I don't think there is a
4 restriction. I think, though, Gateway has said if this
5 Commission determines that there is, which is contrary to my
6 belief, but if you determine that there is, then they want
7 that waived. I think you'll have to ask Mr. Ries.

8 Q. I can get to that, but I think I understand
9 why your testimony is as it is now. So your belief is that
10 the restriction does not currently prevent the connection
11 from occurring?

12 A. That's correct. Nor does --

13 Q. But there is an argument about that issue?

14 A. For whatever reason, there is an argument. I
15 mean, there's -- we could interconnect, my belief, can
16 interconnect with Williams Natural Gas today without this
17 body's approval in my view no different than interconnecting
18 with TMP.

19 Q. I believe I'm going to leave that for now, and
20 if we have some more light shed on it on recross and
21 redirect, I'm not sure that I'm completely finished, but I'm
22 going to stop now. Thank you, Mr. Kreul.

23 JUDGE THORNBURG: We could have another round
24 if you want to come back. The parties will have an
25 opportunity. Commissioner Murray.

1 COMMISSIONER MURRAY: Just another question or
2 two.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. If it is your understanding that you could
5 connect with TMP now and that -- and I think I heard
6 correctly that such an interconnection would have
7 significant upside potentials, the ability to move cheaper
8 gas into the pipe, offer lower rates, compete more, increase
9 incentive for Panhandle to be more competitive in pricing,
10 why then has that not been a part of what you have done in
11 your ownership of MPC and -- I'm getting the acronyms wrong.

12 A. MGC.

13 Q. -- MGC?

14 A. Again, the opportunity that's just presented
15 itself in this last year is with NGPL building from eastern
16 Illinois into the East St. Louis area and providing
17 additional capacity. Up to this point there's been no
18 additional capacity in east Illinois. MRT was fully
19 subscribed.

20 And without firm capacity, we could
21 interconnect with them, but nobody would want to ship gas on
22 MRT/TMP because it wouldn't be there on that cold day.

23 Q. So after -- was it before or after NGPL became
24 a factor that you entered into negotiations for the sale of
25 this stock with Gateway?

1 A. I believe we became aware of NGPL's intent
2 after we were into discussions with Gateway.

3 Q. Now, you indicated earlier that you wanted
4 to -- I'm trying to see how it was you phrased it -- wanted
5 to be out of the pipeline business, had that desire. If
6 this transaction is not approved and in light of the fact
7 that NGPL is now a factor, would you still have that same
8 desire to get out of the pipeline business?

9 A. Again, the answer is yes. I think these being
10 the only intrastate pipelines across a seven-state region
11 that we actually provide gas in, this is the only intrastate
12 system I'm aware of, and it's -- we'd rather focus on the
13 LDC side of the business and not on the pipeline side.

14 But if this transaction were not approved, we
15 have no choice. We'd stay in the intrastate business and
16 make the best of it.

17 Q. And would you anticipate it improving?

18 A. In light of NGPL building into East St. Louis,
19 we would certainly be talking with them about
20 interconnecting with us.

21 Q. Now, several of the parties have taken the
22 position that it is not currently possible to connect with
23 TMP because of a restriction that exists that they think is
24 applicable, and it's my understanding that those same
25 parties think that it would be a detriment, a public

1 detriment if such a connection were to remove this
2 Commission's jurisdiction and place that jurisdiction with
3 FERC.

4 And I'm going to ask those parties why they
5 think that would be a detriment, but I'd like to know your
6 opinion on that.

7 A. Well, I don't understand it. I'll be
8 listening just with you, trying to understand what their
9 position is. There is no -- there's never been any
10 interest, even if we were to interconnect with -- if UPL as
11 it is today, if we were to interconnect with MPC and bring
12 gas from NGPL into Missouri, there is no interest on
13 Missouri Pipeline/Missouri Gas to make that interstate, and
14 I was in a meeting with Mr. Ries two weeks ago and he said
15 the same thing.

16 So I don't think you'll find from -- there's
17 no interest in doing that. So I don't know what's created
18 this commotion about being interstate. Missouri Pipeline
19 will not lose its intrastate if you interconnect with TMP
20 and move gas off of NGPL into Missouri Pipeline. At least
21 that's my opinion.

22 Q. And if it were to become interstate, why would
23 that be a public detriment?

24 A. I don't know. I don't think it will.

25 COMMISSIONER MURRAY: That's all. Thank you.

1 THE WITNESS: You're welcome.

2 JUDGE THORNBURG: Any other questions from the
3 Commissioners? I had a couple.

4 QUESTIONS BY JUDGE THORNBURG:

5 Q. One thing, and this is probably in the direct
6 testimony somewhere, but can you tell me what an Mcf, what
7 those initials stands for?

8 A. I'm sorry. A million cubic feet.

9 Q. And that's the capacity -- that's the way of
10 expressing the capacity of these transmission pipelines?

11 A. That's correct.

12 Q. And then you gave an equivalent to a gallon of
13 propane, and I think it was MMPB.

14 A. MMBtu, which is a million Btu's, which is
15 equivalent to a thousand cubic feet of gas. Bunch of zeros
16 that's hard to keep track of.

17 Q. I just want to make sure we have that
18 somewhere so we can cite it if we need to.

19 Do you know in this corporate structure where
20 the legal title to TMP assets are right now? Are they in
21 MPC or are they in UPL or do you know?

22 A. They're just a piece of pipe owned by UPL.
23 They're not a legal entity stand-alone.

24 Q. But the assets are owned by UPL?

25 A. That's correct.

1 Q. And they're not owned by MPC?

2 A. No, they're not.

3 Q. And do you know about how many miles that TMP
4 pipeline is?

5 A. Six, maybe seven miles. Six miles.

6 Q. And the majority of that mileage is in
7 Missouri, isn't it?

8 A. That's correct. Actually, the pipe comes up
9 into Illinois on the levee, on the river side of the levee.
10 So it's very little bit of pipe in Illinois. Most of it's
11 in Missouri.

12 Q. And if you interconnected the pipeline, if you
13 wanted to have the ability to serve some LDCs or some
14 customer on the Missouri side before the point where it
15 connects with MPC, that service area would have to be
16 certificated in Missouri; is that correct?

17 A. That's correct.

18 Q. So changing that service area, that's a little
19 bit different than interconnecting the pipe itself?

20 A. That's correct.

21 Q. If you just interconnected the pipe to pull
22 gas supply off of it, that wouldn't change your service
23 area?

24 A. No, it wouldn't.

25 Q. But if you wanted to serve customers on that

1 six-mile line that's in Missouri, then you would have to
2 have your certificate amended to do that?

3 A. That's correct. If Missouri Pipeline wanted
4 to serve those customers, that's correct.

5 Q. There was something in your testimony about
6 gas marketers or marketers. If Laclede or AmerenUE has a
7 commercial customer now, that customer could go to a gas
8 marketer, maybe arrange a purchase of their gas supply, and
9 then that transport might be over an MPC line. Is that
10 possible?

11 A. That is possible. Or they could even do --
12 they could be the transporter themselves. Anheuser Bush
13 could have a transportation agreement with Missouri
14 Pipeline.

15 Q. So they could arrange to transport their own
16 gas. And this discussion about bypassing the local
17 distribution companies, while MPC can't do that, a customer
18 directly could arrange that themselves, couldn't they?

19 A. No. We cannot physically connect with any end
20 use customers in service territories of LDCs or
21 municipalities.

22 Q. But that commercial customer would have to
23 arrange with the local distribution company for final
24 delivery of the gas?

25 A. That's correct, but that's not what bypass is

1 where you go straight from the pipeline to the meter of the
2 customer instead of going through the LDC. You're bypassing
3 the LDC.

4 Q. So the bypass is where you actually bypass the
5 local distribution system entirely?

6 A. And you cut them out of the revenue.

7 Q. I see. On the capacity of MPC, I think you
8 indicated that you could flow a little more gas if that
9 customer is near the point where you interconnected, for
10 instance, with Panhandle?

11 A. Uh-huh.

12 Q. And then if it's at the end of your line, the
13 capacity issues become a little more challenging; is that
14 correct?

15 A. That's correct, yes.

16 Q. What type of equipment would you have to
17 install to increase the capacity in the middle or at the end
18 of the line?

19 A. You do it two different ways typically. One
20 is you can add compression where you're actually increasing
21 pressure, just like a pump.

22 Q. Yes.

23 A. And that would increase the capacity of the
24 pipeline, or you could add more pipe, what we call looping
25 the system, where you might have a 12-inch piece of pipe and

1 you add another 12 so the flow goes through two pieces of
2 pipe instead of one. That increases the capacity.

3 Q. Okay. And that's just a matter of function of
4 how much do you want to spend to increase the capacity? I'm
5 assuming that there would be a cost/benefit analysis you do
6 just before deciding to make a capital investment to
7 increase the capacity; is that correct?

8 A. That's correct, yes.

9 Q. But it is possible to increase capacity by
10 making those investments?

11 A. Yes.

12 Q. With your LDC hat on, if you're an LDC, what's
13 the typical term for a firm transport contract? How far in
14 the future do those go?

15 A. I'm not sure if anything's typical anymore in
16 the natural gas business, but typically three to five years.

17 Q. And would there be options to renew based on
18 the three to five years?

19 A. You can always -- yeah, there are some
20 options.

21 Q. Sometimes there are options?

22 A. Yeah.

23 Q. And that's just -- okay. That answers my
24 question.

25 JUDGE THORNBURG: That's all I had.

1 COMMISSIONER GAW: I have one more.

2 JUDGE THORNBURG: Commissioner Gaw.

3 COMMISSIONER GAW: Thank you, Judge.

4 FURTHER QUESTIONS BY COMMISSIONER GAW:

5 Q. Can you tell me whether or not UtiliCorp or
6 any of its affiliates are involved in the financing of this
7 transaction to guarantees or otherwise?

8 A. It's my understanding that we are not.

9 COMMISSIONER GAW: That's all I have. Thank
10 you.

11 JUDGE THORNBURG: We've been going about 90
12 minutes. I think this might be a good time to break for our
13 court reporter and also for lunch. That will give a chance
14 for all the parties to have a fairly equivalent opportunity
15 to prepare their recross and redirect.

16 So I think we'll adjourn now and come back
17 at -- we'll go ahead and take a full hour. We'll come back
18 at quarter to one. Thank you.

19 (A BREAK WAS TAKEN.)

20 JUDGE THORNBURG: We'll begin with the
21 recross, and the first person up would be Gateway Pipeline
22 Company.

23 MR. KEEVIL: I have no recross, Judge.

24 JUDGE THORNBURG: And we're passing over
25 Panhandle. Ameren.

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1 MR. BYRNE: No recross, your Honor.

2 JUDGE THORNBURG: Laclede Gas.

3 MR. PENDERGAST: Thank you, your Honor.

4 RECROSS-EXAMINATION BY MR. PENDERGAST:

5 Q. Mr. Kreul, you were asked a couple of
6 questions, I believe, by Commissioner Murray about the
7 status of contracts with existing users on the system. Do
8 you recall those questions?

9 A. Yes. Well, I recall the questioning, not the
10 specific questions.

11 Q. Okay. And can you tell me, under the
12 amendments to the Stock Purchase Agreement, for what period
13 of time is UtiliCorp authorized to extend those contracts
14 until?

15 A. Let's see. I think for Laclede we can extend
16 it through 2002, others through December 31st of 2001. I
17 think that's the two limitations, I think.

18 Q. Okay. And so from the standpoint of contract
19 extensions and contracts being in effect for any material
20 time after this transaction is disposed of by the
21 Commission, at least for your largest customer you're only
22 authorized to negotiate a contract through December 31st,
23 2002; is that correct?

24 A. That's correct.

25 Q. And other contracts for other customers on the

1 system you believe may be December 31st, 2001?

2 A. As they come up. They may or may not come up.

3 We have a lot of contracts that even go past 2002. So if

4 there's any that are expiring this year, I think the

5 limitation is I need Gateway's approval prior to

6 consummating an extension.

7 Q. Okay. You were asked a number of questions

8 about your understanding of the condition that was imposed

9 by the Commission initially on MPC in GA-89-126. Do you

10 recall that?

11 A. Yes.

12 Q. And your interpretation is that as long as an

13 unrelated or an affiliated but separate entity owns those

14 you can interconnect now; is that correct? Is that your

15 testimony?

16 A. I guess would you repeat the question?

17 Q. Yes. Is it your testimony that under that

18 condition, as long as those facilities are owned by a

19 separate legal entity that may or may not be affiliated with

20 MPC, that it's free to interconnect at this point under that

21 condition?

22 A. That is correct.

23 Q. Are you familiar with Mr. Ries' testimony in

24 this case?

25 A. I have read it.

1 Q. Do you have a copy of it?

2 A. I do not.

3 MR. PENDERGAST: If I could approach the
4 witness?

5 JUDGE THORNBURG: You may approach.

6 BY MR. PENDERGAST:

7 Q. At the bottom of page 6 of his testimony he
8 quotes --

9 JUDGE THORNBURG: I'm sorry. Can you tell us
10 which testimony you're referring to?

11 MR. PENDERGAST: Mr. Ries' rebuttal testimony,
12 I believe. Is that correct?

13 THE WITNESS: It's his rebuttal testimony,
14 yes.

15 BY MR. PENDERGAST:

16 Q. And would you tell me what appears at the
17 bottom of page 6 of that rebuttal testimony?

18 MS. SHEMWELL: This is stamped proprietary.

19 MR. PENDERGAST: Do we need to go in-camera?

20 JUDGE THORNBURG: What page are you on?

21 MR. PENDERGAST: Page 6. I'm asking him to
22 quote from a Commission Order, so I assumed it would not
23 need to be proprietary.

24 JUDGE THORNBURG: Well, I'm assuming that the
25 proprietary information is set off in the answers; is that

1 correct?

2 MR. KEEVIL: The proprietary stuff is at
3 the -- begins on line 10, I think, on that page, Judge.

4 JUDGE THORNBURG: I'm sorry. I'm on the wrong
5 page. As long as you're not asking him to read or
6 questioning something that's not set off as proprietary, we
7 can do that.

8 MR. PENDERGAST: Thank you, your Honor.

9 BY MR. PENDERGAST:

10 Q. Now, does he quote an excerpt from the
11 Commission's Report and Order in the proceeding in which --

12 A. Yes. There's a question on line 12, there's
13 an answer on line 16 which he does quote from the Order of
14 GM-94-252, which I believe is the UtiliCorp acquisition of
15 these assets.

16 Q. Would you please read that quote.

17 A. As to the physical separation of MPC's
18 intrastate pipeline operation from a portion of the pipeline
19 which crosses the Mississippi River, all parties agree that
20 the prohibition against connecting the intrastate system to
21 an interstate system is a condition which is imposed at the
22 time the certificate was issued to MPC in Case GA-89-126 and
23 that it will remain a condition of the certificate if
24 transferred.

25 Q. Now, does that say from a portion of an

1 interstate pipeline?

2 A. To the interstate system is a condition. It
3 talks about an interstate.

4 Q. Does it qualify that condition by saying who
5 owns that interstate portion?

6 MR. BOUDREAU: I'm going to object at this
7 point. The condition says what it says, and I think that
8 this line of questioning to me is starting to sound
9 argumentative.

10 MR. PENDERGAST: Well, if I might, he's
11 offered an interpretation, certainly unsolicited by us, as
12 to what he believes the Commission condition meant, and I'm
13 trying to probe that, and I thought I'd start with the
14 language that was used by the Commission itself.

15 JUDGE THORNBURG: I've got both these Orders.
16 I've read them. The Commission can read them. And so I
17 don't want to delve into this too much, but I'm going to
18 overrule the objection. This has been opened up, and the
19 witness has already testified as to what he thinks the
20 condition is.

21 So you can ask these questions, but I don't
22 want to spend too much time on this. We've got the Orders.

23 MR. PENDERGAST: Certainly, your Honor.

24 BY MR. PENDERGAST:

25 Q. My question was, does that qualify that any

1 way by stating the condition applies depending on who owns
2 the interstate portion?

3 A. What I'm reading here does not qualify it, no.
4 I think -- no, it does not qualify.

5 Q. And can you tell me, back when that Order was
6 issued, did MPC own those facilities?

7 A. No, they did not.

8 Q. Okay. So under your theory, since MPC didn't
9 own those facilities at that time, that condition had
10 absolutely no force and effect whatsoever. Is that your
11 testimony?

12 MR. BOUDREAU: I'm going to object again
13 because the language that he's pointing to is not the
14 language of the certificate. It's the language that was in
15 the Order that approved the transfer of those facilities
16 from the prior owner to the current owners. This is not the
17 certificate language.

18 JUDGE THORNBURG: So this was the Order
19 transferring the --

20 MR. BOUDREAU: My understanding is this is
21 language in the Order that the Commission issued approving
22 the transfer of the assets from the prior owner to
23 UtiliCorp. So this is not the certificate language. This
24 is a characterization of -- perhaps at best it's a
25 characterization or an interpretation or something. The

1 certificate language says what the certificate says, and
2 that's my point.

3 JUDGE THORNBURG: At the time this is a
4 characterization put on it by the parties. I mean, I've
5 read the Order.

6 MR. PENDERGAST: Absolutely, your Honor.

7 JUDGE THORNBURG: What's the question now?

8 MR. PENDERGAST: Absolutely, your Honor, it is
9 a characterization.

10 JUDGE THORNBURG: What was the question for
11 the witness?

12 MR. PENDERGAST: My question was initially who
13 owned those facilities at that time, and I think the witness
14 testified that MPC did not own it. And what I'm trying to
15 probe the witness on is --

16 JUDGE THORNBURG: Well, I think you got the
17 answer to your question. That question was answered. You
18 can proceed.

19 MR. PENDERGAST: Fine.

20 BY MR. PENDERGAST:

21 Q. As somebody that's interpreted this particular
22 condition, if those facilities were already owned by someone
23 other than MPC, can you give me any kind of explanation as
24 to what the meaning and significance of that particular
25 language was?

1 MR. BOUDREAU: I will object again on the
2 grounds that that is clearly argumentative.

3 MR. PENDERGAST: Your Honor --

4 JUDGE THORNBURG: Okay. I'm trying to
5 remember the wording of the question. I'm going to sustain
6 the objection. You can ask the witness the basis for his
7 opinion. You can approach it that way.

8 BY MR. PENDERGAST:

9 Q. You have testified that the condition
10 applicable to MPC that was first authorized by the
11 Commission in 1989 does not preclude MPC or presumably
12 anybody that acquires those facilities from interconnecting
13 with the interstate portion as long as that is owned by a
14 separate legal entity; is that correct?

15 A. That was my testimony, yes.

16 Q. Okay. And is it also your testimony that at
17 the time the referenced Order that you have read from was
18 issued by the Commission referencing what the parties agreed
19 upon, that those interstate facilities were already owned by
20 a separate entity?

21 A. I'm sorry. Would you repeat the question?

22 Q. That those interstate facilities were already
23 owned by a separate legal entity?

24 A. There's no interstate facilities I guess is
25 the point that needs to be made here. It's a piece of pipe

1 in the ground that does nothing but sit there with nitrogen
2 in it until we do something with it.

3 Q. That's fine. Those facilities that are
4 referred to as interstate facilities in the Order, do you
5 know what facilities it's referring to?

6 A. Yes.

7 Q. Okay. Is it your testimony that at the time
8 that Order was issued, that those facilities, interstate
9 facilities or non-MPC facilities, whatever you want to call
10 them, were already owned by a separate legal entity other
11 than MPC?

12 A. They were owned by a separate entity.

13 Q. So would it also be your testimony that that
14 particular provision expressing what the parties have agreed
15 to keep in effect, that there was no restriction at that
16 time from MPC connecting with that interstate facility at
17 the very time that Order was issued?

18 A. All of my assumptions I'm basing on the Order
19 back in '89. Again, I'm not sure what this is. I know what
20 it is, but everything I have stated up to this point is
21 based on my interpretation of the Order in '89.

22 Q. Okay. Well, under your interpretation of the
23 Order in '89, would it be your testimony that the day after
24 that particular Report and Order was issued, since those
25 Trans-Mississippi facilities were owned by a separate legal

1 entity, that MPC could have connected with them?

2 A. Yes.

3 Q. In response to some questions you also
4 indicated, I believe, some bewilderment about why anybody
5 should be concerned about these facilities becoming FERC
6 jurisdictional. Do you recall that?

7 A. Yes.

8 Q. Are you aware of any other instance where a
9 mixture of intrastate and interstate facilities have been
10 deemed to be completely FERC jurisdictional in the recent
11 past?

12 A. I'm aware of Kansas Pipeline who had an
13 affiliate called Riverside Pipeline, and they were bringing
14 gas from Oklahoma across Kansas and delivering it into
15 Missouri in the Kansas City area through those two entities,
16 that eventually those went from intrastate, the Kansas
17 Pipeline, under that scenario, the Kansas Pipeline was
18 pulled underneath FERC jurisdiction rather than Kansas
19 jurisdiction.

20 Q. Okay. And do you recall how long ago that
21 happened?

22 A. No, I don't. Maybe five years ago.

23 Q. Okay. Do you recall whether or not there's
24 any commonality in the owners of Gateway or one of the
25 owners of Gateway and the owners of those pipeline

1 facilities that became FERC jurisdictional?

2 A. Yeah. I understand that Dennis Langley is a
3 principal in Gateway or soon to be a principal. I'm not
4 sure what the standing of it is, and that he was a principal
5 in the Kansas Pipeline and the Riverside Pipeline systems.

6 Q. You also indicated that you were unaware of
7 anything that would be detrimental in the event FERC
8 jurisdiction was, in fact, asserted over these facilities.
9 Are you aware what FERC's policy is on bypass?

10 A. I think what the question was earlier and what
11 I answered to was what the -- why is there so much concern
12 about being interstate. My question -- I think what I was
13 answering was I don't think it's going to happen, so I don't
14 know what that concern is. I'm not familiar -- I'm not that
15 familiar with all the various FERC policies.

16 Q. So you weren't testifying and did not mean to
17 render an opinion on whether or not assertion of FERC
18 jurisdiction over the entirety of those facilities would be
19 detrimental; is that what you're saying?

20 A. I did not intend to testify on that, no.

21 Q. Do you, though, know what FERC's policy is
22 regarding bypass of local distribution companies through
23 interconnection with interstate pipeline facilities?

24 A. I know that it happens. I don't know what
25 their policy is.

1 Q. Do you know what FERC's policy is on pipeline
2 rate design?

3 A. I know they have straight fixed variable as
4 opposed to modified, which is what we're under, but not much
5 more than that, no.

6 Q. And what's the difference between those two?

7 A. Straight fixed, most of -- your fixed costs
8 are loaded into the demand side of your price component as
9 opposed to modified where it's split 50/50 or whatever.

10 Q. And does that mean that, in effect, the method
11 that's generally approved by FERC and used by FERC that you
12 have to pay for that capacity month in, month out regardless
13 of how much you've used during any particular month?

14 A. Well, you do under intrastate rates, too, but
15 you have -- yes.

16 Q. But you indicated that there's a bigger
17 volumetric part in your intrastate rates?

18 A. Would you repeat your statement?

19 Q. What portion of your intrastate rates were
20 recovered on a volumetric basis?

21 A. Off the top of my head, I can't recall. It's
22 been a long time since I've even addressed that sort of
23 thing. I don't know what goes into the demand and into the
24 commodity portions.

25 Q. But it does have a commodity portion?

1 A. Yes.

2 Q. But you don't know what the relative size of
3 that commodity portion is?

4 A. For Missouri Pipeline, I think it's about
5 50/50.

6 Q. 50/50. And under the methodology that's
7 commonly used by FERC, is it your understanding that would
8 be 50/50?

9 MR. BOUDREAU: Your Honor, at this point I
10 don't mean to truncate the scope of cross-examination, but I
11 don't think that Mr. Kreul's held himself out as any sort of
12 authority on the nature or scale or whatever of FERC
13 jurisdiction.

14 Now, presumably Laclede has offered the
15 testimony of a witness. If the scale of FERC jurisdiction
16 or the degree of FERC jurisdiction is an issue, perhaps it
17 should have been or is all for all I know addressed by their
18 witness. I think it's inappropriate to take my witness who
19 runs an intrastate pipeline company and ask him about FERC
20 jurisdiction.

21 MR. PENDERGAST: Your Honor, I'll withdraw the
22 question if counsel is indicating this witness is not
23 qualified to speak on the meaning and significance of FERC
24 jurisdiction. I will withdraw the question.

25 JUDGE THORNBURG: I'm not going to let you

1 color it that way. The issue of FERC jurisdiction and the
2 benefit or detriment of that has been raised in this
3 proceeding, but I don't recall any direct testimony that got
4 into the ratemaking part of it. I don't recall any question
5 from the Bench on that either.

6 So I think you're beyond the scope of what was
7 asked from the Bench. I'm going to sustain the objection on
8 that basis.

9 MR. PENDERGAST: That's fine, your Honor.

10 Thank you.

11 BY MR. PENDERGAST:

12 Q. Mr. Kreul, moving along, you indicated that
13 some potential efficiencies that might be achieved by a new
14 owner of the pipeline would relate to a reduction in
15 corporate costs or corporate overheads; is that correct?

16 A. I think my testimony was that they may have
17 lower administration costs than what Missouri Pipeline
18 currently has for a number of reasons, yes.

19 Q. Okay. And when you talk about those costs,
20 are you talking about costs that are allocated to it by
21 UtiliCorp?

22 A. Some are allocated. Some are direct costs,
23 yes.

24 Q. Okay. And for those costs that are allocated,
25 are those joint and common costs that UtiliCorp collects not

1 just from MPC but from other companies that are owned by
2 UtiliCorp?

3 A. Yes.

4 Q. Okay. And are those costs spread over a
5 significant number of customers?

6 A. What costs are those?

7 MR. BOUDREAU: Your Honor, I'm not sure what's
8 meant by the term significant.

9 BY MR. PENDERGAST:

10 Q. Do you have any idea how many customers those
11 administrative costs would be spread over?

12 A. Well, UtiliCorp is a large corporation where
13 we have a lot of different businesses. So I don't know how
14 many -- from a regulated distribution standpoint, we have
15 1.2 million customers. Again, that's just a portion of
16 UtiliCorp's business, and costs are spread across the entire
17 gamut of UtiliCorp.

18 Q. Okay. So these administrative functions,
19 these corporate costs which are now being spread over
20 perhaps 1.2 million customers --

21 A. Well, they're being spread over more than
22 1.2 million customers. That's just a portion of UtiliCorp's
23 operations.

24 Q. And you're saying that by providing the same
25 function in-house on behalf of -- how many customers does

1 MPC have now?

2 A. We probably have 15.

3 Q. Okay. That by basically undertaking those
4 functions itself and spreading them over 15 customers, you
5 can -- you can generate more efficiencies than UtiliCorp can
6 by taking those same costs and spreading them over
7 more than 1.2 million customers; is that what your testimony
8 is?

9 A. No. We have certain allocated costs, and
10 based on the Massachusetts Formula, some of those costs are
11 rolled into our costs, and I don't know any particulars of
12 what those costs are. I know it's -- I think it's in the
13 range of one and a half million dollars, which are
14 relatively minor compared to the total cost of what
15 UtiliCorp allocations are.

16 Q. Okay. Can you tell me if a proposed
17 arrangement utilizing NGPL were to materialize, what sources
18 of gas that would access?

19 A. I'm not that familiar with NGPL's total
20 system. I know it goes all the way down to the southern
21 portion of Texas and it wraps around to west Texas. So I'm
22 not -- but what sources, I mean, it's Gulf Coast,
23 Mid-Continent. NGPL is a huge network.

24 Q. Okay. Well, from the standpoint of just the
25 gas supply itself, the commodity cost of gas, how do those

1 gas supplies compare with what's currently available through
2 Panhandle?

3 A. As far as pricing?

4 Q. Yeah.

5 A. They're approximately the same, maybe a little
6 bit more expensive being Gulf Coast vs. Mid-Continent.

7 Q. So when you said that an arrangement relying
8 on NGPL would result in gas cost savings, you weren't
9 referring to commodity cost gas, were you, back at the
10 wellhead?

11 A. I would think from time to time -- and again,
12 I don't know specifically, but from time to time
13 Mid-Continent may be cheaper than Gulf Coast if there was a
14 storm in the gulf, for whatever reason. I mean, the price
15 of gas is very volatile in all regions, and I've seen cases
16 where Mid-Continent is cheaper -- I'm sorry -- more
17 expensive than Gulf Coast.

18 But typically Gulf Coast is a little bit more
19 expensive. Surely not near what it used to be. It used to
20 be 30, 40 cent differential. Now it's maybe a nickel.

21 Q. Okay. So typically from a gas cost
22 standpoint, all else being equal, this particular
23 arrangement you're talking about based on prior history
24 would be a little more expensive rather than a little less
25 expensive than supplies off Panhandle; is that correct?

1 A. Typically, again, fractions of a percent,
2 maybe 1 percent cheaper in Mid-Continent than Gulf Coast.

3 Q. And just to be clear, Mid-Continent would be
4 the ones that are accessed off Panhandle?

5 A. That's correct.

6 Q. Okay. You also indicated -- well, you
7 indicated that, and correct me if I'm wrong, that
8 transportation costs utilizing NGPL would be about half of
9 Panhandle's?

10 A. I think I said MRT. I'm not that familiar
11 with Panhandle -- I mean with NGPL's costs. I think MRT, if
12 I did say NGP, I think MRT's transportation rates are half
13 of Panhandle, approximately. It's four and a half dollars
14 versus \$10. Again, I've not looked at that in a while.

15 Q. Let me ask you, to clarify that, whose is
16 about half of whose?

17 A. MRT is about half the transportation cost as
18 Panhandle.

19 Q. Okay. And how about NGPL?

20 A. I'm not that familiar. I don't recall what
21 their rates are.

22 Q. Okay. And I think you indicated earlier that
23 because MRT does not have any firm capacity, that that was a
24 motivating factor in UtiliCorp not exploring some sort of an
25 interstate arrangement; is that correct?

1 A. That's correct.

2 Q. Okay. Does that situation remain today with
3 respect to MRT?

4 A. I anticipate -- it remains today as we speak,
5 but I anticipate a change as soon as NGPL comes in and takes
6 Illinois Power, starts serving Illinois Power. I would
7 expect that Illinois Power will turn back their capacity on
8 MRT at some level and capacity will become available on MRT.
9 I don't know that to be a fact. It's speculation, but I
10 think it's pretty -- I think it's fair speculation.

11 Q. Okay. And how much capacity will be turned
12 back, do you know?

13 A. Oh, I don't know. I don't recall.

14 Q. Okay. And as I believe you indicated earlier,
15 you aren't sure what NGPL's rates are compared to Panhandle?

16 A. I do not know.

17 Q. Okay. You indicated earlier that UtiliCorp
18 had explored the possibility of operating the
19 Trans-Mississippi facilities. Was that as an interstate
20 pipeline?

21 A. That's correct. A portion of it would have
22 been interstate, yes.

23 Q. Do you have any reason to believe that if
24 UtiliCorp were to pursue that, that it could not do as good
25 a job as the proposed applicants in this case?

1 A. I think if we wanted to pursue it, we could do
2 it as good as the applicants in this case. I think
3 you'll -- in Mr. Ries' testimony, I think you'll see,
4 though, that he has a broad range of experience. A whole
5 lot of that is in the interstate area, which we at UtiliCorp
6 do not have.

7 So given that, maybe Gateway would be in a
8 better position to explore it. But if we were to get into
9 it, I think we could do a good job, yes.

10 MR. PENDERGAST: Thank you. I have no further
11 questions.

12 JUDGE THORNBURG: At this point I may
13 interrupt the recross. I think we had another question from
14 the Bench or two, and I'll come back through the parties
15 again.

16 I apologize. We didn't have a question.
17 Okay. We'll proceed with the recross, then. The next party
18 up is the Office of Public Counsel. At least that's what
19 was filed.

20 RE CROSS-EXAMINATION BY MS. O'NEILL:

21 Q. Mr. Kreul, you indicated that your current
22 titles include president of Missouri Pipeline Company and
23 president of Missouri Gas Company; is that correct?

24 A. That's correct.

25 Q. And you've also testified in response to

1 questions from the Bench and from others that you were
2 involved in the negotiations of this proposed transaction;
3 is that correct?

4 A. Yes, that's correct.

5 Q. And that the price that was settled on was
6 book value, correct?

7 A. That is correct.

8 Q. And what is Missouri Pipeline Company's
9 current net book value?

10 A. Approximately I think it's 32 million,
11 approximately.

12 Q. And what is MGC, Missouri Gas Company's
13 current net book value?

14 A. Approximately 22 million.

15 Q. And there's an additional amount to this
16 purchase price that covers this Trans-Mississippi Pipeline
17 asset; is that correct?

18 A. That is correct.

19 Q. And what's its current net book value?

20 A. Approximately 10 million.

21 Q. Its net book value currently is \$10 million?

22 A. I think. I may be wrong. Apparently I am
23 wrong.

24 Q. Is there any place in the application that you
25 have in front of you that would help you to determine what

1 the current net book value is?

2 A. I'll see.

3 JUDGE THORNBURG: Are these questions about
4 the book values?

5 MS. O'NEILL: Yes.

6 JUDGE THORNBURG: They were in the Purchase
7 Agreement.

8 THE WITNESS: That's what I have in front of
9 me.

10 MS. O'NEILL: The Purchase Agreement that you
11 sponsored.

12 THE WITNESS: I'm not coming to it. If you
13 could direct me, that would be helpful, if you know.

14 JUDGE THORNBURG: The numbers I'd seen were
15 page 2, the Purchase Agreement.

16 THE WITNESS: Yeah. Thank you.

17 JUDGE THORNBURG: I think we're ready.

18 BY MS. O'NEILL:

19 Q. Okay. Have you found that?

20 A. Yes, I have.

21 Q. And what's the net book value of TMP?

22 A. It would be underneath the company, which is
23 10.3 million.

24 Q. 10.3 million. And is that -- and the
25 10.3 million is what you refer to as UPL separate from MPC

1 and MGC; is that right?

2 A. That would be the other holdings that UPL has
3 outside of two subsidiaries, Missouri Pipeline and Missouri
4 Gas.

5 Q. Other than TMP, are there any other holdings
6 that are being transferred in this?

7 A. I can't think of any, no.

8 Q. And TMP is six miles of pipe that's not
9 currently in use; is that correct?

10 A. That is correct.

11 Q. Is it your testimony that there's no premium
12 being paid for that portion of the --

13 MR. BOUDREAU: At this point I'm going to
14 object. I don't think this is responsive to any of the
15 questions that were asked by the Bench, and it's my
16 understanding that this is recross based on questions from
17 the Bench. I don't know where this is going, but I haven't
18 seen it linked to anything that's been asked so far by any
19 of the Commissioners.

20 MS. O'NEILL: I believe that Commissioner --

21 JUDGE THORNBURG: I'm going to overrule the
22 objection. We had some information on this, and I believe
23 there may have been a question or two about values from the
24 Bench.

25 BY MS. O'NEILL:

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1 Q. Is it your testimony that no premium is being
2 paid for any portion of -- any portion of this transaction?

3 A. There is no -- Gateway is buying this pipeline
4 for book value.

5 Q. And you previously indicated that you did not
6 conduct any studies to determine what that book value was;
7 is that correct?

8 A. I'm not sure that was my testimony.

9 Q. Contained in those book values are there any
10 acquisition premiums on the books of UPL or its subsidiaries
11 related to the purchase of these assets by UtiliCorp?

12 A. There is no premium on Missouri Pipeline and
13 Missouri Gas. There is premium on UtiliCorp bought -- I'm
14 sorry. UtiliCorp bought Trans-Mississippi 'back in '95 and
15 there was a premium in it. Those are all nonregulated
16 pieces of pipe.

17 Q. And what's the amount of that premium?

18 A. I'm sorry. I don't know what that is.

19 Q. That's included in the 10.3?

20 A. That's in the 10.3. It's my understanding
21 it's in the 10.3.

22 Q. And UtiliCorp bought MPC and the assets we're
23 talking about as TMP both in 1994; is that right?

24 A. Actually, the transaction closed in '95.

25 Q. Okay. But that's the '94 case that we've been

1 referring to?

2 A. That's correct.

3 Q. And UtiliCorp acquired both of those entities
4 from the same seller; is that correct?

5 A. That's correct. All three, actually, Missouri
6 Pipeline, Missouri Gas and the river crossing.

7 Q. Okay. So all three of those were included in
8 the transaction, but they were all three separate companies?

9 A. That's correct.

10 Q. Owned by the same parent?

11 A. That's correct.

12 Q. And UPL is now the parent of those three
13 companies?

14 A. That is correct.

15 Q. And I don't want to go into too much detail on
16 this because we've been through some of this with
17 Mr. Pendergast, but just to clarify one thing for me, it is
18 correct to say that UtiliCorp agreed that that restriction
19 on MPC which was in place in '94 would go with the company
20 when the transfer occurred; is that correct?

21 A. We agreed for that restriction that was placed
22 in '89, in the original certification, for that to remain in
23 place.

24 Q. And from '89 to '94 the restriction was in
25 place?

1 A. That's correct.

2 Q. And '95, when UtiliCorp closed the
3 transaction, the restriction was in place?

4 A. That's correct.

5 Q. And UtiliCorp has not taken any affirmative
6 action to remove the restriction from the certificate up
7 through today; is that correct?

8 A. There's been no need to.

9 Q. So you haven't done it?

10 A. We've not done it.

11 MS. O'NEILL: I don't have any anything
12 further. Thank you.

13 JUDGE THORNBURG: Thank you. Ms. Shemwell.

14 MS. SHEMWELL: Thank you.

15 RECROSS-EXAMINATION BY MS. SHEMWELL:

16 Q. I think you were responding to Commissioner
17 Gaw's question when he was asking about how you would add
18 capacity, and you responded that you could do the dual pipe.
19 I guess, are those like side by side pipes essentially or
20 along the same path --

21 A. That's correct.

22 Q. -- that you would add capacity?

23 A. I think that was Judge Thornburg asking those
24 questions, but it was --

25 Q. Okay.

1 A. Yeah. When we refer to looping, we're
2 actually adding another piece of pipe parallel to the
3 existing so flow can be split equally.

4 Q. Staff has recently heard an estimate of cost
5 for a compression station of something in the 12 to
6 \$15 million range. Does that sound right to you?

7 A. No, it does not.

8 Q. What do you think?

9 A. That sounds very high. I don't know. I think
10 we looked at, in fact, three or four years ago at 3 and
11 4 million. You can even rent compressors. So it's not
12 near -- I don't recall any cost being that high.

13 Q. What does it depend on, the size of the
14 compressor station?

15 A. How much throughput, how much horsepower, how
16 much the cost of the land, a lot of different variables.

17 Q. What about additional pipe, let's just say 8
18 or 12-inch pipe?

19 A. It's actually not the size of the pipe that's
20 driving the price. It's really the throughput. So if
21 Panhandle were to add compression, it would be very
22 expensive because they have one and a half BCF a day
23 capacity, where we only have 5 percent of that. So it's --

24 Q. Actually, I was trying to ask what was the
25 cost for putting in new pipe?

1 A. Oh. You know, it depends upon the size again.

2 Q. We've recently again heard an estimate of
3 approximately one million a mile. How does that --

4 A. If it's for 24-inch pipe, that's a good price.
5 If it's for six-inch pipe, that's a bad price.

6 Q. Some additional cost, however, for adding both
7 of those?

8 A. I don't know. I'm not that close to the cost
9 estimating for these. I know when we originally put in, I
10 think we just -- we installed some 12-inch pipe not too long
11 ago, and it might have been \$300,000 a mile. Again, I'm
12 doing what my attorneys tell me not to do and that's
13 speculate.

14 Q. Well, I mean, where it is, if it's in downtown
15 St. Louis as opposed to rural Pulaski County --

16 A. Sure.

17 Q. -- is an issue as well?

18 A. Sure. But we do have right of way. We have
19 the space and right of way to provide for that pipe.

20 Q. How much additional maintenance -- would there
21 be additional personnel because of additional maintenance on
22 a compression station? Would you need more people?

23 A. Maybe, maybe not. Depends upon the location
24 of the compression station. My guess is you would not add
25 staff to add a compressor.

1 MS. SHEMWELL: I think that's all. Thank you,
2 sir.

3 JUDGE THORNBURG: I believe that completes
4 recross. Mr. Boudreau, do you have redirect?

5 MR. BOUDREAU: I believe so, just a few
6 questions. Thank you.

7 REDIRECT EXAMINATION BY MR. BOUDREAU:

8 Q. Just for purposes of clarification, Mr. Kreul,
9 I believe there's been some discussion throughout your
10 cross-examination, and this kind of goes to the two hats
11 perhaps that you wear. You have a pipeline hat and you have
12 an LDC hat. There was some testimony, I believe you said we
13 serve municipalities of Salem, Rolla and Owensville. Were
14 you talking about your LDC hat at that time, Missouri Public
15 Service?

16 A. We serve the LDCs in those three cities.

17 Q. But MPS, UtiliCorp through its operating
18 division is also the LDC in those three communities?

19 A. Missouri Public Service is the LDC in those
20 three communities.

21 Q. Thank you. I believe you got a question --
22 you were asked, I believe, by Mr. Pendergast about the
23 principal objective of UtiliCorp in terms of selling the
24 stock of UPL. Do you recall that?

25 A. Yes.

1 Q. I believe your testimony was that the
2 principal objective was to obtain the highest possible
3 value. Do you recall that?

4 A. Yes.

5 Q. I want to ask you this. Are you familiar
6 now -- I mean, let me ask this. Are you familiar with
7 Mr. Ries and his credentials in terms of his experience in
8 the pipeline business?

9 A. I am. I've known Mr. Ries for at least five
10 years.

11 Q. Now that you've had an opportunity to become
12 familiar with him, become familiar with some of the ideas
13 that are being talked about, do you have any reason to
14 believe that Gateway through Mr. Ries' operational control
15 will be able to provide transportation service on anything
16 other than a reliable, safe and cost-effective basis?

17 A. No. Particularly since he's maintaining our
18 field operations, I'm fully confident what he'll do as good
19 if not a better job particularly on the business development
20 type opportunities with his connections in the gas industry.

21 Q. And presumably that would be an issue for
22 UtiliCorp generally because it has some LDC operations that
23 are served, if I also understand your testimony, exclusively
24 through that pipeline?

25 A. That is correct.

1 Q. Do you have any concerns about Gateway's
2 ability to finance its operations and to operate as a going
3 concern?

4 A. No, I do not. I understand that TCW is a
5 partner and they're a huge conglomeration, financial
6 institution, as I understand what they are, who they are,
7 So I think they surely have money behind them. So no, I
8 don't -- I'm fully confident that they'll be able to
9 perform.

10 Q. I can't recall exactly who it was that touched
11 on the topic. I think it might have been either
12 Commissioner Murray or Commissioner Lumpe, but I believe
13 there was some talk or some questions to you about
14 whether -- or some scenarios whereby perhaps the pipeline
15 companies are sold or transferred separately from the
16 Trans-Mississippi Pipeline assets. Do you recall that?

17 A. Yes.

18 Q. My question to you is, under the agreement
19 that the parties, UtiliCorp and Gateway, have entered into,
20 is that an option?

21 A. No, it's not. It's all or none.

22 Q. So what we're selling now, what the company is
23 selling is the capital stock of UPL; is that correct?

24 A. That's correct.

25 Q. And the principal things that UPL owns and

1 holds are the capital stock of the two pipeline companies
2 and the Trans-Mississippi Pipeline --

3 A. That's correct.

4 Q. -- assets; is that correct?

5 A. That's correct.

6 Q. I believe you also got a question from
7 Mr. Pendergast about -- he gave you the copy of some
8 testimony with some language that appeared in the 1994 Order
9 when UtiliCorp acquired the assets of the pipeline companies
10 and the Mississippi River portion of the pipeline. Do you
11 recall that?

12 A. Yes, I recall that.

13 Q. Can you tell me, at that time did UtiliCorp
14 know how it was going to hold onto the TMP assets? Did it
15 know what the ownership structure, the resulting ownership
16 structure was going to be?

17 A. I don't believe that they did.

18 Q. And this may be more for purposes of
19 clarification than anything. I believe that you received a
20 question from Commissioner Gaw and he was asking you about
21 whether or not UtiliCorp or whether MPC could and MGC could
22 improve the revenue stream on current operations. Do you
23 recall that?

24 A. Yes, I do.

25 Q. And I think your response was essentially that

1 it's operating about as good as it can operate right now?

2 A. That's my belief, yes. That was my answer and
3 that still is my belief.

4 Q. Okay. Let me ask you this, and it may be
5 obvious, but there's been some talk about another way to
6 increase revenues would be to increase throughput from these
7 facilities; is that correct?

8 A. That's correct.

9 Q. So that is an option is to go in, buy a
10 compressor station, do whatever has to be done and basically
11 increase the capacity of the pipeline effectively; isn't
12 that correct?

13 A. Again, increasing the capacity does not
14 necessarily mean increasing the revenue or the throughput
15 because you have to have somebody that wants that capacity,
16 and under the current scenario with Panhandle, I'm not sure
17 if there's any additional -- we don't have people standing
18 in line looking for additional capacity.

19 I think we will if we were to get an
20 interconnect with gas coming from the east and create a
21 competitive situation with MRT, NGPL, Panhandle, actually, I
22 think we'd be in a pretty good position to do that.

23 MR. BOUDREAU: May I have just a moment, your
24 Honor?

25 JUDGE THORNBURG: You may.

1 MR. BOUDREAU: Thank you, your Honor. I have
2 no further questions.

3 JUDGE THORNBURG: Mr. Kreul, I think that's
4 all the questions we have for you, and I thank you very much
5 for being here.

6 THE WITNESS: Great. You're welcome. Thank
7 you.

8 JUDGE THORNBURG: Our next party and our next
9 witness, the party will be Gateway and Mr. Ries.

10 (Witness sworn.)

11 DAVID J. RIES testified as follows:

12 DIRECT EXAMINATION BY MR. KEEVIL:

13 Q. Mr. Ries, would you state your name for the
14 record, please.

15 A. It's David J. Ries.

16 Q. Are you the same David Ries who has caused to
17 be prepared and prefiled in this case direct testimony and
18 rebuttal testimony which has been premarked earlier this
19 morning as Exhibit 4 and 4HC, being your direct testimony,
20 and 5, 5P and 5HC being your rebuttal testimony?

21 A. I am.

22 Q. Do you have any corrections you need to make
23 to either piece of testimony to your knowledge at this time?

24 A. Not to my knowledge, no.

25 Q. If I asked you the questions that are

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1 contained in those exhibits that I referenced a moment ago,
2 would your answers today be the same as contained therein?

3 A. I believe so, yes.

4 MR. KEEVIL: With that, Judge, I would offer
5 into the record Exhibit No. 4, 4HC, 5, 5P and 5HC and tender
6 the witness for cross-examination.

7 JUDGE THORNBURG: And Exhibit 4 is the direct
8 testimony?

9 MR. KEEVIL: Yes, 4 is direct, 5 is rebuttal.

10 JUDGE THORNBURG: And 5 is rebuttal. Are
11 there any objections to these exhibits?

12 (No response.)

13 Hearing none, these exhibits will be received.

14 (EXHIBIT NOS. 4, 4HC, 5, 5P AND 5HC WERE
15 RECEIVED INTO EVIDENCE.)

16 JUDGE THORNBURG: And at this time we're ready
17 to begin the cross-examination, and we'll proceed with
18 UtiliCorp.

19 MR. BOUDREAU: I have no questions of this
20 witness. Thank you.

21 JUDGE THORNBURG: Ameren.

22 MR. BYRNE: Yes, your Honor.

23 CROSS-EXAMINATION BY MR. BYRNE:

24 Q. Good afternoon, Mr. Ries.

25 A. Good afternoon.

1 Q. I just have a few questions, and I'd like to
2 ask you about some of the conditions that have been -- that
3 the parties have suggested in this proceeding.

4 Now, my understanding is one condition that's
5 been the subject of conversation this morning is the
6 interconnect, and my understanding is your -- Gateway's
7 position is you want to be able to interconnect with the
8 Trans-Mississippi facilities; is that right?

9 MR. KEEVIL: Judge, if we're -- I hate to keep
10 doing this. I did this once this morning. If he's getting
11 into specific business plans of Gateway, I think that has
12 been up to this point proprietary. If he's merely asking
13 general questions as the questions this morning were of
14 Mr. Kreul regarding the assets which currently cross the
15 river, I don't think that is proprietary.

16 MR. BYRNE: I guess I'm only asking -- and
17 hopefully this isn't proprietary. It wasn't earlier this
18 morning. I'm only asking about the condition, not whether
19 they're going to do it or not, but just about the --

20 JUDGE THORNBURG: Well, okay. If you're
21 asking about -- I think we've opened up in public session
22 the nature of the condition and what it is. But if you're
23 asking what the business plan is, then that would have to be
24 in-camera.

25 MR. BYRNE: I'm asking about the condition.

1 JUDGE THORNBURG: Okay. Ask your question
2 again and we'll proceed with that.

3 BY MR. BYRNE:

4 Q. My understanding is you do not want as a
5 condition of this certificate that you can't interconnect
6 those facilities; is that true?

7 A. Well, I think what we sought was a
8 clarification of a previous Order wherein Missouri Pipeline
9 or MPC owned assets that they were putting in service and
10 additionally had assets that they were not putting in
11 service that extended across the river, and there was a
12 condition placed that MPC couldn't connect those two pieces
13 of pipe together.

14 It's been our view, as well as was
15 Mr. Kreul's, that you could connect those two pieces of pipe
16 together as long as Missouri Pipeline did not own the assets
17 that went across the river.

18 Q. Okay. And my understanding also is if it
19 turns out the Commission disagrees with that, you'd like
20 them to waive that condition?

21 A. That is correct.

22 Q. Another issue that's been raised in other
23 people's testimony is the possibility of a rate moratorium.
24 Have you considered or are you -- is Gateway willing to
25 consider a rate moratorium if it's granted the authority

1 that it's --

2 MR. KEEVIL: Judge, I'm going to object to
3 this. It sounds to me like Mr. Byrne is attempting to
4 negotiate a settlement here. We did have extensive
5 settlement discussions back during the time of the
6 prehearings.

7 Those settlement discussions failed, and
8 whether or not Gateway is -- what settlement conditions
9 Gateway might have at one time been willing to agree to are
10 irrelevant for the purpose of hearing today. Settlement was
11 not reached.

12 MR. BYRNE: Your Honor, I'm not asking about
13 any settlement discussions. I'm just saying some of the
14 parties have filed testimony in this case asking for, not a
15 settlement, but conditions as part of the approval process,
16 and I'm asking if he would be willing to live with the
17 conditions that have been filed by the other parties'
18 testimony.

19 JUDGE THORNBURG: I don't want an
20 on-the-record negotiation of the settlement proposal.
21 I understand Mr. Keevil's objection in that sense.

22 We do have testimony, and it might have been
23 Laclede's witness that proposed certain conditions. If you
24 want to ask Mr. Ries' opinion of those conditions, you can
25 do that.

1 MR. BYRNE: Okay. I'll ask it that way, then.

2 JUDGE THORNBURG: Do you need a moment to get
3 that testimony in front of you?

4 MR. BYRNE: I've got it right here.

5 JUDGE THORNBURG: Okay. And if the witness is
6 familiar with it, which I don't know if he's read it or not.

7 MR. KEEVIL: Judge, let me also, if he's going
8 to be reading from Pflaum's testimony, I don't believe
9 Pflaum's testimony has been admitted into the record at this
10 point, and I would hope that any questions that we're asking
11 here would be subject to further -- I mean, there's no
12 guarantee that everything Mr. Pflaum says will be in the
13 record.

14 JUDGE THORNBURG: I think we can deal with
15 that if there's some problem later in getting the testimony
16 before the Commission. So you can proceed, Mr. Byrne.

17 BY MR. BYRNE:

18 Q. Okay. Let me start over, then. Well, I guess
19 unrelated to past settlement discussions, just my question
20 is, are you willing to have a rate moratorium if this is
21 approved?

22 A. Well, I think in the context of Data Requests
23 and settlement proposals, we did indicate some
24 willingness --

25 Q. Excuse me. I don't think -- I don't want to

1 ask you about settlement proposals. Those are privileged.
2 I don't want to ask about settlement proposals. I'm merely
3 asking, are you willing to have a rate moratorium if this is
4 approved now?

5 A. Well, I don't think it's appropriate to impose
6 a rate moratorium upon Gateway that didn't exist at the time
7 that we entered into this transaction with UtiliCorp.

8 Q. Okay. Fair enough. Have you read
9 Mr. Pflaum's prefiled testimony?

10 A. I did a few weeks ago when it was filed, yes.

11 Q. Maybe I can -- maybe I can cut this short,
12 then, and just ask you, are you willing to do any of the
13 things Mr. Pflaum has proposed in his seven conditions, if
14 you remember what those were?

15 A. And I would say my general recollection of the
16 conditions that Mr. Pflaum proposed were generally contract
17 negotiation type issues that were attempting to be imposed
18 upon Gateway through this regulatory process.

19 It struck me as being a rather one-sided
20 negotiation process in the context of attempting to impose a
21 certain set of conditions and means of doing business upon
22 these assets that don't exist today.

23 Q. Okay. Let me ask you about another condition
24 that I think is part of the -- part of the way Missouri
25 Pipeline Company and Missouri Gas Company do business now,

1 and that is the issue of bypass.

2 Would it be your expectation that you would
3 agree not to bypass local distribution companies and
4 municipalities if this deal is approved or would you want to
5 have the opportunity to bypass local distribution companies
6 and municipalities?

7 A. It's been my position that both MPC and MGC do
8 not have that ability today, and I am not attempting in this
9 proceeding to change their certificates or means of doing
10 business in any way and only attempting to make an
11 acquisition at this point in time.

12 Q. So from your perspective, that could be a
13 condition that the Commission could impose if they approved
14 this transaction?

15 MR. KEEVIL: I'm going to object to that. I
16 mean, I think what he said is the current conditions are
17 there. The current conditions on bypass will continue. I
18 don't know where he's going with this, but it seems to me to
19 be irrelevant, No. 1, based on the witness' answer, and
20 No. 2, it's just inappropriate to pursue in
21 cross-examination. He's attempting to -- he's negotiating a
22 settlement through cross-examination.

23 JUDGE THORNBURG: I'm going to sustain the
24 objection. If you have another question, you can ask it,
25 but you're trying to restructure his answer somehow.

1 BY MR. BYRNE:

2 Q. Okay. Never mind. I don't have another
3 question I would ask.

4 Well, let me ask another question. I guess
5 it's still related to bypass. Is it your understanding that
6 if your facility became FERC jurisdictional, at that point
7 you would -- you would be free to bypass local distribution
8 companies and municipalities?

9 A. And by "your facilities" you're talking about
10 MPC and MGC becoming FERC jurisdictional, is that the
11 question?

12 Q. Yes.

13 A. I think certainly there's different sets of
14 rules and conditions in which FERC mandates that companies
15 operate pipelines that are in FERC jurisdictional service,
16 one of those being open access to all transporters, and
17 that's, from my understanding, generally come to be
18 interpreted as that you really have to provide connections
19 and access to capacity to any and all qualified providers.

20 I'm not suggesting here that under Gateway
21 ownership we would proactively attempt to bypass LDCs, but
22 that under FERC jurisdiction you've got less flexibility in
23 whether or not you're allowed to make interconnections with
24 companies, including the companies specifically that are
25 wanting a bypass of an LDC.

1 Q. Okay. So would it be fair from that answer to
2 say that you're not making a commitment that you wouldn't
3 bypass LDCs if you were FERC jurisdictional?

4 A. I think what I was trying to say, and
5 obviously not so clearly, that under FERC jurisdiction
6 you're precluded from denying individual shippers the
7 opportunity to bypass.

8 MR. BYRNE: Okay. Thank you. That's all the
9 questions I have.

10 JUDGE THORNBURG: Do we have cross by Laclede?

11 CROSS-EXAMINATION BY MR. PENDERGAST:

12 Q. Good afternoon, Mr. Ries.

13 A. Good afternoon.

14 Q. I'd like to begin, if we could, with a brief
15 discussion regarding the ownership structure of the
16 pipelines in the event that the proposed restructure is
17 approved, and I'd like to begin at the bottom, if I could,
18 with MPC and MGC. Can you tell me who will own those?

19 A. Currently UtiliCorp Pipeline Systems is the
20 owner of those two companies.

21 Q. And upon the proposed restructuring, if it
22 were to be approved by the Commission, would they, albeit
23 with a different name, continue to own it?

24 A. Yes, they would.

25 Q. So MGC and MPC would be owned by, we'll call

1 it company X at this point. Okay. Now, who would own
2 company X?

3 A. Gateway Pipeline Company as the transaction is
4 proposed would acquire all of the stock of the now
5 company X.

6 Q. Okay. So Gateway Pipeline would own
7 company X, which would in turn own MGC and MPC. Now, who
8 would own Gateway Pipeline?

9 A. Well, Gateway Pipeline has received agreements
10 for a senior loan from BankOne to hold a senior note that
11 would be secured by the assets of Gateway Pipeline Company.
12 The equity holders of Gateway would be in the form of MoGas
13 Energy, LLC.

14 Q. Okay. So BankOne and MoGas, LLC will own
15 Gateway, which will own company X, which will own MGC and
16 MPC; is that correct?

17 A. That's correct.

18 Q. Okay. Who owns MoGas, LLC?

19 A. There are currently three principals
20 identified in the ownership of MoGas. That's TCW Asset
21 Management, Dennis Langley and myself.

22 Q. Okay. So let me see if I've got this
23 straight. TCW Asset Management, Dennis Langley and yourself
24 own MoGas, LLC, who in conjunction with BankOne own Gateway
25 Pipeline, who in turn owns company X, who in turn owns MGC,

1 MPC, or would own them in the event this was approved by the
2 Commission?

3 MR. KEEVIL: Judge, I'm going to object to
4 this as just being unduly argumentative for one thing. I
5 believe what Mr. Ries testified was that BankOne made a loan
6 to MoGas -- not to MoGas, to Gateway. They're not owning
7 Gateway. He kept calling this company X. I think it's
8 intentionally inflammatory. It's UPL is what it is. And I
9 think it's misstating the facts and is being unduly
10 argumentative.

11 JUDGE THORNBURG: First I want to note, a lot
12 of this is already in the record and we're just rehashing
13 it, and this is taking time we don't need to take.

14 I agree, right now this is UPL, not company X.
15 Granted, they're going to be changing the name. And BankOne
16 is providing the loan. They aren't -- as I understand,
17 they're not an owner, and you have been characterizing them
18 as an owner. So I guess I'll sustain. You're going to have
19 to rephrase your questions to avoid characterizing these
20 things.

21 MR. PENDERGAST: Certainly, your Honor.

22 JUDGE THORNBURG: The record doesn't support
23 some of these things.

24 MR. PENDERGAST: I apologize for any
25 inaccurate reference.

1 BY MR. PENDERGAST:

2 Q. Would it be safe to say that it's TCW Asset
3 Management, Dennis Langley and yourself who own MoGas, LLC,
4 who in turn own Gateway Pipeline, who would in turn own UPL,
5 who would in turn own MGC and MPC?

6 A. I believe that's correct.

7 Q. Okay. Can you explain for me why it takes
8 four owners in this ownership succession, what the rationale
9 for that is in order to own and acquire and operate two
10 pipeline companies?

11 A. I'm not sure I understand the question.
12 You've got a question about a specific individual company?

13 Q. Yeah. What I'm asking is, why are there so
14 many layers of ownership in this particular arrangement?

15 A. Well, I think there's a reason for every one
16 of them to be there.

17 Q. Fine. Could you tell us what they are?

18 A. Missouri Pipeline and Missouri Gas Company
19 are, in fact, regulated entities with individual tariffs and
20 business plans that operate within this state and are
21 currently subsidiaries of UtiliCorp Pipeline Systems, which
22 also owns other assets. So all three of those have a
23 purpose of their own.

24 Gateway Pipeline Company is a company that was
25 formed to enter into this transaction to acquire the stock

1 of UPL and to acquire or act as the operating entity of this
2 enterprise once the transaction was completed.

3 MoGas Energy was a company that was put
4 together to hold the equity interest in Gateway and
5 essentially enter into a stockholder arrangement amongst the
6 three parties that are the equity owners of MoGas.

7 Q. Okay. And is it your position that, of all of
8 those companies, the only ones that would be subject to
9 regulation by the Commission would be MGC and MPC?

10 A. Well, I think we've talked about the
11 utilization of the other assets that were included in the
12 transaction that are currently held by UPL and were formerly
13 referred to as TMP and that there was the potential that
14 those assets could be activated as well as a regulated
15 entity.

16 Q. Okay. But barring that activation, would it
17 be your understanding that MGC and MPC are the only one of
18 those companies that are regulated by the Commission?

19 A. I would say that's correct.

20 Q. Let me ask you this. If UPL or Gateway
21 Pipeline or MoGas, LLC were to be acquired or merged with
22 another utility or another company, would you view any need
23 to seek Commission approval for that?

24 MR. KEEVIL: Objection. He's asking for legal
25 conclusions now about speculative events that aren't even

1 planned.

2 MR. PENDERGAST: What I'm trying to do is I'm
3 trying to find out -- as I understand it, this proceeding
4 started with a dispute over whether or not there was
5 jurisdiction given the fact that these two facilities were
6 owned by a holding company, and I'm trying to probe whether
7 or not if the Commission approves this transaction that
8 company would be able to go ahead and change ownership
9 without any Commission approval. And I'm asking the witness
10 as the president of that company whether he has any views on
11 that subject.

12 JUDGE THORNBURG: I don't think it's relevant
13 to the proceeding we have here. We've already resolved the
14 jurisdictional issues. So I'll sustain the objection.

15 BY MR. PENDERGAST:

16 Q. You were asked a number of questions about the
17 conditions that are set forth in Dr. Pflaum's testimony. Do
18 you recall those?

19 A. Yes.

20 Q. Do you believe it is appropriate for existing
21 users of MPC and MGC to be at risk for loss of volumes that
22 may be experienced after the proposed restructuring or the
23 proposed transaction if it's approved by the Commission?

24 A. I'm not sure I understand the specifics of
25 your question both in terms of what risk is and loss of

1 volumes from whom.

2 Q. Well, let me pose a hypothetical to you. The
3 proposed transaction is approved by the Commission, and
4 despite your expectations, the quality of service declines
5 and you lose volume. Is it your position that existing
6 users of the system should have to pick up the costs that
7 are no longer being covered by those lost volumes?

8 A. Well, there's still a whole array of questions
9 around that question. In the context of, you know, what was
10 the appropriate cost vs. benefit of the volumes that were
11 being lost, obviously there's a cost associated with
12 throughput as well as the revenues that were lost with it at
13 the same time.

14 Secondly, whether or not there is a potential
15 for replacement or a new customer being generated to replace
16 those volumes as well I think are all issues that need to be
17 viewed in the context of the generality of the question in
18 the context of should the other customers be required to
19 pick up the cost.

20 Q. Let me move from the general to very specific.
21 If, in fact, because of reliability problems or poor service
22 it can be demonstrated that MPC has lost volumes on its
23 system and, therefore, has fewer volumes to spread its fixed
24 costs over, would it be your position today that existing
25 users of the system should have to pay for that lost

1 contribution?

2 A. Well, I think in the -- generally, I would
3 subscribe to the understanding that in overall consolidated
4 ratemaking processes the cost of services are spread across
5 all customers. And to the extent that you have more or less
6 volumes and you have subsequent rate proceedings, there is
7 typically a desire to levelize the playing field at that
8 particular time where all costs are spread across all
9 existing customers.

10 Q. So would the answer to my question be yes?

11 A. I'm not sure I can answer that as a yes or a
12 no. I think in the context of a consolidated ratemaking
13 process and a rate case being filed, I would think I would
14 say yes.

15 Q. If MPC or MGC have to incur additional costs
16 in order to go ahead and increase throughput, should
17 existing customers pay for those additional costs if the
18 revenues aren't sufficient to support those additional
19 costs?

20 MR. KEEVIL: Judge, I'm going to object. I
21 probably should have objected to the last one, but I was
22 hoping this rate case line of inquiry would end.

23 First of all, he's asking rate case questions.
24 These are not acquisition questions. Second of all,
25 Mr. Ries' opinion regarding these matters for the purposes

1 of this case frankly are irrelevant. It would be relevant
2 if this future rate case ever occurs and Gateway seeks
3 recovery of either costs lost due to losing volumes or
4 increased expense. Then he can go into all that. For
5 purposes of this case today, this is an irrelevant and
6 inflammatory line of questions.

7 MR. PENDERGAST: Your Honor, we have -- yes,
8 we have proposed conditions that are designed, as the
9 Commission has done in the past, to put the risk for these
10 things on the applicant.

11 And in responding to those conditions Mr. Ries
12 has said that they're inappropriate, and I believe I have
13 the right to cross-examine him as to why he believes they
14 are inappropriate, and that's what I'm trying to do here.

15 MR. KEEVIL: He's given his opinion, they're
16 inappropriate.

17 JUDGE THORNBURG: That's fine. I'm going to
18 overrule the objection, but I'm not sure how productive this
19 line of questioning is going to be with this witness. You
20 can continue and -- you can continue.

21 MR. PENDERGAST: Thank you, your Honor.

22 BY MR. PENDERGAST:

23 Q. Do you need me to repeat the question?

24 A. Please.

25 Q. Okay. In the event MPC or MGC were to make

1 incremental expenditures to attract new load in the future
2 and the revenues from that new load were insufficient to pay
3 for the costs it incurred to make that new load possible,
4 would it be your view that existing users should have to
5 bear the costs that aren't covered by those additional
6 revenues?

7 A. I think, again, I'll repeat myself. In the
8 event that subsequent rate proceedings were being filed and
9 additional cost had been incurred that were not being
10 recovered by the incremental revenues associated with the
11 creation of that capacity, it would be my position that
12 those shortfall in cost would be subject to recovery from
13 existing customers, and just as confidently as I would
14 believe that if revenues were exceeding the cost of those
15 incremental facilities, that those customers would certainly
16 claim the right and the desire to reduce their rates as a
17 result of that over-collection of incremental revenues.

18 Q. Okay. Fair enough. You are aware of
19 Dr. Pflaum's proposal on right of first refusal?

20 A. I have read Dr. Pflaum's testimony, yes.

21 Q. And you have said that in your view that's
22 inappropriate?

23 A. I believe I've said that I believe that's
24 inappropriate. Generally what he is proposing is a set of
25 contract terms. Even went so far as to offer Laclede to

1 enter into a long-term contract that would address all of
2 Dr. Pflaum's concerns in a long-term transportation
3 agreement which to date they have had no desire to initiate
4 discussions on.

5 Q. You met with Laclede, did you not?

6 A. Yes, I did. I have more than once since we
7 entered into the agreement.

8 Q. And you indicated to them that you had grand
9 plans to connect with the facilities --

10 MR. PENDERGAST: Maybe we need to go in-camera
11 here.

12 MR. KEEVIL: Yeah.

13 JUDGE THORNBURG: Okay. At this point if
14 there are any persons present in the room that are not
15 attorneys and have not entered into the --

16 MR. KEEVIL: I think this is just proprietary.

17 JUDGE THORNBURG: Non-attorneys and persons
18 not in compliance with the Commission's Protective Order
19 with regard to proprietary information. Okay. At this
20 point the -- we will be cleared in a moment. Okay. At this
21 point the record will go in-camera, and the court reporter
22 will note that.

23 REPORTER'S NOTE: At this point, an in-camera
24 session was held, which is contained in Volume 5, pages 218
25 through 226 of the transcript.)

1 JUDGE THORNBURG: The next party with cross
2 according to the prefiled agreement is Office of the Public
3 Counsel.

4 MS. O'NEILL: Thank you.

5 JUDGE THORNBURG: If there's anyone out in the
6 lobby, let them know they can come back in.

7 MR. KEEVIL: Judge, I apologize. Did you say
8 we're back out of camera?

9 JUDGE THORNBURG: Yeah, we're out of camera.
10 We're public again.

11 MR. KEEVIL: As opposed to in-camera, we're
12 out.

13 JUDGE THORNBURG: I'll just use the term we're
14 in public session.

15 CROSS-EXAMINATION BY MS. O'NEILL:

16 Q. Good afternoon, Mr. Ries.

17 A. Good afternoon.

18 Q. First I wanted to clarify something that I
19 thought I heard you say, and if I heard it wrong I
20 apologize. When Mr. Pendergast asked you who owned MoGas
21 Energy, you said three principals have been identified, and
22 then you named TCW, Mr. Langley and yourself, correct?

23 A. I'm not sure if that's the exact words, but
24 yes.

25 Q. Are there other owners of MoGas?

1 A. No.

2 Q. Okay. From that answer, I wasn't sure. I
3 couldn't tell.

4 Okay. Now, when Mr. Kreul testified earlier
5 today, he said that although he was a participant in the
6 negotiations of this proposed transaction and although he
7 was somewhat aware at some point that Mr. Langley was
8 involved as an equity partner, he didn't have direct contact
9 with Mr. Langley. Did you negotiate this transaction?

10 A. Yes, I did.

11 Q. Who else -- who else from MoGas and/or Gateway
12 negotiated this transaction?

13 A. Well, I had assistance from legal counsel in
14 putting the transaction together.

15 Q. Did you have assistance from Mr. Langley?

16 A. No.

17 Q. And were you -- when you put this transaction
18 together, were you deeply involved in how the transaction
19 was going to be structured?

20 A. I was, yes.

21 Q. So you were aware of all the terms and
22 conditions?

23 A. Yes, I was.

24 Q. And you, in fact, describe those -- describe
25 the proposed transaction in your direct testimony, which is

1 Exhibit 4; is that correct?

2 A. I don't believe I described the transaction.

3 Q. Okay. At page 2, is there a question, Please
4 describe the proposed transaction, followed by an answer?

5 A. Talking about in the direct testimony?

6 Q. In the direct testimony.

7 A. Oh, okay.

8 Q. Is that correct?

9 A. Yes, it is.

10 Q. And did you make an attempt to be complete in
11 your description of the transaction in your direct
12 testimony?

13 A. Well, I believe it was complete.

14 Q. To your knowledge -- and go ahead and take a
15 look at it if you need to refresh your recollection -- were
16 there any important terms of the transaction that you left
17 out of this description?

18 A. Well, generally the description of the
19 transaction as it starts on page 2 generally makes reference
20 to a Stock Purchase Agreement which isn't -- wasn't included
21 as part of my testimony, but it generally outlines in very
22 complete detail the transaction that was being proposed
23 here.

24 Q. Your testimony outlines in complete detail the
25 transaction you proposed?

1 MR. KEEVIL: Asked and answered, Judge.

2 MS. O'NEILL: I'm not clear from his answer,
3 your Honor, whether he means the testimony or the agreement.
4 I'm just trying to clarify.

5 THE WITNESS: The agreement.

6 JUDGE THORNBURG: Excuse me. The witness
7 answered the agreement?

8 THE WITNESS: Yes.

9 BY MS. O'NEILL:

10 Q. And did you also participate in drafting the
11 agreement?

12 A. Yes, I did.

13 Q. And you're familiar with the contents of the
14 agreement?

15 A. Yes, I am.

16 Q. And the agreement does not address waiver of
17 any restrictions contained in the certificates of the
18 regulated pipelines, does it?

19 A. No, it does not.

20 Q. And were you also involved in preparing the
21 Joint Application that was filed with the Commission?

22 A. Well, I would say legal counsel was involved
23 with preparing the application. I wasn't directly involved
24 in it. Obviously to the extent that we provided documents
25 and agreements, we were aware that the application was

1 proceeding, yes.

2 Q. You were aware of the contents of the
3 application?

4 A. Yes.

5 Q. Did you have -- did you approve your legal
6 counsel to file the application?

7 MR. KEEVIL: Objection.

8 JUDGE THORNBURG: What's the objection?

9 MR. KEEVIL: It's attorney/client privilege,
10 seeking the communications between Mr. Ries and counsel.

11 MS. O'NEILL: It's not a confidence or a
12 secret, I don't think, Judge.

13 JUDGE THORNBURG: And what was the question?

14 MS. O'NEILL: Whether or not he approved the
15 application that was filed by his legal counsel.

16 JUDGE THORNBURG: I think the client would
17 have to authorize that. I'll overrule the objection.

18 THE WITNESS: Yes.

19 JUDGE THORNBURG: Thank you.

20 BY MS. O'NEILL:

21 Q. And did that application request a waiver of
22 any restrictions contained in the certificates of the
23 regulated pipelines?

24 A. Not that I'm aware of, no.

25 Q. In your description in Exhibit 4, at page 3,

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1 do you address whether this transaction will have any effect
2 on the current customers of MPC and MGC?

3 A. That's correct.

4 Q. And do you claim that this will be a
5 transparent transaction?

6 A. I do.

7 Q. And that there will be no -- that you're not
8 seeking to change any rates or tariffs regarding these
9 companies in this proceeding?

10 A. I believe that's what it says, yes.

11 Q. In the process of your negotiation in this
12 transaction, did you, Mr. Ries, make an attempt to find out
13 all the information you could about these companies you were
14 seeking to acquire?

15 A. I believe we did a thorough review, yes.

16 Q. And did your review include discovering what
17 the capacity of these pipelines was?

18 A. Generally, I believe we knew that, yes.

19 Q. And did you also know that the pipelines are
20 nearly at full capacity on peak?

21 A. I believe that was my statement as well, yes.

22 Q. So you understood that in your negotiations?

23 A. Yes.

24 Q. And in your investigation of these assets
25 belonging to UPL, did you review Orders of this Commission

1 regarding the certificates of MPC and MGC?

2 A. Yes, we did.

3 Q. And so you're aware that at the time that
4 MPC's certificate was issued, there was a restriction about
5 interconnection with a pipeline under the river; is that
6 correct?

7 A. We were aware of the restriction that was
8 identified in the original Order, that's correct.

9 Q. And you're aware of the restriction being
10 continued to UtiliCorp at the time that they made their
11 purchase in the '94 case?

12 A. We were, yes.

13 Q. And were you also aware that at the time
14 UtiliCorp purchased MPC and the pipeline that goes under the
15 river that we've called TMP, that they were not -- that
16 those two entities were owned by another corporate entity?

17 A. I don't know that I knew that at the time of
18 that transaction that they had been segregated individually.
19 It was my -- my understanding that that was something that
20 UtiliCorp did at about the time of the transaction itself.

21 Q. So you may not have had complete information
22 regarding this issue from UtiliCorp; is that your position?

23 A. I didn't state that position at all. All I
24 said was I think that's something that happened about the
25 time this transaction was completed by UtiliCorp.

1 Q. Gateway is a new company just formed this
2 year; is that correct?

3 A. That's correct.

4 Q. And MoGas Energy was also formed this year?

5 A. That's correct.

6 Q. And other than this transaction, is Gateway
7 involved in any other business at this time?

8 A. No, it's not.

9 Q. Is MoGas involved in any other business other
10 than Gateway at this time?

11 A. No, it's not.

12 Q. You testified earlier that there is, in
13 addition to MoGas, the equity owner of Gateway, that there
14 is a senior debt financed by BankOne; is that correct?

15 A. That's correct.

16 MR. KEEVIL: Judge, we're getting close to
17 in-camera again here.

18 MS. O'NEILL: That may be.

19 JUDGE THORNBURG: Are you going to ask some
20 details on the terms of the note?

21 MS. O'NEILL: I was just getting to that, yes.

22 JUDGE THORNBURG: At this time we'll go into
23 an in-camera session. Any non-attorneys that are not party,
24 have not complied with the terms of the Commission's
25 Protective Order will have to leave the hearing room at this

1 time.

2 MR. BYRNE: Is it proprietary?

3 MR. KEEVIL: I think it is the HC stuff.

4 MS. O'NEILL: I don't think this was
5 declassified. This is 3810. I think this stayed HC.

6 JUDGE THORNBURG: This is going to be highly
7 confidential information?

8 MS. O'NEILL: Yes.

9 JUDGE THORNBURG: If you're not authorized to
10 see highly confidential information, then you'll also have
11 to leave the room.

12 (REPORTER'S NOTE: At this point, an in-camera
13 session was held, which is contained in Volume 5, pages 236
14 through 242 of the transcript.)

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1 BY MS. O'NEILL:

2 Q. In your rebuttal testimony, which is
3 Exhibit 5, you have some discussion early in that testimony,
4 I'll refer you to pages 2 and 3, regarding population growth
5 in the areas served by MPC and MGC; is that correct?

6 A. Yes.

7 Q. You're aware of the current restrictions in
8 MPC and MGC's certificates regarding bypass; is that
9 correct?

10 A. Yes.

11 Q. You're not seeking to have those restrictions
12 lifted in this proceeding; is that correct?

13 A. Yes, that's correct that I'm not requesting a
14 lifting of that condition.

15 Q. Okay. Are you familiar with Phelps County
16 personally?

17 A. I've been through it on the interstate.

18 Q. Are you familiar with Pulaski County other
19 than being through it on the interstate?

20 A. Other than the fact that Fort Leonard Wood is
21 a significant land position in Pulaski County, no.

22 Q. How about Crawford County?

23 A. Same way, know where it's at. I'm not
24 intimately familiar with it, no.

25 Q. So do you have some familiarity with the

1 St. Louis suburban areas that are served by this pipeline?

2 A. I have spent several days familiarizing myself
3 with that area in general, yes.

4 Q. Would it be fair to say that you're more
5 familiar with the St. Louis portion of the service areas of
6 this pipeline than the rural areas?

7 A. I would say St. Louis area, primarily
8 St. Charles and Franklin Counties.

9 Q. At page 3 of your rebuttal testimony you talk
10 about the fact that there's been some increases in
11 population for these rural counties, and can you tell me
12 what the total population is of Crawford County currently?

13 MR. KEEVIL: Judge, I'm going to object to
14 that. I think the part she's referring to he's quoting
15 from -- or not quoting, but referring to Mr. Jim Gray's
16 Schedule 4.

17 MS. O'NEILL: I'm just asking if he knows.

18 MR. KEEVIL: Perhaps Mr. Gray's Schedule 4
19 could enlighten us on that since that's where that's taken
20 from.

21 JUDGE THORNBURG: That's true. I'll overrule
22 the objection. You can answer the question.

23 THE WITNESS: And the question was?

24 BY MS. O'NEILL:

25 Q. Do you know what the current population is of

1 Crawford County?

2 A. No.

3 Q. Do you know the current population of any of
4 these rural counties that are served especially by MGC
5 Pipeline?

6 A. Exactly, no.

7 Q. Were the populations of those counties
8 relatively low in comparison to the counties in the
9 St. Louis suburban area?

10 A. I think generally I would view that as a
11 correct statement.

12 Q. But as far as any intimate knowledge of the
13 population, you just don't have that at this time; is that
14 correct?

15 A. Well, that's correct.

16 MS. O'NEILL: I don't have anything further at
17 this time.

18 JUDGE THORNBURG: At this point we've been
19 going for a period of time, so we're going to take just a
20 five-minute break. Be enough for the restroom break and get
21 a drink if needed, and then we'll come back.

22 MS. SHEMWELL: How about ten?

23 JUDGE THORNBURG: Ten minutes. Okay. We've
24 been going for a while. We'll take ten minutes.

25 (A BREAK WAS TAKEN.)

1 JUDGE THORNBURG: We're going to go back on
2 the record, and Ms. Shemwell, you can start when you're
3 ready.

4 MS. SHEMWELL: Thank you, your Honor. I'm
5 probably going to have a couple of HC-type questions right
6 off. Would you just prefer I hold until the end or --

7 JUDGE THORNBURG: I will prefer if you can
8 group them and cover them altogether. You can do it at the
9 beginning or end or in the middle, I don't care. Do you
10 want to start off with highly confidential information?

11 MS. SHEMWELL: Yes, let's do that.

12 JUDGE THORNBURG: At this point we'll go into
13 in-camera session, and it's highly confidential information.
14 So anyone that's not abided by the terms of the Commission's
15 Protective Order will have to leave the hearing room.

16 MS. SHEMWELL: Thank you.

17 (REPORTER'S NOTE: At this point, an in-camera
18 session was held, which is contained in Volume 5, pages 247
19 through 249 of the transcript.)

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1 CROSS-EXAMINATION BY MS. SHEMWELL:

2 Q. Mr. Ries, on page 14, I believe it's your
3 direct, you state that Gateway has a well-founded belief
4 that the market will grow west of St. Louis and is willing
5 to invest on that well-founded belief.

6 MR. KEEVIL: I'm sorry, Judge. I missed the
7 page reference there.

8 MS. SHEMWELL: 14.

9 JUDGE THORNBURG: Is that in the rebuttal?

10 MS. SHEMWELL: This is in the rebuttal.

11 MR. BOUDREAU: Page 14 of the rebuttal? I'm
12 lost.

13 MS. SHEMWELL: I'm sorry. Page 15.

14 JUDGE THORNBURG: Of the rebuttal?

15 MS. SHEMWELL: Of the rebuttal.

16 BY MS. SHEMWELL:

17 Q. I just want to ask, what's the foundation of
18 that belief?

19 MR. KEEVIL: Wait a minute. Are we talking
20 about lines 12 through 14?

21 MS. SHEMWELL: Gateway has a well-founded
22 belief --

23 MR. KEEVIL: If we're talking about 12 through
24 14, that's proprietary there.

25 JUDGE THORNBURG: It was marked, set off in

1 the answer.

2 MS. SHEMWELL: I'm sorry. Shall I rephrase it
3 in a way that perhaps is not?

4 MR. KEEVIL: If you can.

5 BY MS. SHEMWELL:

6 Q. Do you think the St. Louis market is going to
7 grow, Mr. Ries?

8 A. I think I'd have to limit the definition of
9 what you refer to as the St. Louis market. I think the
10 market that is currently served by the assets of Missouri
11 Pipeline Company and Missouri Gas Company have been growing
12 and are continuing to grow and far faster than the St. Louis
13 City area would be growing.

14 So it's the suburbs in the western and
15 interstate corridors west of St. Louis are continuing to
16 grow.

17 Q. And do you know if a loss in the city offsets
18 the growth west of the city?

19 A. You know, generally for the St. Louis metro
20 area, there is not a significant overall growth. There is
21 some growth on a net basis, but it's not significant.

22 Q. I'm sorry. Did you answer, did you think it
23 was offset or --

24 A. Well, I think I said in general it's pretty
25 close, but there's a small incremental growth overall.

1 Q. You refer to Mr. Gray's Schedule 4. Do you
2 have Mr. Gray's Schedule 4 there with you?

3 A. No, I do not.

4 Q. I just have a rather simple question that you
5 may be able to answer, and that is, would you agree with me
6 that the growth figures shown in Mr. Gray's Schedule 4 are
7 for a ten-year period?

8 A. I will say my general recollection is that the
9 numbers he was putting together were for a ten-year period,
10 1990 through 1999.

11 Q. You criticize Mr. Gray for not mentioning
12 conversion from alternative fuels to natural gas. Do you
13 know how many conversions in MPC and MGC's territory there
14 were from propane or other alternative fuels to natural gas?

15 A. I have no record of what the exact number of
16 conversions from alternative fuels are. No, I do not.

17 Q. So as a followup, Gateway hasn't done any
18 study to determine how many conversions you might expect?

19 A. The only true measure I have is the throughput
20 and volumetric growth that Missouri Pipeline and Missouri
21 Gas Company has seen over that same ten-year period, and
22 it's far in excess of the population growth.

23 Q. Did you provide that to Staff, that
24 information?

25 A. I believe I provided that in my rebuttal

1 testimony, that what I did was look at the annual filed
2 reports that Missouri Gas Company had provided as a part of
3 their requirement to file annual reports. A review of those
4 indicated that in year 2000 was approximately an 11 percent
5 increase over year '99 and 100 percent increase over the
6 last five years.

7 Q. Do you know how much commercial and industrial
8 growth there was outside of the St. Louis area?

9 A. I don't have specific knowledge. Again, I'm
10 limiting my knowledge base to the area served by these
11 pipelines themselves, and the best way I have measuring that
12 is the throughput on the pipelines themselves.

13 Q. You had indicated one way that you would look
14 at growth would be to approach cities regardless, I think
15 your phrasing was regardless of who their local distribution
16 company might be. Have you contacted any cities in the
17 MPC/MGC area to see if they're interested in having natural
18 gas service?

19 A. In terms of cities that are currently not
20 served?

21 Q. Correct.

22 A. Not as of yet.

23 Q. On page 16 of your rebuttal you state that
24 Mr. Oligschlaeger -- let's get to page 16 of your rebuttal.

25 A. Okay.

1 Q. At line 17, Mr. Oligschlaeger seems to
2 indicate he believes that Gateway's plan -- we're getting
3 into --

4 JUDGE THORNBURG: Apparently it's set off as
5 proprietary.

6 MS. SHEMWELL: It is. Do we need to go
7 in-camera for this phase, Jeff? Jeff?

8 MR. KEEVIL: I'm thinking.

9 MS. SHEMWELL: I thought you were asleep.

10 MR. KEEVIL: No, no, no. The percentages, the
11 debt equity percentages are public. I would defer to
12 Mr. Ries. Dave, I think she's talking about the line 18 on
13 page 16. I would defer --

14 JUDGE THORNBURG: And that's something Staff
15 designated in their testimony that you picked up here and
16 presented as proprietary.

17 MS. SHEMWELL: Actually, my question is --

18 JUDGE THORNBURG: Let's ask the question and
19 then we'll see.

20 BY MS. SHEMWELL:

21 Q. I'm going to ask him where in in
22 Mr. Oligschlaeger's testimony does Mr. Oligschlaeger make
23 that statement? Can you refer us to where?

24 A. My best guess would be page 6. That's all I
25 know right now, and I don't have his testimony in front of

1 me.

2 Q. Would you like to see it so you can --

3 A. Please. Okay.

4 Q. Would you point that out for us?

5 A. Excuse me. What was the question?

6 Q. You indicate that Mr. Oligschlaeger seems to
7 indicate that Gateway's capital structure perhaps has too
8 much equity. Where do you believe he has stated that?

9 A. Well, in Mr. Oligschlaeger's testimony on
10 lines 12 through 15 he makes reference to Gateway's debt
11 equity structure and cost of service, and says that Gateway
12 plans to reduce the relative level of debt and replace it
13 with a higher level of equity financing. Because equity
14 financing is generally higher cost, that then the use of
15 debt, the Staff was concerned that MGC's and MPC's cost of
16 service will increase.

17 Q. He's not evaluating whether there's too much,
18 though, is he? He's just making a comment that one is
19 generally higher cost than the other?

20 A. He says Gateway plans to reduce debt and
21 replace it with higher level equity.

22 Q. Right. He doesn't really make a judgment
23 about that, though, does he?

24 A. What he's saying is that that's going to
25 increase the cost of service of these assets.

1 Q. Yes. And would you agree that equity
2 generally is more expensive than debt, all other things
3 being equal?

4 A. In a rate case proceeding, I would generally
5 agree with that.

6 Q. Would you agree with it in any other
7 proceeding?

8 A. Well, I think outside of that it doesn't
9 really have any relevance.

10 Q. Okay. I don't think it's HC that you're
11 buying this TMP, Trans-Mississippi Pipeline, right? It's
12 been openly discussed that that's part of this transaction.

13 JUDGE THORNBURG: That's been discussed.

14 BY MS. SHEMWELL:

15 Q. Are you going to bring it under FERC
16 jurisdiction?

17 MR. KEEVIL: Apparently Staff does not
18 understand the difference between talking about buying
19 something and business plans concerning that thing once
20 bought. This would be proprietary. I don't have any
21 problem at all with him answering the question, but if she's
22 getting into business plans, which she is --

23 JUDGE THORNBURG: It's a fine distinction, but
24 would you like us to go in in-camera session to answer that?

25 MR. KEEVIL: Based on what I've seen so far of

1 Ms. Shemwell's questioning, yes, I think that would be
2 appropriate.

3 JUDGE THORNBURG: If you're going to ask him
4 what the company's intent is --

5 MS. SHEMWELL: Just in terms of jurisdiction.

6 JUDGE THORNBURG: If you want to ask about how
7 FERC is defining their jurisdiction, we can do that
8 publicly, but if you're going to ask him if they have a plan
9 to take this into FERC jurisdiction, we'll have to --

10 MS. SHEMWELL: I was going to ask that
11 question next.

12 JUDGE THORNBURG: Okay. We'll go in-camera.
13 Do you have any other questions in-camera?

14 MS. SHEMWELL: Mr. Keevil seems to think that
15 most of them are, so it's possible.

16 JUDGE THORNBURG: Well, you didn't need to add
17 the comment. We'll go in-camera, and I believe this may be
18 highly confidential. So if you haven't abided by the terms
19 of the Commission's Protective Order, you'll have to leave.

20 (REPORTER'S NOTE: At this point, an in-camera
21 session was held, which is contained in Volume 5, pages 257
22 through 260 of the transcript.)

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1 JUDGE THORNBURG: We've concluded
2 cross-examination, and at this point we'll proceed with
3 questions from the Bench. Commissioner Murray.

4 COMMISSIONER MURRAY: Thank you.

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Mr. Byrne, I believe, was asking you some
9 questions about bypass. Do you recall that?

10 A. Yes.

11 Q. And he indicated or he asked you about a
12 condition being applied that would -- where you would agree
13 to not bypass. Do you recall that?

14 A. Yes.

15 Q. Would it be your understanding that if FERC
16 were to assert jurisdiction, that any agreement that you
17 would make to such a condition would not be enforceable
18 under FERC's jurisdiction?

19 A. Well, I think it's my understanding that FERC
20 requires pipelines under their jurisdiction to provide
21 access to the pipelines and the capacity on those pipelines,
22 that you really can't preclude somebody from connecting to
23 your pipeline.

24 Q. So any such agreement would not be
25 enforceable?

1 A. I think whether the pipeline agreed to it or
2 some other independent third party person that didn't have
3 jurisdiction under this Commission could in effect cause a
4 bypass whether the pipeline had agreed to it or not.

5 Q. And I have to admit, I wasn't listening as
6 carefully as I should have been when questions were asked
7 about NGPL's rates, and you indicated that it was your
8 understanding that roughly they would be about 40 percent
9 of, was it Panhandle Eastern that you were speaking of?

10 A. Yes. I conditioned that on if you only
11 acquired market zone capacity on NGPL, which basically
12 covers the states of Iowa and Illinois, it's a small
13 fraction. I think it's less than 40 percent of what
14 Panhandle charges for deliveries to their delivery point
15 with Missouri Pipeline.

16 Q. So that if lower rates were achieved as a
17 result of interconnection with TMP, then those lower rates
18 would result not from a cheaper price of gas but from a
19 lower rate for transportation; is that right?

20 A. I think our general concept here is that
21 creating competition for transportation to Missouri Pipeline
22 is what would result in the lower rates. There's not a
23 significant difference in the price of commodity associated
24 with where you're buying the gas, but the access to
25 additional providers of transportation to Missouri Pipeline

1 for use by the shippers or the customers on those pipelines
2 would have a direct and significant advantage to the end
3 users.

4 COMMISSIONER MURRAY: Thank you. That's all
5 my questions, Judge.

6 JUDGE THORNBURG: Commissioner Lumpe.

7 QUESTIONS BY COMMISSIONER LUMPE:

8 Q. Mr. Ries, there were some questions I asked
9 and I was told that I should ask them of you. And one, in
10 looking at the chart here, Gateway and then the new
11 configuration would be I guess MoGas, then Gateway, then UPL
12 which will still exist. That was one question, and it will
13 still exist, and it will own -- will it own all the stock of
14 MPC and MGC?

15 A. That is correct, plus the assets that go
16 across the river.

17 Q. Okay. So it'll -- those three sets of things.
18 Okay.

19 A. Right.

20 Q. Then the UPL, whatever its new name might be,
21 all of it would be owned by Gateway?

22 A. That is correct.

23 Q. And all of Gateway will be owned by MoGas?

24 A. All of the equity component of Gateway would
25 be owned by MoGas.

1 Q. The debt part would be owned by?

2 A. Would be to Gateway directly.

3 Q. Okay. So the debt is straight to Gateway, but
4 MoGas -- and MoGas then has all the equity of Gateway?

5 A. That's correct.

6 Q. Okay. So there's really kind of, I guess, two
7 owners of Gateway in some sense or another?

8 A. Well, certainly the bank thinks that they are
9 first and foremost in that order that their debt and
10 principal is first, and that is the senior secured debt to
11 Gateway. Everything to MoGas is at risk to those equity
12 holders.

13 Q. There was another question I had there in
14 terms of, and I don't know if this is -- I don't know what's
15 confidential in this case and what isn't, so you'll have to
16 tell me.

17 Could Gateway or MoGas, could they merge or
18 sell the stock without our approval?

19 A. Certainly we would think that there could be
20 changes in ownership at the MoGas level in terms of the
21 equity ownership. I don't believe that, as it's currently
22 contemplated, that Gateway is regulated either. I mean, it
23 does not hold regulated assets, so that it could effectively
24 change as well.

25 Q. So being the owner of all the stock of the two

1 regulated companies, it could merge or sell its stock
2 without having to come to us for approval?

3 A. I think that's probably correct.

4 Q. Okay. Let me ask you something on discounts,
5 and I think one of the comments was that, with additional
6 competition, if you were to connect with the under-the-river
7 pipeline that there would be more competition. Would there
8 be greater discounts?

9 A. Well, I would say that Panhandle has known for
10 some time as the sole supplier of gas to Missouri Pipeline
11 there has essentially been no discounts. My initial
12 discussions to date with NGPL and MRT, we are talking about
13 discounts. So I think from that I would conclude that, yes,
14 there would be additional discounts.

15 Q. And you don't -- do you see discounts
16 disappearing in the next ten years or do you see more
17 competition and more potential for discounting?

18 A. I don't know if I can see that far.

19 Q. Five years, three?

20 A. Tomorrow?

21 Q. Tomorrow.

22 A. I think it's a very dynamic situation.
23 Clearly to the extent that you've got excess capacity in a
24 market, you have the potential for discounts. If there is
25 no excess capacity, particularly if the market suddenly

1 grows larger than the available capacity, you get some very
2 weird things happening on the pricing front.

3 So it would be my opinion that at least as a
4 slow growth geographical area and as long as there's
5 incremental pipeline capacity in the area, you have the
6 potential for discounts.

7 Q. Okay. And we discussed bypass, and I think it
8 is your contention that should the connection occur from the
9 under the river to MRT, that it would become FERC
10 jurisdictional, and under the FERC the pipeline has to allow
11 others to connect; is that correct?

12 A. Well --

13 Q. Am I understanding?

14 A. Let me broaden that picture a little bit. I
15 think it's been my position that this transaction has --

16 MR. KEEVIL: Mr. Ries, I don't know what
17 you're going to say here. Is this business planning stuff
18 that you need to go in-camera for or --

19 JUDGE THORNBURG: I think there's a difference
20 between the intent of the company and then talking about the
21 potential jurisdiction of FERC. We already had jurisdiction
22 questions in public.

23 COMMISSIONER LUMPE: I'm asking what his
24 opinion of the FERC requirement is.

25 MR. KEEVIL: I wasn't objecting. When he

1 started out with let me make the picture a little broader, I
2 wasn't sure where he was going to go.

3 THE WITNESS: I was going to talk about FERC.
4 It's been my position, and I think it was stated several
5 times, that we have no intentions of changing the status or
6 the jurisdictional nature of either Missouri Pipeline
7 Company or Missouri Gas Company.

8 So first of all, I'd like to separate those
9 two, that the only thing we're talking about FERC
10 jurisdictional are some assets that are not currently
11 jurisdictional because they're not in service.

12 What we're proposing or at least conceptually
13 what we know is that if you have pipelines that go across
14 the state line, they are subject to FERC jurisdiction. And
15 I think to that extent, those assets that go across the
16 river, that six or seven miles of pipeline that Mr. Kreul
17 talked about, would become subject to FERC jurisdiction.

18 BY COMMISSIONER LUMPE:

19 Q. Just those six miles, but if they were to
20 connect to MRT, wouldn't that be a continuation? Is there
21 some way then that MRT would not be subject to FERC with
22 just the six miles?

23 A. MRT or MPC?

24 Q. MPC. Too many alphabets here.

25 A. Too many Ms, I think. I can see no reason to

1 conclude or even to assume just because those assets were
2 put into FERC jurisdictional service that there would be any
3 reaction or any change to MPC's status. As a matter of
4 fact, there are numerous examples of where that's not the
5 case.

6 Q. And we've had some discussions about
7 conditions. One of my questions was did the bank have
8 conditions, and I think we've had some discussions on that.
9 And I don't know whether this needs to be in-camera or not.
10 I'll ask the question and then you can tell me.

11 Even though I know you've done calculations
12 and you say there should be no default and there's adequate
13 money to pay the bills, should a worst-case scenario there
14 might not be, what is the procedure that would occur?

15 A. And I would say if there's a default by
16 Gateway to the bank?

17 Q. Yes.

18 A. Well, there's really two possibilities. One
19 is that MoGas could contribute additional funds to Gateway
20 to cure a default within a reasonable notice period of time.
21 If Gateway -- or if MoGas chose not to do that, BankOne
22 could foreclose on the property and they would own Gateway
23 Pipeline Company.

24 Q. And by owning Gateway they would also own MPC
25 and MGC?

1 A. That's correct.

2 Q. I was just trying to get where the ownership
3 would fall. And it wouldn't just be the stock of those
4 companies, it would be the companies?

5 A. Yes.

6 Q. Okay. I think I have maybe one more here.
7 And I realize that what -- those terms and conditions are
8 not complete because we're sort of waiting on the
9 transaction; is that correct? The transaction has to occur
10 first and then you get a complete document from the bank?

11 A. Well, I think the document that we've been
12 referring to is a -- it's an 11-page term sheet that goes
13 through a significant amount of detail in terms of what all
14 of the covenants and conditions and the commitments on the
15 part of the bank are.

16 The thing that's left to be done is to convert
17 that term sheet into a formal credit agreement, which is in
18 the process of being done now.

19 Q. So basically we can see the conditions that
20 would be required for this transaction?

21 A. That is correct.

22 Q. All right. Now, one last thing, then.
23 There's some discussion that you can't really make a plan
24 until you know we've approved the transaction, and I sort of
25 feel like chicken and egg here. We kind of like to know

1 what the plans are before we do the transaction, but we
2 can't do the plans until we have a transaction.

3 How do we make a good judgment, then, if the
4 plans aren't there?

5 A. You know, all I can say is that we've
6 generally defined what the plan is. Certainly there is a
7 desire on the part of the customers and certainly the
8 employees and the shareholders to resolve the transactional
9 questions as soon as possible so that there's some certainty
10 and assuery that whatever plans that you are making have
11 some potential to being completed.

12 Likewise, in our approach to prospective
13 customers basically concluded the same thing, and that's for
14 us to come back and talk to them after the transaction's
15 completed. So I, much like you, feel it's kind of like the
16 chicken and the egg, only from this side I'd like to get on
17 the plan, but I need the approval of the certainty that the
18 transaction will occur.

19 I think, in essence, the case that we've tried
20 to lay out here is that there is no detriment, and we
21 certainly think that through our efforts we can improve not
22 only the financial viability but the competitiveness of the
23 services that are being provided by these assets today.

24 Q. One more. The conditions that were placed in
25 Laclede's testimony, you -- how do I put this? You really

1 oppose all of them, or are some more objectionable than
2 others? Can you live with some, not live with any of them?
3 How do you rank them?

4 A. My general objection is not necessarily to the
5 individual proposed conditions but the way they're being
6 proposed as a condition to settlement or a condition to the
7 approval of the transaction.

8 All of the conditions that are being proposed
9 are items that might be considered in a contract negotiation
10 process. The problem I have with that is I have no
11 opportunity to negotiate what might the consideration be,
12 what the volume would be, what the rate would be.

13 What they're wanting to do is to fix up
14 certain parts of that agreement that suits themselves
15 without giving consideration as to what other parts of that
16 type of transportation agreement might evolve into.

17 For instance, the proposing a five-year
18 moratorium, well, I've offered to do a longer term agreement
19 with fixed rate. Certainly provides the opportunity for
20 them to have assurances of rates without making it a
21 condition of this transaction approval process.

22 Q. So basically, if I understand you, you're
23 saying that once you were to receive approval, then you
24 would sit down with the party and address these conditions?

25 A. Exactly.

1 Q. Were there -- I think there were three
2 conditions that you did agree to by Staff. Were there other
3 conditions there that you objected to?

4 A. Well, I think in the -- again, in the process
5 of settlement discussions there were a number of potential
6 conditions that were discussed as a means of settling the
7 approval process, and I think at this point in time we're
8 really to the point of saying that wasn't settled. We're
9 going all the way through hearings. So there's little
10 rationale for offering those up now.

11 Q. Okay. Thank you Mr. Ries.

12 A. No problem.

13 JUDGE THORNBURG: Commissioner Gaw.

14 COMMISSIONER GAW: Thank you, Judge, and I
15 have a suspicion that a lot of this is going to need to be
16 in-camera.

17 JUDGE THORNBURG: Should we just go ahead and
18 go in-camera at this point?

19 COMMISSIONER GAW: I would request that if my
20 questions do not contain confidential material, that the
21 questions themselves not be after the fact when the
22 transcript is reviewed and you can look at that when it's
23 appropriate.

24 JUDGE THORNBURG: This part of the hearing
25 will be in-camera and could be highly confidential or

1 proprietary. So if you're not in compliance with the terms
2 of the Commission's Protective Order, you'll have to leave
3 the hearing room. The Commission could review this portion
4 of the transcript after it's prepared and reclassify this
5 part of the in-camera proceedings.

6 COMMISSIONER GAW: Thank you very much, Judge.

7 (REPORTER'S NOTE: At this point, an in-camera
8 session was held, which is contained in Volume 5, pages 274
9 through 296 of the transcript.)

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1 QUESTIONS BY COMMISSIONER GAW:

2 Q. It is my understanding that the personnel that
3 are with the -- or with the subsidiaries of UPL that are
4 field personnel, that it is your intention to continue them
5 in their present capacities?

6 A. That is correct.

7 COMMISSIONER GAW: That's all I have. Thank
8 you, Judge.

9 JUDGE THORNBURG: Commissioner Lumpe, did you
10 have some additional questions?

11 COMMISSIONER LUMPE: No.

12 JUDGE THORNBURG: I might have a couple of
13 questions.

14 QUESTIONS BY JUDGE THORNBURG:

15 Q. Mr. Ries, is there a formal restriction or
16 informal restriction on MGC or MPC or UtiliCorp or UPL on
17 negotiating transport contracts while this proceeding has
18 put this business sort of in limbo? Is there a restriction
19 on their ability to negotiate contracts?

20 A. Yes, there is. Within the context of the
21 Stock Acquisition Agreement that was part of the filing,
22 there is a provision that we will not contact either
23 employer or employees or customers without the
24 consent/cooperation of UtiliCorp.

25 Primarily the concern there is that they

1 really didn't want to in effect turn over potential business
2 discussions to a new or acquiring party until this
3 Commission had acted.

4 Q. So unless you have UtiliCorp's permission,
5 you've been limited in your contacts to customers?

6 A. Yes, that's true.

7 Q. And on the reverse side of that, has UtiliCorp
8 been limited or any of their subsidiaries in how long they
9 can contract, how far out they can look in their
10 contracting?

11 A. Well, in order to preclude UtiliCorp in the
12 intervening period of time of making a longer term
13 commitment that we wouldn't have necessarily been a part of,
14 we did put a limit on the extent of the contracting period
15 which they could enter into new contracts for.

16 Q. And I think we had some testimony earlier, as
17 I remember, sometime in 2002?

18 A. Yes, I believe that's correct, through year
19 end 2002.

20 Q. Is that customer specific or just generally
21 for any customer?

22 A. I believe that's for new contracts.

23 Q. New contracts. And it sounds like some
24 parties may not have a great deal of incentive. If you have
25 UtiliCorp's permission, some parties may not have a great

1 deal of incentive to bargain with you until this
2 proceeding's resolved?

3 A. Yeah. I think you might conclude that some
4 parties are trying to see what they can get out of this
5 proceeding before they would sit down and enter into new
6 negotiations.

7 Q. And some of the risks regarding the
8 reliability of supplies or having fixed, what's the term,
9 the fixed term, to assure that you have adequate supply for
10 that winter day, some of those terms are -- I'll just leave
11 that question.

12 If you were -- in your experience as an LDC,
13 what type of term contract are they looking for to ensure
14 the reliable of their gas supply?

15 A. Generally, it varies a lot, both in the
16 context of location and volume and alternatives, and most
17 generally the term will be some kind of a direct reflection
18 of what other types of terms and conditions were included in
19 that particular contract.

20 If it's -- my experience is that if it's
21 generally a contract that in effect follows the tariff per
22 se, i.e. as its approved from a rate and condition
23 standpoint, contracts will generally be pretty short term,
24 one to three years.

25 If there's been a bargaining for provisions

1 outside the bounds of the tariff, you can get terms that
2 extend out three to five years, typically not much longer
3 than that.

4 Q. And my concern is with this restriction on
5 UtiliCorp, that some companies even if they wanted a
6 three-year contract, or not companies but LDCs, wouldn't be
7 able to get that right now?

8 A. Well, I think the only provision is is that
9 that's what UtiliCorp can do without our consent. Certainly
10 if there was an LDC that wanted a longer term agreement that
11 extended beyond that period of time, we would be more than
12 willing to participate in that discussion and, in effect, be
13 able to perform that commitment after the transaction was
14 completed.

15 Q. Okay. And another question, this is an area
16 opened by Commissioner Lumpe and I think also by
17 Commissioner Gaw. If there were a default on the bank
18 agreement and the bank acquired the Gateway stock, would
19 that completely extinguish the interest of MoGas in Gateway?

20 A. If Gateway defaulted on its commitment to
21 BankOne?

22 Q. Yes.

23 A. I believe the equity holders in the form of
24 MoGas Energy would be out their investment.

25 Q. Okay. And then I had one other very general

1 question. When you look at -- I know this can vary by the
2 particular situations, but this is just a very general
3 question on the industry.

4 From the well to the end user, who are the
5 players? I know we've got transporters, people that supply
6 the gas, the LDCs. Just starting at the well, who all are
7 players in this industry, and just generally?

8 A. Okay. Big picture.

9 Q. Big picture.

10 A. Well, at the well you've got the producers,
11 clearly a substantial number both in terms of consolidated
12 and independents that are active participants in the overall
13 process.

14 Typically a producer will negotiate its
15 gathering and processing or purification or whatever needs
16 to be done to the gas either on its own or through
17 independent nonregulated third parties that provide
18 gathering and processing services. For the most part, all
19 of those services these days are unregulated in nature and
20 typically paid for by whoever's producing the gas, although
21 other parties could enter into that.

22 Gatherers will typically deliver into either
23 inter or intrastate pipeline systems depending upon their
24 state of jurisdiction. At that point in time, you really
25 have expanded the number of players substantially,

1 particularly in the FERC arena where open access is
2 mandatory. You can have marketers, you can have end users,
3 you can have LDCs, you can have the producers themselves,
4 all of which are capable of contracting with capacities on
5 the interstate pipeline systems.

6 More typical than not, the interstates will
7 deliver directly to LDCs or, in the case of MGC/MPC, to an
8 intrastate and then to a -- which then go to an LDC or
9 municipals. So they're all players.

10 LDCs are probably the largest capacity holders
11 in terms of interstate pipeline capacity, and then you've
12 got the industrial segment that can hold capacity and
13 acquire gas and transportation services or they can turn
14 that all over to an independent third-party marketer who can
15 bundle those services both from the wellhead all the way to
16 the industrial user.

17 Now, that's a snapshot in 60 seconds of who
18 the players are.

19 Q. That's good. I just want an overview, and I
20 think that satisfies me. And those end users could be a
21 residential consumer getting gas from an LDC, but it could
22 also be a commercial or industrial user that could be a
23 customer of the LDC or perhaps one of these marketers that's
24 bundled these services and then made some type of
25 contractual arrangement with that user to get the gas there

1 at a certain price?

2 A. You're very much correct. The one that I had
3 forgot these days, what's the latest on the regulatory
4 horizon is the actual unbundling at the LDC level where end
5 users themselves, both residential and commercial, can in
6 effect acquire their own gas and arrange for their own
7 capacity, although that's a limited number. Typically
8 they're buying a bundled service from a third-party
9 provider.

10 JUDGE THORNBURG: That's all the questions I
11 had.

12 Chair Simmons, we've just completed questions
13 from the Bench, but I don't think you were earlier. Did you
14 have any questions for Mr. Ries?

15 CHAIRMAN SIMMONS: No, sir.

16 JUDGE THORNBURG: Thank you. Is there any
17 party that anticipates substantial recross?

18 MR. BYRNE: I've got a couple of questions.

19 MS. O'NEILL: I'll probably be maybe ten
20 minutes.

21 JUDGE THORNBURG: And on behalf of Gateway, is
22 there a lot of redirect that you anticipate?

23 MR. KEEVIL: I wouldn't say a lot. I'll have
24 some.

25 JUDGE THORNBURG: We may not be able to get

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1 through redirect this evening. Mr. Ries, are you available
2 tomorrow morning?

3 THE WITNESS: (Witness nodded.)

4 JUDGE THORNBURG: I'd like to get through the
5 recross at this time and really see how far we can get. Is
6 there anybody that's got to get up for a break right now?
7 Seeing none, we'll continue. UtiliCorp.

8 MR. BOUDREAU: I just have a few questions.
9 Thank you.

10 RECROSS-EXAMINATION BY MR. BOUDREAU:

11 Q. Mr. Ries, Mr. Pendergast was kind enough to
12 make a reference, I think, to the extraordinary reliability
13 that Laclede has experienced when these pipeline facilities
14 have been operated under the ownership of UtiliCorp. Do you
15 recall that comment?

16 A. Yes, I do.

17 Q. Do you feel that you as the principal
18 operating -- the person responsible for operations of the
19 system after the deal was done, do you feel that you're
20 confident that you're going to be able to provide the same
21 high degree of reliability as has been provided by the
22 current owner?

23 A. I have no reason to believe that the
24 reliability level would degrade in any way. As a matter of
25 fact, it would be my belief that the addition of a second

1 pipeline interconnect would enhance that degree of
2 reliability and provide an improved reliability to the
3 customers connected to it.

4 Q. I wonder if you could just summarize for the
5 Commission what it is about your background that makes you
6 so confident in that statement?

7 A. Well, I've spent virtually my entire career in
8 the natural gas pipeline business with a couple of different
9 companies involving substantial assets covering virtually
10 the entire western half of the U.S. Notably, 14 years with
11 Enron wherein I was involved in both an engineering and
12 operating role, management role, technical support role, in
13 completing reliability projects, operationally derived
14 projects that enhanced the operational reliability and
15 expansion projects that enhanced service reliability,
16 primarily with the companies of Northern Natural Gas Company
17 and the Northern Border Pipeline Company, a couple of fairly
18 significant pipeline operations that cover vast geographical
19 areas.

20 Past that, I joined KN Energy and covered the
21 operational characteristics first in charge of engineering
22 and determining technical requirements to improve their
23 reliability, but beyond that, spent several years doing
24 project development work and business development activities
25 surrounding providing services, new services to customers

1 with companies such as KN Interstate, West Star
2 Transmission, Northern Gas Company, Natural Gas Pipeline
3 Company of America.

4 So I think I've through the 27 years or so of
5 experience developed a pretty good sense of knowledge for
6 what it takes to provide consistent reliable service in the
7 pipeline business.

8 Q. Thank you. I just have one more question. I
9 think you entertained a number of questions from
10 Commissioner Gaw, I believe, about kind of a doomsday
11 scenario of what happens if financial projections don't play
12 out and what would happen, who would end up with what, who
13 would end up owning what. Do you recall that?

14 A. Yes, I do.

15 Q. My question to you is, under any of those
16 circumstances, what is your understanding about the
17 Commission's continued regulatory oversight over the
18 pipeline companies, Missouri Pipeline Company and Missouri
19 Gas Company?

20 A. It's my understanding that the Commission
21 continues to have jurisdiction over the Missouri Pipeline
22 and Missouri Gas Company entities and their continued
23 operation.

24 MR. BOUDREAU: Thank you. No further
25 questions.

1 JUDGE THORNBURG: Mr. Boudreau, thank you. We
2 had another question from Commissioner Lumpe.

3 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

4 Q. Your question, Mr. Boudreau, triggered this.
5 There would be a change in management, you'll have the same
6 field people, but Mr. Kreul is not going to be in charge.
7 Are you going to be the person in charge now?

8 A. That is correct.

9 COMMISSIONER LUMPE: Okay. Thank you.

10 COMMISSIONER GAW: Could I follow up on that?

11 FURTHER QUESTIONS BY COMMISSIONER GAW:

12 Q. So you will be an employee, Mr. Ries, of which
13 company or companies if this goes through?

14 A. Well, I would intend to be the president and
15 chief executive officer of Gateway Pipeline Company, which
16 is the operating company with the subsidiaries of UPL and
17 MPC and MGC.

18 Q. Would you be an employee or an officer of
19 those entities as well?

20 A. Yes.

21 Q. All right. And how many additional staff do
22 you contemplate needing to hire from Gateway down to the two
23 subsidiaries?

24 A. I think Mr. Kreul referred to there's a couple
25 of positions currently, job functions that are combined with

1 other job responsibilities of employees in the Kansas City
2 area. It is our intent to move those job functions to the
3 same field location office at St. Peters, Missouri, and
4 probably not more than two individuals to do that, plus some
5 financial support individuals.

6 Q. Would that be all of the additional employees
7 that you think would be needed to run the operation?

8 A. Yes.

9 COMMISSIONER GAW: That's all I have. Thank
10 you.

11 JUDGE THORNBURG: Mr. Boudreau.

12 MR. BOUDREAU: I'm finished. Thank you.

13 JUDGE THORNBURG: AmerenUE.

14 MR. BYRNE: Your Honor, I have just a couple
15 questions, but they're based on Commissioner Gaw's questions
16 that were in-camera. I guess we need to go in-camera.

17 JUDGE THORNBURG: Okay. At this point we'll
18 go in-camera for highly confidential and/or proprietary
19 information. Persons who have not complied with the
20 Protective Order will have to vacate the hearing room.

21 (REPORTER'S NOTE: At this point, an in-camera
22 session was held, which is contained in Volume 5, pages 309
23 through 314 of the transcript.)

24

25

1 RECROSS-EXAMINATION BY MR. PENDERGAST:

2 Q. Mr. Ries, you were asked a number of questions
3 by Commissioner Gaw about the situation where the proposed
4 restructuring is approved and MPC and MGC come in and claim
5 financial liability problems, how the Commission might deal
6 with that, and I think there was a reference to the Kansas
7 experience which has been discussed in the testimony.

8 And I think you indicated that concerns that
9 had been expressed by other witnesses about claims made by
10 Kansas Pipeline regarding financial viability and bankruptcy
11 were overstated and misrepresented; is that correct?

12 A. That's my understanding.

13 Q. Are you aware of a decision by the United
14 States Courts of Appeal District of Columbia, Missouri
15 Public Service Commission vs. Federal Energy Regulatory
16 Commission?

17 A. Not in any formal detail, no.

18 Q. Well, are you aware that that was a review of
19 a FERC proceeding which established the initial rates for
20 the pipelines which were declared FERC jurisdictional and
21 comprise Kansas Pipeline and Riverside?

22 A. I think my testimony stated I wasn't -- as a
23 participant in that, wasn't completely familiar, that my
24 research was only of what I've been told since this
25 proceeding started.

1 Q. Okay. So you're not aware of that proceeding?

2 A. Well, I'm not intimately familiar with it, no.

3 Q. Well, let me ask you this. Are you aware of
4 whether or not after FERC established initial rates for the
5 now FERC jurisdictional facilities that included Kansas
6 Pipeline and Riverside, that the FERC jurisdictional entity
7 filed a request for a stay with FERC and said that
8 establishment and implementation of those initial rates
9 would drive it into bankruptcy?

10 A. I am not familiar with that, no.

11 Q. And I take it, then, you're not familiar
12 either with the fact that the deal that the pipeline offered
13 FERC was we'll drop any opposition to becoming FERC
14 jurisdictional if you'll allow us to put our motion rates
15 into effect?

16 MR. KEEVIL: I'm going to object to
17 Mr. Pendergast testifying in the form of a question.

18 BY MR. PENDERGAST:

19 Q. Do you have any familiarity --

20 JUDGE THORNBURG: The objection is overruled.
21 To the extent this is a recorded case, we can cover this in
22 briefing, but I'll let you continue for a time.

23 MR. PENDERGAST: I was trying to find out what
24 the witness' knowledge of his factual background was.

25 JUDGE THORNBURG: Okay.

1 THE WITNESS: I'd say again I'm not familiar
2 with the details of that case.

3 BY MR. PENDERGAST:

4 Q. Can you tell me based on your research and
5 experience in Kansas whether or not Kansas Pipeline or any
6 of its affiliates ever made claims to the Kansas Corporation
7 Commission that denial of a certain level of rate relief
8 would financially jeopardize its viability and potentially
9 put it into bankruptcy?

10 A. What I can say is that I secured the services
11 of a witness that acted in those proceedings and relied on
12 his understanding of what those requests were, and my
13 request would be that you will have the opportunity to ask
14 him those questions.

15 Q. Very fine. I should direct my questions to
16 him, then?

17 A. Yes.

18 Q. You were asked a number of questions --

19 MR. PENDERGAST: And I do think we have to go
20 briefly into in-camera if we could.

21 JUDGE THORNBURG: Okay. At this point we'll
22 go back in in-camera session, and we may be discussing
23 proprietary or highly confidential information. So if
24 you're not qualified to hear this information under the
25 terms of the Commission's Protective Order, you'll have to

1 leave the hearing room.

2 (REPORTER'S NOTE: At this point, an in-camera
3 session was held, which is contained in Volume 5, pages 319
4 through 327 of the transcript.)

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1 JUDGE THORNBURG: Thanks. I realize that I
2 indicated that we'd try to finish the cross tonight, but I
3 can't stay the night. And I don't know what the parties'
4 anticipation was, but we will try to finish tomorrow and
5 make every effort to do so.

6 We went pretty hard today with short breaks,
7 and we'll do the same thing tomorrow. If necessary, we can
8 break for lunch a little bit early so you can get in
9 someplace to eat, and we may shorten the lunch hour a little
10 bit tomorrow.

11 I know the Staff witnesses are all at the end,
12 so at least we won't have to have any witnesses traveling.
13 We'll start at 8:15 tomorrow. Is there anything else anyone
14 else wants to bring to my attention?

15 MR. BYRNE: Your Honor, if we don't finish
16 tomorrow, will we just keep going?

17 JUDGE THORNBURG: The Commission's preference
18 is not to go beyond five o'clock on these hearings because
19 it gets into additional staff time and I think it's
20 difficult for the parties if we hadn't made a plan to be
21 here late. On the other hand, I realize there's hardships
22 involved in scheduling another date and having people come
23 back. So we can go a little bit past five tomorrow if we
24 have to, but we generally will not go late into the night.

25 MR. BYRNE: We wouldn't go Friday, it would be

1 scheduled for some future time?

2 JUDGE THORNBURG: I'll have to check the
3 hearing calendar to see if anything's available on Friday.
4 I'll have to check with all the attorneys. I think the good
5 thing here is that we have Staff witnesses, unless some of
6 them have vacation plans,

7 MS. SHEMWELL: Staff witnesses are prepared to
8 go on Friday if necessary, your Honor.

9 JUDGE THORNBURG: Ms. Shemwell has indicated
10 Staff witnesses would be available. I'll have to check with
11 the Commission and the availability of the room, scheduling
12 of a court reporter. If the attorneys can check their
13 schedules, we can see if we need time Friday.

14 I do anticipate that some of the Staff
15 witnesses cover subject areas that were not necessarily
16 disputed. So with some of the remaining witnesses we may
17 move very quickly. I realize that some witnesses covered
18 some very highly contested areas, and those would, of
19 course, slow us down.

20 MS. SHEMWELL: Might I suggest, your Honor,
21 that if it would speed things along, I could ask the parties
22 if they wanted to waive cross, for example, on Mr. Kottwitz
23 where I don't think there was much contentiousness? They
24 could certainly respond tomorrow.

25 JUDGE THORNBURG: Well, he's going to have to

1 be here anyway and the Commission may have questions. If
2 people want to waive, that will speed things along at the
3 time. I don't think it's necessary for you to check. But
4 if any parties do know who they're going to waive, you can
5 let Ms. Shemwell know.

6 So we'll adjourn at this time and reconvene at
7 8:15. Thank you.

8 WHEREUPON, the hearing of this case was
9 recessed until September 6, 2001.

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