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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
September 6, 2001  
Jefferson City, Missouri  
Volume 6

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

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JUDGE THORNBURG: I'm hopeful we'll finish today, but I did check the hearing calendar and this room's available tomorrow and we have a court reporter that's available tomorrow. So before we break for lunch today, if anyone has any unavoidable conflict, you need to let me know about it. But hopefully we'll be done this afternoon or early this evening.

9

Yesterday we left off with cross-examination or recross, and I believe the next attorney up was Ms. O'Neill from Office of the Public Counsel.

12

MS. O'NEILL: Thank you, your Honor.

13 DAVID J. RIES testified as follows:

14 RECROSS-EXAMINATION BY MS. O'NEILL:

15

Q. Good morning, Mr. Ries.

16

A. Good morning.

17

Q. I have a couple of follow-up questions in a couple of areas here. Hopefully they won't be too long.

19

Commissioner Gaw asked you some questions about the structure of MoGas as it relates to the equity in Gateway yesterday. Do you recall that?

22

A. For the most part, yes.

23

Q. And I think you've answered some of my questions so I've been able to trim down my list, but I have a couple of things I'd like to clarify with you.

1                   Do you recall telling Commissioner Gaw that  
2 there are different types of contributions of equity into  
3 MoGas?

4           A.       Yes.

5           Q.       And specifically your contribution is  
6 non-cash, but the other two parties you believe were cash?

7                   JUDGE THORNBURG: I think as long as we're  
8 talking in general terms, we're not into anything  
9 proprietary, but if you get into specifics, I need  
10 Mr. Keevil to let me know.

11                   MR. KEEVIL: I'll do my best, Judge.

12                   JUDGE THORNBURG: Thank you.

13 BY MS. O'NEILL:

14           Q.       Do you recall that?

15           A.       Yes.

16           Q.       And you recall discussing the fact that there  
17 were different types of preferred returns for the different  
18 equity owners?

19           A.       That's correct.

20                   MS. O'NEILL: And Mr. Keevil, if this is going  
21 to be HC, please speak up. I'm not sure from the nature of  
22 yesterday.

23                   MR. KEEVIL: I do believe all of Commissioner  
24 Gaw's questioning was in-camera, and if she's getting into  
25 the specifics regarding Commissioner Gaw's questions --

1 JUDGE THORNBURG: I think almost all of it  
2 was. As long as we're talking again in general terms. If  
3 you get into the specifics of the different individuals, I  
4 think that's sensitive.

5 MS. O'NEILL: I think it may be appropriate  
6 for us to go in-camera at this time.

7 JUDGE THORNBURG: At this time we'll be  
8 discussing confidential and/or proprietary information. I'd  
9 like to ask any non-attorneys that haven't abided by the  
10 terms of Protective Order to vacate the hearing room.

11 (REPORTER'S NOTE: At this point, an in-camera  
12 session was held, which is contained in Volume 7, pages 342  
13 through 360 of the transcript.)

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1 JUDGE THORNBURG: Mr. Keevil, are you ready to  
2 proceed with your redirect or would you like a short  
3 five-minute break?

4 MR. KEEVIL: Just a short break, Judge.

5 JUDGE THORNBURG: We'll break 'til five 'til.  
6 Everyone can get a cup of coffee and then at five to we'll  
7 come back. Thank you.

8 (A BREAK WAS TAKEN.)

9 JUDGE THORNBURG: Mr. Keevil, we can get  
10 started now, and you'll need to let me know if you want to  
11 follow up on any information that was proprietary or highly  
12 confidential. We may want to go into in-camera if you do.

13 REDIRECT EXAMINATION BY MR. KEEVIL:

14 Q. Mr. Ries, you were asked some questions  
15 yesterday regarding the possibility of changes in rates,  
16 rates of MPC or MGC or possible changes in services provided  
17 by MPC or MGC. Do you recall those? I believe it was  
18 primarily Mr. Pendergast asking those questions. Do you  
19 generally recall that line of questioning?

20 A. Yes, I do.

21 Q. Is it your understanding that in order to --  
22 first of all, let me ask you, in this proceeding are you  
23 seeking any changes to the rates or services of MPC or MGC?

24 A. No, we are not.

25 Q. Is it your understanding that under current

1 UtiliCorp ownership UtiliCorp could, if they so chose, seek  
2 to change the rates or services of MPC and MGC?

3           A.       I believe that is correct.

4           Q.       And in the event that a rate case was filed  
5 seeking to change the rates or the tariff, service tariff  
6 provisions of MPC or MGC, would the ultimate decision  
7 regarding whether the rates should be changed or the  
8 services should be changed be up to this Commission?

9           A.       I believe they would.

10          Q.       Mr. Pendergast also asked you about one of  
11 Laclede's recommendations which would provide a right of  
12 first refusal for current customers. And my question to you  
13 regarding that, is that provision currently required of  
14 UtiliCorp?

15          A.       No, it is not.

16          Q.       I believe it was Ms. O'Neill yesterday who  
17 asked you whether the Stock Purchase Agreement addresses a  
18 waiver of the condition on MPC's certificate and also I  
19 believe asked you whether the Joint Application requested  
20 waiver of the condition on MPC's certificate regarding  
21 connecting to what has been referred to by some people as  
22 the TMP properties. Do you generally recall those  
23 questions?

24          A.       Yes, I do.

25          Q.       Now, first of all, let me show you a copy of



1 the Commission's Report and Order in Case No. GA-89-126  
2 where MPC was granted its certificate.

3 First of all, let me ask you if you can -- or  
4 if I accurately described the document which I just handed  
5 you?

6 A. I believe that's correct.

7 Q. If you could turn to page -- well, this is not  
8 taken from the PSC Reporter, so my page reference is going  
9 to be off here, but if you could turn to page 8 of what I  
10 hand you there, Mr. Ries, I believe it's Condition No. 7.  
11 Could you read that condition?

12 A. No. 7 reads, The physical separation of the  
13 intrastate pipeline from the portion of the applicant's  
14 segment crossing the state boundary into Illinois.

15 Q. And in that case, MPC was the applicant,  
16 correct?

17 A. That is correct.

18 Q. So is it your understanding that at the time  
19 of the imposition of that condition, that MPC owned both the  
20 intrastate pipeline and the portion of pipe that crossed the  
21 river into Illinois?

22 A. I believe that's correct.

23 Q. Going back to Ms. O'Neill's question from  
24 yesterday about the Stock Purchase Agreement or the Joint  
25 Application not requesting waiver of the condition. First

1 of all, let me ask you, regarding the condition that you  
2 just read from the certificate which was given to Missouri  
3 Pipeline Company, are you requesting that that condition be  
4 waived?

5 A. No.

6 Q. What is it that you're asking in regard to  
7 that condition?

8 A. Well, we're asking that, for purposes of  
9 clarification, that that condition doesn't apply if the  
10 segment across the river is owned by an entity other than  
11 Missouri Pipeline Company.

12 Q. And why is it that you are requesting  
13 clarification of that at this time?

14 A. Because we have stated in our testimony that  
15 we intend to activate that pipeline, and since it crosses  
16 the state line, it would be an interstate service. So,  
17 therefore, it was our intent to place that in the name of  
18 another entity for jurisdiction by FERC.

19 Q. I guess my question goes more to the  
20 clarification aspect. In your opinion, was there any need  
21 for clarifying what the condition was until the Staff and  
22 certain other parties to this case filed their rebuttal  
23 testimony in this proceeding?

24 A. Clearly neither UtiliCorp nor Gateway saw the  
25 need to do that because we didn't think it really applied

1 once the assets were transferred to another entity.

2 Q. So it was when the rebuttal of Staff and I  
3 believe it was Laclede was filed that a question first arose  
4 in this case regarding what that condition truly was,  
5 correct?

6 A. Yes. And their interpretation was  
7 substantially different than ours.

8 Q. You have been asked several questions by both  
9 attorneys for other parties and by the Bench regarding what  
10 would happen under the hypothetical if the pipeline  
11 facilities became FERC jurisdictional and whether or not it  
12 was your intent to bypass, et cetera, et cetera.

13 First of all, let me ask you, do you believe  
14 under the plan that you have set forth that MPC or MGC will  
15 become FERC jurisdictional?

16 A. No, I don't believe they will.

17 Q. Are you aware of any examples of situations in  
18 which an intrastate pipeline and an interstate pipeline were  
19 in an affiliate relationship and connected, as you are  
20 proposing in this case, in which the intrastate pipeline did  
21 not -- or let me back up. In which FERC did not assert  
22 jurisdiction over that intrastate pipeline as a result of  
23 the connection to the affiliated interstate pipeline?

24 A. I believe there's several. Some of the larger  
25 examples around are not all that far away from Missouri. A

1 few years ago CMS Corporation bought Panhandle Eastern and  
2 Trunkline as wholly-owned affiliates of CMS Corporation.  
3 CMS is fundamentally a utility in Michigan and owns an  
4 extensive intrastate pipeline with Hinshaw exemption.  
5 Panhandle and Trunkline are significant suppliers to that  
6 intrastate pipeline, all of which are wholly-owned  
7 subsidiaries of the CMS Corporation.

8                   Additionally, another fairly large scale  
9 example is Pacific Gas and Electric on the west coast has a  
10 wholly-owned interstate pipeline called PGT Transmission  
11 that transports gas from Canada to the northern California  
12 border. At that point they deliver it to a wholly-owned  
13 intrastate pipeline with Hinshaw exemption for deliveries  
14 throughout the state of California.

15                   Another large scale example, although the  
16 names have changed recently, East Ohio Gas Company is an LDC  
17 serving a significant number of end users in eastern Ohio,  
18 has a wholly-owned intrastate pipeline system and is an  
19 affiliate of a parent company or an interstate pipeline  
20 company now called Dominion Gas Transmission. They're all  
21 owned by Dominion Energy as affiliated pipeline companies.

22           Q.       Is the pipeline which some people have  
23 referred to as TMP currently regulated by this Commission or  
24 by any other commission as far as you're aware?

25           A.       Currently TMP doesn't exist. There is a piece

1 of pipe in the ground that is not subject to any  
2 jurisdiction at this point in time but is part of the  
3 transaction that's being discussed in this case.

4 Q. You've been asked some questions about what  
5 conditions Gateway would be willing to accept imposed upon  
6 the transaction if it was approved by the Commission. Do  
7 you recall those questions?

8 A. Yes, I do.

9 Q. I believe the questions that you've received  
10 specifically related to the ones that had been put forth by  
11 Laclede, but let me ask you, are there other conditions  
12 which you have indicated you would be willing to accept or  
13 which you would be willing to accept today?

14 A. I believe Mr. Kottwitz in his testimony  
15 indicated that we would be willing to accept three  
16 conditions that were as a result of conversations that I had  
17 with him related to operations and pipeline safety.

18 Q. You were asked some questions yesterday by  
19 Commissioner Murray regarding whether cheaper rates could be  
20 achieved by connecting to NGPL and, if so, would that be due  
21 to cheaper transportation rates or commodity costs on NGPL.  
22 Do you recall that general discussion?

23 A. Yes, I do.

24 Q. I believe that your answer was that the NGPL  
25 transportation rates were cheaper than Panhandle's. And I

1 guess my first question on that regard is, what load factor  
2 did your answer assume?

3           A.       I think generally all the conversations we had  
4 on this yesterday involved a hundred percent load factor  
5 use. That is, the hundred percent load rate to the extent  
6 that it was being utilized a hundred percent at the time,  
7 that would be the resultant rate that you could expect to  
8 pay over the volume that was being used.

9           Q.       And if you were not using 100 percent of the  
10 load or of your capacity, would that have an effect on the  
11 rates?

12          A.       Well, the cost, while not exact, tends to be  
13 inversely proportional to your use. So if you're using the  
14 capacity only half the time with a straight fixed variable  
15 rate design, the rate per unit of throughput almost doubles.

16                   And many of the small municipalities and small  
17 end users connected to MPC and MGC are only able to achieve  
18 load factors that are significantly less than 50 percent,  
19 something in the 25 to 30 percent range.

20                   If they were at 25 percent, their total cost  
21 and, therefore, their total savings would be on the order of  
22 four times the price differences that we were talking about  
23 yesterday. Such that if NGPL's rates were, say, half of  
24 Panhandle's, a fourth times factor is that they would expect  
25 to save 200 percent on their transportation costs.

1           Q.       Ms. Shemwell this morning on recross asked you  
2 some questions regarding depreciation expense, and I just  
3 want to -- I thought was fairly clear yesterday in your  
4 responses to Commissioner Gaw, but due to the muddying of  
5 waters this morning I just want to ask you this question.  
6 Is depreciation expense a cash outlay type of an expense or  
7 is it simply a paper expense?

8           A.       It is not a cash expense. It is merely an  
9 exercise used for calculating income tax liability.

10          Q.       And what effect, if any, does that have on the  
11 availability of cash in the banking account?

12          A.       None.

13          Q.       I believe you indicated yesterday in response  
14 to Commissioner Gaw that cash would be available for  
15 distribution to the equity holders?

16          A.       We did talk about that yesterday, that's true.

17          Q.       Ms. O'Neill asked you this morning if an  
18 interconnection was built on the Illinois side of the  
19 Mississippi River, whether Gateway would serve Illinois  
20 customers, and I want to focus on Missouri Pipeline and  
21 Missouri Gas Company here.

22                   Under the hypothetical presented to you this  
23 morning, would Missouri Pipeline Company or Missouri Gas  
24 Company be serving Illinois customers or would it be this  
25 separate third entity possibly doing the serving of the

1 Illinois customers?

2           A.       Well, it certainly wouldn't be Missouri  
3 Pipeline or Missouri Gas Company. They're not authorized to  
4 do business in Illinois and they're intrastates. Any  
5 business that might be done with Illinois customers would  
6 have to be through a separate entity, most likely the  
7 interstate pipeline TMP.

8           MR. KEEVIL: Could I have just a moment, your  
9 Honor?

10           JUDGE THORNBURG: You may.

11 BY MR. KEEVIL:

12           Q.       Just one or two quick additional questions.  
13 Going back to the issue of yesterday's discussion of  
14 Laclede's proposed conditions, could you explain why you're  
15 not willing to accept the conditions proposed by Laclede?

16           A.       I believe I stated yesterday that  
17 philosophically I'm opposed to the tactics being taken by  
18 Laclede to impose what I would refer to as contract terms  
19 and conditions through a regulatory proceeding, that is  
20 getting this Commission to set rules and requirements or  
21 conditions upon Missouri Pipeline and Missouri Gas Company  
22 without any commensurate commitment from Laclede to do the  
23 same.

24           Q.       Assuming the transaction is approved, are you  
25 willing to at that time sit down and negotiate contractual



1 arrangements with Laclede and other customers?

2           A.       I've indicated that to certainly all of the  
3 intervenors in this case from the customer standpoint that  
4 I'm more than willing to consider all of their concerns in  
5 the context of entering into transportation agreements and  
6 provide them the assurances that they need to be able to  
7 assure that we're going to continue to provide long-term  
8 economic and reliable transportation services.

9           MR. KEEVIL: All right. Thank you very much.  
10 That's all.

11           JUDGE THORNBURG: Mr. Keevil, before you sit  
12 down, I have an excerpt from Ms. Shemwell's opening  
13 statement yesterday, and here's a copy for Ms. Shemwell, and  
14 we had discussed whether this might have gotten into  
15 proprietary information.

16           Mr. Keevil, I think you just questioned over  
17 it in public session, but if you will each take a look at  
18 that and before we adjourn today let me know if you want me  
19 to have that set off as an in-camera part of the record, we  
20 can. Again, I think you just questioned over it. And after  
21 we come back from lunch, you-all can talk and I'm open to  
22 doing what you want on that.

23           At this point we're ready to take up  
24 AmerenUE's witness.

25           MR. BYRNE: Isn't there one more witness of

1 theirs, first?

2 JUDGE THORNBURG: I'm sorry. You're right.

3 Just skipped over Gateway. We have Gateway. The next

4 witness is Jeff Makholm.

5 (Witness sworn.)

6 JUDGE THORNBURG: You may be seated.

7 MR. KEEVIL: I'm hoping the court reporter has

8 the three copies I gave her yesterday of Mr. Makholm's

9 testimony.

10 THE REPORTER: It's upstairs.

11 MR. KEEVIL: That's fine. I don't have to

12 provide another three copies.

13 JUDGE THORNBURG: I think we took all the

14 exhibits yesterday and the three copies for the court

15 reporter, and actually she does take those upstairs and do

16 some processing with them up there. So we have those.

17 JEFF D. MAKHOLM, Ph.D. testified as follows:

18 DIRECT EXAMINATION BY MR. KEEVIL:

19 Q. First, sir, just state your name, please.

20 A. My name is Jeff, middle initial D. Makholm,

21 M-a-k-h-o-l-m.

22 Q. By whom are you employed?

23 A. National Economic Research Associates,

24 Incorporated.

25 Q. And have you been retained for purposes of

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1 this case to testify on behalf of Gateway Pipeline Company?

2 A. Yes.

3 Q. Are you the same Jeff D. Makholm who has  
4 caused to be filed the prepared rebuttal testimony of  
5 Jeff D. Makholm, both a nonproprietary version and a highly  
6 confidential version, in this case?

7 A. Yes.

8 MR. KEEVIL: I believe, Judge, the exhibit  
9 number was 6 and 6HC; is that correct?

10 JUDGE THORNBURG: That's correct.

11 BY MR. KEEVIL:

12 Q. Okay. Mr. -- or Dr. Makholm, if I were to ask  
13 you the questions contained in Exhibits 6 and 6HC, would  
14 your answers today be the same as contained in the  
15 testimony? Well, first let me ask you, do you have any  
16 changes or corrections you need to make to Exhibit 6 or 6HC?

17 A. Thank you. I have two minor changes. The  
18 first on page 20. It's a grammatical problem with a  
19 sentence. Line 5, there are two examples of the word "of"  
20 in that line. The second one before the word litigation  
21 should be removed. So that the sentence reads, starting on  
22 line 3, It is disingenuous for Dr. Pflaum to portray Kansas  
23 Pipeline as opposed to Williams and its predecessor  
24 Northwest Central as the cause of undesirable and  
25 unproductive litigation.

1                   The second correction is on page 31. It's  
2 footnote 43 where I have made some inaccurate references to  
3 another testimony. That Footnote 43 should read, Rebuttal  
4 testimony of Roberta A. McKiddy, page 15, not 13, line 30  
5 through page 16, line 89.

6                   That's all.

7           Q.       Thank you. With those two changes, if I were  
8 to ask you the questions contained in those exhibits, would  
9 your answers today be the same as contained therein?

10          A.       Yes.

11                  MR. KEEVIL: With that, I would offer  
12 Exhibit 6 and 6HC into evidence and tender the witness for  
13 cross-examination.

14                  JUDGE THORNBURG: Are there any objections?

15                  (No response.)

16                  Hearing none, these exhibits will be received.

17                  (EXHIBIT NOS. 6 AND 6HC WERE RECEIVED INTO  
18 EVIDENCE.)

19                  JUDGE THORNBURG: At this time we'll start the  
20 cross-examination, and first up will be UtiliCorp.

21                  MR. BOUDREAU: Thank you. I just have a few  
22 questions.

23 CROSS-EXAMINATION BY MR. BOUDREAU:

24          Q.       Good morning, sir.

25          A.       Good morning.

1           Q.       Your testimony, I believe, covers a number of  
2 topics, but one of the areas that you address is a response  
3 to the testimony of Laclede witness Pflaum --

4           A.       Yes.

5           Q.       -- with respect to his issues that he's  
6 addressed with respect to this application and some of the  
7 companies and individuals involved?

8           A.       Yes.

9           Q.       Okay. I believe one of the things that's  
10 addressed in that testimony is -- or in Mr. Pflaum's  
11 testimony is he makes a parallel or attempts to make a  
12 parallel between some proceedings involving Kansas Pipeline  
13 Company because of some involvement of some -- the  
14 involvement of a common principal in both of the companies  
15 with respect to Kansas Pipeline and Gateway; is that  
16 correct?

17          A.       Yes.

18          Q.       And I believe the general gist or at least --  
19 there's a number of things that are talked about in  
20 Mr. Pflaum's testimony, but I think one of the gists of the  
21 testimony is that it's an attempt to characterize this  
22 Gateway Pipeline Company as possibly being a company that  
23 will be overly litigious based on the experience of Kansas  
24 Pipeline Company; is that correct?

25          A.       Yes.

1           Q.       Now, what I wanted to ask you about is that  
2 there are some references to some specific proceedings  
3 involving Kansas Pipeline in Mr. Pflaum's testimony; is that  
4 correct?

5           A.       Correct.

6           Q.       Do you have any personal knowledge about these  
7 proceedings that he refers to?

8           A.       I have personal knowledge of some of those  
9 proceedings where I was a participant.

10          Q.       Now, what I want to ask you is, based on your  
11 knowledge of those proceedings, do you agree with  
12 Mr. Pflaum's characterization of Kansas Pipeline Company as  
13 being overly litigious, and do you agree with the parallel  
14 to this company, Gateway Pipeline Company, as being possibly  
15 over litigious?

16               MS. O'NEILL: Your Honor, I object to that  
17 question as overly broad and vague. It's going to call for  
18 a long narrative response. If Mr. Boudreau could rephrase  
19 it so we could have some idea of what cases he's referring  
20 to in the question.

21               MR. PENDERGAST: Your Honor, I'm going to also  
22 object on the grounds that I don't believe this is  
23 cross-examination. What this is is a party with the same  
24 interests with the party who he's presumably cross-examining  
25 trying to elicit additional rebuttal testimony, and I

1 believe that's inappropriate.

2                   MR. BOUDREAU: If I may, I believe it's a  
3 characterization that Mr. Pendergast's witness has made. I  
4 think it's a topic upon which this particular witness is  
5 particularly well qualified to respond. It's an issue  
6 that's been put -- I mean, it's been put in issue by  
7 Laclede, and I think it's appropriate that we explore this.

8                   JUDGE THORNBURG: I'm going to overrule the  
9 objections at this point, but I'm going to say I'm not sure  
10 how productive this is going to be. This is more an area  
11 attorneys can brief. I'm going to allow this to go because  
12 it has been opened up. You've got some leeway.

13                   If the witness can recall the question, you  
14 can answer.

15                   THE WITNESS: I can recall. My answer is I do  
16 not believe that Dr. Pflaum has made a fair characterization  
17 either with respect to the source of litigation in those  
18 prior cases or with respect to the parallel between those  
19 cases and this. And to be brief, there are three reasons  
20 why I conclude that.

21                   First, the Kansas cases were generically  
22 different than this case. It involved the efforts of an  
23 interstate pipeline monopoly serving a major city against  
24 the interests of a new entrant seeking to construct pipeline  
25 capacity to that city.

1                   It would be more parallel to this case if we  
2 had an interstate pipeline monopoly, let's say Mississippi  
3 River Transmission in the old days, trying to litigate and  
4 impede the entry of a new pipeline trying to construct  
5 capacity to the same region. We don't have those  
6 circumstances in this case. There's no interstate pipeline  
7 involved. These facilities are already constructed. So the  
8 situations were different.

9                   Second, it is unfair to claim that Kansas  
10 Pipeline was the source rather than the target of  
11 litigation. It's typical for incumbent monopolies to engage  
12 in litigation as a device to raise the cost of entrance, and  
13 that typical example of --

14                  MS. O'NEILL: Your Honor, at this time I renew  
15 my narrative objection. This has gone -- we're into like a  
16 second point. So the question was obviously compound and  
17 calling for a narrative response.

18                  JUDGE THORNBURG: I'm going to overrule that.  
19 He's got three points. He's on his second one. We haven't  
20 spent too much time on it.

21                  You may proceed.

22                  THE WITNESS: My second point was that typical  
23 behavior that we see, and it was typical behavior there and  
24 it does not have a parallel here.

25                  Third, it's unfair to draw a parallel between



1 the financing of Kansas Pipeline which was heavily  
2 debt-laden and the type of financial parameters surrounding  
3 the Gateway project which we've heard from Mr. Ries is not  
4 so debt-laden.

5                   So for those three reasons I find that the  
6 parallels that Dr. Pflaum tries to draw between Kansas  
7 Pipeline cases and this case are unfair.

8                   MR. BOUDREAU: Thank you. That's all I have.

9                   JUDGE THORNBURG: Thank you. Mr. Byrne, did  
10 you have some questions for this witness?

11                  MR. BYRNE: I have no questions for this  
12 witness. Thank you.

13                  JUDGE THORNBURG: Mr. Pendergast.

14                  MR. PENDERGAST: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. PENDERGAST:

16           Q.       Good morning.

17           A.       Good morning.

18           Q.       First of all, you were asked some introductory  
19 questions by Mr. Boudreau about litigation over in Kansas  
20 and why it was not -- or why you don't believe it's  
21 comparable to factually the situation here. And in your  
22 testimony you portray that litigation as primarily the  
23 result of an incumbent pipeline trying to prevent a new  
24 entrant; is that correct?

25           A.       To the extent that I was involved and I

1 observed the testimony of Williams in that case, yes, I  
2 agree.

3 Q. Okay. Well, let me ask you some questions  
4 about litigation and whether all the litigation was  
5 initiated by Williams.

6 First of all, are you aware of whether or not  
7 the KCC Staff has challenged the prudence, reasonableness  
8 and whether or not contracts by KPL and Riverside with its  
9 customers should have been approved by the KCC?

10 A. I'm aware of that, yes.

11 Q. Are you aware of whether the Missouri Public  
12 Service Commission Staff has challenged the prudence of  
13 contracts involving Riverside and KPC and one of its largest  
14 customers here in Missouri?

15 A. Yes.

16 Q. Are you aware of whether Kansas, various  
17 Kansas municipalities have challenged the reasonableness and  
18 propriety and prudence of KPC contracts and recommended to  
19 the Commission that they not be approved?

20 A. Yes.

21 Q. Okay. So it's not just WNG, it was Kansas  
22 City's, it was the major customers and others who also  
23 challenged the reasonableness, propriety and prudence of  
24 contracts involving Kansas Pipeline?

25 A. Mr. Pendergast, I never made the claim that

1 all of the litigation was initiated by Williams. What I did  
2 claim was that Williams engaged in litigation to drive up  
3 the costs of the entrant, and I would maintain that in  
4 driving up the costs to the entrant it did cause  
5 circumstances to exist where costs then could be objected to  
6 by various distributors, staffs, municipalities along the  
7 way.

8 But I would continue to maintain, as I have  
9 maintained all along in those cases, that a significant  
10 degree of the cost-raising devices signified by the early  
11 litigation initiated by Williams resulted in those  
12 succeeding cases.

13 Q. You say that you never claimed WNG was the  
14 only one, but you never referenced in your testimony  
15 anywhere all the claims and recommendations that have been  
16 made by parties other than WNG, did you?

17 A. I don't have a complete knowledge of all of  
18 the litigation surrounding Kansas Pipeline from its birth to  
19 its sale to other parties or its existence today. I only  
20 have personal knowledge of the cases in which I was  
21 involved.

22 Q. Okay. Let me ask you about those. You  
23 indicate that WNG drove up the costs for these new entrants,  
24 and is one of those costs you're referring to market entry  
25 costs?

1           A.       Yes.

2           Q.       Okay. And did KPC and Riverside attempt to  
3 recover those market entry costs from its customers by  
4 including them in the rate base?

5           A.       I'm not exactly sure the precise mechanism for  
6 inclusion, but the first part of your answer, did they seek  
7 to include, the answer is yes.

8           Q.       Okay. And can you tell me what those market  
9 entry costs were and how they were calculated?

10          A.       I cannot remember how they were calculated.  
11 That was not a subject of my testimony in those cases.  
12 Generally, as I recall, their source significantly was due  
13 to the delay in Kansas Pipeline and its affiliates providing  
14 service, a delay that they alleged and I believe was caused  
15 by Williams' actions, Williams' threats of litigation and  
16 such.

17          Q.       Do you recall, sir, whether or not you  
18 submitted testimony in which you identified these costs as  
19 being the costs incurred with the failure of the entrants  
20 into the market, the prior pipelines, to earn their  
21 authorized returns?

22          A.       I'd have to see the testimony to refresh my  
23 recollection.

24                   JUDGE THORNBURG: You can approach the  
25 witness. Let Mr. Keevil see the document.

1 THE WITNESS: If you'll just give me a moment  
2 to look at this testimony.

3 JUDGE THORNBURG: That's fine.

4 THE WITNESS: Yes, I've read the portion that  
5 you handed to me.

6 BY MR. PENDERGAST:

7 Q. Okay. And does that refresh your memory on  
8 what market entry costs were and what they represented?

9 A. Yes. It confirms what I just told you before.  
10 On page 21 of my testimony, it says, quote, A series of  
11 factors/events, however, combined to delay the start-up of  
12 these pipelines, and I describe a number of elements  
13 therein, including actions of Williams.

14 Q. Okay. And then on page 22, does it talk about  
15 how this prevented them from -- or made it so that they were  
16 unable to earn their returns?

17 A. I say, The market entry costs result from the  
18 fact that KPP and KNP -- those are the Kansas Pipeline  
19 entities generally -- were not able to earn their allowed  
20 rate of return due to these factors/events, yes.

21 Q. And were market entry costs designed to  
22 compensate them for that prior inability to earn those  
23 returns?

24 A. Yes. And further, they were designed to --  
25 the best answer is yes.

1 Q. Okay. And how far back in time did those  
2 market entry costs go with respect to trying to capture the  
3 inability of the pipelines to earn the returns?

4 A. I'm not sure of the dates in any specific way,  
5 but I do mention in that answer on that testimony a date of  
6 1985. I think that's probably generally the start date.

7 Q. Back to 1985, and can you tell me when they  
8 were seeking to recover these market entry costs?

9 A. I believe this testimony is dated 1994.

10 Q. 1994. So essentially KPC was trying to go  
11 back and recapture returns which it claimed it or its  
12 predecessors had been unable to earn for the prior nine  
13 years; is that correct?

14 A. I'm not sure that that's a correct  
15 characterization.

16 Q. Okay.

17 A. I'm not -- I do not know the precise method of  
18 calculating those costs, nor am I -- nor do I recall the  
19 precise period of time over which they were calculated.

20 MR. KEEVIL: Your Honor, is this a Kansas  
21 Pipeline rate case? If not, what is the relevance of this  
22 line of questioning?

23 MR. PENDERGAST: Well, your Honor, the  
24 relevance of this line of questioning is that, first of all,  
25 he brought the subject up. He talked about how this was

1 simply an exercise of pipelines increasing the costs  
2 associated with them entering the market, and I think I have  
3 a right to question him on that, and I think I have a right  
4 to question him on that for the proposition of whether or  
5 not they intend on seeking something similar here.

6 MR. KEEVIL: Well, then, ask that question.

7 JUDGE THORNBURG: In the interest of moving  
8 this along, I'm going to over -- if that was an objection,  
9 I'll overrule it, but the value of this is diminishing as  
10 you go. But if you bring it back to your point, that would  
11 help.

12 MR. PENDERGAST: I will try and do that.

13 BY MR. PENDERGAST:

14 Q. Can you tell me, on these past market entry  
15 costs, was one of the reasons that KPC gave in that case for  
16 why those costs were incurred that the main customer,  
17 Western Resources, initially did not want to take service  
18 from the pipeline?

19 A. I believe that I stated in my testimony, in  
20 testimony that there was marked highly confidential, I don't  
21 know what that means in this case. Does it mean that --

22 JUDGE THORNBURG: It means you're subject to  
23 whatever those conditions were in Kansas, and unless you get  
24 permission from your client there --

25 THE WITNESS: Okay. Then any issue associated

1 with that question I cannot answer it.

2 MS. O'NEILL: Your Honor, I'd object to that  
3 answer to that question because this -- and I'm not sure  
4 exactly how I'm going to do this, but, your Honor, he  
5 testified to this in his prepared prefiled testimony, and,  
6 therefore, I believe that it is appropriate for  
7 Mr. Pendergast or any of us to cross-examine him on it.

8 JUDGE THORNBURG: I'm going to say to the  
9 extent you can answer the question without revealing any  
10 information that's protected, and then also if you did have  
11 this information in your prefiled testimony, obviously  
12 that's already in.

13 THE WITNESS: Well --

14 MR. KEEVIL: Judge, the problem is  
15 Mr. Pendergast is going into things that are not in his  
16 prefiled testimony in this case in the guise of  
17 Mr. Pendergast's cross-examination of the 1994 Kansas  
18 Pipeline rate case.

19 MR. PENDERGAST: He had a prefatory question  
20 asking whether or not that had any relevance and bearing on  
21 this case. He said no, it was different. I'm trying to  
22 establish whether it's different or similar, and they're the  
23 ones that opened that up, not me.

24 JUDGE THORNBURG: Okay. Your question has to  
25 do with whether another company declined to take service?



1                   MR. PENDERGAST: And whether or not that was a  
2 factor in the creation of these so-called market costs.

3                   JUDGE THORNBURG: Okay.

4                   MR. KEEVIL: I hate to keep confusing this,  
5 but now I believe what he's talking about is a startup  
6 company. It was a brand-new company at the time in the  
7 Kansas Pipeline issue. What we're dealing with in this case  
8 is existing pipelines, not startup companies.

9                   JUDGE THORNBURG: Let me ask the witness this.  
10 Were the assets in the Kansas case, have they been  
11 constructed but not put in service for a lengthy period of  
12 time?

13                  THE WITNESS: The assets that we're talking  
14 about here that were going to provide service were either  
15 constructed or converted from other use in oil pipelines, I  
16 believe, and they were designed to render gas service to the  
17 Kansas City area.

18                  But they were certificated to provide service  
19 at a certain date, and for reasons that I stated in this  
20 testimony were unknowable at the time, reasons largely due  
21 to the litigiousness of the incumbent interstate pipeline  
22 monopoly, there was a delay in actually using those  
23 facilities for the services for which they were  
24 certificated.

25                  JUDGE THORNBURG: They were ready but there

1 was a delay in using them?

2 THE WITNESS: Couldn't flow any gas through  
3 them and hence could not recover the revenues that were --  
4 that they were designed to recover when the pipelines were  
5 certificated.

6 JUDGE THORNBURG: Okay.

7 THE WITNESS: That was the nature of this. It  
8 was a startup company with either newly built or converted  
9 pipelines that could not flow gas for various reasons.

10 JUDGE THORNBURG: Mr. Pendergast, what I'm  
11 going to ask you to do is try to wrap this area up, but I  
12 think there is a difference here, that is MGC and MPC  
13 pipeline assets are currently in service and as far as I  
14 know there's not going to be any interruption in the service  
15 of these pipelines.

16 MR. PENDERGAST: Your Honor, I'm not so much  
17 referring to the ones that are in service but the ones that  
18 they plan to put in service, which like the ones over in  
19 Kansas were a converted pipeline.

20 JUDGE THORNBURG: I understand that, but at  
21 this point that's not even an asset under our jurisdiction.

22 MR. PENDERGAST: Well --

23 JUDGE THORNBURG: I mean, as far as  
24 certificating it.

25 MR. PENDERGAST: Well, I'll try and be brief.

1 BY MR. PENDERGAST:

2 Q. If -- well, let me ask you the question I  
3 asked you before. Was one of the reasons that KPC gave for  
4 the creation of these market costs the initial reluctance of  
5 one of its major customers to take service from it, if you  
6 know?

7 A. I do know, and there was reluctance on the  
8 part of a major customer to take service from these  
9 pipelines, but it was a reluctance born out of the  
10 uncertainty largely on how to deal with a threat of Williams  
11 to cancel its full requirements contracts to that customer  
12 if that customer took any service from the new entrant.

13 Hence, to my recollection, and I believe it's  
14 in my testimony, the reluctance was largely due to what I  
15 considered a threat on the part of the incumbent monopoly to  
16 take action that would hurt that buyer if they took service  
17 from the entrant, a threat that was later determined to be  
18 groundless.

19 Q. Let me ask you this. If Laclede is initially  
20 reluctant to go ahead and take service from MPC or MGC in  
21 the event these additional facilities are put in place or if  
22 MGC and MGC begin to do -- do not -- are not able to make  
23 money, are not able to make sufficient earnings to make  
24 whatever their expected returns are, can we expect them to  
25 request that Laclede or other customers pay market entry

1 costs?

2 MR. KEEVIL: That's a four-part question at  
3 least, compound question.

4 JUDGE THORNBURG: There's a lot of ifs there,  
5 but there's just one question. Can you restate the last  
6 part of the question, the very last part? Can you expect  
7 what?

8 BY MR. PENDERGAST:

9 Q. In the event that Laclede is unwilling to take  
10 service from MPC and MGC in the future and they do not have  
11 their revenues materialize to the degree that they believe  
12 they need to have them materialize, will they have to  
13 recover any market entry costs from Laclede?

14 A. Mr. Pendergast, there are no market entry  
15 costs here. They're in the market, and we've already heard  
16 testimony from Mr. Ries that they've got plenty of money  
17 with their capital structure to pay their debt and have a  
18 return for the equity owners besides.

19 There is no parallel between the market entry  
20 cost case in Kansas Pipeline and the established pipeline,  
21 established revenue case here. Furthermore -- I'll stop,  
22 because I liked your previous question better.

23 JUDGE THORNBURG: You've answered the  
24 question. Mr. Pendergast, you can continue.

25 BY MR. PENDERGAST:

1           Q.       And that will be true not only for costs  
2 associated with MPC and MGC but also costs associated with  
3 the Trans-Mississippi Pipeline that's put in service?

4           MR. KEEVIL: Judge, I don't remember. Are we  
5 public or private?

6           JUDGE THORNBURG: We're still in public  
7 session, but I don't think he's asked what Gateway plans to  
8 do with these, just if they're placed in service. So I  
9 don't think we're dealing with their business plan or  
10 intent.

11          THE WITNESS: For any hypothetical project to  
12 place that trans -- those assets that have been called  
13 Trans-Mississippi Pipeline into service, I see no parallel  
14 between the kind of hostage holding that did go on back in  
15 the 1980s in Kansas and what would take place in  
16 negotiations between sophisticated companies like Laclede  
17 and sophisticated companies like Gateway. That kind of game  
18 playing that we saw in Kansas 15 years ago would not reoccur  
19 here.

20 BY MR. PENDERGAST:

21          Q.       Let me ask you this. On the market entry  
22 costs, did the Kansas Court of Appeals, to your knowledge,  
23 ultimately find that those costs were not proper on the  
24 grounds that they had never been incurred or acquired by  
25 KPC?

1           A.       I have no knowledge of that appeal decision.  
2 I've heard things to that extent, but I don't know whether  
3 that's the final resolution of the issue. I'm not sure.

4           Q.       And do you know whether or not in seeking  
5 these costs KPC made claims that without them they would be  
6 unable to survive?

7           A.       I believe in various proceedings they made a  
8 claim that they could not, and that that claim was supported  
9 in large part by a different financing requirement under  
10 which they were certificated, which I believe was close to  
11 90 percent debt, that gave Kansas Pipeline considerably less  
12 leeway in terms of its income picture than the kind of case  
13 that we see here which has a normal debt structure for a  
14 pipeline company.

15          Q.       But they did make that claim, to your  
16 knowledge?

17          A.       Yes.

18          Q.       And do you know if they also made that claim  
19 at FERC in trying to recover market entry costs there as  
20 well?

21          A.       I believe that they did, but I was not  
22 involved in the FERC cases.

23          Q.       Thank you. You mention at page 20 some  
24 litigation between --

25          A.       Are we talking about this?

1 Q. I'm talking about your current testimony.

2 A. Thank you. I'm sorry for interrupting.

3 Q. Yeah. Page 20, you indicate that Dr. Pflaum  
4 has misrepresented a situation regarding litigation between  
5 Kansas Pipeline and Kansas Gas Service; is that correct?

6 A. Yes.

7 Q. And in making that assertion, you indicate  
8 that he talks that litigation involves an alleged breach of  
9 the Linchpin and Wraparound settlements, whereas you say it  
10 really involves the settlement of KPP's rate case before the  
11 KCC in 1997; is that correct?

12 A. Yes.

13 Q. And you specifically reference OneOk, Inc. vs.  
14 Kansas Pipeline Company, et al, Case No. 99-CO6574; is that  
15 right?

16 A. Yes.

17 MR. PENDERGAST: If I could approach the  
18 witness?

19 JUDGE THORNBURG: You may.

20 BY MR. PENDERGAST:

21 Q. Could you identify the document I've just  
22 handed you?

23 A. It reads in the District Court of Johnson  
24 County, Kansas, Case No. 99-CO6574.

25 Q. And is that a copy of Kansas Gas Service's

1 Petition in the litigation that you reference in your  
2 testimony?

3 A. Well, there's more than one document here.  
4 Yes, it is.

5 Q. Okay. And would you please turn to page 4,  
6 paragraph 14 of the Petition.

7 A. Yes.

8 Q. Does that indicate that Kansas Gas Service and  
9 KPL are parties to several gas transportation and sales  
10 agreements?

11 A. Sales contracts, yes.

12 Q. And does paragraph 15 indicate these contracts  
13 were originally executed in 1988, 1991 and 1995?

14 A. Yes.

15 Q. Were any of those contracts, to your  
16 knowledge, related to Linchpin and Wraparound agreements or  
17 settlements?

18 A. I don't know.

19 Q. So when you indicate that this has nothing to  
20 do with the Linchpin or Wraparound settlements, you can't be  
21 certain, can you?

22 A. Oh, I can be certain as I was certain when I  
23 read this Petition that the terms Linchpin and Wraparound do  
24 not occur in that Petition, and the Petition seemed to be  
25 complete in its description of the proceedings that it --



1 the settlement that was described and the proceedings that  
2 were described, and I conclude therein that there's nothing  
3 about that that concerns Linchpin or Wraparound settlements  
4 as such. Those words don't appear in that document.

5 Q. Okay. Those words don't appear in those  
6 documents. The contracts that are referenced in the  
7 Petition, to your knowledge -- well, you don't know whether  
8 they're Linchpin or Wraparound agreement related or not, do  
9 you?

10 A. I don't know anything other than is written in  
11 that Petition, and as written it makes no mention of things  
12 called Linchpin or Wraparound.

13 Q. Tell me if you can, if you don't believe  
14 that's about the Linchpin and Wraparound agreements, what is  
15 the dispute about?

16 A. I'm not sure what you're talking about in  
17 terms of Linchpin or Wraparound.

18 Q. Well, I'm asking you, what do you believe the  
19 dispute is about?

20 A. As contained in this Petition?

21 Q. Yes.

22 A. It's about a settlement of various issues  
23 involving a rate case in which I was in for Kansas Pipeline.

24 Q. And does it indicate that it's also resolving  
25 disputes relating to contracts?

1           A.       It says that in the Petition, yes.

2           Q.       Okay. Fine. And is the settlement that it's  
3 referring to a settlement under which -- and I'd refer you  
4 to page -- or to paragraph 18 and 19 where Kansas Gas  
5 Service agreed to pay KPL \$7 million, KPC \$7 million in  
6 exchange for a reduction in rates?

7           A.       Can you give me that paragraph number again?

8           Q.       Yeah. Paragraphs 18 and 19.

9           A.       In paragraph 19F has a \$7 million figure in it  
10 as consideration for the long-term reduction in rates  
11 charged and to cover contract reformation and transition  
12 costs associated therewith.

13          Q.       Okay. And would you please tell me what rate  
14 reduction it's referring to there, and I think you'll see it  
15 a paragraph or two before?

16          A.       The paragraph before says, Rather than risk  
17 the uncertainty of an administrative or judicial  
18 determination, the parties undertook efforts to reach a  
19 global settlement on all disputed issues. I don't know what  
20 all those issues are.

21          Q.       Okay. Well, I'm speaking of paragraph 19.

22                   MR. PENDERGAST: If I could approach the  
23 witness?

24                   JUDGE THORNBURG: Okay.

25 BY MR. PENDERGAST:

1 Q. Would you please read subparagraph D of 19.

2 A. On day one of the fifth year of the settlement  
3 agreement for all contracts except the Paola, Pottawatomie  
4 and Ottawa contracts which were already at competitive rates  
5 and the Johnson/Wyandotte, Kansas contracts which was to be  
6 at competitive rates in six years, KPC's rates would be  
7 lowered to competitive rates defined to mean the then  
8 applicable cost-based firm transportation service rate  
9 charged by Williams Natural Gas Company, a competing  
10 pipeline.

11 These rates would continue for a period of  
12 three years, the fifth, sixth and seventh years of the  
13 settlement agreement, August 1st, 2001 through July 31st,  
14 2004, after which time KPC could file an application with  
15 the FERC to increase its rates, i.e. a filed rate case.  
16 However, notwithstanding this application, the rates charged  
17 by KPC to Kansas Gas Service would be based on the total COS  
18 not to exceed 27.9 million.

19 Q. Okay.

20 MR. KEEVIL: Judge, I'm going to object to  
21 just reading a portion of a paragraph if he's not going to  
22 have the witness read the introductory two sentences from  
23 paragraph 19. Apparently there's some dispute regarding  
24 whether this is concerning a settlement agreement, as  
25 Mr. Makholm has testified, or whether it concerns something

1 else, and I think the introductory sentence in paragraph 19  
2 needs to be included if he's going to have the paragraph  
3 reading from subparagraph 19D.

4 MR. PENDERGAST: I have no objection.

5 JUDGE THORNBURG: We can take it up on  
6 redirect, but do you have a problem with reading those two  
7 sentences?

8 MR. PENDERGAST: No, not at all.

9 THE WITNESS: Paragraph 19. The settlement  
10 agreement contains numerous terms which are or may become at  
11 issue in this lawsuit. These terms include but are not  
12 limited to the following.

13 BY MR. PENDERGAST:

14 Q. Under the paragraph that you just read before  
15 those two sentences, that indicated that KPC was going to  
16 reduce its rates to a competitive rate for Kansas Gas  
17 Service by 2001, is that correct, August of 2001?

18 A. I believe that's what is contained in that  
19 subparagraph B.

20 Q. And do you know prior to August 2001, since  
21 KPC first started providing service, have its rates been  
22 above WNG's rates?

23 A. I don't know whether they've been consistently  
24 above or below. I do know that -- and I also am not sure  
25 that in any particular way those rates are comparable. I

1 can't answer that question.

2 Q. Okay. You can't answer the question, but the  
3 settlement that you referenced in your testimony indicates  
4 that at least by August they were going to be reduced to  
5 what was defined as competitive rate, meaning the rates  
6 charged by WNG; is that correct?

7 A. Yes.

8 Q. Okay.

9 A. No. I'm sorry. It didn't say a competitive  
10 rate. It said rate of a competing pipeline. I don't know  
11 whether that rate charged by Williams can be characterized  
12 as a competitive rate.

13 Q. It doesn't say competitive rate?

14 A. It says competing pipeline. Firm  
15 transportation charged by Williams Natural Gas Company, a  
16 competing pipeline, whatever those rates happen to be.

17 Q. The record will reflect what you read on  
18 paragraph D.

19 And this settlement alleges, does it not, that  
20 rather than follow through on its commitments, it alleges  
21 common law fraud and breach of contract against KPC for  
22 failing to honor it's commitments under that settlement,  
23 does it not?

24 A. You mean what this Petition says in it?

25 Q. Yes.

1           A.           It's a Petition.

2                   MR. KEEVIL: Judge, let me jump in here. This  
3 line of questioning began because Mr. Pendergast was  
4 claiming that what Mr. Makholm said in his testimony was  
5 this case did not involve the Linchpin and Wraparound but  
6 involved the construction -- let's see -- the pending  
7 litigation dispute regarding certain provisions of a  
8 settlement of KPP's rate case. That's exactly what this --  
9 even Mr. Pendergast has now admitted in his question, this  
10 Complaint/Petition that he has here involves the settlement  
11 of a KPP rate case.

12                   Therefore, the details of what's in the other  
13 details, the details of the rate structure of Kansas  
14 Pipeline back in the early 90s or whatever is not relevant.  
15 The thing that he has just -- Mr. Pendergast keeps referring  
16 to supports what Dr. Makholm has said, and, therefore, this  
17 is a fruitless, irrelevant line of inquiry at this point.

18                   MR. PENDERGAST: Your Honor, I think it's  
19 abundantly clear if you read his testimony that he is trying  
20 to give the impression that Dr. Pflaum has somehow  
21 misrepresented litigation in a way that is unfair to KPC  
22 that suggests that KPC has perhaps done something that it  
23 hasn't done and that that's a pattern that he claims  
24 Dr. Pflaum has repeated throughout his testimony.

25                   And I think the record needs to be illuminated

1 to indicate that this is entirely consistent with the gist  
2 of Dr. Pflaum's testimony.

3 JUDGE THORNBURG: Okay. You're going to have  
4 to restrict your questioning to addressing what's presented  
5 in -- this was responsive to Dr. Pflaum. That's what you're  
6 saying. You're going have to keep your questioning to that.  
7 I don't have this Petition. It's not in the record. And  
8 characterizing the claims in there, I just don't know what  
9 those are. The Petition's not here.

10 MR. PENDERGAST: Your Honor, I'd be happy to  
11 offer that as an exhibit.

12 JUDGE THORNBURG: Well, I don't know if I want  
13 to open that up or not. But we're getting -- the relevance  
14 is starting to get tenuous. I understand you're wanting to  
15 show what kind of player this company would be here in  
16 Missouri --

17 MR. PENDERGAST: That's right, your Honor.

18 JUDGE THORNBURG: -- in relation to what they  
19 were in Kansas.

20 MR. PENDERGAST: Absolutely.

21 MR. KEEVIL: Judge, this company's never been  
22 in Kansas.

23 MR. PENDERGAST: Principals.

24 JUDGE THORNBURG: Right, the principals.

25 MR. KEEVIL: A principal.

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1 JUDGE THORNBURG: A principal. The relevance  
2 is getting tenuous. The relevance of this in this  
3 proceeding is getting tenuous, and we need to move along.

4 MR. PENDERGAST: I'm on my final question on  
5 this.

6 JUDGE THORNBURG: Well, okay. What's the  
7 question you have right now?

8 MR. PENDERGAST: Well, actually, I'd just like  
9 an answer to my prior question, which was, and did they not  
10 allege common law fraud and breach of contract against KPC?

11 JUDGE THORNBURG: Okay. We can go that far.  
12 If those are claims presented in the Petition and the  
13 witness is aware of that, we can ask this. You can answer.

14 THE WITNESS: Those claims are in the  
15 Petition.

16 MR. PENDERGAST: Thank you.

17 MS. SHEMWELL: Your Honor, might this be an  
18 appropriate time for a short break?

19 JUDGE THORNBURG: How many more questions do  
20 you have, Mr. Pendergast?

21 MR. PENDERGAST: Maybe 15 minutes.

22 JUDGE THORNBURG: We can take a five-minute  
23 break. We're probably going to break a little bit early for  
24 lunch today so people can get in and out quicker, but we'll  
25 adjourn to 10:15 and come back.



1                   MR. BOUDREAU: Before we go off the record,  
2 just a mechanical matter. Mr. Kreul for UtiliCorp has  
3 concluded his testimony. Can he be excused from the  
4 proceeding? If he's around and additional testimony is  
5 required of him, I'll certainly make every effort to produce  
6 him.

7                   JUDGE THORNBURG: I believe we've been through  
8 all the Commission questions and all the parties. Mr. Kreul  
9 can be excused.

10                  MR. BOUDREAU: Thank you very much.

11                  (A BREAK WAS TAKEN.)

12                  JUDGE THORNBURG: At this time we'll go back  
13 on the record, and Mr. Pendergast, you can proceed.

14                  MR. PENDERGAST: Thank you.

15 BY MR. PENDERGAST:

16                  Q.       You indicated earlier that KPC's situation was  
17 different because it was a company with 90 percent debt. Do  
18 you recall that?

19                  A.       Yes.

20                  Q.       Can you tell me whether or not KPC ever  
21 submitted testimony with the KCC claiming that its capital  
22 structure was 100 percent equity?

23                  A.       I don't recall that.

24                  Q.       Do you know when they filed testimony with the  
25 KCC what they did represent as to what their capital

1 structure was?

2           A.       No, other than my general knowledge about what  
3 the capital structure was which I represented. I don't know  
4 anything else.

5           Q.       Did you ever file testimony on their capital  
6 structure or on their cost of equity?

7           A.       I did on their cost of equity, yes.

8           Q.       And filing that testimony, you don't recall  
9 what capital structure they were claiming?

10          A.       I was not the capital structure witness.

11          Q.       Do you have any knowledge of what KPC's rates  
12 were versus WNG's rates?

13          A.       My general knowledge is that KPC's rates in  
14 that they were certificated to be a source of cheaper Kansas  
15 gas for Kansas City, cheaper than Williams or its  
16 predecessor, that it started lower, but that through delay  
17 in market entry costs those rates became higher over time.

18          Q.       Do you know whether they were approximately  
19 three times higher?

20                 MR. KEEVIL: Judge, I'm going to object. What  
21 time period, No. 1, is Mr. Pendergast talking about? Again,  
22 I don't see the relevance of this testimony. We're talking  
23 about KPC rates back in, I assume, sometime in the late  
24 '80s, early '90s. It's irrelevant to Gateway Pipeline's  
25 proposed acquisition from UtiliCorp United.

1                   MR. PENDERGAST: Well, your Honor, we're  
2 having allegations made here that this transaction ought to  
3 be approved by the Commission because, for one thing, it  
4 will bring additional sources of supply and it will reduce  
5 costs for customers and that that's one of the reasons the  
6 Commission should go ahead and approve it.

7                   I think it's relevant to inquire into what the  
8 track record of the owners of this pipeline has as far as  
9 other competitive pipeline arrangements that they've been  
10 engaged in.

11                  MR. KEEVIL: Again, Judge, there's only one.  
12 Mr. Pendergast keeps attempting to leave the impression that  
13 there's some group of similar ownership here. There's one  
14 principal owner that is the same between the two.

15                  And if he wants to ask about what Gateway's  
16 plans regarding competition or rates or whatever, to the  
17 extent that this witness knows, that would be fine. But  
18 asking about what the components of Kansas Pipeline  
19 Company's rates were in the late '80s is irrelevant to this  
20 case.

21                  MR. PENDERGAST: Your Honor, to suggest that  
22 it is inappropriate to test the assertions that have been  
23 made about the future and speculative benefits by asking  
24 witnesses what the historical track record has been of  
25 persons that are making those assertions or on whose behalf

1 those assertions are being made, I think it's absolutely  
2 appropriate to ask questions regarding whether or not those  
3 kind of results have been achieved in the past.

4                   MR. KEEVIL: This witness has already  
5 differentiated in great detail the differences between that  
6 pipeline company and this pipeline company, and, therefore,  
7 what that pipeline company's rates are, again --

8                   JUDGE THORNBURG: Okay. I'm ready. I'm going  
9 to sustain the objection. I don't find this relevant at  
10 all. If you want to differentiate the testimony, you know,  
11 that's been filed, that's another purpose, but to get into  
12 the rates, that's not -- to this detail, that's not relevant  
13 to this proceeding.

14 BY MR. PENDERGAST:

15           Q.       Okay. You indicated that the primary reason  
16 WNG became involved in this litigation in your testimony was  
17 to prevent KPC from becoming a player in the pipeline  
18 market. Is that basically it?

19           A.       I think we should be a bit more specific about  
20 what you mean by this proceeding.

21           Q.       Pardon?

22           A.       You said this proceeding.

23           Q.       In this proceeding, you have filed testimony  
24 saying --

25           A.       In this proceeding?

1 Q. Yes.

2 A. Okay. And I have filed testimony regarding  
3 something about Williams Natural Gas?

4 Q. I'm sorry, not Williams. That KPC -- well,  
5 yeah, you have filed testimony regarding Williams, have you  
6 not, in this proceeding?

7 A. I've only filed testimony in this proceeding  
8 to say that bringing Williams into this proceeding is a  
9 waste of our time and a distraction to the Commission and  
10 this group in this courtroom.

11 Q. You have filed testimony claiming, have you  
12 not, that the reason you say that is that this was just a  
13 situation of a dominant pipeline, WNG, litigating in  
14 contrast to what Mr. -- or Dr. Pflaum has said, litigating  
15 in order to keep a new entrant into the market out? Isn't  
16 that what you said in your testimony?

17 A. I said in my testimony that Williams engaged  
18 in the familiar strategy to raise the cost of its rivals,  
19 and its rival in a market where it was the incumbent  
20 monopolist was Kansas Pipeline.

21 Q. Okay. And in saying that that's what Williams  
22 was doing and what its objective was, are you aware of  
23 testimony that was filed by WNG indicating that one of the  
24 reasons that it had intervened in KPC's rate case was  
25 because KPC had visited Williams' chief executive and had

1 indicated that it had cornered the market in Kansas City and  
2 that if WNG did not sell its facilities to KPC, it would be  
3 ruined? Do you recall WNG submitting testimony like that?

4 A. No.

5 Q. You do not?

6 A. No. The facts as you characterize, I don't  
7 have a recollection about visits to CEOs of Williams.

8 Q. In your testimony you indicate that Laclede  
9 has previously raised concerns about FERC jurisdiction and  
10 you reference in particular the Illini Carrier proceeding.  
11 Do you recall that in your testimony?

12 A. Yes.

13 Q. Okay. Can you tell me in that Illini Carrier  
14 proceeding, are you familiar with a Mr. Troost for  
15 Mississippi River Transmission Corporation?

16 A. Yes. I believe Mr. Robert Troost works for  
17 Mississippi River Transmission Corporation.

18 Q. And they were the ones that were acquiring the  
19 facilities of Illini Carrier; is that correct?

20 A. That's correct.

21 Q. And do you recall whether or not he made a  
22 commitment on the stand during cross-examination indicating  
23 that MRT would never connect Illini Carrier facilities with  
24 MRT?

25 A. I do not recall.

1           Q.       Do you know whether or not the facilities that  
2 were acquired by MRT, the Illini Carrier facilities, are  
3 connected today to MRT?

4           A.       I do not believe they are.

5           Q.       And in contrast, in this case Gateway is  
6 proposing to connect those facilities; isn't that correct?

7                   MR. KEEVIL:  Judge --

8                   MR. PENDERGAST:  Excuse me.  I should -- the  
9 record will speak for itself obviously.

10                  JUDGE THORNBURG:  Okay.  You were going to  
11 raise the proprietary issue?

12                  MR. KEEVIL:  Yes.

13                  JUDGE THORNBURG:  I'm not certain that you  
14 opened that up, Mr. Keevil, earlier.

15                  MR. PENDERGAST:  I think we've all been  
16 informed of that, so I'll move on.

17 BY MR. PENDERGAST:

18           Q.       You also talk about Dr. Pflaum's  
19 representations regarding service interruptions involving  
20 KPC.  Do you recall that testimony?

21           A.       I do.  Do you have a page?  I'll find it.

22           Q.       Page 21.

23           A.       That's correct.  Thank you.

24           Q.       Can you tell me, did KPC, in fact, interrupt  
25 deliveries to Western Resources?

1           A.       I do not know the physical nature of that.  
2 All I do know is that the complaint that surrounded whatever  
3 went on was dismissed by the Commission.

4           Q.       Was it dismissed by the Commission because  
5 several months after this happened the parties indicated  
6 that they had resolved their differences? Do you have a  
7 copy of the dismissal in front of you?

8           A.       I do.

9           Q.       Could you refer to it, please?

10          A.       And I know that the Commission dismissed the  
11 complaint or the show -- the Commission dismissed the  
12 complaint that Dr. Pflaum brought up in his testimony both  
13 upon Staff making an independent investigation into the  
14 issues and because the parties had resolved their  
15 differences.

16          Q.       Okay.

17          A.       And it was my -- my argument with Dr. Pflaum  
18 is that he raised the issue of there being a complaint of  
19 service interruption without describing how that issue was  
20 resolved to the satisfaction obviously of the Commission  
21 because it dismissed the complaint.

22          Q.       Okay. And I know that you have a concern  
23 about him not having mentioned that, but did you investigate  
24 or attempt to determine whether or not the underlying  
25 service interruption actually occurred?



1           A.       No. I just read the dismissal of the  
2 complaint by the Commission at the recommendation of the  
3 Staff. No, I didn't go into it further than that.

4           Q.       So you don't know whether it occurred or not?

5           A.       I don't know what -- I don't know what the  
6 independent investigation of the issues comprised of the  
7 Staff. All I'm reading is the Order of the Commission  
8 itself when it dismissed the complaint.

9           Q.       And does it say in that Order -- in fact you  
10 cite in your testimony. It says, Further Staff -- and I'm  
11 reading lines 9, 10 of your testimony -- has reviewed the  
12 gas supply contracts of Kansas Pipeline and concluded that  
13 at the present time respondents have under contract  
14 sufficient supplies of gas to meet their contract demand  
15 with WRI. Do you see that?

16          A.       I do.

17          Q.       Does that say anything about whether or not  
18 they had sufficient capacity at the time these  
19 interruptions, according to Dr. Pflaum, occurred?

20          A.       I don't know anything about the facts  
21 underlying this, only the resolution by the Commission.

22          Q.       So given that, you have no basis for disputing  
23 the factual representation made by Dr. Pflaum, do you?

24          A.       My dispute isn't about the facts. My dispute  
25 is with the misrepresentation of Dr. Pflaum with respect to

1 whether or not this was a problem in Kansas, and obviously  
2 the Commission concluded that it wasn't. And we may, if we  
3 wish, engage in detailed chasing business of trying to find  
4 out whether or not the Commission came to the proper  
5 conclusion. I think that's a waste of time.

6           My problem was not with the facts. My problem  
7 with Dr. Pflaum's misrepresentation leaving the impression  
8 on the table that Kansas Pipeline was provided an insecure  
9 or otherwise not a high-quality service, and that  
10 implication is refuted, I believe, effectively in the final  
11 resolution of that proceeding.

12           Q.       I want to ask you about that and whether it  
13 was refuted. Does the KCC in its Order say that those  
14 interruptions did not occur?

15           A.       It doesn't say anything other than it has  
16 dismissed the complaint on the recommendation of the Staff  
17 and the parties.

18           Q.       Okay. Fine. But it doesn't make any finding  
19 about the interruptions, does it?

20           A.       I don't know what it does in terms of the  
21 facts of the case, other than it dismisses the complaint.  
22 And that's good enough for me to make the claim that  
23 Dr. Pflaum has left an inappropriate representation on the  
24 table.

25           Q.       And it doesn't say anything about whether

1 there was capacity sufficient at the time Dr. Pflaum says  
2 these interruptions occurred, does it?

3           A.       I would conclude that any of those questions  
4 are rearguing a case a the Commission's already concluded.  
5 Why would we want to do that?

6           Q.       Well, because we're going to be having a new  
7 pipeline here, and there are people in Missouri that are  
8 concerned about --

9                   MR. BOUDREAU: Your Honor, I think this has  
10 now fallen into just basically argument between counsel and  
11 the witness, and I'm not sure it's all that productive. We  
12 need to maintain some degree of decorum here.

13                   JUDGE THORNBURG: I understand.

14                   MR. PENDERGAST: I'll withdraw the question.

15                   JUDGE THORNBURG: Mr. Pendergast, you'll need  
16 to direct questions to the witness, and if you don't feel  
17 the witness has answered the question, you can ask me to  
18 direct the witness.

19                   MR. PENDERGAST: Thank you, your Honor. May I  
20 continue?

21                   JUDGE THORNBURG: You can continue.

22                   MR. PENDERGAST: Thank you.

23 BY MR. PENDERGAST:

24           Q.       Speaking of litigation, and your testimony  
25 does take issue with Dr. Pflaum's representation about KPC

1 and its history of litigation, does it not?

2           A.       It does.

3           Q.       Can you tell me, has KCP sued its largest  
4 customer, WRI, in the past, to your knowledge?

5           A.       I don't have specific knowledge, but I believe  
6 that it may have.

7           Q.       Has it sued Missouri Gas Energy, one of its  
8 largest customers, in the past?

9           A.       It may have. And when I say it may have,  
10 without specific knowledge, my general knowledge of the  
11 events surrounding the entry of Kansas Pipeline involved the  
12 desire of this pipeline to want to maintain the entry for  
13 which it was originally certificated against lots of  
14 obstacles, and hence I believe that the lawsuits that you've  
15 described are part of that process.

16          Q.       Okay. And those would have been lawsuits  
17 directed at its customers?

18          A.       That's correct. And I know in specific, and  
19 it came up with respect to the testimony that you handed me,  
20 that one of its customers was part of the obstruction in  
21 providing service for which it was originally certificated,  
22 and the Commission in its own management audit of that  
23 company recognized that there were good reasons for that  
24 obstruction.

25                   JUDGE THORNBURG: Mr. Makholm, I think you've

1 answered the question.

2 THE WITNESS: Thank you.

3 JUDGE THORNBURG: Go ahead, Mr. Pendergast.

4 BY MR. PENDERGAST: Thank you. That's all I  
5 have, your Honor.

6 JUDGE THORNBURG: Thank you. Ms. O'Neill.

7 MS. O'NEILL: Thank you.

8 CROSS-EXAMINATION BY MS. O'NEILL:

9 Q. Good morning, Mr. Makholm.

10 A. Good morning, Ms. O'Neill.

11 Q. In the testimony that you prefiled in this  
12 case, you discuss your belief that Gateway's acquisition of  
13 these pipelines would actually be a benefit to the public  
14 interest and not a detriment; is that correct?

15 A. A benefit and not a maintenance of the same  
16 public interest that we had under the previous owner.

17 Q. So not only --

18 A. Not only not a detriment, but a benefit.

19 Q. Okay. And you refer several times in your  
20 testimony, I think page 8 and page 10 and some other places,  
21 to the potential benefit of competition of pipelines in the  
22 St. Louis region and the surrounding regions covered by MGC  
23 and MPC. Do you recall that testimony?

24 A. Yes.

25 Q. And in appearing to testify on behalf of

1 Gateway, how much time did you spend in the area

2 certificated -- that MGC is certificated to serve?

3 MR. KEEVIL: I'm going to object to that. How  
4 much time did he spend in the area?

5 MS. O'NEILL: In the area.

6 MR. KEEVIL: What relevance does that have?

7 MS. O'NEILL: In those geographic locations.

8 JUDGE THORNBURG: And your questions is did he  
9 visit --

10 MS. O'NEILL: Did you visit those geographic  
11 locations?

12 JUDGE THORNBURG: -- geographic locations and  
13 how much time did he spend there?

14 THE WITNESS: I did not visit the geographic  
15 locations.

16 BY MS. O'NEILL:

17 Q. In preparation for your testimony, did you  
18 make efforts to become aware of the nature of the population  
19 and the geographic conditions of those areas?

20 A. Generally, yes.

21 Q. And did you do that by reviewing prefilled  
22 testimony of other witnesses in this case?

23 A. That plus reviewing from independent sources  
24 the lay of the land in terms of pipelines in the region,  
25 something I've done before for previous cases and I did

1 again for this case.

2 Q. Would you say you spent more time looking at  
3 the lay of the land regarding the St. Louis suburban area  
4 than the rural area served by MGC?

5 A. I would not say that.

6 Q. You would say you looked at both of them  
7 equally?

8 A. Yes.

9 Q. You're aware that MGC relies a hundred percent  
10 on MPC for the gas it transports to its customers?

11 A. That's my understanding.

12 Q. And you realize that MGC's customers are  
13 completely captive to that pipeline?

14 A. They are captive to that pipeline to the  
15 extent that they take natural gas service. They're not  
16 captive from the economic sense in terms of not having other  
17 alternatives to their energy needs.

18 Q. In fact, the only way that those areas are not  
19 captive is if they choose alternate forms of energy rather  
20 than natural gas; is that correct?

21 A. Generally, that's correct.

22 Q. In preparing your testimony in this case for  
23 Gateway, did you review plans by Gateway, business plans by  
24 Gateway for increasing throughput and attracting additional  
25 business to MGC and MPC?

1           A.       I believe I did, yes, or to the extent that  
2 those plans have been filed as part of this proceeding.

3           Q.       So would it be fair to say that the only plans  
4 you reviewed are plans to the extent they exist in prefiled  
5 testimony?

6           MR. KEEVIL:  Objection.  That's not  
7 necessarily what he said.

8           MS. O'NEILL:  I'm trying to clarify what he  
9 said.

10          JUDGE THORNBURG:  I understand.  You're trying  
11 to get the basis of the information he looked at, and that's  
12 a fair question.

13          MR. KEEVIL:  I think, I think there may be --  
14 judge, I apologize.  I think there may be a misconception  
15 here because of Dr. Makholm coming from another state, and  
16 I've run into this with lots of other witnesses also.  In  
17 some states you file responses to Data Requests, and in  
18 Missouri you just exchange them between the parties.  
19 Mr. Makholm may not know whether Data Response Responses are  
20 officially filed.

21          JUDGE THORNBURG:  And that question arose in  
22 my mind, is it the testimony or discovery materials or what,  
23 but I'm going to let Ms. O'Neill clear that up.

24 BY MS. o'neill:

25          Q.       So can you answer the question?

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1           A.       Not necessarily related only to prefiled  
2 testimony. I am aware that there are Data Requests and Data  
3 Request Responses and I have reviewed those as well.

4           Q.       And have you reviewed any business plans in  
5 addition to those two sources, prefiled testimony and  
6 responses to Data Requests?

7           A.       No.

8                   MS. O'NEILL: Your Honor, this may -- based on  
9 those answers, I don't think that the answers to the  
10 following questions would require proprietary information,  
11 but I am going to ask him about the information he found in  
12 those requests. So if you want to close it, we can go  
13 in-camera.

14                   MR. KEEVIL: You probably need to.

15                   JUDGE THORNBURG: Ask the question. We'll  
16 see.

17 BY MS. O'NEILL:

18           Q.       Did the plans that you reviewed reveal how  
19 Gateway's acquisition of UPL will lead to more diversity of  
20 supply to the captive customers on these pipelines?

21           A.       I believe that begs the question of if they  
22 will lead to more diversity in supply, and I'm not sure that  
23 I've gotten to that point.

24           Q.       Did your analysis lead you to believe that  
25 they have a plan to increase the diversity of supply?

1           A.       It's perfectly reasonable to me that a company  
2 that would acquire these kind of assets, particularly what's  
3 going -- given what's going on in Illinois, which is public  
4 knowledge, would consider a plan to connect those supplies  
5 of capacity in Illinois to the St. Louis region.

6           Q.       But you didn't review any plans that said  
7 that?

8           A.       Not in any specific terms, no.

9           Q.       Did you review any plans that specifically  
10 addressed how Gateway plans to increase customer base?

11          A.       No.

12          Q.       Did you review any plans that Gateway has for  
13 encouraging current customers to increase their throughput  
14 usage?

15          A.       No.

16          Q.       In preparing for your testimony, what  
17 information have you reviewed regarding any barriers to  
18 entries in throughput on the existing pipelines?

19          A.       Other than the discussion of the capacity in  
20 the current pipelines that's contained in the prefiled  
21 testimony or the Data Request Responses, none.

22          Q.       Beginning, I think, somewhere around page 25  
23 of your testimony, you have some discussion regarding the  
24 concerns raised by some of the parties that FERC may assume  
25 jurisdiction and that that may be a detriment to public

1 interest. Do you recall that testimony?

2 MR. KEEVIL: Your Honor, I believe she's  
3 quoting from the HC part there,

4 MS. O'NEILL: I'm not actually quoting, but I  
5 may have memorized it by now. I apologize.

6 JUDGE THORNBURG: Are you talking about page 5  
7 of the testimony?

8 MS. O'NEILL: I'm saying beginning at page 25  
9 there is testimony, and we may need to go in-camera then. I  
10 don't object to doing that. In fact, it may be appropriate  
11 to go in-camera at this point because I will have some  
12 questions shortly that will need to be in-camera anyway.

13 JUDGE THORNBURG: At this point we'll go  
14 in-camera, and we may be discussing proprietary or highly  
15 confidential testimony. So those persons who have not  
16 complied with the Commission's Protective Order will need to  
17 leave the hearing room.

18 (REPORTER'S NOTE: At this point, an in-camera  
19 session was held, which is contained in Volume 7, pages 422  
20 through 441 of the transcript.)

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1 CROSS-EXAMINATION BY MS. SHEMWELL:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. I'd like to refer to page 6 of your testimony,  
5 line 11, I believe. You indicate that these two pipeline  
6 companies, MGC and MPC, will continue to be regulated by the  
7 Commission. You can't really guarantee them, though, can  
8 you, that they won't become FERC jurisdictional?

9 A. Well, at the present time, with no connection  
10 to Illinois, I think we can guarantee that.

11 MR. KEEVIL: Judge, I hate to do this right  
12 after you went back public, but if she -- I don't know where  
13 this is going, but we may be proprietary here.

14 JUDGE THORNBURG: As long as we're dealing  
15 with --

16 MS. SHEMWELL: Ifs.

17 JUDGE THORNBURG: No. As long as we're  
18 dealing with the question of FERC jurisdiction, I think we  
19 can deal with that publicly. But if we're dealing with  
20 Gateway's business plan and whether or not they will  
21 actually make the connection, then we'll have to go into --  
22 that will be proprietary.

23 MS. SHEMWELL: I think it's been rather  
24 publicly stated that they intend to reopen that. What they  
25 intend to do with it perhaps is not, or that it's part of

1 the purchase.

2 JUDGE THORNBURG: Well, you asked a  
3 jurisdictional question. I'm okay doing that in public. If  
4 you get into Gateway's business plans, we'll have to look at  
5 closing.

6 BY MS. SHEMWELL:

7 Q. At line 14 you say Gateway is not requesting a  
8 rate increase for either MGC or MPC in this proceeding.  
9 Does that statement imply that they could have?

10 A. I do not know whether as part of this  
11 proceeding they could, but they haven't. That's all I'm  
12 saying.

13 Q. At this point Gateway doesn't own any property  
14 in Missouri; is that correct?

15 A. That's my belief.

16 Q. And they don't provide any utility services to  
17 any customers in Missouri?

18 A. Correct.

19 Q. You indicate that Gateway will keep  
20 UtiliCorp's employees to provide service in this area?

21 A. No.

22 Q. You don't say that?

23 A. Yes, I do refer to other testimony in this  
24 respect of Mr. Ries in that respect.

25 Q. I'll just move on. Can you tell us about

1 Gateway's competitors in the St. Louis/St. Charles area? In  
2 looking at competition, did you look at who their  
3 competitors were? When I say the St. Charles area, I'm  
4 talking about St. Charles County and St. Louis County.

5       A.       The competition in pipelines is a bit wider  
6 issue than a specific county. From a general perspective,  
7 there's always competition to natural gas from other sources  
8 of fuel, and from a wider pipeline perspective there is  
9 potential competition from other pipelines, whether they're  
10 in the county or not.

11       Q.       If we limit it to natural gas competitors, do  
12 you know of natural gas competitors in those counties,  
13 though?

14       A.       I'll have to refresh my memory as to where  
15 those particular counties are.

16       Q.       St. Louis, of course, is on the eastern side  
17 of the state, and St. Charles I think I can say --

18       A.       Just adjacent.

19       Q.       -- is directly west.

20       A.       Yeah. Those areas lie between Mississippi  
21 River Transmission Corp that has a line running into  
22 St. Louis and Missouri Pipeline that is just west, and so I  
23 would --

24       Q.       Missouri Pipeline Company? I'm sorry.

25       A.       Missouri Pipeline Company, yes. That's right.

1 Q. And are you suggesting that's a competitor to  
2 itself or you're listing all --

3 A. I'm listing the pipeline competitors in the  
4 region of the counties you were describing.

5 Q. Thank you.

6 A. And then just across the river there are other  
7 pipelines that can engage in competitive behavior. The NGPL  
8 line coming west is one of them that will happen in the  
9 future.

10 Q. Do you know where Rolla, Missouri is?

11 A. Rolla. I thought you might ask me a question  
12 like this, so I've been reviewing Missouri geography, but I  
13 think you got me.

14 Q. Well, that wasn't my intent. If I say that  
15 it's --

16 A. I don't know where Rolla is.

17 Q. -- southeast approximately, I don't know,  
18 100 miles, are you aware of any natural gas competitors to  
19 MPC or MGC in that area?

20 A. I don't know exactly where Rolla is or in  
21 relationship, for instance, to Williams Gas Pipeline that's  
22 down there somewhere, but I think if you plotted these  
23 pipelines on a map and plotted Rolla on a map you could  
24 pretty much determine this for oneself. I don't know.

25 Q. You testify about Mr. Ries' qualifications.

1 Let's see. On page 11 you start that testimony, and more  
2 specifically on page 13, 12 and 13.

3 A. Yes.

4 Q. How long have you known Mr. Ries?

5 A. I met him as part of this proceeding.

6 Q. Did he ever work for you then?

7 A. Work for me?

8 Q. Yes.

9 A. No, he never worked for me.

10 Q. And please understand, I'm not questioning his  
11 qualifications. Did you call anybody to ask about, for  
12 example, the acquisition of assets or projects exceeding  
13 a billion dollars that you refer to on line 12?

14 A. Line 12 of page 13?

15 Q. Yes, sir. The sentence reads, He has had  
16 supervision responsibilities for as many as 250 employees  
17 and he has recommended to corporate management the  
18 acquisition of assets of projects exceeding \$1 billion.

19 A. No. As my footnote there shows, I'm restating  
20 portions of his own testimony. I'm relying on his testimony  
21 for those representations. I did not independently validate  
22 those numbers.

23 Q. Would the same be true of your testimony about  
24 Mr. Langley's qualifications?

25 A. No.



1 Q. Did you talk to any of his competitors in  
2 Kansas, for example?

3 A. I know Mr. Langley over the course of years.

4 Q. So you didn't talk to anyone at the Kansas  
5 Corporation Commission?

6 A. I have in the past, yes. I've been involved  
7 in proceedings at the Kansas Corporation Commission  
8 involving issues in which Mr. Langley was a witness.

9 Q. You indicate that Gateway will have a capital  
10 structure of approximately 53 percent debt and 47 percent  
11 equity at page 14, line 13.

12 A. Line 14, line 14?

13 Q. Page 14, line 13 and 14.

14 A. Right. References the numbers in the  
15 testimony of Mr. Ries.

16 Q. Has any of the testimony that you have heard  
17 here changed your opinion about those percentages?

18 A. No.

19 Q. Sir, are you aware that Missouri has affiliate  
20 transactions rules? Let me footnote that with the fact that  
21 those rules have been challenged and we're awaiting a  
22 Western District decision, but there is a stay only for  
23 certain parties and that the affiliate transactions rules  
24 are, therefore, effective for other parties?

25 A. Sure. All states have some sort of -- all

1 regulatory jurisdictions that are competent and modern have  
2 some sort of rule associated with affiliate transactions.

3 Q. In your testimony -- I'm sorry. I don't have  
4 the page here. In criticizing Staff's testimony you suggest  
5 that they are somehow supporting cross subsidization; is  
6 that accurate?

7 A. To the extent that there's the implication  
8 that comes from reading the Staff's testimony that they  
9 conclude that there's a benefit to consumers associated with  
10 the inability of the pipeline companies to make a return in  
11 favor of the ability of the distribution company to make a  
12 return, to the extent that that's a cross subsidy, I  
13 conclude that that cannot be characterized as a public  
14 benefit.

15 Q. I'd like to turn to page 27, please, of your  
16 testimony where you discuss what I'm going to refer to, and  
17 I believe you have, as the SunShine decision.

18 A. Yes.

19 Q. Are you testifying that the approach taken by  
20 the FERC in the SunShine case is FERC's current policy?

21 A. It's my testimony that that case reflects what  
22 I understand to be normal FERC action not to become involved  
23 in the regulation of Hinshaw pipelines merely because they  
24 have an interstate affiliate. Something else must prompt,  
25 in my experience, FERC action to assert jurisdiction.

1 Q. Is it your impression that whoever owns the  
2 Trans-Mississippi Pipeline might or is planning to make that  
3 a Hinshaw pipeline?

4 A. Dealing in purely hypothetical terms, if that  
5 pipeline actually runs underneath the river from one state  
6 to another, I don't see how you could claim that that border  
7 crossing would qualify for Hinshaw status.

8 Q. Are you aware of the disposition of the  
9 SunShine Order?

10 A. The disposition?

11 Q. Yes.

12 A. Subsequent to this Order?

13 Q. Yes.

14 A. I am not.

15 Q. So you're not aware that it was vacated?

16 MR. KEEVIL: Objection. He's not aware  
17 whether it was -- I mean, she's testifying.

18 MS. SHEMWELL: I'm just asking if he knew that  
19 it had been vacated.

20 MR. KEEVIL: There's no evidence that it has.  
21 She's assuming facts not in the record.

22 JUDGE THORNBURG: I'll sustain. Ask him  
23 whether he knows whether it's been vacated.

24 BY MS. SHEMWELL:

25 Q. Do you know if it's been vacated?

1           A.       I do not.

2           Q.       Mr. Makholm, does the FERC require a crossing  
3 of three states for a pipeline to be interstate?

4           A.       My understanding is that the FERC does not  
5 have any stated rules as such other than a border crossing  
6 as a way of determining whether or not to assert  
7 jurisdiction. It knows that it is its duty to assert  
8 jurisdiction over those entities that cross state lines.

9                   Whether or not it asserts jurisdictions over  
10 intrastate affiliates of interstate pipelines is entirely up  
11 to it, and it's my testimony that the circumstances that  
12 prompt the FERC to assert jurisdiction over intrastate  
13 pipelines are different than the circumstances that we see  
14 here with MPC and MGC.

15                   And the different circumstances do occur in  
16 the Kansas case where it did run through three states and  
17 cross two different state lines.

18           MS. SHEMWELL: Thank you, sir. That's all I  
19 have. Thank you, your Honor.

20           JUDGE THORNBURG: I think at this time it  
21 would be appropriate to first go back in public session.

22                   I think it would be appropriate to take the  
23 lunch break and go ahead and take an hour and come back at  
24 12:30.

25                   Thank you.

1 (A BREAK WAS TAKEN.)

2 JUDGE THORNBURG: At this time we'll go back  
3 on the record and have questions from the Bench, and we'll  
4 start with Commissioner Lumpe.

5 QUESTIONS BY COMMISSIONER LUMPE:

6 Q. Mr. Makholm, you discuss in your testimony  
7 issues of the FERC jurisdiction.

8 A. I do.

9 Q. Okay. And if I read you correctly, you're  
10 suggesting that the FERC would not take jurisdiction?

11 A. That's correct.

12 Q. All right.

13 A. That's my belief.

14 Q. And is it your understanding -- or maybe  
15 you're not the one to tell me, but I'll ask anyway. Is it  
16 your understanding that none of these many layers of the  
17 company intends to ask for FERC jurisdiction? In other  
18 words, MoGas, Gateway, UPL, the two subsidiaries and any  
19 other layers that might be created, it is not their intent  
20 to ask for FERC jurisdiction?

21 A. Yes, that's true.

22 Q. Okay. The second thing, I think, or one of  
23 the other things you address are the various conditions.

24 A. Yes.

25 Q. And it is -- would you tell me your objections

1 to those conditions?

2           A.       Yes. The seven conditions have -- to the  
3 extent that the conditions aren't irrelevant, I'll point out  
4 what I mean by that -- have two objectionable  
5 characteristics, in my opinion.

6                   One of them is that it appears to me that  
7 various of those conditions represent the quid in a normal  
8 quid pro quo negotiation between a customer and a provider.  
9 For example, having the right of first refusal is a benefit  
10 to a buyer but is a benefit that the buyer usually pays for  
11 somehow or other in some other consideration in a contract.  
12 There's a quid pro quo for the benefit to the buyer.

13                  As such, there are elements of those seven  
14 suggested requirements that represent just a quid and not a  
15 quid pro quo.

16          Q.       You say several. Are there some --

17          A.       I will point them out.

18          Q.       Okay. Which suggests to me that some of them  
19 aren't quid pro quo?

20          A.       Yes.

21          Q.       Okay.

22          A.       I have to refer to the testimony -- it's not  
23 yet in the record, I believe -- of Dr. Pflaum, page 14.

24          Q.       Yes.

25          A.       No. 1 involves a rate cap for a period of not

1 less than five years. That would be a benefit to a buyer,  
2 certainly not a benefit to a seller, something that a seller  
3 would be willing to give a buyer if the buyer is willing to  
4 offer up something in return. So that is a quid, not a quid  
5 pro quo.

6                   No. 2. No. 2 is Laclede's asking for  
7 something that it does not currently have from UtiliCorp  
8 and, in fact, something that Laclede does not have itself.  
9 That is, Laclede can make -- excuse me. UtiliCorp can make  
10 its rates on the basis of a consolidated rate filing. We've  
11 heard Mr. Ries talk about that. Consolidated rate filings  
12 take the cost of service and spread it among all the users  
13 based on the rate design that is then in effect.

14                   Laclede is asking for a suspension of that  
15 ability to engage in consolidated ratemaking, so that to the  
16 extent that there are any transportation volumes lost, the  
17 other customers, Laclede, for instance, in a consolidated  
18 ratemaking setting would not bear any responsibility for  
19 that on the down side.

20                   You notice that they don't ask for any upside  
21 protection for Gateway, which would be that if volumes  
22 increase and there is a setting of rates, that Gateway can  
23 keep that. This is just a one-sided benefit to customers  
24 like Laclede associated with downside volumes. That's  
25 something that's going to be a benefit to the buyer. So

1 once again, this is a quid and not a quid pro quo.

2           No. 3, a prohibition against bypass. Bypass  
3 might be an uncomfortable consequence for Laclede. In any  
4 event, it's something that you Commissioners have under your  
5 control with an intrastate pipeline. It's up to you as the  
6 Commission to decide if and when conditions warrant bypass.  
7 It's your decision.

8           But what Laclede is asking for through the  
9 testimony of Mr. Pflaum here is for Gateway in advance to  
10 make a concession associated with bypass irrespective of the  
11 control that the Commission has over that subject that  
12 UtiliCorp has never -- does not and has never conceded. So  
13 that is also a benefit for Laclede it does not have now.  
14 It's a quid and not a quid pro quo.

15           No. 4. No. 4 is a right of first refusal.  
16 That's a benefit to a buyer. Buyers pay something for that  
17 benefit in contracts, and hence that's a quid and not a quid  
18 pro quo.

19           So those first four items represent something  
20 that you might consider seeing in a deal between a buyer and  
21 seller but they're -- the way they're presented here as  
22 necessary items for this acquisition to go forward appears  
23 to me to be the desire of Laclede to want to get contract  
24 terms and not pay for them, want to get somehow the  
25 Commission to impose contract terms that in a bilateral



1 negotiation would carry with them responsibilities for the  
2 buyer to pay something, and in this case perhaps they can  
3 pay nothing.

4                   In that respect, at least the first four  
5 appear to me to be a gambit on the part of Laclede to try to  
6 get conditions outside of any contract with Gateway that it  
7 won't be able to negotiate without paying for them if it  
8 negotiates with Gateway. That's why those are those four.

9           Q.       And 5, 6, 7 are not quids?

10          A.       Well, 5, 6 and 7 have other issues. No. 5.  
11 No. 5 under the egis, under the umbrella of issues  
12 associated with FERC asks for Gateway to give up ever owning  
13 or using the Trans-Mississippi Pipeline. We've heard from  
14 Mr. Ries that that's a very important part of the business  
15 plan of Gateway. It is a -- it would be a very serious loss  
16 to Gateway, and I don't know -- to me, not knowing --

17                   MR. KEEVIL: Judge, we may need to go  
18 in-camera here if he goes much further with that.

19                   JUDGE THORNBURG: Yeah. I looked up when he  
20 said business plan.

21                   THE WITNESS: I back up. I take -- when I  
22 said business plan, I take it back.

23                   JUDGE THORNBURG: You can't take it back.

24                   THE WITNESS: I didn't mean business plan.

25                   JUDGE THORNBURG: But if you -- the

1 jurisdictional issues we can discuss, but whether or not  
2 they have intent to -- as a part of their business plan,  
3 whether or not they have intent to connect or not connect,  
4 that would have to be in-camera.

5           THE WITNESS: Let me deal with just  
6 jurisdictional and competitive issues. I see No. 5 as  
7 anti-competitive because No. 5 would prevent, purely  
8 hypothetically speaking, a new independent pipeline  
9 transportation company in Missouri from importing volumes  
10 from Illinois that would be in competition to supplies that  
11 already flow into Missouri. That's how I view No. 5. I  
12 view No. 5 as anti-competitive.

13           No. 6, submit the showing of plans. I'm not  
14 exactly sure what the language in No. 6 would actually  
15 result in, but I suspect No. 6 as well as Nos. 1, 2, 3 and 4  
16 would give to customers advance notice and perhaps  
17 competitors advance notice of plans before you would  
18 normally get that kind of notice in the normal commercial  
19 environment. That may be a quid and not a quid pro quo.

20           And No. 7, I think, is completely irrelevant  
21 and redundant because 7 asks for the obligation to use firm  
22 services on interstate pipelines. Gateway will only be a  
23 transportation company. It will not contract for any  
24 services on other pipelines, firm or interruptible.

25           It doesn't matter to us if Gateway is only a

1 transportation company and its users contract for Gateway's  
2 transportation services. It's not Gateway's responsibility  
3 to secure transportation upstream. It's their customer's  
4 responsibility to secure transportation upstream. So I  
5 consider No. 7 to be either redundant or irrelevant, one of  
6 those.

7                   But for all these reasons, either redundancy,  
8 anti-competitiveness in terms of bringing gas supplies into  
9 the St. Louis region, or quids and not quid pro quos, I find  
10 those seven items to be, as I've said, more of a gambit than  
11 a genuine set of issues that go to the question of public  
12 interest.

13 BY COMMISSIONER LUMPE:

14           Q.       Let me ask you on 6, Item No. 6, we talked a  
15 little bit about this yesterday. Were you here yesterday?

16           A.       I was.

17           Q.       Okay. About the issue of does the plan come  
18 first or the decision and the decision come first and then  
19 the plan and the chicken and the egg sort of thing. Which  
20 should be first? I mean, guess I'm trying to get at how  
21 does the Commission make good decisions without full  
22 information?

23           A.       If I might, and I don't want to be  
24 presumptuous, but the decision of the Commission with  
25 respect to the public interest of this transaction as it

1 stands seems to me sufficiently informed by the plans that  
2 we've heard about yesterday that are already filed either in  
3 testimony or responses to Data Requests in terms of how the  
4 company's going to cover its interest payments, where its  
5 revenues are going to come from and what plans it sees over  
6 the next couple of years in terms of growth in volumes.

7                   Those are plans, and they have to do with MPC  
8 and MGC, and I believe that those are plans that would allow  
9 a prudent decision regarding whether this is in the public  
10 interest. That's only my opinion.

11                   With respect to any hypothetical plans  
12 associated with the Mississippi River crossing, without  
13 being specific or speaking specific about what we heard  
14 yesterday, I think that those would be competitive plans.  
15 They would be plans that would be caught up in the  
16 commercial interest of the company pursuing them.

17                   And I would not believe it prudent for the  
18 company to reveal all of its detailed plans on how to be a  
19 competitor with that kind of project in advance, plans that  
20 its competitors could then examine, plans regarding  
21 customers that then the competitors then could go to and try  
22 to undercut and so forth.

23                   Therefore, when it deals with new projects,  
24 new pipelines, new services, new loads, commercial plans  
25 cannot have the same specificity as we're normally used to

1 dealing with in regulated load and regulated pipelines and  
2 distribution services and so forth that don't face  
3 competition.

4           Q.       So to the extent that we have some  
5 calculations in the testimony saying here's what we think  
6 our revenue will be, here's our expenses, we think this will  
7 be our profit or what we'll make, that we have adequate  
8 dollars to pay our debt, to pay our equity, et cetera,  
9 et cetera, those are sufficient numbers for us to make a  
10 good decision?

11          A.       Yes, with respect to the facilities over which  
12 you have jurisdiction, which are MPC and MGC. The pipeline  
13 under the river no one has jurisdiction because it's not  
14 being used for anything. But we know that, via the  
15 testimony yesterday of Mr. Ries, that there's enough money  
16 in the revenues --

17                   MR. KEEVIL: Be careful.

18                   THE WITNESS: We know that without any  
19 expansion, without any use of any hypothetical shipments of  
20 gas from Illinois, that the company's credit-worthy and it  
21 has sufficient revenues to cover its interest payments and  
22 to include a return on equity now.

23 BY COMMISSIONER LUMPE:

24           Q.       Okay. Because my concern would be, one, the  
25 first issue I talked to you about, losing jurisdiction to

1 the FERC. We don't want to do that. And the second one  
2 would be, I do not want to lose the companies to the bank,  
3 and that's why I asked those questions.

4           A.       Yes. And I have short responses to those.  
5 The first is, I have a great deal of experience in FERC  
6 proceedings, dozen of them, and in state proceedings, dozens  
7 of them, and I do not conclude that there is any significant  
8 possibility that MPC and MGC would fall under FERC  
9 jurisdiction both because the company is not going to ask  
10 for that and because the structure of those pipelines, those  
11 intrastate lines, does not mimic the kind of structure that  
12 has prompted FERC to assert jurisdiction in the past.

13                   The Federal Energy Regulatory Commission is  
14 not seeking new jurisdiction. They only do it when they  
15 think it's ridiculous for them not to. I do not believe  
16 that's going to happen.

17                   And with respect to the bank taking over the  
18 assets in the case of -- or taking the stock in the case of  
19 a default, I believe that when a company has put up close to  
20 half --

21                   MR. KEEVIL: Careful.

22                   THE WITNESS: Hypothetically.

23                   MR. KEEVIL: No numbers.

24                   THE WITNESS: No numbers. When a company has  
25 put up --

1 MS. O'NEILL: Your Honor, perhaps it would be  
2 appropriate to go in-camera so we can get complete answers  
3 from Mr. Makholm.

4 JUDGE THORNBURG: Just so we can answer  
5 comfortably, we'll go in-camera for a moment. I'll ask the  
6 persons who have not abided by the Commission's Order to be  
7 qualified to hear highly confidential information to leave  
8 the room.

9 (REPORTER'S NOTE: At this point, an in-camera  
10 session was held, which is contained in Volume 7, pages 462  
11 through 463 of the transcript.)

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1 JUDGE THORNBURG: Commissioner Murray, did you  
2 have any questions?

3 COMMISSIONER MURRAY: I have no questions.

4 JUDGE THORNBURG: If somebody will let the  
5 folks in the lobby know they can come in.

6 I had a couple of questions just so I can  
7 understand some things that we talked about earlier.

8 QUESTIONS BY JUDGE THORNBURG:

9 Q. I want to come back to one of the conditions  
10 you talked about, and what I want to know is if I'm an LDC  
11 on the MGC pipeline, that's my only source of gas, to  
12 transport gas, would I also be responsible or an agent on my  
13 behalf be responsible for arranging transport on an upstream  
14 pipeline or would MGC take care of that for me?

15 A. It would be what you request MGC to do, but  
16 typically the distributor is responsible for its own gas  
17 supply and its own gas transportation.

18 Q. Okay. And MGC, if I said I want a firm  
19 contract with you and I want a firm contract upstream, MGC  
20 would do that?

21 A. With Panhandle Eastern. You as the LDC can  
22 contract firm with MGC, you can contract firm with Panhandle  
23 Eastern, and you can buy gas from whomever puts it into  
24 Panhandle Eastern.

25 Q. Let's talk about the Hinshaw Amendment and



1 Hinshaw status. Can you tell me what that is?

2 A. Generally, it refers to pipelines that don't  
3 cross state lines and are not subject to FERC jurisdiction.

4 Q. Is the Hinshaw Amendment a federal law?

5 A. I believe it's an amendment to the Natural Gas  
6 Act, I believe.

7 Q. What's the significance of having Hinshaw  
8 status?

9 A. What's the significance of it?

10 Q. What does that mean? What is Hinshaw status?

11 A. It just means that the FERC, the federal  
12 energy regulators do not have jurisdiction over prices or  
13 terms or other elements associated with the operation of  
14 those pipelines.

15 Q. And does that apply whether it's an intrastate  
16 or interstate pipeline?

17 A. Those are loose terms that -- interstate by  
18 definition is interstate commerce and it falls under the  
19 jurisdiction of the Natural Gas Act, and hence the Federal  
20 Energy Regulatory Commission is the regulator of those terms  
21 and conditions on those pipelines.

22 Q. And if that sort of pipeline was in Hinshaw  
23 status for the purpose --

24 A. An interstate pipeline can't be in Hinshaw  
25 because its interstate pipeline.

1 Q. Okay.

2 A. It's doing business crossing state lines as an  
3 operational entity, and hence that definition is something  
4 that's not, cannot be Hinshaw.

5 JUDGE THORNBURG: Okay. That's all I had.  
6 We're going to move to the recross. UtiliCorp, do you have  
7 any questions, Mr. Boudreau?

8 MR. BOUDREAU: I have none. Thank you.

9 JUDGE THORNBURG: Ameren, Mr. Byrne?

10 MR. BYRNE: None, your Honor.

11 JUDGE THORNBURG: Laclede?

12 RECROSS-EXAMINATION BY MR. PENDERGAST:

13 Q. You were asked a number of questions by  
14 Commissioner Lumpe regarding the conditions that Laclede has  
15 proposed in its testimony. Do you recall those questions?

16 A. Yes.

17 Q. And I think you came up with this quid pro quo  
18 concept that you discussed at some length and that these are  
19 matters that ought to be addressed contractually rather than  
20 by the Commission. Is that your basic position?

21 A. That's my basic position, yes.

22 Q. Let me ask you this. You've read our  
23 testimony, and you're aware of the misgivings that Laclede  
24 has about doing business with Gateway, aren't you?

25 A. I'm not aware of that except to the extent

1 that it appears in Dr. Pflaum's testimony.

2 Q. Okay. And in a nonregulated environment, if I  
3 had misgivings about doing business with somebody, would I  
4 be required to do business with them?

5 A. In a nonregulated environment?

6 Q. Yes.

7 A. If you had misgivings?

8 Q. Yes.

9 A. It would be up to you and the party to deal  
10 with those misgivings.

11 Q. Now, have you come to this Commission and  
12 said, I want you to approve this proposed restructuring but  
13 only if Laclede wants to do business with them? Have you  
14 taken that position?

15 A. I'm not sure. I didn't get that question.  
16 That took a turn that I wasn't expecting. Could you repeat  
17 that?

18 Q. Yes. Have you come to this Commission and  
19 said, We want to have this proposed acquisition approved and  
20 we want to provide service to Laclede, particularly for  
21 those portions of Laclede that can't take service from  
22 anybody else, but we'll only do it if we can negotiate a  
23 contract with Laclede, and we'll only ask this Commission to  
24 approve it if they have Laclede's consent? Is that the  
25 position you've taken?

1           A.       No.

2           Q.       What you've done is you've asked this  
3 Commission, notwithstanding Laclede's deep misgivings,  
4 notwithstanding the fact that Laclede has raised all these  
5 concerns, to tell Laclede that it's going to have to do  
6 business with you --

7                   MR. KEEVIL:  Objection, your Honor.

8                   MR. PENDERGAST:  -- whether Laclede wants to  
9 or not?

10                  MR. BOUDREAU:  This sounds to me like the  
11 attorney's testifying.

12                  JUDGE THORNBURG:  Mr. Pendergast, you need to  
13 redo your question.  The objection is sustained.

14 BY MR. PENDERGAST:

15           Q.       Is it your position that Laclede should be  
16 able to negotiate with you whether or not it wants to do  
17 business?

18           A.       Me, you mean --

19           Q.       With Gateway.

20           A.       Gateway.  It's my position that nothing with  
21 respect to the prices and services of Gateway's service to  
22 Laclede is affected by this deal, and, therefore, to the  
23 extent that any of Laclede's misgivings as they appear in  
24 the testimony of Dr. Pflaum are genuine, my -- and  
25 particularly as reflected in this list of seven items, my

1 answer is they're not genuine. They're red herrings. You  
2 may have other problems that are not contained in the  
3 testimony of Dr. Pflaum, but I don't know what those are.

4 Q. Let me ask you this. Is it your position that  
5 Laclede will have the opportunity to determine whether or  
6 not it will do business with Gateway for those portions of  
7 its load that can only be served by MPC if the Commission  
8 approves this proposed acquisition?

9 A. It will retain -- it's my testimony that I  
10 believe you will retain the same rights with respect to  
11 terms of service and prices that you have now with respect  
12 to the current owner.

13 Q. So it would be your answer that Laclede will  
14 not have the opportunity to not take service from Gateway if  
15 it does not believe that it's a reliable provider?

16 MR. KEEVIL: Judge, I believe it's asked and  
17 answered.

18 MR. PENDERGAST: It wasn't answered, your  
19 Honor, and I'm trying to get an answer.

20 JUDGE THORNBURG: It's a difficult question.  
21 I'll overrule the objection. Well, the objection is  
22 overruled.

23 THE WITNESS: It's my testimony that nothing  
24 has changed that would deny you any rights that you have  
25 before this Commission to deal with issues associated with

1 price or quantity or quality associated with the service you  
2 get on MPC.

3 BY MR. PENDERGAST:

4 Q. Let me ask you this. Will this change -- will  
5 the entity that serves us change if the Commission approves  
6 this acquisition?

7 A. Entity meaning piece of steel? No.

8 Q. No. Will the legal entity that is serving us  
9 change if the Commission approves this acquisition?

10 A. Of course.

11 Q. Okay. And is it your position that whether  
12 that change occurs or not should be something that Laclede  
13 has an opportunity to negotiate and has an opportunity to  
14 say yea or nay to, or is it something instead that you  
15 believe the Commission needs to approve regardless of what  
16 Laclede's position on that is?

17 MR. KEEVIL: Judge, I'm going to -- I've lost  
18 track of what legal entity he's talking about here. MPC is  
19 currently serving Laclede. MPC will be serving Laclede  
20 after the transaction. Is he talking about MPC or is he  
21 talking about Gateway?

22 MR. PENDERGAST: I'm talking about Gateway. I  
23 think he already said it would be a different legal entity.

24 JUDGE THORNBURG: I'm sorry. You're going to  
25 have an opportunity to clear anything up you think's unclear

1 on redirect, Mr. Keevil. I'll overrule the objection. The  
2 question was already answered anyway.

3 THE WITNESS: Well, there was a question.

4 JUDGE THORNBURG: Proceed.

5 THE WITNESS: I will.

6 JUDGE THORNBURG: If you can remember the  
7 question.

8 THE WITNESS: I can. I believe you have the  
9 right to make your concerns known and that your position in  
10 this proceeding is to a large part doing so. However, it's  
11 up to the Commission to determine what represents the public  
12 interest, not you, Laclede.

13 What I object to is your insinuation that  
14 merely because one owner of MoGas is -- was once an owner of  
15 a completely different kind of pipeline in Kansas, that  
16 somehow Gateway is unfit to serve you. I think that's a  
17 disingenuous and unsupportable position.

18 BY MR. PENDERGAST:

19 Q. And, sir, I'm saying regardless of what you  
20 may think and regardless of what position you may have, if  
21 that's how Laclede feels, if that's what conclusions Laclede  
22 has reached, what you're saying is it's up to the Commission  
23 to decide whether or not we will be forced to take service  
24 from Gateway rather than it being something that we will be  
25 able to voluntarily negotiate with you through a contractual

1 arrangement?

2           A.       With Gateway you mean?

3           Q.       Yes.

4           A.       You take service from a regulated intrastate  
5 pipeline. I do not believe that Gateway has property  
6 rights -- excuse me. I do not believe that Laclede has any  
7 property rights in deciding who can and cannot own the  
8 facilities that serve you.

9                   I think that is an issue, to the extent that  
10 the Commission has asserted jurisdiction over the  
11 transaction, for the Commission to decide. But it's  
12 perfectly possible for the Commission to decide to approve  
13 the transaction over your objections.

14          Q.       So when it comes to this arena as to what  
15 ought to be contractual in nature and freely negotiated,  
16 your position would be who you do business with isn't one of  
17 those items, that's something for the Commission to control,  
18 but the terms and conditions under which that happens in  
19 which this person or entity provides service, that's  
20 something that has to be negotiated by contract? Is that  
21 your position?

22          A.       No, not as such. My position is that it  
23 appears to me that to the extent your concerns are reflected  
24 in the testimony of Dr. Pflaum, the list of items that he  
25 has requested that the Commission consider do not seem



1 motivated by a genuine concern over quality of service,  
2 that's not changing, or genuine concern over price, that's  
3 not changing. It seems motivated by the desire to get a  
4 jump on negotiations further down the road.

5 Q. Well, that may be your view, but what I'm  
6 saying is, if we have misgivings about having to enter into  
7 a contractual relationship and having no choice but doing it  
8 with Gateway and we believe that there are measures that  
9 have to be taken to make that feasible given what we  
10 believe, what you're basically saying is only part of it is  
11 something that's legitimate for the Commission to determine,  
12 and that's whether or not we have to go ahead and take  
13 service from them? That's within their discretion, but  
14 these measures under which we take service you believe ought  
15 to be privately negotiated?

16 A. No, I don't believe so. I think that there's  
17 a tariff that this Commission approves under which these  
18 facilities provide service, and that tariff controls what's  
19 charged to you today, at least in terms of maximum prices  
20 and the parameters of quantity and quality of service.

21 You're protected by tariff, just like your  
22 customers are protected by tariff overseen by this  
23 Commission. To the extent that you want to negotiate  
24 something that's different than the tariff, then that's up  
25 to you to work out, to the extent you can, with the owners

1 of the pipeline now or in the future.

2           But the basic protections of the interests of  
3 you as a utility and your consumers is up to the Commission.  
4 At least the first four items on this list of seven produced  
5 by Dr. Pflaum are things that are very much within the  
6 Commission's jurisdiction to decide, and they don't have to  
7 be decided beforehand as part of this deal in a way that  
8 gives you benefits that you don't currently have.

9           Q.       So you say these are within the Commission's  
10 discretion to decide?

11           JUDGE THORNBURG: Was that a question?

12           MR. PENDERGAST: Or jurisdiction to decide.

13           THE WITNESS: The Commission --

14           JUDGE THORNBURG: I'm sorry. What is your  
15 question? Put it in the form of a question.

16 BY MR. PENDERGAST:

17           Q.       So it's your testimony that the first four of  
18 these are within the Commission's jurisdiction to decide?

19           A.       These things concern rates, terms of service  
20 and such. So to the extent that there's a rate case some  
21 day, the Commission has lost no jurisdiction over the terms  
22 of the rate or the quantity or quality of service as it  
23 comes up in a rate case.

24           Q.       Let me ask you this. In an unregulated  
25 environment where people have an opportunity to negotiate

1 arrangements and negotiate who they will do business with,  
2 is it your experience that on occasion when a party to a  
3 transaction changes and one of the parties to that  
4 transaction has misgivings about it, that they will propose  
5 additional measures to satisfy those misgivings? Has that  
6 ever happened in an unregulated environment?

7           A.       Of course.

8           Q.       And as far as these specific conditions are  
9 concerned, you discussed the direct service to industrial  
10 customers, the bypass provision No. 3. Now, is it your  
11 understanding that Gateway has already agreed that that's in  
12 the existing certificate and it will abide by that?

13          A.       I don't -- I don't know about that. The  
14 existing certificate I have not read, and I'm not sure -- I  
15 was here yesterday and saw discussions surrounding it, but  
16 I'm not exactly sure what that discussion constituted. So I  
17 don't want to agree with that. I just don't know.

18          Q.       Well, is it your testimony that this third  
19 condition here is inappropriate and should not be approved  
20 by the Commission?

21          A.       My point is that the third condition, as I  
22 stated before in response to Commissioner Lumpe, is that the  
23 Commission retains all of the discretion over deciding  
24 issues of bypass that it always had, and if this Commission  
25 is predisposed to look -- frown upon bypass, nothing

1 changes.

2           But if this Commission sees perhaps on a  
3 case-by-case basis some large industrial customer requesting  
4 bypass, then it's up to this Commission to decide whether or  
5 not that's a reasonable request. It's not something to make  
6 a condition on Gateway when the Commission retains full  
7 jurisdiction to decide on questions of bypass.

8           Q.       I'm really confused now. You're saying that  
9 Gateway's position is now that this bypass certificate  
10 condition, your testimony is that the Commission should not  
11 continue that. Is that your testimony?

12           MR. KEEVIL: Objection, Judge. What he said  
13 was he has not read the certificate of MPC and MGC and he  
14 does not know what the current conditions are regarding  
15 bypass. Mr. Ries, as I'm sure Mr. Pendergast knows, spoke  
16 about this earlier either yesterday or today, and whatever  
17 Gateway has said regarding the issue of bypass is already in  
18 the record.

19           Mr. Pendergast is just plowing ground for the  
20 umpteenth time here, and it's already been answered by  
21 Mr. Ries, been answered by Mr. Makholm that he hasn't read  
22 the certificate. This is irrelevant, unduly inflammatory  
23 and unduly lengthy.

24           JUDGE THORNBURG: The objection is overruled.  
25 You can ask the question, answer the question. Do you

1 recall the question?

2 THE WITNESS: My answer is no.

3 BY MR. PENDERGAST:

4 Q. If only I remembered what my question was.

5 Was that the answer I was looking for?

6 A. No. No. If only it were.

7 (Laughter)

8 Q. Since it wasn't -- well, are you deferring to  
9 Mr. Ries on this subject or are you stating an opinion on  
10 behalf of Gateway with regard to whether or not this  
11 condition should continue?

12 A. I'm deferring to what you've heard from  
13 Mr. Ries on questions of bypass.

14 Q. Okay. Can you tell me whether or not for a  
15 significant period of time FERC for interstate pipelines had  
16 something called a right of first refusal?

17 A. Yes.

18 Q. Okay. And can you tell me how that right of  
19 first refusal worked?

20 A. The right of first refusal allows interstate  
21 pipeline firm shippers like Laclede to continue to renew  
22 their contracts on interstate pipelines to the extent that  
23 you match the highest offer that's brought in by somebody  
24 else.

25 That condition is part of a larger set of

1 terms and conditions imposed on taking firm service on  
2 interstate pipelines. Don't view it by itself. It's part  
3 of a package of terms and conditions.

4 Q. Okay. But that's something that FERC has  
5 authorized and imposed outside of the contractual bargaining  
6 process?

7 A. Yes.

8 Q. Can you tell me, does FERC also have  
9 provisions that indicate when pipelines pursue new business  
10 opportunities and incur costs to do so, they do so at their  
11 own risk?

12 A. It depends on the case, but there are cases in  
13 which that is true.

14 Q. Okay. And FERC does that regardless of what  
15 contractual arrangements there may be between the parties?

16 A. That's not necessarily true. Parties can  
17 engage in contractual relationships that transfer the risk  
18 to somebody else, but it's certainly the case that the  
19 Commission, the FERC, has allowed pipelines to build  
20 facilities at risk.

21 Q. Do you know if any of its previous decisions  
22 regarding any of these facilities this Commission has ever  
23 spoken to the issue of risk and whether the acquirer of the  
24 facilities should be placed at risk?

25 A. I do not know.

1           Q.       And you indicated that under your quid pro quo  
2 dialog that you were concerned because of Laclede saying  
3 that it did not want to bear the risk of volumes that were  
4 lost, that we had not indicated that we would be willing to  
5 give up the benefits of increased volumes. Do you recall  
6 that?

7           A.       I do.

8           Q.       If Laclede were willing to give up that  
9 benefit, would that condition be acceptable to you then?

10          A.       I'm not sure it would be. The insulation of  
11 risk of a buyer on a consolidated ratemaking system is an  
12 interesting concept, but it's not a concept that any of the  
13 customers of Laclede enjoy.

14                   And to the extent that that would be  
15 considered a benefit, it's a benefit that you would be  
16 getting out of this arrangement that you don't currently  
17 have with UtiliCorp, which was the reason for my discussion  
18 associated with the one-sidedness of these conditions in the  
19 first place.

20                   I don't know how that would work out or the  
21 extent to which Gateway would object to that particular  
22 provision if you made it more balanced. They may accept it.  
23 You'd have to ask them.

24                   MR. PENDERGAST: Okay. Thank you. I have no  
25 further questions.

1 JUDGE THORNBURG: Thank you. Office of the  
2 Public Counsel?

3 MS. O'NEILL: Thank you, your honor.

4 RECROSS-EXAMINATION BY MS. O'NEILL:

5 Q. Mr. Makholm, in responding to Commissioner  
6 Lumpe's concerns about not wanting to lose these utilities  
7 to the bank, you suggested that that possibility was, in  
8 your opinion, not likely; is that correct?

9 A. I went further than that. I described it -- I  
10 may have described it as inconceivable if I hadn't already  
11 done so.

12 Q. And in part your answer relies on your  
13 acceptance of the proposed capital structure that's been put  
14 forth in the testimony of Mr. Ries; is that correct?

15 MR. KEEVIL: Judge, I don't know if we're  
16 getting --

17 JUDGE THORNBURG: You're concerned we may be  
18 getting --

19 MR. KEEVIL: Well, that question's okay, but I  
20 don't know where -- I'm alerting everyone we're getting  
21 close.

22 JUDGE THORNBURG: You may proceed with your  
23 answer.

24 THE WITNESS: I can answer that. The extent  
25 to which there may be any bank default or foreclosure issues



1 or any debt issues like that are, of course, affected by the  
2 amount of equity in the capital structure.

3 BY MS. O'NEILL:

4 Q. And if, in fact, the actual capital structure  
5 would match what Mr. Ries proposed pro forma, that would be  
6 something that you're relying on as a basis for your answer?

7 A. That's correct. It's such a normal type of  
8 capital structure for a pipeline company that it would not  
9 constitute one which would give concern about something as  
10 truly odd in regulatory circles as default or foreclosure.

11 Q. But it doesn't change the fact that the bank's  
12 perspective on this loan is different than what the  
13 Commission's perspective is as far as the financial  
14 viability of the company?

15 A. We've been through that, and it is -- what we  
16 discussed was that the bank's perspective is a subset of the  
17 Commission's perspective in that the bank is concerned with  
18 the credit-worthiness of the equity holders and the extent  
19 to which the assets and the revenues coming in with the use  
20 of assets can pay for the debt and can pay for equity in  
21 addition to covering the debt.

22 And so the credit-worthiness criterion should  
23 be just as important to the Commission as it is to the bank.

24 Q. Well, and without going back through the  
25 testimony that you and I went through before lunch today,

1 you do understand that Commissioner Lumpe's concerns and the  
2 Commission's concerns are different from what the bank's  
3 concerns are?

4           A.       They're greater than the bank's concerns but  
5 not different. It's a subset versus the whole set.

6           Q.       And you understand that the Commission's  
7 interest in this transaction is to determine whether the  
8 pipeline's ultimate customers, the public, will suffer a  
9 detriment if this transaction's allowed?

10                   MR. KEEVIL: I'm going to object to this,  
11 Judge. This is supposed to be based on questions from the  
12 Bench, and she's setting forth her belief as to what the  
13 Commission's concerns are.

14                   JUDGE THORNBURG: I think you are beyond the  
15 scope of the Bench questions, so I'll sustain the objection.

16                   MS. O'NEILL: I don't have any further  
17 questions at this time.

18                   JUDGE THORNBURG: Thank you. Ms. Shemwell.

19                   MS. SHEM WELL: Thank you.

20 RE-CROSS-EXAMINATION BY MS. SHEM WELL:

21           Q.       Mr. Makholm, in response to a question by  
22 Commissioner Lumpe, you seemed essentially to be  
23 guaranteeing that MPC and MGC will not become FERC  
24 jurisdictional. Can you actually give the Commission such a  
25 guarantee?

1           A.       Of course I cannot. All I can give the  
2 Commission is my opinion based on my experience.

3           MS. SHEMWELL: Thank you.

4           JUDGE THORNBURG: Commissioner Gaw, you  
5 weren't here when we picked up earlier. Do you have any  
6 questions?

7           COMMISSIONER GAW: No. I'm fine.

8           JUDGE THORNBURG: At this time we're ready for  
9 the redirect. Mr. Keevil, are you prepared to proceed?

10          MR. KEEVIL: Could I have -- how long have we  
11 been going, about an hour?

12          JUDGE THORNBURG: We've been in here about  
13 55 minutes. Typically we go about an hour and a half before  
14 breaking. If you need five minutes --

15          MR. KEEVIL: I would appreciate just five  
16 minutes.

17          JUDGE THORNBURG: Five or ten minutes?

18          MR. KEEVIL: Five should be enough.

19          JUDGE THORNBURG: We'll break for five  
20 minutes. You can stretch or get coffee. That will help  
21 speed up the redirect also.

22          Thank you.

23          (A BREAK WAS TAKEN.)

24          JUDGE THORNBURG: We're ready to start  
25 redirect, Mr. Keevil.

1 MR. KEEVIL: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. KEEVIL:

3 Q. Mr. Makholm, this morning before we broke for  
4 lunch Mr. Pendergast handed you a copy of a Petition brought  
5 by OneOk as plaintiff against Kansas Pipeline Company and  
6 referred to some attachments that are referenced in that  
7 Petition but I don't believe showed you the attachments.  
8 Seemed to me to imply that the attachments were the Linchpin  
9 and Wraparound agreements that he was talking about during  
10 his cross-examination of you.

11 My question to you is, during the lunch break  
12 did you have an opportunity to review the attachments to the  
13 Petition which Mr. Pendergast showed you this morning?

14 A. Yes.

15 Q. And were any of those attachments the Linchpin  
16 or Wraparound agreement?

17 A. They were not.

18 MR. PENDERGAST: I think I'm going to object.  
19 I believe it mischaracterizes the record. I don't believe I  
20 ever indicated that the attachments, which I don't believe I  
21 ever received from Gateway when it provided me with the  
22 Petition, were the Linchpin contracts.

23 MR. KEEVIL: First of all, I don't believe  
24 they were provided because I believe they asked for the  
25 things that Dr. Makholm had reviewed prior to the testimony.

1 He reviewed the Petition prior to his testimony. As I  
2 indicated, he reviewed the attachments over lunch. The  
3 attachments were and are irrelevant until Mr. Pendergast  
4 made the insinuation during his cross-examination that he  
5 made.

6 JUDGE THORNBURG: I'm going to overrule the  
7 objection. I think it helps clarify the record to know what  
8 the witness considered, and so for that purpose it's  
9 helpful.

10 Thank you.

11 BY MR. KEEVIL:

12 Q. This morning before lunch Mr. Pendergast also  
13 asked you some questions about whether Kansas Pipeline had  
14 sued MGE in the past.

15 And my question to you is, if it were  
16 represented to you that any suit brought by KPC against MGE  
17 was done merely as a counterclaim or defensive posture  
18 rather than as the plaintiff, would you have any reason to  
19 dispute that representation?

20 A. No. That confirms my recollection.

21 Q. During Mr. Pendergast's cross of you this  
22 afternoon after lunch, he asked you the question will the  
23 legal -- assuming the transaction is approved, will the  
24 legal entity providing service to Laclede change, and I  
25 believe your answer at that time was yes, but perhaps I

1 misunderstood you. And if it was, would you like to explain  
2 your answer?

3           A.       I believe that I made a mistake in that, legal  
4 entity, I was thinking about the change in ownership from  
5 UtiliCorp to Gateway, but the entity that provides service  
6 to Laclede is MPC, and that legal entity will not change.

7           Q.       To your knowledge, will the tariffed rates or  
8 services provided by MPC to Laclede or to anyone else change  
9 as a result of this proceeding?

10          A.       They won't because this is not a rate case.

11                 MR. KEEVIL: I have two proprietary questions,  
12 Judge. I'm trying to figure out if I have any more public  
13 so we don't have to go --

14                 JUDGE THORNBURG: That's fine if you want to  
15 check with your support staff.

16 BY MR. KEEVIL:

17          Q.       Dr. Makholm, is it your understanding that MGC  
18 has represented that it will not and does not intend to seek  
19 FERC jurisdiction for MPC?

20          A.       That's correct.

21                 MR. KEEVIL: Okay. Two real quick proprietary  
22 questions, Judge.

23                 JUDGE THORNBURG: At this point we'll go into  
24 in-camera session, and proprietary information is going to  
25 be discussed. So anyone not authorized to hear this

1 information in the Protective Order will lead to leave.

2                   (REPORTER'S NOTE: At this point, an in-camera  
3 session was held, which is contained in Volume 7, pages 488  
4 through 490 of the transcript.)

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1 JUDGE THORNBURG: I believe that concludes the  
2 questioning of Mr. Makholm.

3 Okay. Mr. Byrne, would you like to proceed  
4 with your witness?

5 MR. BYRNE: Yes. I need to go fetch my  
6 witness if I could.

7 MR. KEEVIL: Judge, was Dr. Makholm's  
8 testimony received?

9 JUDGE THORNBURG: I have it marked as received  
10 and offered.

11 MR. KEEVIL: I knew I'd offered it. I failed  
12 to put a check mark.

13 JUDGE THORNBURG: Well, the record if it  
14 doesn't already reflect should show that this evidence has  
15 been received, the testimony, and those are Exhibits 6 and  
16 6HC.

17 Thank you.

18 (Witness sworn.)

19 JUDGE THORNBURG: You may be seated.  
20 Mr. Byrne, you may proceed.

21 MR. BYRNE: Thank you, your Honor.

22 JULIANNE J. HEINS testified as follows:

23 DIRECT EXAMINATION BY MR. BYRNE:

24 Q. Could you please state your name for the  
25 record.



1           A.       My name is Julianne J. Heins.

2           Q.       And are you the same Julianne J. Heins that's  
3 caused to be filed in this proceeding rebuttal testimony  
4 that's been marked as Exhibit 7 and cross-surrebuttal  
5 testimony that's been marked as Exhibit 8?

6           A.       Yes, I am.

7           Q.       And are the answers that you gave in that  
8 rebuttal and cross-surrebuttal testimony true and correct to  
9 the best of your knowledge and belief?

10          A.       Yes, I am, except I have one change I need to  
11 make.

12          Q.       I'll get to that in a second. Other than the  
13 change that you're going to make, are they true and correct  
14 to the best of your knowledge and belief?

15          A.       Yes.

16          Q.       Okay. Why don't we get to the change, then?

17          A.       On page 5 of my rebuttal testimony, line 16,  
18 the word reliable should be unreliable. So the sentence  
19 would read, In many ways including causing unreliable or  
20 unsafe system operations prompting.

21          Q.       Okay. Do you have any other changes to your  
22 testimony?

23          A.       No, I do not.

24          Q.       Okay. And as corrected, if I was to ask you  
25 those questions contained in that testimony today when

1 you're here under oath, would your answers be the same?

2           A.       Yes, they would.

3                   MR. BYRNE: Thank you. I would offer  
4 Exhibits 7 and 8 and would tender Ms. Heins for  
5 cross-examination.

6                   JUDGE THORNBURG: Are there any objections to  
7 Exhibits 7 or 8?

8                   MR. KEEVIL: Judge, I object to Exhibit 8. It  
9 purports to be cross-surrebuttal but all Ms. Heins does in  
10 there is take pieces from other parties' rebuttal testimony  
11 and agree with them or may even attempt to piggyback onto  
12 their rebuttal.

13                   The purpose of cross-surrebuttal is to take  
14 issue with, to rebut testimony previously filed, not to join  
15 in or piggyback or otherwise say the same thing as something  
16 that was previously filed.

17                   No objection to 7.

18                   MR. BYRNE: Your Honor, I believe the purpose  
19 of cross-surrebuttal testimony is to respond to the rebuttal  
20 testimony of other parties. That's what we did here, and I  
21 believe it's perfectly appropriate.

22                   JUDGE THORNBURG: Objection will be overruled  
23 and the exhibit will be received.

24                   (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE THORNBURG: Our first in order of  
2 cross-examination is Laclede Gas, Mr. Pendergast.

3 MR. PENDERGAST: No questions, your Honor.

4 JUDGE THORNBURG: Office of Public Counsel?

5 MS. O'NEILL: No questions, your Honor.

6 JUDGE THORNBURG: Ms. Shemwell?

7 CROSS-EXAMINATION BY MS. SHEMWELL:

8 Q. Good afternoon, Ms. Heins.

9 A. Good afternoon.

10 Q. Is Ameren dependent on, is it MGC, to serve  
11 customers, your natural gas customers?

12 A. We're relying on Missouri Pipeline Company,  
13 MPC.

14 Q. In what area of your territory is that?

15 A. That's in the Wentzville service territory.

16 Q. Am I correctly characterizing your testimony  
17 when I say you expressed some concern with reliability?

18 A. With any change of ownership, there is a  
19 concern of reliability because for that service territory we  
20 require deliveries off of Missouri Pipeline to meet pressure  
21 requirements on the west side of our Wentzville system. If  
22 there were to be a failure in delivery to us in that system,  
23 we could effectively lose some of the small communities in  
24 the Wentzville service area.

25 Q. When you say lose some of the small

1 communities, what does that mean?

2           A.       No gas service. The pressures would be low  
3 enough that we could not perhaps make deliveries on peak  
4 days.

5           Q.       Just to clarify further, if I were a residence  
6 in that area, I might not have gas.

7           A.       That's correct, under a peak day scenario,  
8 yes.

9           Q.       How many peak day scenarios do you have a  
10 year?

11          A.       I'm not sure I understand what you're meaning.

12          Q.       I guess my question is, are there peak and  
13 off-peak days during the year?

14          A.       Yes, there are.

15          Q.       And can you say in general how many peak days  
16 you might average per year?

17               MR. KEEVIL: Judge, I'm going to object to  
18 this. It's friendly cross and it's irrelevant. Now she's  
19 asking for speculation.

20               MS. SHEMWELL: I don't --

21               MR. KEEVIL: Can you guess how many peak days?

22               MS. SHEMWELL: I wasn't aware that friendly  
23 cross was a reasonable objection, but I'm just trying to  
24 clarify their concerns with reliability and how often that  
25 might happen.

1 JUDGE THORNBURG: The objection is overruled.

2 THE WITNESS: How we plan for our peak days,  
3 we plan based upon the coldest temperatures experienced for  
4 over a 30-year period. Can I tell you with certainty that  
5 this winter we will reach a temperature which will  
6 necessitate that we will -- that we would be at operating  
7 pressures low enough? I can't forecast the weather.

8 But should we reach a day we estimate at zero  
9 or below zero of an average temperature, without the input  
10 of Missouri Pipeline it would be very difficult to maintain  
11 delivery pressures to parts of the Wentzville service  
12 territory.

13 MS. SHEMWELL: Thank you.

14 JUDGE THORNBURG: UtiliCorp?

15 MR. BOUDREAU: Yes. Thank you.

16 CROSS-EXAMINATION BY MR. BOUDREAU:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. I understand from your testimony that you've  
20 been somewhat handicapped in terms of evaluating the overall  
21 case because you haven't been privy to the HC information  
22 that's been filed; is that correct?

23 A. That's correct.

24 Q. So I'm going to try to do a little maneuvering  
25 here along with you and see if we can address just one topic

1 that I want to touch on.

2           You filed surrebuttal -- or cross-surrebuttal,  
3 excuse me, that basically, as I understand it, voices an  
4 agreement with the seven, I think the seven conditions that  
5 have been proposed by Laclede witness Pflaum; is that  
6 correct?

7           A.       We're supporting those conditions, that's  
8 correct.

9           Q.       That's my understanding. And that would be  
10 all seven of those conditions? That's the way I read your  
11 testimony.

12          A.       That's the way the surrebuttal testimony  
13 reads, yes.

14          Q.       I wanted to talk with you a little bit about  
15 Condition No. 7. Do you have Dr. Pflaum's testimony  
16 available to you? I direct you to page 15 of his rebuttal  
17 testimony.

18          A.       Yes, I have it.

19          Q.       Okay. Now, there's only one -- as I see it,  
20 there's only one sentence of that response or that condition  
21 that is nonproprietary, so that you -- am I fair in assuming  
22 that you haven't seen the entire text?

23          A.       That's correct. I only have seen -- you're  
24 talking about Condition 5, lines 1 and 2?

25          Q.       Excuse me. No. 5, which appears on line 1 of

1 page 15.

2 A. Yes, that's all I've seen.

3 Q. Okay. And that deals with the issue of FERC  
4 jurisdiction; is that correct?

5 A. That's correct.

6 Q. Okay. And I'm going to try and keep this at  
7 kind of a high level. I just want to try and touch on this.  
8 My understanding is FERC only has jurisdiction over  
9 interstate pipelines; is that correct?

10 A. That's correct.

11 Q. And there may be some pipelines that may cross  
12 a state boundary, but there may be some exemptions that are  
13 available where they could be regulated as intrastate?

14 A. I understand that to be correct, yes.

15 Q. So if the question of -- the issue of FERC  
16 jurisdiction would come up only if there were some cross  
17 state boundary aspect to what's going on; is that correct?  
18 Is that your understanding?

19 A. That's my understanding of FERC jurisdiction.

20 Q. With that general context and knowing that you  
21 haven't seen the rest of this, I want to pose to you a  
22 couple of questions, and I'm going to try and place them as  
23 abstract questions so we don't have to touch on what may be  
24 HC information. And that is, from -- well, let me back up.

25 As I understood your earlier testimony,

1 AmerenUE provides natural gas services as an LDC in  
2 Wentzville?

3 A. That's one of our service territories, that's  
4 correct.

5 Q. Is that the only one of your service  
6 territories that's served by the MPC pipeline or are there  
7 others?

8 A. That service territory is the only one  
9 receiving service from Missouri Pipeline, that's correct.

10 Q. Are there any receiving service from Missouri  
11 Gas Company?

12 A. No, there is not.

13 Q. Okay. Let me ask you the abstract question.  
14 Asking you to keep your LDC hat on, just as an abstract  
15 matter, is it advantageous to AmerenUE to have as many  
16 sources of supply of natural gas as possible just from a  
17 business perspective?

18 A. Yes, it is.

19 Q. That gives some flexibility in terms of  
20 choosing maybe a less costly source of supply over another  
21 one; isn't that correct?

22 A. That's correct.

23 Q. And you can keep your cost of service then as  
24 low as possible to your end use customers; isn't that  
25 correct?



1           A.       That's correct.

2           Q.       And this may also have some benefits.

3 Assuming that there's some competition between fuel sources,  
4 and I'll use propane as an example, being able to have  
5 cheaper sources of natural gas, either supply or  
6 transportation, would be advantageous vis-a-vis competition  
7 from propane?

8           A.       For us as the entity buying the gas, propane  
9 is not a competitive fuel for us in that area. It's all gas  
10 on gas competition.

11          Q.       Fair enough.

12                   MR. BOUDREAU: Thank you. I have no further  
13 questions for this witness.

14                   JUDGE THORNBURG: Thank you. Gateway Pipeline  
15 Company.

16                   MR. KEEVIL: Just a couple real quick  
17 questions, Judge.

18 CROSS-EXAMINATION BY MR. KEEVIL:

19          Q.       Ms. Heins, in response to Ms. Shemwell's  
20 cross-examination, I believe you talked about your concerns  
21 regarding operational reliability if the transaction is  
22 approved. Did I understand that correctly?

23          A.       Yes, I've testified to that.

24          Q.       Okay. In your cross-surrebuttal on page 3,  
25 lines 6 through 8, do you state that if the -- if these

1 conditions, referring to the conditions that Mr. Kottwitz  
2 set forth in his testimony, are required by the Commission  
3 and adhered to by Gateway, they will substantially alleviate  
4 the concern I expressed in my rebuttal testimony about the  
5 operational reliability of MPC following its acquisition by  
6 Gateway. Is that your testimony?

7 A. Yes, it is.

8 Q. And are you aware that Mr. Ries on behalf of  
9 Gateway has indicated that Gateway has agreed to these  
10 conditions set forth by Mr. Kottwitz?

11 A. Yes, I am.

12 Q. I take it, then, your operational reliability  
13 concerns are substantially alleviated?

14 A. Yes. I have testified to that.

15 Q. All right. Mr. Boudreau asked you a few  
16 questions about this Condition 5 and the statement that you  
17 make in your cross-surrebuttal that you were not privy to a  
18 lot of highly confidential information. And my question to  
19 you in that regard is, how many Data Requests did Union  
20 Electric submit to Gateway in this proceeding?

21 A. I am not sure of the exact number. I think  
22 it's just under a dozen.

23 Q. Okay. And of that dozen, is it not true that,  
24 at the request of Union Electric, Gateway reclassified all  
25 but two of those responses as proprietary for the specific

1 reason for allowing you to review the material?

2           A.       I believe that is correct.

3           MR. KEEVIL: Thank you, Judge. No further  
4 questions.

5           JUDGE THORNBURG: Commissioner Murray, do you  
6 have any questions for this witness?

7           COMMISSIONER MURRAY: Yes, I do, your Honor.  
8 Thank you.

9 QUESTIONS BY COMMISSIONER MURRAY:

10          Q.       Good afternoon.

11          A.       Good afternoon.

12          Q.       I'd like to go over some of those areas of  
13 concern that you raised in your testimony. It's already  
14 been covered the operational reliability concerns. They're  
15 pretty much taken care of, as I understand it, correct?

16          A.       Yes.

17          Q.       Then the next concern that you indicated was  
18 that Gateway may not have enough financial resources to  
19 operate and maintain the MPC system over the long run. Do  
20 you have any facts upon which you base that concern?

21          A.       Unfortunately, the majority of that  
22 information has deemed to be highly confidential. So we  
23 have had to rely on Staff witness Roberta McKiddy for what  
24 I've been able to read in the nonproprietary versions. Some  
25 of what I've been able to read indicates to me that Staff

1 has grave concerns about the financial viability of Gateway,  
2 and so that has only enhanced our concern.

3 Q. Okay. And your concern No. 3 that MPC has had  
4 very stable rates in the years since it began operations and  
5 you're concerned that Gateway might significantly increase  
6 rates, wouldn't MPC have to apply to the Missouri Public  
7 Service Commission first no matter which company owned it?

8 A. Yes, they would, but we raised that as a  
9 condition in this proceeding because we have very little  
10 choice in who owns Gateway and how they operate Gateway, and  
11 we wanted to make the Commission aware that it is a concern  
12 that if they are not financially viable one way they may  
13 choose to enhance their revenue stream to increase rates.  
14 So that's why we raised it as an issue.

15 Q. But you would agree that the Missouri Public  
16 Service Commission would have to approve any increase in  
17 rates?

18 A. Yes.

19 Q. The fourth concern regarding the changes or  
20 diminishment in service that may result from this  
21 transaction, you speak about the high level of service that  
22 AmerenUE has received from MPC and then talk about a  
23 specific employee being dedicated to receiving and  
24 processing nominations, receipt delivery schedules,  
25 confirmations and handling other daily operational issues

1 between transportation customers and UPL. Do you see that  
2 testimony on page 6 of your rebuttal?

3 A. Yes, ma'am.

4 Q. Do you have any reason to believe that, other  
5 than speculation, that that type of service will continue?

6 A. Are you asking whether or not I believe that  
7 they will hire an additional person to perform those  
8 functions? I'm not sure I understand your question.

9 Q. Well, I'm not sure I understand your concern,  
10 and I guess that's where I'm trying to get. It seems that  
11 you're expressing concern that you may not receive the same  
12 high level of service that you received in the past under  
13 the new ownership. And I'm asking, do you have any reason,  
14 other than speculation, to think that the level of service  
15 will diminish?

16 A. No. It's only speculation, because we have  
17 yet to see any firm plans as to how Mr. Ries will hire that  
18 role or who will be handling that role.

19 Q. Okay. Now, you go on under that same concern  
20 and state that Gateway may change the tariffed services of  
21 MPC in a manner that is detrimental to customers, and then  
22 you give some examples.

23 Here again, wouldn't Gateway have to come  
24 before -- or MPC have to come before this Commission before  
25 any of those tariffed services could change?

1           A.       Yes, they would, to change any tariffed  
2 services. An underlying factor about diminishment of  
3 service are current business practices and policies under  
4 which we enjoy flexibility, and those may change as the  
5 ownership changes. So there's two facets to that, not only  
6 the -- not just the tariffed services, but the normal  
7 operating business policies.

8           Q.       Wouldn't it require this Commission to really  
9 micro-manage the companies that we regulate in order to know  
10 in advance all of their business practices and exactly how  
11 they plan to carry out, for example, which employees they  
12 had dedicated to certain services?

13          A.       Yes, it would. I think, though, my role as an  
14 intervenor is to bring to the Commission's's attention the  
15 certain concerns we have under a change in ownership of MPC.

16          Q.       But you're expressing to us, I believe, that  
17 those concerns are sufficient for us to deny the  
18 application.

19          A.       Ameren has not expressed an opinion one way or  
20 the other as to whether the Commission should approve or  
21 disapprove the sale of MPC/MGC to Gateway.

22          Q.       So you are not taking that position, you're  
23 just simply raising your concerns?

24          A.       Yes, ma'am.

25          Q.       Okay. Thank you for clarifying that.

1                   Then you express a concern regarding the  
2 timing of the acquisition. Could you explain that in a  
3 little more detail?

4           A.       Yes. Given that it has been my experience no  
5 matter how much one plans, transitions in ownerships, in  
6 ownership between companies are never smooth.

7                   We are concerned in the reliability of  
8 service, no matter how well everyone plans, that should this  
9 transfer of ownership occur in the winter, it could cause  
10 operational reliability problems for us in our service  
11 territory, which is why we've asked for approval either by  
12 mid October or after the winter, the first of April.

13          Q.       Are there any other safeguards that could be  
14 employed other than or as opposed to limiting the dates?

15          A.       One we have been willing to consider and we've  
16 mentioned it in discussions with Mr. Ries is if he would  
17 consider retaining under contract the current employees who  
18 manage those functions, especially some of the ones in  
19 Kansas City who manage the nominations, operations,  
20 functions, then we would feel somewhat more comfortable that  
21 we would have the same people handling the same functions  
22 even though there was new ownership over the winter.

23                   COMMISSIONER MURRAY: Thank you. I believe  
24 that's all the questions I have for this witness.

25                   JUDGE THORNBURG: Commissioner Lumpe.

1 QUESTIONS BY COMMISSIONER LUMPE:

2 Q. Ms. Heins, does UE have no other pipeline  
3 choice in the Wentzville area?

4 A. AmerenUE made a decision when it selected  
5 Missouri Pipeline to serve that Wentzville area not to build  
6 additional pipe of its own into that area based upon a cost  
7 analysis that was run. If MPC was to not be a provider of  
8 choice for us, AmerenUE could serve that area by laying  
9 additional pipe of its own.

10 Q. But at this point, that is your only source?

11 A. On peak days, yes. If I could, we can manage  
12 that system on most winter days without the additional  
13 support. It's as it gets colder and demands increase we  
14 lose pressure, operating pressures on that system, and the  
15 Missouri Pipeline input adds additional pressure for us to  
16 maintain service in that area. So only as it gets colder we  
17 rely on that input.

18 Q. I see. Okay. So it's basically your peak day  
19 single supplier or source of pressure?

20 A. Yes, ma'am. In fact, in the winter we shut  
21 that -- excuse me. In the summer we take no gas at all from  
22 Missouri Pipeline.

23 Q. And I think there was testimony that Gateway  
24 intended to keep the same personnel in the field, et cetera.  
25 Are you concerned about different personnel than the seven



1 or so that they talked about that they plan to keep on the  
2 same people?

3           A.       Yes, ma'am. Our interaction on getting gas  
4 scheduled and confirmed to move into our system occurs with  
5 a person on a daily basis in Kansas City. This person knows  
6 our system and understands our needs, and so that is why  
7 if -- we would like to -- if the Commission were to approve  
8 this in the winter, we would like to continue to deal with  
9 that person at least to get through this winter of  
10 transition.

11          Q.       And have you had any word that this person is  
12 not going to be around anymore?

13          A.       Yes, and I believe Mr. Kreul testified to that  
14 earlier.

15          Q.       That this is -- oh, this is the particular  
16 second person that is not going to be there anymore?

17          A.       Yes, ma'am.

18          Q.       I see. Okay. And just to follow up a little  
19 bit on the concerns, the five concerns that you expressed,  
20 the first concern you said if Staff's conditions were met  
21 would no longer be a problem; is that right?

22          A.       That's correct.

23          Q.       All right. And then the second one is the  
24 financial that you talked about, and you have concerns  
25 partly because you haven't seen the information and you're

1 relying on some of Staff's testimony, but you have some  
2 financial concerns?

3           A.       Yes, ma'am. And we will take the position  
4 that if the Staff is satisfied, then our concerns would be  
5 satisfied, because I cannot see the information.

6           Q.       And then the other -- the other three that you  
7 talk about are potential concerns but not -- they're  
8 concerns that necessarily would be brought to the  
9 Commission, such as potential rate increases, potential  
10 other things. In other words, two of them were really  
11 potential things and not known things; is that correct?

12          A.       As I understand your question, yes.

13          Q.       Well, you said potential rate increases and  
14 potential change in service, and so those are maybes but not  
15 something you know will happen?

16          A.       That's correct.

17          Q.       Okay. You also agree with Laclede's seven  
18 conditions?

19          A.       Yes, we do.

20                   COMMISSIONER LUMPE: Okay. Thank you. That's  
21 all I have.

22                   JUDGE THORNBURG: Commissioner Gaw.

23                   COMMISSIONER GAW: No questions.

24                   JUDGE THORNBURG: That completes the Bench  
25 questioning. We'll proceed with the recross. Laclede Gas?

1 MR. PENDERGAST: No questions, your Honor.

2 JUDGE THORNBURG: Office of Public Counsel?

3 MS. O'NEILL: No questions.

4 JUDGE THORNBURG: Staff?

5 MS. SHEMWELL: Just one. Thank you.

6 RECROSS-EXAMINATION BY MS. SHEMWELL:

7 Q. Ms. Heins, you've agreed with Commissioner  
8 Murray and Commissioner Lumpe that this Commission had the  
9 opportunity to review any rate filing made by MPC. Am I  
10 characterizing that correctly?

11 A. Yes.

12 Q. On page 4 of your surrebuttal, I believe, you  
13 at line 16 recognize that at least some other parties are  
14 concerned that MPC might become a FERC jurisdictional  
15 pipeline. Would you agree with me that, if that were to  
16 occur, this Commission would have no control over the rates  
17 charged by MPC?

18 A. That would be correct, yes.

19 MS. SHEMWELL: Thank you.

20 JUDGE THORNBURG: UtiliCorp?

21 MR. BOUDREAU: No questions. Thank you.

22 JUDGE THORNBURG: Gateway Pipeline,

23 Mr. Keevil?

24 MR. KEEVIL: Not too many, Judge.

25 RECROSS-EXAMINATION BY MR. KEEVIL:

1           Q.       Ms. Heins, in response to a question by  
2 Commissioner Murray, you once again mentioned the fact that  
3 you couldn't see the financial information because you can't  
4 see highly confidential information.

5                   Isn't it true that Union Electric could have,  
6 if it felt it necessary or desirable or worthwhile, could  
7 have hired a financial consultant to participate in this  
8 case?

9           A.       Yes, we could have, but we didn't feel based  
10 upon the discussions that we had had with Mr. Ries and in  
11 looking at the case that it was necessary to go to that  
12 expense. It was not until we got far enough along in this  
13 case that we realized the extent of the material that would  
14 be deemed highly confidential, and we felt it was a bit late  
15 to do that.

16          Q.       And in any event, your expertise is not in  
17 finance, right? You're basically in gas supply purchasing.  
18 If I'm mistaken correct me, but is that correct?

19          A.       No, my expertise is not in financial  
20 statements. I know how to read them, but that's not my  
21 expertise.

22          Q.       Again, in response to Commissioner Murray you  
23 said that your concern was that, I believe it was page 4 of  
24 your testimony, regarding this person in Kansas City who  
25 does the scheduling and nominations. I may have the page

1 wrong there. I apologize. You stated that you had seen no  
2 plans as to how the person who will perform that service  
3 will be hired.

4                   Were you here yesterday when Mr. Ries said  
5 that they did certainly intend to hire an employee to  
6 perform those functions?

7           A.       Yes, I was here, but he indicated not how  
8 quickly he would hire someone.

9           Q.       Let's see. You also in response to  
10 Commissioner Murray, I believe, indicated that this  
11 diminution in service issue on page 4 of your testimony is  
12 not a tariffed service issue but some other kind of service  
13 issue.

14                   Is it your position that the Commission should  
15 impose service obligations outside of those contained in the  
16 tariffs of the companies it regulates?

17           A.       I indicated in my response there were two  
18 facets to service, one was tariffed and one was just in  
19 general operation, and I'm not suggesting that the  
20 Commission necessarily regulate what goes on in general  
21 business policies.

22           Q.       Thank you very much.

23           A.       But I wanted them to understand that there was  
24 that issue.

25                   MR. KEEVIL: Judge, I move to strike the

1 remainder of that answer.

2 MR. BYRNE: She's allowed to --

3 JUDGE THORNBURG: We won't strike it. That  
4 was responsive. It clarified her position.

5 BY MR. KEEVIL:

6 Q. Ms. Heins, does the Commission manage or  
7 regulate Union Electric's hiring policies?

8 A. Not to my knowledge.

9 Q. Do they manage or otherwise regulate Union  
10 Electric's non-tariffed services?

11 A. Not to my knowledge.

12 Q. Okay. Are you aware that attached to the  
13 Stock Purchase Agreement in this case there was as an  
14 exhibit, there was a Transition Services Agreement between  
15 Gateway and UtiliCorp to handle the transition --  
16 potentially handle the transition between the two companies?

17 A. I did not see the agreement, but I have been  
18 made aware of the agreement by both Mr. Kreul and Mr. Ries.

19 Q. But you didn't read the transition?

20 A. I don't believe I got to see it. I think it  
21 was HC.

22 Q. No. Well, the record will speak for itself,  
23 but I would take issue with that. The transition agreement  
24 was not HC. There were a few little pieces that were.

25 MR. KEEVIL: Thank you very much.

1 JUDGE THORNBURG: Mr. Byrne, do you have some  
2 redirect?

3 MR. BYRNE: Just a few, your Honor.

4 REDIRECT EXAMINATION BY MR. BYRNE:

5 Q. Ms. Heins, just a clarification. Again,  
6 Commissioner Lumpe asked about service. I think the term  
7 she used was is MPC the exclusive provider of peak day  
8 service, I guess, to the Wentzville service area. And for  
9 clarification, is there another pipeline that provides gas  
10 service to the Wentzville service area?

11 A. There are two pipelines, Panhandle directly  
12 through AmerenUE service system, and then we take deliveries  
13 of Panhandle gas through Missouri Pipeline Company. On a  
14 peak day, both inputs are required to meet system demands.

15 Q. And on a non-peak day, you could -- if there  
16 was no service from Missouri Pipeline, you could serve the  
17 system just with Panhandle, right?

18 A. On a non-peak day, that's correct.

19 Q. Okay. A couple of the Commissioners,  
20 Commissioner Murray and Commissioner Lumpe, asked about some  
21 of your concerns such as the potential for rate increases or  
22 changes in service. Asked you if Missouri Pipeline would  
23 have to come back to the Commission to get those approved.  
24 Do you remember that, those questions?

25 A. Yes, I do.

1           Q.       Let me ask you this. In spite of -- do you  
2 think those are appropriate issues for the Commission to  
3 consider in this case in determining whether to approve this  
4 transaction even though they also would consider them later  
5 in a future case?

6           A.       Yes, I do.

7           Q.       Mr. Keevil asked you some questions about  
8 Mr. Ries and his testimony that they would hire somebody to  
9 do the nominations. Do you remember that question?

10          A.       Yes, I do.

11          Q.       And let me ask you this. If they hired  
12 somebody who was relatively inexperienced and there was a  
13 period of time where that person would have to get trained,  
14 could that adversely affect customers?

15          A.       Yes, it may.

16                   MR. BOUDREAU: Object. It assumes facts not  
17 in evidence.

18                   MR. BYRNE: I'm not asking her to assume  
19 anything. I'm saying if they hired somebody who wasn't  
20 experienced, could that cause a problem?

21                   JUDGE THORNBURG: It's a hypothetical  
22 question, I believe. Objection's overruled.

23 BY MR. BYRNE:

24          Q.       You can answer the question.

25          A.       Yes, it may. There's a lot that goes on on a



1 peak day when you're trying to get gas scheduled, and it  
2 really takes someone who knows what they're doing to what  
3 make sure all the bases are covered, that the gas is  
4 confirmed with Panhandle, to make sure it flows to our city  
5 gate.

6 Q. If there was a gap between the period of time  
7 when the current person stopped working for Missouri  
8 Pipeline and the new person was hired, could that gap  
9 adversely affect customers?

10 A. Yes.

11 MR. BOUDREAU: Object. It calls for  
12 speculation by the witness.

13 JUDGE THORNBURG: Overruled.

14 THE WITNESS: Yes.

15 MR. BYRNE: Thank you. That's all the  
16 questions I have.

17 JUDGE THORNBURG: Ms. Heins, that's all we  
18 have for you. Thank you. Go ahead and begin the next  
19 witness, and that would be Laclede Gas.

20 (Witness sworn.)

21 JUDGE THORNBURG: You may proceed,  
22 Mr. Pendergast.

23 MR. PENDERGAST: Thank you, your Honor.

24 CHRISTOPHER C. PFLAUM testified as follows:

25 DIRECT EXAMINATION BY MR. PENDERGAST:

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1 Q. Dr. Pflaum, would you please state your name  
2 and business address for the record.

3 A. Christopher C. Pflaum, Spectrum Economics,  
4 Incorporated, 9401 Indian Creek Parkway, Overland Park,  
5 Kansas 66210.

6 Q. And are you the same Christopher C. Pflaum  
7 who's previously caused to be filed in this proceeding  
8 rebuttal testimony consisting of 19 pages and two schedules?

9 A. I am.

10 Q. If I were to ask you the same questions today  
11 that were asked in your prefiled rebuttal testimony, would  
12 those answers be true and correct to the best of your  
13 knowledge and belief?

14 A. I'd probably correct some spelling errors, but  
15 other than that, yes.

16 Q. Do you have any corrections to make?

17 A. They're obvious.

18 MR. PENDERGAST: With that, I would offer  
19 Dr. Pflaum for cross-examination and move that his rebuttal  
20 testimony be received into evidence.

21 JUDGE THORNBURG: Motion to receive the  
22 Exhibits 9 and 9HC. Are there any objections?

23 MR. KEEVIL: Judge, I'm going to object to  
24 Schedule 2. It is a compendium of letters and memoranda  
25 from individuals who are not here today who work for

1 companies who are not parties to this case and as such  
2 constitutes blatant hearsay.

3 MR. PENDERGAST: Your Honor, if I could  
4 respond?

5 JUDGE THORNBURG: You may respond.

6 MR. PENDERGAST: I'm sure the Commission has  
7 well recognized that expert witnesses, which Dr. Pflaum is,  
8 may rely on information from other sources, some of which  
9 might be inadmissible hearsay, as long as such information  
10 is generally used for the purposes put forward.

11 So even if it were hearsay, I think Missouri  
12 law would indicate that it's appropriate for him to rely  
13 upon it and to include it, but I don't even believe it  
14 qualifies as hearsay. He is offering that for the purpose  
15 of indicating that customers have raised concerns. He's not  
16 offering it for the purpose of talking about the validity of  
17 those concerns or the truth of the matter asserted therein.

18 I think from that standpoint it would be an  
19 appropriate exception to the hearsay rule. Even if it were  
20 hearsay, in event, as I said, under cases including I'd cite  
21 Peterson v. National Carriers, Inc. WB54169 which was  
22 decided April 14th, 1998, courts have recognize it's  
23 appropriate for experts to rely on this kind of  
24 documentation.

25 It's also clear that experts under the

1 Administrative Procedures and Review Act can perform  
2 surveys, collect data and present the results of that even  
3 though the people that may be responding aren't available  
4 for cross-examination. I just think based on --

5 JUDGE THORNBURG: Okay. Do you have a  
6 response?

7 MR. KEEVIL: Yeah, I might as well. Starting  
8 from the back and working forward, calling this a survey, if  
9 you take a look at it, stretches credulity.

10 I believe the exception to hearsay  
11 Mr. Pendergast refers to about experts relying on what would  
12 otherwise be hearsay refers to learned treatises and trade  
13 type material, not letters from third-party customers of  
14 companies that aren't even involved in this case.

15 And as for the matter of not being offered for  
16 the truth of the matter asserted, if they're -- if they're  
17 being offered to prove what Mr. Pendergast said they're  
18 being offered for, that's clearly hearsay, because whatever  
19 is in there goes to Mr. Pflaum's testimony. Otherwise, he  
20 wouldn't have attached them.

21 JUDGE THORNBURG: That's enough. Mr. Pflaum,  
22 did you rely on any of these materials in formulating your  
23 opinions presented in your testimony?

24 THE WITNESS: I was there for most of that,  
25 because a lot of this happened during procedures before the

1 Kansas Corporation Commission, and those business records,  
2 and they are business records because they are --

3 JUDGE THORNBURG: I'm not asking you for legal  
4 argument. Did you rely on these materials in formulating  
5 your opinions that are presented in your testimony?

6 THE WITNESS: Yes.

7 JUDGE THORNBURG: The objections -- the  
8 objection is overruled, and the exhibits will be received.

9 (EXHIBIT NOS. 9 AND 9HC WERE RECEIVED INTO  
10 EVIDENCE.)

11 JUDGE THORNBURG: We're going to proceed with  
12 the cross. The first in order was Panhandle, which we  
13 are -- which waived. And next we have Ameren. Mr. Byrne,  
14 did you have any questions?

15 MR. BYRNE: No questions, your Honor.

16 JUDGE THORNBURG: Ms. Shemwell?

17 MS. SHEMWELL: No questions, your Honor.

18 JUDGE THORNBURG: Ms. O'Neill?

19 MS. O'NEILL: Just a couple. Thank you, your  
20 Honor.

21 CROSS-EXAMINATION BY MS. O'NEILL:

22 Q. Good afternoon, Mr. Pflaum.

23 You indicated to Judge Thornburg here a couple  
24 minutes ago that you were present during most of the  
25 occurrences that generated the documents in Schedule 2; is

1 that correct?

2           A.       They happened during a period of time in which  
3 my client was engaged in various regulatory litigation with  
4 Mr. Langley's former firm, the Bishop Group, and so I was  
5 privy to these complaints.

6           Q.       So you had direct dealings with Mr. Langley  
7 and his former firm in the Kansas arena; is that correct?

8           A.       I testified in a number of matters involving  
9 their operations in Kansas, yes.

10          Q.       And the cases that you discussed in your  
11 testimony, are those cases that you were personally involved  
12 in?

13          A.       Those are three of the cases I was involved  
14 in. I was also involved in some civil litigation as a  
15 consultant.

16          Q.       Okay. So some of the cases you were involved  
17 in with Williams and some you were involved with after you  
18 left Williams; is that correct?

19          A.       I was never with Williams.

20          Q.       Oh, you were never with Williams. Some of  
21 them were with --

22          A.       Three of them --

23          Q.       I'm a little confused. I guess that's why I'm  
24 asking these.

25          A.       Three of the cases were regulatory cases, two

1 before the Kansas Commission and one before this Commission.  
2 I was a witness for Williams. There was an anti-trust case.  
3 I was an consultant to Duke. There was other litigation  
4 considered, and I've been a consultant in those matters.

5 MS. O'NEILL: I don't have anything further at  
6 this time. Thank you.

7 JUDGE THORNBURG: UtiliCorp. Mr. Boudreau,  
8 are you -- I'm sorry.

9 MR. BOUDREAU: Close enough. I'll respond to  
10 anything.

11 JUDGE THORNBURG: It's late. Are you ready to  
12 proceed?

13 MR. BOUDREAU: Yes, I am. I just have a few  
14 questions. Would you prefer to take a break?

15 JUDGE THORNBURG: No. If you were going to be  
16 lengthy I might. As you saw, I'm getting tongue-tied. But  
17 if you have a few questions, we'll proceed.

18 MR. BOUDREAU: I don't anticipate this will  
19 take long.

20 CROSS-EXAMINATION BY MR. BOUDREAU:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

23 Q. I just have hopefully just a few questions for  
24 you.

25 Do you know what the legal standard for

1 approval of the Joint Application in this case is under  
2 Missouri law?

3           A.       I believe it's that will do no harm, in  
4 layman's terms.

5           Q.       Are you aware that the standard has come about  
6 as a consequence of the Missouri Supreme Court balancing  
7 property rights of the seller with the legitimate interests  
8 of ratepayers served by the utility?

9           A.       I haven't read that decision, but it doesn't  
10 surprise me.

11          Q.       When you say -- when you address the topic, I  
12 guess on page 13 of your testimony, about the wide latitude  
13 to be given to a utility to sell its holdings, that you  
14 generally agree with that concept?

15          A.       As long as it's to a party fit to operate a  
16 public utility, yes.

17          Q.       Let's see here. I may have some things that  
18 take us into HC information. I just want to make sure I  
19 don't do that on an ad hoc basis.

20                   I have a short series of questions that will  
21 probably take us through some HC material, then I have  
22 probably some break-out questions at the end which will be,  
23 I think, suitable for public session.

24                   JUDGE THORNBURG: Okay. At this point the  
25 hearing will go in-camera, and it's for highly confidential



1 information. So I'll ask the appropriate people that need  
2 to to leave the hearing room.

3 (REPORTER'S NOTE: At this point, an in-camera  
4 session was held, which is contained in Volume 7, pages 525  
5 through 534 of the transcript.)

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1 JUDGE THORNBURG: Mr. Boudreau, you may  
2 proceed.

3 BY MR. BOUDREAU:

4 Q. I want to turn just for a minute or two to  
5 your recommended conditions, which I believe start on  
6 page 14 of your testimony. Are you with me?

7 A. I am.

8 Q. Let me ask you this. Are you familiar with  
9 the nature of the contractual arrangement Laclede currently  
10 has with MPC?

11 A. My recollection is it's a one-year contract.

12 Q. Do you know whether they have a direct  
13 contract with MPC?

14 A. I thought they had a contract with MPC to  
15 bring in gas from Panhandle, but the exact nature of the  
16 contract, I don't know.

17 Q. I'm just trying to decide how far into this to  
18 delve with you, because you may not be in any position to  
19 answer.

20 You said that you thought they had a one-year  
21 contract. Do you know what the timing or the expiration of  
22 that current arrangement is?

23 A. I do not.

24 Q. Okay. That may shorten things up  
25 substantially.

1                   Let's turn to your first condition. You talk  
2 about the requirement that MPC and MGC be required to  
3 continue to provide firm transportation service. Do you see  
4 that?

5           A.       Yes.

6           Q.       I guess my question to you is pretty simple.  
7 Are you aware of any circumstance that would suggest that  
8 Laclede is not going to be able to secure firm  
9 transportation service over MPC's facilities if the ultimate  
10 ownership of the company changes?

11          A.       I think that that concern is occasioned by  
12 what happened in Kansas where --

13          Q.       I'm asking -- I'm asking you, are you aware of  
14 any circumstance that would suggest to you that Laclede is  
15 not going to have available to it firm transportation  
16 service over MPC's facilities after this transaction?

17                   MR. PENDERGAST: Your Honor, I would request  
18 that the witness be allowed to answer. I think he was  
19 answering the precise question when he was interrupted.

20                   JUDGE THORNBURG: Well --

21                   MR. BOUDREAU: I believe he's talking --

22                   JUDGE THORNBURG: I'd rather let the witness  
23 answer. The objection is overruled. Mr. Boudreau, I would  
24 suggest you let the witness have an opportunity to answer  
25 the question before you ask the next one.

1                   Okay. You can answer.

2                   THE WITNESS: Condition No. 1 is a  
3 prophylactic pretty much to prevent a restructuring that  
4 might end up with a situation like we had in Kansas.

5                   MR. BOUDREAU: Your Honor, I'm going to object  
6 now on the grounds it's just completely unresponsive to the  
7 question.

8                   MR. PENDERGAST: I think it's --

9                   MR. BOUDREAU: I've asked whether he's aware  
10 of any circumstance that would suggest that firm  
11 transportation would not be available to Laclede once the  
12 transaction is completed. Now he's telling me why he's  
13 proposing this particular condition. I would suggest to you  
14 that that answer is nonresponsive.

15                  JUDGE THORNBURG: That's fine. Dr. Pflaum,  
16 can you try to answer the question asked?

17                  THE WITNESS: Yes.

18                  JUDGE THORNBURG: Yes. Okay. You're aware?

19                  THE WITNESS: Yes.

20 BY MR. BOUDREAU:

21           Q.       And that circumstance is what? Has MPC or  
22 Gateway, any representative of those two companies to your  
23 knowledge suggested to Laclede that they will not have firm  
24 transportation service available to them?

25           A.       The past behavior of the major owner of the

1 company suggests --

2 MR. BOUDREAU: Your Honor, again, I object to  
3 this. I've just asked a pretty limited question, I think,  
4 is he aware of any representative of Gateway or MPC or --  
5 well, Gateway at this point because they don't own the  
6 company, that they've represented to Laclede that they would  
7 not have firm transportation available to them? It's a  
8 pretty straightforward question, I think.

9 MR. PENDERGAST: Your Honor, he asked if there  
10 was any circumstance. He's trying to tell --

11 MR. BOUDREAU: That was not the question.

12 JUDGE THORNBURG: Proceed with your answer.  
13 You can ask a follow-up question if you don't get what you  
14 want here. Go ahead, Dr. Pflaum.

15 THE WITNESS: Previous behavior has suggested  
16 that this is a company or at least that one owner of this  
17 company, the majority owner, is not averse to using  
18 interruptible service to back up firm service. It's  
19 happened in the past, and that's the reason for this  
20 condition being proposed.

21 JUDGE THORNBURG: Mr. Boudreau, you can follow  
22 up to take care of that.

23 BY MR. BOUDREAU:

24 Q. I don't know how much narrower I can make it,  
25 but I'll try once again. Are you aware of any

1 representative on behalf of Gateway having expressed to  
2 Laclede in any fashion that firm transportation service will  
3 not be available to it?

4           A.       No.

5           Q.       Thank you.

6                   Also in that condition you have suggested that  
7 the Commission impose a rate cap for a period of not less  
8 than five years; is that correct?

9           A.       Yes.

10          Q.       Let me ask you this. Is it your understanding  
11 that the Commission has the legal authority to unilaterally  
12 impose a rate cap on Gateway as a condition of its approval  
13 of the Joint Application?

14          A.       I don't know. If it's not legal, I guess they  
15 won't do it.

16          Q.       Let me have a follow-up question on this. You  
17 are aware that this is not a rate case? I mean, the rates  
18 of the company are not at issue in this transaction?

19          A.       Not directly. They're not being set in this  
20 forum. Rates are always an issue.

21          Q.       Let me ask you this. Are you familiar with  
22 past Commission decisions in merger or stock acquisition  
23 transactions in this state?

24          A.       I'm aware of them happening. I don't recall  
25 reading any.

1 Q. Okay. So you would not be aware of whether  
2 the Commission has ever unilaterally imposed a rate freeze  
3 of any length in the context of a merger or a stock sale?

4 A. I wouldn't be aware of that.

5 Q. Are you generally familiar with the nature of  
6 Iacled Gas Company's operations?

7 A. I've consulted for LDCs. I'm generally  
8 familiar how LDCs operate.

9 Q. So you know they're an LDC?

10 A. Yes.

11 Q. We know that much?

12 A. We know that much.

13 Q. Let me just ask you something of an abstract  
14 question. From a business perspective, doesn't it make  
15 sense for any business to have as many sources of supply as  
16 possible available to it?

17 A. Not necessarily. If some of those sources  
18 have such high marginal costs that they'll never really be  
19 considered for doing a transaction, then it's just  
20 administrative clutter. If they are competitive, then it  
21 would be within limits, of course, managerial limits, it  
22 would be a good idea to have many sources of supply.

23 Q. A business wouldn't know if it's competitive  
24 or not if it wasn't available; is that correct?

25 A. No, that's not true. If you had someone whose

1 costs you knew are very high, for whatever reason, let's say  
2 they're not really set up to do business with the small  
3 customer and you're a small customer, you might know that  
4 they're not a good supplier because let's say they have a  
5 multi-part tariff with a very high transactions cost but a  
6 very low volumetric cost. You just look at that and you  
7 say, well, I don't care. I don't need them as a supplier  
8 because they're not going to be a competitive supplier to  
9 me.

10 MR. BOUDREAU: Fair enough. I have no further  
11 questions for this witness. Thank you.

12 JUDGE THORNBURG: Thank you. We'll take a  
13 ten-minute break 'til three o'clock before we take up  
14 Gateway's cross.

15 (A BREAK WAS TAKEN.)

16 JUDGE THORNBURG: Okay. At this point we'll  
17 go back on the record, and we have the cross-examination on  
18 behalf of Gateway Pipeline Company. Mr. Keevil, you may  
19 proceed.

20 MR. KEEVIL: Thank you, Judge.

21 JUDGE THORNBURG: By the way, do you have many  
22 questions or --

23 MR. KEEVIL: No, I don't have many.

24 JUDGE THORNBURG: Okay. Then I need to let  
25 the Commission know how we're doing here. Go ahead.



1 CROSS-EXAMINATION BY MR. KEEVIL:

2 Q. Dr. Pflaum, I believe you stated, but I just  
3 want to confirm, you've previously testified as a consultant  
4 on behalf of Williams Natural Gas?

5 A. I have.

6 Q. In how many proceedings?

7 A. Three.

8 Q. And were all of those proceedings the  
9 proceedings before the Kansas Corporation Commission which  
10 you reference in your testimony?

11 A. No. Two were before the Kansas Commission and  
12 one was before the Missouri Commission.

13 Q. Are all of those proceedings referenced in  
14 your testimony?

15 A. I'm not sure if the Missouri one is or not. I  
16 think that case settled. I never was here to testify.

17 Q. Okay. So you didn't take the stand and  
18 actually present evidence in the Missouri proceeding?

19 A. No. It was an AGA hearing. That's all I  
20 remember about it.

21 Q. Is it true that Williams Natural Gas, at least  
22 at the time you were testifying on their behalf, was a  
23 competitor of Kansas Pipeline Company?

24 A. No.

25 Q. They were not a competitor?

1           A.       No. Kansas Pipeline Company's rates were  
2 three times those of Williams. So in the classic sense you  
3 really couldn't consider them to be competitors.

4           Q.       Did they serve the same area? They competed  
5 for the same load, attempted to compete for the same load?

6           A.       There was no competition. They were an  
7 artifact of regulation and how can -- how can you -- there's  
8 a principle in economics that the same product can't sell  
9 for different prices in the same market. And so to the  
10 extent that Kansas Pipeline was charging three times as much  
11 as Williams, there was no way that they were competitors in  
12 the classic sense.

13                   MR. KEEVIL: Judge, I'd ask that be stricken  
14 as nonresponsive. I asked if they were seeking to serve the  
15 same load.

16                   MR. PENDERGAST: He asked whether they were  
17 attempting to compete.

18                   JUDGE THORNBURG: Yeah, something about  
19 competitors. I won't ask him to -- that won't be stricken,  
20 but you can ask a follow-up question, Mr. Keevil.

21 BY MR. KEEVIL:

22           Q.       They were in the same market, Dr. Pflaum?

23           A.       They both had facilities in the same market  
24 and delivered gas to some of the same markets, yes.

25           Q.       Were there other parties in these proceedings

1 that you refer to who took different positions regarding the  
2 relative competitiveness of Kansas Pipeline rates vis-a-vis  
3 Williams' rates, different from your position?

4           A.       I think the only party who -- well, first of  
5 all, no one ever --

6           Q.       That's a yes/no question, Doctor.

7           MR. KEEVIL: Judge, could you --

8           JUDGE THORNBURG: Can you answer the question  
9 he presents?

10           THE WITNESS: I don't recall anyone rebutting  
11 the rate differential of three to one or anyone suggesting  
12 that they were competitors in the classic sense, no, except  
13 for witnesses for Kansas Pipeline.

14 BY MR. KEEVIL:

15           Q.       So the answer would be yes?

16           A.       Well, of course, Kansas Pipeline, of course,  
17 considered itself a competitor, but no one else did.

18           Q.       So Williams, then, in your opinion, was not  
19 concerned in the least bit about Kansas Pipeline Company?

20           A.       The concern wasn't price. It was the threat  
21 Mr. Langley made to Mr. Bailey that raised the concern and  
22 caused Williams to intervene. Mr. Langley went to Tulsa and  
23 went to Mr. Bailey's office.

24           MR. KEEVIL: Judge, I didn't ask about  
25 Mr. Langley and Mr. Bailey. I asked about whether Williams

1 considered Kansas Pipeline Company a competitor in the least  
2 bit.

3 MR. PENDERGAST: I think he asked whether they  
4 considered them a threat.

5 JUDGE THORNBURG: You asked whether Williams  
6 in your opinion was not concerned in the least bit about  
7 Kansas Pipeline Company. I think the witness was attempting  
8 to explain what the concern was.

9 MR. KEEVIL: I didn't ask what the concern  
10 was. I asked whether they were concerned.

11 JUDGE THORNBURG: Okay. Can you answer  
12 whether they were concerned?

13 THE WITNESS: That's what I was doing.

14 JUDGE THORNBURG: Can you answer, were they  
15 concerned or not?

16 THE WITNESS: They were concerned.

17 BY MR. KEEVIL:

18 Q. Who did Mr. Bailey work for?

19 A. Keith Bailey is the Chairman of the Board of  
20 Williams.

21 Q. Williams. Okay. Speaking in terms of size of  
22 throughput, Kansas Pipeline was smaller than Williams; is  
23 that correct?

24 A. You mean into Kansas City?

25 Q. Yes.

1           A.       Initially, Kansas Pipeline had 12 percent, and  
2 then as a result of some additional contracts I believe they  
3 carried 23, 25 percent of the gas into the Kansas City  
4 market.

5           Q.       And Williams carried the other 75 to 80?

6           A.       Tiny bit from Panhandle.

7           Q.       Are any tariff changes being sought in this  
8 case, this case now, that you're aware of?

9           A.       No.

10          Q.       In your testimony -- let's see. Where is  
11 that? I believe on -- actually, the question begins on the  
12 bottom of page 6, and then the discussion continues over  
13 onto page 7. You talk about operational difficulties which  
14 led to a complaint in Kansas which you have included in  
15 Schedule 2; is that correct?

16          A.       Right. I don't have the schedules with me,  
17 but I have the -- I have documents on the complaint, yes.

18          Q.       Do you have a copy of the complaint up there?

19          A.       Is that the one made by Western Resources?

20          Q.       Yeah. It's Western Resources vs. KPP and KNP.

21          A.       Yes, I think I do have that.

22          Q.       Docket No. 191842-U.

23          A.       Rather than me flipping through all these  
24 pages, maybe you could just -- here it is. Yes, I do have  
25 it in front of me. Complaint and Request for Emergency Show

1 Cause Order.

2 Q. That is the operational problem you refer to  
3 in your testimony, correct, that case?

4 A. This is the case that ultimately resulted from  
5 the operational problem, yes.

6 Q. Okay. Are the other attachments or, what  
7 would you call them, exhibits in Schedule 2 relating to that  
8 case also?

9 A. Yes. They are a series of correspondence.

10 Q. Which all concern that case?

11 A. Yes.

12 Q. Did you represent anyone in that case?

13 A. No. That case was -- no, I did not.

14 Q. Okay. Now, is it true, Dr. Pflaum, that that  
15 case resulted in an Order of Dismissal by the Kansas  
16 Corporation Commission which found that the staff of the  
17 Kansas Corporation Commission had made an independent  
18 investigation of the issues raised in the complaint and  
19 recommended that the Commission dismiss the complaint and  
20 indicated that, based upon its evaluation of the capacity of  
21 KPP and KNP, the system was adequate to deliver the volumes  
22 contracted for by Western?

23 A. That was the ultimate resolution of the  
24 complaint, yes.

25 Q. Dr. Pflaum, I'm going to hand you something.

1                   MR. KEEVIL: Judge, I apologize. I only have  
2 two copies of this. I can get another copy made.

3                   JUDGE THORNBURG: Are you going to be offering  
4 it in as an exhibit?

5                   MR. KEEVIL: I think so, hopefully.

6                   JUDGE THORNBURG: Mr. Pendergast needs to see  
7 a copy.

8                   MR. KEEVIL: Sorry, Mike.

9                   MS. O'NEILL: Your Honor, I don't know whether  
10 Mr. Keevil has provided those to all counsel.

11                  MR. KEEVIL: No, I haven't.

12                  JUDGE THORNBURG: I don't think he has because  
13 he only has two copies. Are you going to ask the witness to  
14 identify this document?

15                  MR. KEEVIL: Yes.

16                  JUDGE THORNBURG: Okay. Go ahead.

17 BY MR. KEEVIL:

18                  Q. Dr. Pflaum, I've handed you a document. Can  
19 you identify that as the Order of Dismissal we were just  
20 speaking about?

21                  A. Yes.

22                  MR. KEEVIL: Judge, like I said, I apologize.  
23 I only have two copies. I will get the fit number of copies  
24 before we break today, but I would offer this as an exhibit.

25                  JUDGE THORNBURG: This is a copy of an Order,

1 and is it somehow related to some of these attachments to  
2 Dr. Pflaum's testimony?

3                   MR. KEEVIL: Yes. It is the Order of  
4 Dismissal by the Kansas Corporation Commission from the  
5 complaint attached in Dr. Pflaum's Schedule 2 in Docket  
6 No. 191, 842-U before the Kansas Corporation Commission.

7                   JUDGE THORNBURG: I'm sorry. What was the  
8 document again, the Order of Dismissal?

9                   MR. KEEVIL: Yeah.

10                  JUDGE THORNBURG: Okay. Are there any  
11 objections to the admission of this exhibit?

12                  MS. O'NEILL: Your Honor, if this is the  
13 document we received from Mr. Keevil yesterday, I don't have  
14 an objection.

15                  JUDGE THORNBURG: Is it the same document that  
16 you may have provided yesterday, Mr. Keevil?

17                  MR. KEEVIL: It was in the package of  
18 documents.

19                  MS. O'NEILL: Okay.

20                  JUDGE THORNBURG: We're going to need copies  
21 for counsel here today.

22                  MR. KEEVIL: For the copies and the Bench and  
23 everybody.

24                  JUDGE THORNBURG: Five copies for the Bench  
25 and three copies for the court reporter. We'll mark it as

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1 Exhibit No. 21, and if the court reporter can have one of  
2 your two copies, she can go ahead and mark that so we don't  
3 get confused.

4 (EXHIBIT NO. 21 WAS MARKED FOR  
5 IDENTIFICATION.)

6 JUDGE THORNBURG: I'm going to show that as  
7 offered and received, but you will need to get the  
8 appropriate number of questions.

9 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

10 MR. KEEVIL: That's all I have, Judge. I  
11 apologize for not having the copies.

12 JUDGE THORNBURG: Thank you, Mr. Keevil.  
13 Commissioner Murray, any questions?

14 COMMISSIONER MURRAY: Yes, thank you.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good afternoon, Dr. Pflaum.

17 A. Good afternoon.

18 Q. MPC and MGC are both utilities regulated by  
19 this Commission; is that correct?

20 A. That's correct.

21 Q. And Laclede is a customer of those utilities;  
22 is that correct?

23 A. That's correct.

24 Q. Now, Laclede is also a utility regulated by  
25 this Commission, correct?

1           A.       You've got them all.

2           Q.       I'd like you to put on your hat as a regulated  
3 utility.

4           A.       I was a regulator. I was never a regulated  
5 utility, but I'll try.

6           Q.       Put on your Laclede hat as a regulated utility  
7 and help me determine whether Laclede would be amenable to  
8 conditions imposed upon it as a regulated utility similar to  
9 those conditions that Laclede is asking us to impose upon  
10 MPC and MGC?

11          A.       Okay. I think whether or not they'd like  
12 them, putting on my other hat, if they had a history like  
13 the applicants here, that would be reasonable. If you  
14 have -- my dad was a utility executive. I grew up in the  
15 utility business.

16                   If you have a history, good service to your  
17 customers, good behaviors as a business, then there will be  
18 no reason for extraordinary conditions occasioned by  
19 acquiring new property or acquiring new divisions.

20                   If on the other hand your background is sordid  
21 and the regulators would have and customers would have  
22 concerns about whether or not they might become victims of  
23 dirty tricks, as have your other customers, then I can see  
24 why conditions like this would be required.

25          Q.       And how far should we look into those types of

1 concerns? Should we go beyond what has -- any information  
2 that has been brought to us about what has happened within  
3 the state of Missouri?

4           A.       Your own staff -- when I was working for  
5 Williams, your own staff cooperated with me and with  
6 Williams and they were quite active as observers in the  
7 Kansas docket. So they're intimately familiar with what was  
8 going on.

9                    You also -- your own Commission in the gas  
10 clause, the AGA or ACA hearing, has studied the Kansas  
11 properties, and I believe you have a prudence hearing in  
12 about two weeks on some of these contracts that are left  
13 over from the days when Bishop owned Riverside and Kansas  
14 Pipeline. So I think there's been -- your Commission and  
15 your Commission Staff knows about these people.

16           Q.       Okay. Is Laclede a firm capacity holder on  
17 MRT?

18           A.       I believe so.

19           Q.       How about Panhandle?

20           A.       I believe they are also, yes.

21           Q.       And can Laclede, does it have the right to  
22 resell excess capacity?

23           A.       Well, certainly on Panhandle should because  
24 that would be the federal rules, you know, to release  
25 capacity and it would get refunds based on that. Well, it

1 can resell, of course, yes.

2 Q. Does that in any way have any influence on  
3 Laclede's position in this case?

4 A. I don't see why, no. I don't think that any  
5 of that enters into their position. I think it really is  
6 just concerns about the applicants.

7 COMMISSIONER MURRAY: I think that's all I  
8 have. Thank you.

9 JUDGE THORNBURG: Commissioner Gaw.

10 COMMISSIONER GAW: Thank you, Judge.

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. Good afternoon, Dr. Pflaum.

13 A. Good afternoon.

14 Q. The various correspondence that you have, some  
15 of this correspondence in Exhibit 2 to your testimony, are  
16 those things that are described in those various documents  
17 things that you have personal knowledge of?

18 A. I obviously was not an operational person at  
19 Williams who made up the shortfall when Kansas Pipeline  
20 defaulted. However, I met that person, I've talked to them,  
21 and that person testified in Kansas.

22 Q. But you do not have any personal knowledge of  
23 those things that are described in the different pieces of  
24 correspondence or do you?

25 A. I talked to the people who were there, but I

1 wasn't there, I guess is the best way to put it.

2           Q.       The issue of the Trans-Mississippi Pipeline or  
3 the issues surrounding that, do you see the use of that  
4 pipeline for additional gas into the UPL system as being a  
5 positive or a negative to the revenue future of this group  
6 of companies?

7           MR. KEEVIL: Judge, before he answers that, I  
8 might ask, I think we're getting into the in-camera stuff.

9           JUDGE THORNBURG: I don't think he's asking  
10 about Gateway's intent or not intent. I think it's a  
11 general question.

12          MR. KEEVIL: I don't have any objection to the  
13 Commissioner's question, but based on Dr. Pflaum's previous  
14 answers to other people's questions, which may or may not in  
15 my opinion have been responsive to the question asked, that  
16 question's close enough to certain in-camera material I  
17 thought it might be a wise idea to go in-camera at this  
18 time.

19          COMMISSIONER GAW: Whatever you-all think is  
20 appropriate is fine with me.

21          JUDGE THORNBURG: Dr. Pflaum --

22          THE WITNESS: I'll be careful.

23          JUDGE THORNBURG: I'm not going to ask you to  
24 be careful, but if you think your answer may reveal any  
25 highly confidential information you obtained in this

1 proceeding, we'll need to go in-camera and present that.

2 THE WITNESS: It won't.

3 JUDGE THORNBURG: Thank you.

4 THE WITNESS: Let me do it as a hypothetical.

5 Let's say hypothetically that NGPL were to buy that piece of  
6 pipe and enter the St. Louis market. That would be good by.

7 BY COMMISSIONER GAW:

8 Q. And good in what sense?

9 A. In that it would provide transportation, more  
10 transportation competition to Panhandle. It's another issue  
11 whether or not -- the degree to which Panhandle would  
12 respond because Panhandle's structured and it's rates are  
13 structured really for the long haul, to the Chicago area and  
14 north markets. Their rates are tilted so that they're not  
15 particularly competitive in Kansas City and St. Louis, for  
16 example. They're pretty competitive if you get towards the  
17 end of their pipe. So I can't speak to how Panhandle might  
18 respond, but it certainly couldn't hurt.

19 Q. So when you were describing the competition  
20 there, did you make a distinction in the ownership of the  
21 Trans-Mississippi Pipeline itself or are you just talking  
22 about that access to that company's gas having that positive  
23 effect?

24 A. It's really not the gas because gas is priced  
25 on a national market. It's really transportation.

1           Q.       Okay. So I'm asking you whether or not you  
2 made some sort of a subtle distinction in the ownership of  
3 the Trans-Mississippi Pipeline itself with your answer a  
4 while ago. I'm not sure whether you were or not.

5           A.       The structure of my answer is I did. I  
6 avoided a whole slew of regulatory issues.

7           Q.       All right. I understand your desire to do  
8 that, but I'm not sure that that's going to not be on a  
9 track that runs into it anyway.

10                   Did you make a suggestion in your testimony in  
11 regard to that pipeline that runs across the Mississippi  
12 River as to the potential FERC jurisdiction that might come  
13 about as a result of this proposed sale?

14          A.       Yes.

15          Q.       And what was your opinion?

16          A.       That it could open up the Missouri Pipeline to  
17 FERC regulation.

18          Q.       And what are your reasons for that in a brief  
19 form?

20          A.       The applicants themselves could ask for it and  
21 likely would get it. A group of industrial consumers, for  
22 example, could petition the FERC that they want direct  
23 connections and that this is, in fact, an interstate  
24 pipeline and, therefore, they could ask for it to be  
25 declared as one. Who knows what can happen in regulation.

1 Sometimes unexpected things occur and you really can't  
2 anticipate them.

3 Q. What happens -- is the reason for your  
4 opinion, does the -- is the reason for your opinion that  
5 there is an affiliate ownership of that Trans-Mississippi  
6 line with the company that owns the line that it's  
7 connecting to, in this case UPL and I don't know if it's MGC  
8 or MPC?

9 A. I think that's probably some party, whomever  
10 that might be, wished to move this pipeline to FERC  
11 regulation, that would probably be the basis for their  
12 argument.

13 Q. Because there is a subsidiary/parent  
14 relationship --

15 A. Yes.

16 Q. -- between the owners?

17 A. Yes.

18 Q. If the ownership of those two connected lines  
19 were in unaffiliated companies, would your opinion change?

20 A. Yes.

21 Q. And what would that opinion be then?

22 A. Well, if two different people owned them, two  
23 different companies, then I don't see how the FERC could  
24 assert jurisdiction on the Missouri portion based on -- I  
25 mean, it would be just like any other interstate pipeline



1 having an connection to an intrastate pipeline. If they're  
2 unaffiliated in any way, there's no way to pull the  
3 intrastate into the federal jurisdiction.

4 Q. Let me give you another scenario, hypothetical  
5 form. What would happen if the Trans-Mississippi Pipeline  
6 were owned by a corporation that was owned by Mr. Langley  
7 but was not an affiliate of MGC or MPC or UPL?

8 A. That gets into fine points of the law that I  
9 don't want to speculate on. I'm not an attorney.

10 Q. What would happen, then, if that 18 inches or  
11 so that separates the two pipelines were owned by a separate  
12 entity --

13 A. I think that --

14 Q. -- that connected the two entities together?

15 A. I think -- that I don't know. I just don't  
16 know.

17 Q. Do you believe -- I think we have to go into  
18 HC.

19 JUDGE THORNBURG: At this point we'll go in  
20 in-camera session, and those persons not authorized to hear  
21 highly confidential information will need to leave the  
22 hearing room.

23 (REPORTER'S NOTE: At this point, an in-camera  
24 session was held, which is contained in Volume 7, pages 559  
25 through 562 of the transcript.)

1 JUDGE THORNBURG: And Commissioner Lumpe, I  
2 believe you have some questions.

3 QUESTIONS BY COMMISSIONER LUMPE:

4 Q. On the jurisdictional issue again, and this  
5 seems to be one of these significant issues of this case,  
6 and the company claims that it has no intention of asking  
7 for FERC jurisdiction. Is it your position that it doesn't  
8 matter whether they ask, that FERC will come and take  
9 jurisdiction whether somebody asks or not?

10 A. One, they say now they're not going to ask,  
11 but you'll have to weigh that in relation to the history of  
12 the principal.

13 Two, they don't necessarily have to ask. You  
14 may not have been in the room when I earlier answered that  
15 perhaps a group of industrial customers who wanted to bypass  
16 the LDC could petition FERC and say, This is an interstate  
17 pipeline. We don't care what they call it, it's an  
18 interstate, and we want a direct connection to it and we're  
19 asking you as FERC to take control jurisdiction over this  
20 pipeline and give us our direct connection.

21 So it doesn't have to be the applicants  
22 themselves, the owners themselves who ask for FERC  
23 jurisdiction. Customers can ask.

24 Q. And it is your position that it was sort of  
25 presented that FERC really doesn't look to take jurisdiction

1 unless it's almost impossible that they not, and is that --

2           A.       No.

3           Q.       Do you disagree?

4           A.       Absolutely. The FERC --

5           Q.       They're out there looking for jurisdiction?

6           A.       I wouldn't say it that way, Commissioner. I  
7 would say that the FERC has committed to opening up gas  
8 markets as much as they can. They have a long history going  
9 back to Order 436.

10                   If a group of large users were to say, FERC,  
11 we are paying too much for gas because this interstate  
12 pipeline that goes right by us and which we could get a  
13 direct connect and save money calls itself an intrastate  
14 pipeline even though it has a piece going across state  
15 lines. Would you help us?

16                   Because of the FERC's, they call it a  
17 pro-competitive bias, I think they would call it, I think  
18 that there would be at the policy level at that Commission  
19 strong proponents for taking control.

20           Q.       Is part of that, if I heard you correctly,  
21 that the FERC wants to be able to allow all participants to  
22 be able to latch onto the -- I'm trying to think of a better  
23 word -- but get into the pipeline and carry its gas and that  
24 sort of thing; in other words, that open policy of open  
25 access?

1           A.       The FERC wants to remove any -- has  
2 historically moved to remove any impediments they could to  
3 the free flowing of the commodity gas wherever people want  
4 it, and they have generally been proponents of direct  
5 connects and of industrial customers being able to, for want  
6 of a better word, escape the LDCs.

7           Because the FERC would say, well, if the LDC  
8 price to, let's say, a large industrial customer is higher  
9 than the price than they get from a direct connect, then  
10 clearly the LDC price does not reflect the true cost of  
11 serving that customer and is there as a subsidy to some  
12 other customer class and, therefore, results in the  
13 inefficient use of natural gas. That would be their policy  
14 argument.

15           As an economist and someone who's worked in  
16 regulatory policy for a lot of years, it's a compelling  
17 argument.

18          Q.       And one of your other concerns, you had four  
19 or so, I think, and one of them was that one of these, is it  
20 MPC is the only source for some of Laclede's customers?

21          A.       Yes. Well, one of them is. I don't remember  
22 which one.

23          Q.       Are they connected? Is MGC connected to MPC?

24          A.       We heard testimony earlier that they are.

25          Q.       So they are?

1           A.       Yeah. But Laclede can't get gas directly,  
2 let's say, from Panhandle to those customers. Laclede has  
3 to go through MPC or whatever, MGC, to get to those  
4 customers.

5           Q.       And it is the sole supply for a number of  
6 Laclede's customers?

7           A.       That is what Laclede has told me, yes.

8           Q.       And I think I've gone through your seven  
9 conditions with everyone else. I won't bother you with  
10 those.

11                   COMMISSIONER LUMPE: That's all I have. Thank  
12 you.

13                   JUDGE THORNBURG: Commissioner Murray, you may  
14 proceed with any questions you have.

15 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

16           Q.       I have a couple of follow-up questions. Your  
17 position as to FERC jurisdiction and the rationale that you  
18 explained here a moment ago as to FERC's thinking and you  
19 said that it was a compelling argument. I guess what I want  
20 to ask you is, are you opposed to FERC jurisdiction because  
21 you believe it would be detrimental to the Missouri LDCs?

22           A.       I think my gut level opposition would be  
23 because it would be a detriment to customers, because you  
24 end up allocating a portion of the costs back to the truly  
25 captive customers. In a sense from the LDC level it's a

1 zero sum game. You've got an investment. You've got a  
2 revenue requirement. You've got so many ends of sales  
3 you're going to put that over.

4           If you get bypassed, you haven't -- your costs  
5 are pretty much the same. You've just got fewer customers  
6 to assess those costs against.

7           So in a sense, the LDCs, it's almost  
8 irrelevant. They can go in for a rate case, and they truly  
9 do have market power because for most of their customers  
10 there's no other way to get natural gas. So it's the  
11 customer that suffers in the long run, not the LDC  
12 stockholder.

13       Q.     But some of the customers would benefit?

14       A.     Some of the industrials could get lower gas,  
15 maybe get lower cost gas, or at least lower cost  
16 transportation, if they were to direct connect to a pipeline  
17 rather than behind the LDC.

18       Q.     So would it be your position that the FERC is  
19 not concerned about residential users?

20       A.     I could say it strongly, but no, they're not.

21       Q.     So in order to be protective of the  
22 residential users, we'd have to be proactive; is that your  
23 position?

24       A.     It's your policy decision, not mine, but you  
25 have to decide the extent to which these sum costs exist,

1 whether or not you want to protect your ability to allocate  
2 those costs in the way that you see fit or whether you're  
3 going to go ahead and accept the FERC policy, because by  
4 accepting FERC domain, you are therefore at least implicitly  
5 accepting the FERC policy, and that's your policy decision.  
6 I just want to make you aware of it.

7           Q.       I find it hard to believe that the FERC would  
8 have a policy that they would think in the long run  
9 ultimately would be detrimental to any group. I would think  
10 that their policy would be -- would at least be attempting  
11 to encompass, first of all, not just state by state but the  
12 whole country.

13          A.       Right. Their policy is based on economic  
14 efficiency, the idea that by making -- providing service at  
15 the absolute lowest cost, we're doing our jobs as  
16 regulators. Typically state commissions consider both  
17 productive and allocative efficiency.

18                   In other words, state regulators say, Yes, we  
19 want service to be at the lowest total cost, but we're also  
20 concerned that we are dealing here with a market structure  
21 that historically has been regulated, investments have been  
22 made on which there will be a return. So that if you -- you  
23 basically strand investment is what happens, and at the  
24 state level regulators have been more concerned with not  
25 imposing those stranded costs from large consumers who might

1 leave the utility on the captive small customers.

2           You've been going through probably the same  
3 thing with electric dereg. It's the same arguments. The  
4 big guys are going to get a lot cheaper power, and the  
5 people at the residential level are going to pay more.

6           Q.       So you're advocating status quo?

7           A.       I'm not an advocate. I was a policy analyst  
8 for a long time, a couple years at the commission. I just  
9 tell the Commission, here's what it is and absolutely  
10 suggest you make your own decision.

11          Q.       But you are taking a position?

12          A.       Not really, not as an economist. I'm telling  
13 you what would happen, and it's my understanding that  
14 historically this Commission has been somewhat at odds with  
15 the FERC on these allocated versus productive efficiency  
16 issues.

17                 And I'm just alerting you to the fact that,  
18 based on your historical policy, if FERC were to assert  
19 jurisdiction here, this would be contrary to what this  
20 Commission has historically -- how it's historically acted  
21 in these circumstances.

22          Q.       I understand that states historically fight  
23 federal jurisdiction wherever possible.

24          A.       You and I both have been in this business for  
25 a long time.



1           Q.       But I don't necessarily agree that that's good  
2 policy.

3           A.       Okay.

4           COMMISSIONER MURRAY:   Anyway, thank you.

5           JUDGE THORNBURG:   I have just a couple of  
6 questions.

7 QUESTIONS BY JUDGE THORNBURG:

8           Q.       I'm going to try this again.  I'm still not  
9 quite certain what the Hinshaw status means.  Can you  
10 explain that?

11          A.       Ask a lawyer.

12          Q.       Ask a lawyer.  Okay.  Generally, an LDC to get  
13 the gas they need, they need to arrange for gas supply and  
14 transport of that gas; is that true?

15          A.       Sometimes they can -- from an intrastate  
16 pipeline, they can still buy it on a bundled basis, but FERC  
17 had unbundling many years ago.  So usually those are --  
18 those are two separate transactions.

19          Q.       If there were other sources of transport  
20 upstream from MPC so that there might be some competition  
21 with Panhandle and that resulted in some lower transport  
22 rates, I think there's been some indication that that  
23 creates an additional margin for MPC to raise its transport  
24 rates and have higher revenues without impacting the end  
25 user.  Is that a possibility?

1           A.       Sure.

2           Q.       And that would be a way for MPC or MGC to  
3 generate additional revenues?

4           A.       Obviously if you can find -- let's think about  
5 this. If they're providing both the upstream transport and  
6 the transport from the interstate pipeline to the customer,  
7 then they would capture that margin. If the LDC has  
8 arranged for these separately, then the LDC would capture  
9 that margin. So it depends on the nature of who holds the  
10 rights on the interstate pipeline.

11          Q.       If Laclede held firm transport rates for some  
12 term with Panhandle, then they might be able to capture that  
13 differential?

14          A.       They would. If it was Laclede's contract and  
15 Laclede's transport right on Panhandle and Panhandle -- and  
16 Laclede went to Panhandle and said, Look, if you don't lower  
17 your rate, let's say meet NGPL, we're going to swing our  
18 volume to then. Then Laclede initially due to regulatory  
19 lag would garner that margin, and then with the next rate  
20 case it would go back to the customer because Laclede's a  
21 regulated utility.

22          Q.       I suppose if Laclede had a rate freeze placed  
23 on MPC that could help them capture that during that lag  
24 period?

25          A.       No. It would be Laclede's costs, it would be

1 directly their -- the MPC margin or cost is the MPC margin  
2 or cost. If Laclede holds the contract that delivers to  
3 MPC, what MPC charges is not relevant to what Laclede can  
4 extract from the interstate pipeline. It's a conduit, in  
5 other words.

6 JUDGE THORNBURG: Okay. That's all the  
7 questions I had.

8 I think we better take a ten-minute break, and  
9 then when we come back we'll do the recross and redirect and  
10 try to finish that today. We're going to do -- obviously I  
11 don't believe we're going to get done this evening. So I'm  
12 going to ask that we be prepared to begin tomorrow at 8:30,  
13 and if any of the attorneys have some issues with that, let  
14 me know.

15 I think the witnesses that we finish with  
16 today and have finished with yesterday can be excused.  
17 We're on Dr. Pflaum right now, but if we can get all  
18 finished, then he'll be free to go. So that's what we're  
19 going to try to do this evening.

20 MR. KEEVIL: How late did you say we're going  
21 to go this evening, Judge?

22 JUDGE THORNBURG: If we're going to come back  
23 tomorrow, we don't need to go too late this evening.

24 MR. BYRNE: There are eight more witnesses.

25 JUDGE THORNBURG: I don't think we need to --

1 if there's some need to stay late tonight because there's  
2 some concern we won't get through these witnesses tomorrow,  
3 you need to let me know. Otherwise, we probably won't go  
4 much past five.

5                   MR. BOUDREAU: I don't know if it's helpful or  
6 not. I don't have extensive lines of cross, just speaking  
7 for myself, for OPC or Staff's witnesses. I mean, I have a  
8 few questions for some of them. I don't think it's going to  
9 take a lot of time. I don't know about the other counsel.  
10 I just don't know how helpful that is, but I don't  
11 anticipate grilling anybody for any length of time.

12                   MR. BYRNE: We did five witnesses in two days.  
13 It's hard to imagine we're going to do eight more in one  
14 day.

15                   JUDGE THORNBURG: I do understand that. I do  
16 anticipate some of these witnesses moving more quickly.  
17 We're eating into our break time. Let's come back at ten  
18 after. The attorneys can visit, and then we'll have a short  
19 conference when we come back.

20                   (A BREAK WAS TAKEN.)

21                   JUDGE THORNBURG: Okay. As far as the  
22 schedule, we're not going to be able to finish tonight. I  
23 know at least one of the witnesses can't stay late. So  
24 we'll take up tomorrow at 8:30. I don't see anybody  
25 objecting to that.

1                   MR. KEEVIL: Can we go any late at all, take  
2 witnesses that are available if necessary?

3                   JUDGE THORNBURG: I think unless there's a  
4 need to do that to get done tomorrow, I think we'll just  
5 come in in at 8:30 tomorrow.

6                   MR. BYRNE: I just think it's very unlikely --  
7 I'm not going to have any cross-examination, but I think  
8 it's pretty darn unlikely we're going to get through eight  
9 witnesses tomorrow. I just don't think that's going to  
10 happen.

11                  JUDGE THORNBURG: Well, if we don't get done  
12 tomorrow we're going to deal with that then. Mr. Keevil.

13                  MR. KEEVIL: Does anyone object to doing --  
14 are the OPC people here?

15                  MS. O'NEILL: My witnesses are here. They  
16 could stay 'til 5:30 or so. If we can get through one or  
17 both of them, they'd be willing to stick around.

18                  JUDGE THORNBURG: For how long?

19                  MS. O'NEILL: 5:30 or so.

20                  JUDGE THORNBURG: If we're in the middle of a  
21 witness, we can go a little bit longer, but the Commission  
22 needs to have an opportunity for their questions, too, and I  
23 didn't make arrangements for commitments there. I'm going  
24 to tell you administratively we don't like to go very much  
25 beyond five because it creates other issues internally with

1 the Commission unless we've made arrangements early on to do  
2 that.

3           We'll proceed and we'll go as far as we can.  
4 I certainly don't have a problem if we finish up with this  
5 witness before five starting with the next and going as far  
6 as we can. On the recross, we would have Ameren.

7           MR. BYRNE: No questions, your Honor.

8           JUDGE THORNBURG: Staff?

9           MS. SHEMWELL: No questions. Thank you, your  
10 Honor.

11          JUDGE THORNBURG: Office of the Public  
12 Counsel?

13          MS. O'NEILL: No questions, your Honor.

14          JUDGE THORNBURG: UtiliCorp, Mr. Boudreau?

15          MR. BOUDREAU: None. Thank you.

16          JUDGE THORNBURG: Gateway, Mr. Keevil?

17          MR. KEEVIL: If I've counted correctly,  
18 depending on the witness' answer, I've only got two.

19          THE WITNESS: Put the pressure on.

20          JUDGE THORNBURG: Are these prior exhibits?

21          MR. KEEVIL: Yeah. This is the exhibit I  
22 previously asked you to receive. I think it's 21.

23          JUDGE THORNBURG: Yes, it's 21.

24          MR. BOUDREAU: Excuse me, your Honor. Was 21  
25 received?

1 JUDGE THORNBURG: Yes, it was.

2 RECROSS-EXAMINATION BY MR. KEEVIL:

3 Q. Dr. Pflaum, in response to some questions from  
4 Commissioner Murray earlier, you referred to the concerns  
5 and recommendations in your testimony as their concerns  
6 rather than your concerns, and I was wondering who the they  
7 is?

8 A. You know, I don't have a dog in this fight.  
9 It's the Commission's concerns. I'm just trying to make  
10 them fully aware of the various ramifications.

11 Q. So the concerns in your testimony are the  
12 Commission's concerns?

13 A. Well, if you'll point specifically to the page  
14 to which you're referring.

15 Q. Turn to your recommendations. You did the  
16 same thing with your seven recommendations. Those are the  
17 Commission's recommendations?

18 A. No. I recommend those.

19 Q. Those are your recommendations?

20 A. Yes.

21 Q. And the concerns, I think Commissioner Murray  
22 and Commissioner Lumpe referred to three or four concerns  
23 you list in your testimony?

24 A. Well, I have to -- I recall that, but I don't  
25 recall where in my testimony she was referring. So you'd

1 have to point me to it.

2 Q. Well, were you presenting your testimony on  
3 behalf of the Commission?

4 A. No.

5 Q. Are the concerns listed in your testimony your  
6 concerns?

7 A. Show me where.

8 Q. Are the concerns generally in your testimony  
9 your concerns?

10 MR. PENDERGAST: I'm going to object this line  
11 of questions. I think it mischaracterizes the discussion  
12 that was had on this issue. I think these specific  
13 questions were being raised with respect to the bypass  
14 policy and economic justification, and I don't believe that  
15 the discussion really went beyond that.

16 JUDGE THORNBURG: Okay. I'm going to overrule  
17 the objection. Mr. Keevil, the question's not real clear to  
18 me either. You asked him what his concerns are with respect  
19 to --

20 MR. KEEVIL: Well, I'm just trying to figure  
21 out, in response to the Commissioners' questions concerning  
22 the concerns listed in his testimony --

23 THE WITNESS: I remember now.

24 MR. KEEVIL: -- he said, he referred to those  
25 concerns as their concerns, and I'm trying to figure out who



1 the they is, whose concerns are these in his testimony.

2 JUDGE THORNBURG: I think Dr. Pflaum has a  
3 recollection now.

4 THE WITNESS: Yes, Judge. I think what I was  
5 talking about there, we were talking about FERC issues and  
6 bypass issues, and what I'm trying to do, these are things  
7 that the Commission should be concerned about or should  
8 consider.

9 I don't personally have any concerns about  
10 FERC jurisdiction or bypass. That's more of a policy issue  
11 for this Commission. It's not for an expert witness to do  
12 anything other than lay out the parameters for the  
13 Commission so they can make an informed judgment.

14 BY MR. KEEVIL:

15 Q. So the concerns aren't Laclede's concerns?

16 A. They may or may not be. They're not mine.

17 Q. They're not yours and they may not be  
18 Laclede's?

19 A. I'm not Laclede's mouthpiece. I mean, the  
20 concerns are policy concerns, policy issues that would  
21 arise, and I'm just trying to discuss them and provide some  
22 illumination, not offer an opinion.

23 MR. PENDERGAST: Your Honor, if I could  
24 respond, too.

25 MR. KEEVIL: Objection. I didn't ask him a

1 question.

2 JUDGE THORNBURG: I'm sorry, Mr. Pendergast,  
3 do you have an objection? You can make your arguments in a  
4 brief, and you're going to have a chance to do redirect here  
5 also.

6 MR. KEEVIL: Well, the witness has answered.  
7 I don't see why he's objecting now.

8 JUDGE THORNBURG: Go ahead, Mr. Keevil.

9 MR. KEEVIL: Thank you, Judge.

10 BY MR. KEEVIL:

11 Q. You mentioned bypass. To the extent that FERC  
12 has a policy regarding bypass, that policy currently applies  
13 to MRT, Panhandle or any entity that might activate what has  
14 been referred to in this case as the TMP assets, correct?

15 A. Well, I don't think they go far enough to  
16 bypass to anyone, but yes, anyone could use those. Any  
17 interstate could use those, and if they could then from  
18 there get to a bypass candidate, they could do it.

19 MR. KEEVIL: Thanks. That's all I have.

20 JUDGE THORNBURG: Okay. Mr. Pendergast?

21 MR. PENDERGAST: Thank you.

22 REDIRECT EXAMINATION BY MR. PENDERGAST:

23 Q. Just a couple of clarification questions, if I  
24 could. You were asked a number of questions by Mr. Keevil  
25 just now regarding recommendations made in your testimony

1 regarding proposed conditions, and just to clarify the  
2 record, do you believe those proposed conditions are  
3 reasonable?

4           A.       Yes.

5           Q.       And appropriate?

6           A.       Yes.

7           Q.       Thank you.

8                    You also were asked a number of questions by  
9 Mr. Keevil about the Order of Dismissal. Do you recall  
10 those questions?

11          A.       Yes.

12          Q.       And just to fully present what's in that Order  
13 of Dismissal, I believe Mr. Keevil read a number of  
14 sentences out of it. Do you still have that in front of  
15 you?

16          A.       I can get it right here.

17          Q.       Would you.

18          A.       I have it.

19          Q.       And the last sentence in the -- before the  
20 paragraph immediately preceding the, It is therefore by the  
21 Commission ordered, does it say, Further, Staff has reviewed  
22 the gas supply contracts of KPP and KNP and concluded that  
23 at the present time respondents have under contract  
24 sufficient supplies of gas to meet their contract demand  
25 with WRI?

1           A.       Yes.

2           Q.       Okay.  Could you look at the front page of  
3 that Order and tell me when that Order was issued?

4           A.       March 15th, 1995.

5           Q.       March 15th or March 14th?

6           A.       My stamp says the 15th, but it's dated the  
7 14th.

8           Q.       Okay.  March 14th or March 15th.  Was that a  
9 number of months after the interruptions occurred?

10          A.       Well, the interruptions were, I believe,  
11 January 18th and 19th, so yes.

12          Q.       And does this Order purport to indicate  
13 anything about whether supplies were adequate at that time?

14          A.       Actually, if I could just have a moment.

15                 MR. KEEVIL:  Judge, I'm going to object to  
16 this while he's looking, just so we can save time.  
17 Dr. Pflaum testified while I was questioning that he was not  
18 involved in this case.  Therefore, his knowledge of it has  
19 to being taken from the complaint or the Petition which is  
20 in evidence as well as the Order of Dismissal which is in  
21 evidence which speak for themselves.  And I think to ask him  
22 any further questions is either hearsay or just, like I  
23 said, taken from documents that speak for themselves.

24                 JUDGE THORNBURG:  It's overruled.

25                 THE WITNESS:  Actually, I believe the problems

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1 occurred, yeah, January 17th and 18th, 1994. This is 15  
2 months after that.

3 BY MR. PENDERGAST:

4 Q. 15 months. Okay. And once again, this  
5 doesn't purport to say what the situation was prior to  
6 March 14th or 15th, does it?

7 A. No. This is part of the settlement.

8 Q. You were also asked a number of questions by  
9 Commissioner Murray regarding capacity release on Panhandle,  
10 and are you aware that Laclede has a bundled supply  
11 arrangement where it is given a delivered service off of  
12 MPC?

13 A. You made me aware of that probably before but  
14 reminded me again.

15 Q. And just by way of clarification, would that  
16 have any impact on your comments about capacity release from  
17 Panhandle?

18 A. Well, it would seem that because of that and  
19 because of the ACA proceedings, that would be recaptured,  
20 I'm not sure that it would ever flow through to MPC.

21 Q. Okay. And it wouldn't be something that would  
22 be recovered in base rates?

23 A. I don't think so.

24 MR. PENDERGAST: Okay. Thank you. I have  
25 nothing further.

1 JUDGE THORNBURG: Thank you. Dr. Pflaum, you  
2 may be excused.

3 (Witness excused.)

4 JUDGE THORNBURG: We'll start with the Public  
5 Counsel witnesses.

6 (Witness sworn.)

7 JUDGE THORNBURG: You may be seated.

8 MARK BURDETTE testified as follows:

9 DIRECT EXAMINATION BY MS. O'NEILL:

10 Q. Mr. Burdette, would you state your full name  
11 for the record, please.

12 A. Mark Burdette.

13 Q. How are you employed?

14 A. I'm a Public Utility Financial Analyst for  
15 Missouri Office of the Public Counsel.

16 Q. And did you prepare and cause to be filed in  
17 this matter both NP and HC versions of rebuttal testimony  
18 and supplemental rebuttal testimony which have been marked  
19 as 10 and 10HC and 11 and 11HC in this case?

20 A. I have to take your word on the numbers, but  
21 yes.

22 Q. And are there any changes or corrections to  
23 that testimony that you would like to make at this time?

24 A. No, none that I'm aware of.

25 Q. If I was to ask you the questions contained in

1 the versions of 10 and 11, 10 and 10HC and 11 and 11HC here  
2 today, would your answers be the same as they are in the  
3 prefiled testimony?

4           A.       Yes.

5                   MS. O'NEILL: Your Honor, at this time I would  
6 offer Exhibits 10, 10HC, Exhibit 11 and 11HC into evidence.

7                   JUDGE THORNBURG: Are there any objections to  
8 these exhibits?

9                   (No response.)

10                   Hearing none, they'll be received.

11                   (EXHIBIT NOS. 10, 10HC, 11 AND 11HC WERE  
12 RECEIVED INTO EVIDENCE.)

13                   MS. O'NEILL: And I would tender the witness  
14 for cross-examination.

15                   JUDGE THORNBURG: Ms. Shemwell?

16                   MS. SHEMWELL: No questions. Thank you, your  
17 Honor.

18                   JUDGE THORNBURG: Mr. Byrne?

19                   MR. BYRNE: No questions, your Honor.

20                   JUDGE THORNBURG: Laclede Gas?

21                   MR. PENDERGAST: No questions, your Honor.

22                   JUDGE THORNBURG: UtiliCorp?

23                   MR. BOUDREAU: Yes, just a couple. Thank you.

24 CROSS-EXAMINATION BY MR. BOUDREAU:

25           Q.       Good afternoon, Mr. Burdette.

1           A.       Good afternoon.

2           Q.       You're a lucky man. I'm incented to be brief  
3 tonight.

4           A.       Thank you.

5           Q.       I've just got a couple of questions for you,  
6 and the first is, would you agree with me that there -- that  
7 the joint applicants in this case haven't requested any  
8 change in the rates that will be charged by Missouri  
9 Pipeline Company or Missouri Gas Company?

10          A.       Correct.

11          Q.       Would you also agree with me that there's  
12 really no evidence in the record of any problems in terms of  
13 safe operation of the pipeline specifically?

14          A.       To the extent of my knowledge in that area, I  
15 would have to agree.

16                   MR. BOUDREAU: That's all I have. Thank you.

17                   JUDGE THORNBURG: Okay. Gateway, Mr. Keevil?

18                   MR. KEEVIL: No questions.

19                   JUDGE THORNBURG: Okay. Commissioner Murray,  
20 do you have any questions?

21                   COMMISSIONER MURRAY: I have no questions.

22 Thank you.

23                   JUDGE THORNBURG: I don't have any questions.

24 That doesn't give any opening for recross or redirect. I  
25 can't excuse this witness until tomorrow. I'll e-mail the



1 Commission and I'll let you know when I get their responses  
2 if we're going to have any Bench questions.

3                   Mr. Burdette, can you be available tomorrow on  
4 short notice if we need to call you back?

5                   THE WITNESS: Yeah. I'll be here at 8:30.

6                   JUDGE THORNBURG: Are your offices in this  
7 building?

8                   THE WITNESS: They are.

9                   MS. O'NEILL: And pending things that may come  
10 up with the Commission, I don't have any redirect.

11                  JUDGE THORNBURG: We can -- if you need to be  
12 in your office, we can call you. We can work -- we can get  
13 you down here as long as you're in the building.

14                  THE WITNESS: You mean tomorrow?

15                  JUDGE THORNBURG: Tomorrow. Thank you. And  
16 at this time you can be dismissed. You're not released  
17 until I find out if we have more questions from the  
18 Commissioners.

19                  THE WITNESS: Thank you.

20                  JUDGE THORNBURG: Ms. O'Neill, you can call  
21 your next witness.

22                  MS. O'NEILL: Kimberly Bolin.

23                  (Witness sworn.)

24 KIMBERLY BOLIN testified as follows:

25 DIRECT EXAMINATION BY MS. O'NEILL:

1 Q. Could you please state your name for the  
2 record.

3 A. Kimberly Bolin.

4 Q. And how are you employed?

5 A. I'm a Public Utility Accountant with the  
6 Office of the Public Counsel.

7 Q. And did you prepare and cause to be filed in  
8 this case rebuttal testimony and supplemental rebuttal  
9 testimony in both HC and NP versions?

10 A. Yes, I did.

11 Q. And are those current -- those prefiled  
12 testimonies marked as Exhibit 12 and 12HC and Exhibit 13 and  
13 13HC?

14 A. Yes, they are.

15 Q. And are there any changes or corrections that  
16 you would like to make to those prefiled testimonies at this  
17 time?

18 A. I had a correction in my rebuttal testimony,  
19 but I made the correction through my supplemental rebuttal  
20 testimony.

21 Q. And are there any other corrections that you  
22 would make at this time?

23 A. No, there isn't.

24 Q. And if I were to ask you the questions  
25 contained in your rebuttal testimony and supplemental

1 rebuttal testimony here today, would your answers be the  
2 same?

3           A.       Yes, they would.

4           MS. O'NEILL: Your Honor, I move for admission  
5 of Exhibit 12 and 12HC and Exhibit 13 and 13HC.

6           JUDGE THORNBURG: Are there any actions to  
7 these exhibits?

8           (No response.)

9           Hearing none, Exhibits 12, 12HC, 13 and 13HC  
10 will be received.

11           (EXHIBIT NOS. 12, 12HC, 13 AND 13HC WERE  
12 RECEIVED INTO EVIDENCE.)

13           MS. O'NEILL: And I tender the witness for  
14 cross-examination.

15           JUDGE THORNBURG: Thank you. Ms. Shemwell, do  
16 you have any questions for this witness?

17           MS. SHEMWELL: I do not, your Honor. Thank  
18 you.

19           JUDGE THORNBURG: Mr. Byrne?

20           MR. BYRNE: No questions, your Honor.

21           JUDGE THORNBURG: Mr. Pendergast?

22           MR. PENDERGAST: No questions, your Honor.

23           JUDGE THORNBURG: Mr. Boudreau?

24           MR. BOUDREAU: Thank you. Again, just a few.

25 CROSS-EXAMINATION BY MR. BOUDREAU:

1 Q. Good afternoon, Ms. Bolin.

2 A. Good afternoon.

3 Q. I'll try and keep this brief. You have in  
4 your rebuttal testimony addressed basically, I think, three  
5 topics. I'm just trying to speed things along here. I  
6 think you've touched on the topic of acquisition adjustment;  
7 is that right?

8 A. That's correct.

9 Q. Transaction costs?

10 A. That's correct.

11 Q. And you've also made a reference to the  
12 affiliated transactions. I think those are the three broad  
13 categories.

14 A. Yes.

15 Q. Now, with respect to the concerns that were  
16 expressed about acquisition adjustment and transaction  
17 costs, you're aware that nobody's requested any change in  
18 any rates at least in this case?

19 A. I'm aware that they've not requested any in  
20 this case.

21 Q. And as a consequence of the approval or if the  
22 Commission were to approve the Joint Application, there  
23 wouldn't be any change in any of the rate schedules or  
24 tariffs or provisions?

25 A. That is correct.

1           Q.       The affiliate transactions rules that you've  
2 brought up, I didn't compare them line by line, but was it  
3 just a recitation of the rule that the Commission's adopted  
4 with respect to affiliated transactions?

5           A.       Yes, it was.

6           Q.       With respect to your supplemental rebuttal,  
7 the only question I have about that is on -- it's not  
8 numbered, but it's the first page, and I think it overlaps  
9 onto the second major. There's some discussion there about  
10 a business strategic plan. Am I correct?

11          A.       That is correct.

12          Q.       My question to you is, are you suggesting that  
13 the filing was deficient because a business strategic plan  
14 was not supplied? And maybe worded another way, is there a  
15 requirement under the circumstances of this case that a  
16 business strategic plan be filed along with the application?

17          A.       I don't think there's necessarily a  
18 requirement. We request it and we would like to have the  
19 information in order to provide effective regulation.

20          Q.       I understand that, but I -- and that's just  
21 what I wanted to clarify. You're not suggesting that the  
22 filing itself was insufficient for lack of a business  
23 strategic plan being supplied along with the application,  
24 are you?

25          A.       I don't know that there's that requirement

1 that it be filed with the original filing.

2 Q. So you don't know whether or not there's a  
3 requirement under the Commission's rules accompanying --

4 A. I'm not aware.

5 Q. Well, let me ask you this.

6 MR. BOUDREAU: Let me do this. I would ask  
7 the Commission to take administrative notice of its own  
8 applications rule, which I believe is 4 CSR 240-2.050. It  
9 sets out the filing requirements of the company,  
10 applications of different topics and subject matters.

11 JUDGE THORNBURG: The Commission will take  
12 notice of its own administrative rules.

13 BY MR. BOUDREAU:

14 Q. It would fair to say, then, that the rule says  
15 what the rule says; is that correct?

16 A. I guess the rule says what the rule says.

17 Q. And if the rule were to say that along with an  
18 application of this type you need to fill a feasibility  
19 study or a business strategic plan, that the rule would say  
20 so, wouldn't it?

21 A. I guess it would.

22 MR. BOUDREAU: That's all I have for this  
23 witness. Thank you.

24 JUDGE THORNBURG: Thank you, Mr. Boudreau.  
25 Mr. Keevil?

1                   MR. KEEVIL: I thought I'd start walking  
2 before you called me to speed it up.

3                   JUDGE THORNBURG: That's fine.

4 CROSS-EXAMINATION BY MR. KEEVIL:

5           Q.       Good afternoon, Ms. Bolin.

6           A.       Good afternoon.

7           Q.       Did I hear you tell Mr. Boudreau just a few  
8 moments ago that you agree that this is not a rate case?

9           A.       Yes, I agree with that. This is not a rate  
10 case.

11          Q.       And you agree that no one in this case is  
12 requesting an acquisition adjustment or transaction cost  
13 recovery or any change in the rates or services or tariffs  
14 of Missouri Pipeline Company or Missouri Gas Company?

15          A.       I would agree with that statement, not in this  
16 case.

17          Q.       Are you aware of what this Commission's prior  
18 policy has been regarding addressing acquisition adjustments  
19 in acquisition cases as opposed to the rate case following  
20 the acquisition case?

21          A.       Yes, I'm aware of it.

22          Q.       And what is it?

23          A.       I believe they do not go ahead and rule that  
24 an acquisition adjustment cannot be denied at that time,  
25 that it will be considered in future rate cases.

1           Q.       So just to take the last part of your answer  
2 there, the Commission's policy has been to address the issue  
3 of acquisition adjustments in rate cases rather than in the  
4 acquisition?

5           A.       That is correct. That is Commission policy.

6           MR. KEEVIL: No further questions.

7           JUDGE THORNBURG: Thank you. Commissioner  
8 Murray, do you have any questions?

9           COMMISSIONER MURRAY: I have no questions.

10          JUDGE THORNBURG: I don't have any questions.  
11 Ms. Bolin, I'm going to ask also that, will you be available  
12 tomorrow?

13          THE WITNESS: Yes, I will.

14          JUDGE THORNBURG: As long as you're available  
15 in the building, we may recall you if there are questions  
16 from the Bench, but at this point -- well, we may still have  
17 some redirect from Ms. O'Neill. We'll do that. We'll have  
18 another round of this if there are questions from the Bench.

19          MS. O'NEILL: With that understanding, I do  
20 have just a couple of questions.

21 REDIRECT EXAMINATION BY MS. O'NEILL:

22          Q.       Ms. Bolin, you were asked by Mr. Boudreau  
23 whether or not there's a requirement that a strategic  
24 business plan be filed along with the application. Do you  
25 recall that question?



1           A.       Yes, I do.

2           Q.       In fact, in an application for an acquisition  
3 such as this, there's also not a requirement that testimony  
4 be filed at the time the application is filed; is that your  
5 understanding?

6           MR. BOUDREAU: I'm going to object. I think  
7 she's testified she's not aware of what the rule says. I  
8 think she told me she wasn't aware of what was contained in  
9 the rules.

10          JUDGE THORNBURG: The applications rule?

11          MR. BOUDREAU: Yes.

12          MS. O'NEILL: I'll withdraw the question.

13 BY MS. O'NEILL:

14          Q.       Ms. Bolin, you've been involved in other  
15 proceedings before this Commission; is that correct?

16          A.       That is correct.

17          Q.       And is it common practice to request  
18 additional information from companies who apply for  
19 Commission actions of various kinds?

20          A.       Yes, it is. We send out many DRs in many  
21 cases.

22          Q.       And in this particular case, were you able to  
23 do a complete analysis of this proposed transaction without  
24 requesting a business plan?

25          A.       No, I was not.

1           Q.       And was the lack of a strategic business plan  
2 a hinderance to you, at least as far as what was provided to  
3 you a hinderance in performing your evaluation?

4           A.       Yes, it was.

5           Q.       And you were asked by Mr. Keevil whether or  
6 not you were aware of the Commission's policy regarding  
7 making a determination about acquisition adjustments in  
8 acquisition cases. You recall that?

9           A.       Yes, I recall that.

10          Q.       Are you also familiar with the Commission's  
11 practice, recent practice regarding granting acquisition  
12 adjustments in subsequent rate cases?

13          A.       To my knowledge, they have not granted an  
14 acquisition adjustment in any case.

15                   MS. O'NEILL: Pending further questioning  
16 from the Commission, I don't have any further questions.

17                   JUDGE THORNBURG: Okay.

18                   MR. KEEVIL: Let's do some Staff witnesses.

19                   JUDGE THORNBURG: I'm with you. We'll  
20 continue. Actually, I think a couple of these we aren't  
21 going to have extensive questioning.

22                   Ms. Bolin, thank you. And we'll call you  
23 tomorrow if we have Bench questions.

24                   Then next up was Mr. Kottwitz. Is he  
25 available?

1 MS. SHEMWELL: Your Honor, when it became  
2 apparent that we were likely going to go tomorrow, I asked  
3 the other parties if it was all right that Mr. Kottwitz be  
4 taken out, and he'll be available to go first in the  
5 morning. So if we could proceed with Mr. Lock, he's  
6 available.

7 JUDGE THORNBURG: Sure. Mr. Lock.

8 (Witness sworn.)

9 JUDGE THORNBURG: You may be seated. You may  
10 proceed.

11 MS. SHEMWELL: Thank you, your Honor.

12 PHIL LOCK testified as follows:

13 DIRECT EXAMINATION BY MS. SHEMWELL:

14 Q. Would you please state your full name for the  
15 record.

16 A. Phil S. Lock, L-o-c-k.

17 Q. Where do you work?

18 A. I work at 200 Madison Street, Jefferson City,  
19 Missouri 65101.

20 Q. For whom do you work?

21 A. I work for the Missouri Public Service  
22 Commission as a Regulatory Auditor.

23 Q. Mr. Lock, did you prepare testimony that has  
24 been filed in this case and marked 15 and 15HC?

25 A. Yes, I did.

1           Q.       So you filed nonproprietary and HC rebuttal  
2 testimony; is that correct?

3           A.       That's correct.

4           Q.       Do you have any corrections or additions to  
5 your testimony?

6           A.       I have a couple of corrections, minor  
7 corrections. Bear with me. I have them in my other  
8 testimony which I don't have with me.

9           Q.       That's fine.

10          A.       One correction I have is on page 6, line 17.  
11 Where it says "orders have place," it should be "placed"  
12 with a D on the end. And the other minor correction I have  
13 is on the same page, line 18, and in front of GA-94-325 it  
14 should say Case No. Those are all the corrections.

15          Q.       Thank you. If I were to ask you the same  
16 questions today, would your answers be substantially the  
17 same?

18          A.       Yes, they would.

19          Q.       Is your testimony true and correct to the best  
20 of your knowledge and belief?

21          A.       Yes, it is.

22                   MS. SHEMWELL: Your Honor, I would offer 15  
23 and 15HC into evidence and tender the witness for cross.

24                   JUDGE THORNBURG: Are there any objections to  
25 the admission of Exhibits 15 and 15HC?

1 (No response.)

2 Hearing none, these exhibits will be received  
3 into evidence.

4 (EXHIBIT NOS. 15 AND 15HC WERE RECEIVED INTO  
5 EVIDENCE.)

6 JUDGE THORNBURG: Thank you, Ms. Shemwell.

7 MS. SHEMWELL: Thank you, your Honor.

8 JUDGE THORNBURG: Ms. O'Neill, do you have any  
9 questions for this witness?

10 MS. O'NEILL: No, your Honor.

11 JUDGE THORNBURG: Mr. Pendergast?

12 MR. PENDERGAST: No, your Honor.

13 JUDGE THORNBURG: Mr. Byrne?

14 MR. BYRNE: No, your Honor.

15 JUDGE THORNBURG: Mr. Boudreau?

16 MR. BOUDREAU: I may have one or two. Thank  
17 you, your Honor.

18 CROSS-EXAMINATION BY MR. BOUDREAU:

19 Q. Good afternoon, Mr. Lock.

20 A. Good afternoon.

21 Q. The first question I have for you I think is  
22 in the nature of clarification. On page 2, I believe, on  
23 line 10, you characterize the transaction as being the sale  
24 by UtiliCorp of pipeline assets. Do you see that?

25 A. Yes, I do.

1 MS. SHEMWELL: I'm sorry. What was the line  
2 reference?

3 MR. BOUDREAU: It's line 10 on page 2.

4 BY MR. BOUDREAU:

5 Q. My question to you is, have you sat through  
6 some of the other testimony that's gone on about this case?

7 A. Yes, I have.

8 Q. This may just be semantics. I know the term  
9 sale of assets and sale of stock has been used somewhat  
10 interchangeably here. My question to you is, do you  
11 understand this is the sale of the capital stock of the  
12 parent companies of the two pipeline companies?

13 A. Yes, I do. After I included that in there, I  
14 do recognize that.

15 Q. Thank you. On, I believe it starts at the  
16 this bottom of page 2, you have a question and answer  
17 starting on line 18. You talk about -- well, actually, it's  
18 line 22. Excuse me. Line 22, page 2, and you have a  
19 question and answer about whether UtiliCorp anticipates  
20 higher gas rates for eastern district customers as a result  
21 of the sale. Do you see that?

22 A. Right.

23 Q. And you say it's uncertain whether UtiliCorp  
24 anticipates higher gas rates, correct?

25 A. That's correct.

1           Q.       I guess my question to you is, has UtiliCorp  
2 filed any request for rate relief for its eastern district  
3 MPS customers?

4           A.       No, they haven't filed for any rate relief.

5           Q.       So you can say for certain that UtiliCorp will  
6 not be raising rates as a part of this proceeding; isn't  
7 that right?

8           A.       As part of this proceeding, that's correct.

9           Q.       And you can also state for certain that it has  
10 not filed nor has it indicated that it proposes to file any  
11 rate increase for the eastern district operations; is that a  
12 fair statement?

13          A.       I'm not aware of any.

14          Q.       Let me ask you this.  Would the same also be  
15 true of AmerenUE?

16          A.       Could you reask the question, specifically  
17 what you're asking for?

18          Q.       Let me restate it.  Has AmerenUE indicated  
19 that it plans on seeking to raise rates for any of its gas  
20 distribution operations, particularly those that are served  
21 off this pipeline?

22          A.       Not that I'm aware of.

23                 MR. PENDERGAST:  Your Honor, I'm going to  
24 object on the basis that I think the question may assume  
25 something that is simply inconsistent with how the system

1 works. Are you talking about -- I think it assumes a base  
2 rate increase to recover.

3 THE WITNESS: My responses were reference to  
4 base rates. I assumed that's what you were talking about.

5 MR. BOUDREAU: I think that's what I was  
6 talking about, too. Hopefully we're on the same page.

7 THE WITNESS: All right.

8 JUDGE THORNBURG: I'm not sure that was  
9 actually an objection but a clarification, and we'll take it  
10 as such.

11 BY MR. BOUDREAU:

12 Q. I believe it's on page 3 of your testimony,  
13 there's a question to you on line 7, If the sale were to  
14 occur, could this result in increases to cost of service  
15 provided to customers on the eastern district? Do you see  
16 that?

17 A. Yes, I do.

18 Q. And you say the potential is there?

19 A. Yes.

20 Q. Is that right?

21 A. Yes, I did.

22 Q. But you are not stating, are you, that there  
23 will, in fact, be an increase to MPS's eastern district cost  
24 of service as a direct consequence of the proposed stock  
25 sale, are you?



1           A.       Not directly associated with this case, no.

2           Q.       Okay. To your knowledge, has Gateway or any  
3 other party applicant in this case requested that any of the  
4 rate schedules of MPS or MPC be modified in any way as a  
5 consequence of the Commission's approval of this  
6 transaction?

7           A.       No, and this is not the forum to do it.

8           Q.       On page 4, and I believe it's in response to a  
9 question that starts at line 12 of your testimony, you make  
10 some reference to, I think the term you use is the higher  
11 transportation costs associated with UtiliCorp's eastern  
12 district customers. Do you see that?

13          A.       Yes, I do.

14          Q.       Now, those higher transportation costs, using  
15 your terminology, are costs that already exist, aren't they?

16          A.       Yes.

17          Q.       And if the Commission were to deny this  
18 application, those transportation costs won't go down, will  
19 they?

20          A.       Probably not.

21          Q.       Let me turn to page 7 of your testimony, and I  
22 believe there you have a reference to concerns or at least  
23 the issue of bypass of local distribution companies. Do you  
24 see that?

25          A.       Yes.

1 Q. And I think you note --

2 MS. SHEMWELL: I'm sorry. Can I have that  
3 reference again?

4 MR. BOUDREAU: Page 7 of his testimony, and I  
5 believe the question and answer that I'm referring to start  
6 on line 3.

7 MS. SHEMWELL: Thank you.

8 BY MR. BOUDREAU:

9 Q. And let me ask you this. What is your  
10 understanding about the current status of any restriction on  
11 bypass of LDCs that currently exist associated with Missouri  
12 Pipeline Company or Missouri Gas Company's certificates, to  
13 your knowledge?

14 A. I couldn't answer that question. I just know  
15 it requires prior Commission approval before that's  
16 required.

17 Q. So you don't know if that Commission is  
18 actually imposed on the existing certificates?

19 A. I couldn't answer that.

20 Q. Fair enough.

21 MR. BOUDREAU: That's all the questions I have  
22 for this witness. Thank you.

23 JUDGE THORNBURG: Mr. Keevil, did you have any  
24 questions?

25 MR. KEEVIL: Just a few, Judge. Not very

1 many.

2 CROSS-EXAMINATION BY MR. KEEVIL:

3 Q. Good afternoon, Mr. Lock.

4 A. Good afternoon, Mr. Keevil.

5 Q. I want to follow up briefly on something that  
6 Mr. Boudreau was asking you about. I think he asked you if  
7 there were -- correct me if I'm wrong here. I may be. He  
8 asked you, I believe, if any changes in rates were being  
9 sought in this case. Do you recall that?

10 A. There's no rate increases being sought in the  
11 context of this particular case, no.

12 Q. Okay. And that would apply to both base  
13 rates, ACA rates, PGA rates or any other type of rates,  
14 right?

15 A. Well, this case is not the forum to increase  
16 gas rates, I mean, commodity cost rates.

17 Q. Rates of any kind, correct?

18 A. That's my understanding.

19 Q. Okay. Have you seen any evidence from any of  
20 the other parties in the case that indicate that as a direct  
21 result of this case their rates will increase?

22 A. As it directly concerns this particular case,  
23 no, but down the road there's that potential.

24 Q. Hang on just a second. And is that -- I'm  
25 trying to stay out of highly confidential here. Is that

1 because of the reason you express at the top of page 4 of  
2 your testimony, in your opinion?

3           A.       Trying to stay away from the HC.

4           Q.       It's in HC.

5           A.       I know.

6           Q.       I just want you to look at it and tell me if  
7 that's --

8           A.       Which particular lines are you talking about?

9           Q.       The first five lines. Is that why you believe  
10 that possibly exists or is there some other possibility I'm  
11 missing?

12          A.       That's basically my major concern. The other  
13 concern is, there is one other concern I have, too, and from  
14 the standpoint that additional throughput is required on  
15 that MPC system, there will be additional capital costs that  
16 need to be accounted for, and I have not seen a cost/benefit  
17 analysis of what those costs are relative to the revenue  
18 stream that will arrive from that. But those two things are  
19 my concerns.

20          Q.       Would you agree, just generally speaking again  
21 so we don't get into any HC stuff, increasing throughput  
22 should result in a lower per-unit cost?

23          A.       It may and may not.

24          Q.       So it may or may not result in your  
25 hypothetical of higher costs, correct?

1           A.       That's true.

2           Q.       Okay. And I assume you're not -- correct me  
3 if I'm wrong. I assume you're not the witness to address  
4 the possibility which you discuss in highly confidential  
5 form at the top of page 4 of your testimony?

6           A.       That's correct. I think that's Staff witness  
7 Morrissey's testimony.

8           Q.       It probably goes without saying, Mr. Lock, but  
9 since no changes in rates are being sought in this case, are  
10 you aware of any changes in services or tariffs that are  
11 being sought in this case?

12          A.       I've not been made aware of that, although I  
13 have not addressed that specific issue.

14          Q.       When you address ACA rates in your  
15 testimony -- strike that.

16                   Do MPC and MGC have ACA rates?

17          A.       No.

18                   MR. KEEVIL: Thank you. That's all.

19                   JUDGE THORNBURG: Commissioner Murray, do you  
20 have any questions?

21                   COMMISSIONER MURRAY: Just one.

22 QUESTIONS BY COMMISSIONER MURRAY:

23          Q.       Good afternoon.

24          A.       Good afternoon.

25          Q.       If the Commission does not approve this

1 application, is there a potential for an increase in rates  
2 for MPC and MGC?

3           A.       As I indicated earlier, I think down the road  
4 there is that potential, and I've got to be careful how I  
5 say this because some of this is HC, but the FERC issue is  
6 one of my concerns.

7                   And the other issue is regarding bringing in  
8 additional throughput through the system, and I'm sure as  
9 everybody's heard this, when you put additional throughput  
10 through the system, it will require some additional capital  
11 outlay, whether it be additional pipe, pressure regulator  
12 stations, what have you.

13                  So there's going to be some additional costs  
14 associated with that. And I still don't have the comfort  
15 factor knowing exactly what those costs are relative to the  
16 revenues.

17           Q.       The potential for rate increase is there  
18 regardless of who owns MPC or MGC; is that correct?

19           A.       I would say that's true.

20                  COMMISSIONER MURRAY: Thank you. That's all I  
21 have.

22                  JUDGE THORNBURG: Ms. O'Neill, do you have any  
23 questions based on questions from the Bench? And granted,  
24 if we come back to this witness again, we'll have another  
25 round.

1 MS. O'NEILL: Not at this point, your Honor.  
2 JUDGE THORNBURG: Laclede?  
3 MR. PENDERGAST: No, your Honor.  
4 JUDGE THORNBURG: Ameren?  
5 MR. BYRNE: No, your Honor.  
6 JUDGE THORNBURG: UtiliCorp?  
7 MR. BOUDREAU: Forgive me. What are we doing  
8 now?  
9 JUDGE THORNBURG: This is recross.  
10 MR. BOUDREAU: Obviously I have none.  
11 JUDGE THORNBURG: Mr. Keevil?  
12 MR. KEEVIL: No.  
13 JUDGE THORNBURG: Okay. Ms. Shemwell, do you  
14 have -- if you have redirect, it's your turn.  
15 MS. SHEMWELL: I do, and I would like a minute  
16 with my witness before.  
17 JUDGE THORNBURG: I understand. Is it just a  
18 minute or is it five minutes?  
19 MS. SHEMWELL: Probably just a minute or two.  
20 JUDGE THORNBURG: We can go off the record for  
21 just a moment. I'm going to ask everybody to stay seated  
22 and you can find a corner or come up here.  
23 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)  
24 JUDGE THORNBURG: We'll go back on the record  
25 at this time and, Ms. Shemwell, you may continue.

1 MS. SHEMWELL: Thank you.

2 REDIRECT EXAMINATION BY MS. SHEMWELL:

3 Q. Mr. Boudreau had a question, and does the  
4 description of this particular transaction as a stock  
5 transaction as opposed to an asset transaction change your  
6 testimony?

7 A. No, it does not.

8 Q. I think a question -- well, there were two  
9 questions, and I'm not sure I understand the word that you  
10 were using. Did you say that this is not the form or the  
11 forum for a rate case?

12 A. I indicated forum, but -- yeah, that's what I  
13 said, forum.

14 Q. This is the forum for a rate case, though,  
15 isn't it?

16 A. This is the forum, yes, it is.

17 Q. So would you care to say more specifically  
18 what you were intending to answer?

19 A. Basically, this is not a rate case, but it is  
20 the forum for a rate case. There's two different things  
21 there.

22 Q. So yes, they may bring a rate case to this  
23 forum?

24 A. Yes, that's correct. This doesn't have the  
25 designation as a rate case.



1 JUDGE THORNBURG: Ms. Shemwell, the  
2 distinction is that the rate case would come before the  
3 Commission, is that what you're saying?

4 MS. SHEMWELL: I think the point is this is  
5 the correct forum for a rate case, it's just not currently  
6 in front of the Commission in this case.

7 MR. KEEVIL: I'm willing to stipulate that the  
8 Missouri Commission is the forum for utility rate cases if  
9 that's --

10 MS. SHEMWELL: Among other forums, shall we  
11 say. There are a variety of forums for rate cases.

12 JUDGE THORNBURG: That's fine. I think we  
13 have the meaning.

14 MS. SHEMWELL: Thank you. And that's all I  
15 have. I appreciate it.

16 JUDGE THORNBURG: Mr. Lock, will you be  
17 available tomorrow if the Commission has questions for you?

18 THE WITNESS: Yes, I will.

19 JUDGE THORNBURG: It's 5:05 now. I think  
20 we'll take the rest of these up in the morning. I'm trying  
21 to anticipate which witnesses may take the amount of time.  
22 I anticipate based on the subject matter that Morrissey may  
23 be one that we have some time on. Are there other witnesses  
24 that may go as quickly as the three we had this evening?

25 MR. KEEVIL: I'd say we could probably do

1 Mr. Gray in the next ten minutes if you got him up there.

2 MS. SHEMWELL: He is available.

3 JUDGE THORNBURG: Are there any other

4 witnesses who will take a significant amount of time?

5 MR. KEEVIL: Take a what?

6 JUDGE THORNBURG: Significant amount of time.

7 MR. KEEVIL: Oh, significant amount of time.

8 I'm sorry. The Mr. Gray reference was not a significant

9 amount of time. The last three on the list.

10 MS. O'NEILL: My guess is that Oligschlaeger,

11 Morrissey and McKiddy will take longer than the others.

12 JUDGE THORNBURG: Let's go ahead and take

13 Mr. Gray, and then we'll adjourn for the evening.

14 Mr. Lock, you're excused for now, but you need

15 to be available in the building just in case any of the

16 Commissioners indicate they need to recall you back.

17 THE WITNESS: Very good.

18 (Witness sworn.)

19 JUDGE THORNBURG: Ms. Shemwell, you may

20 proceed.

21 MS. SHEMWELL: Thank you, your Honor.

22 JAMES A. GRAY testified as follows:

23 DIRECT EXAMINATION BY MS. SHEMWELL:

24 Q. Mr. Gray, would you please state your full

25 name for the record.

1 A. James A. Gray, G-r-a-y.

2 Q. For whom do you work?

3 A. Missouri Public Service Commission.

4 Q. What do you do for them?

5 A. I'm a Regulatory Economist I.

6 Q. Mr. Gray, did you prepare testimony in this  
7 case, public and highly confidential testimony, or NP and  
8 highly confidential testimony that's been marked 16 and 16HC  
9 and filed with the Commission?

10 A. I'm unsure of the numbers, but yes.

11 Q. Will you take my word that it's been marked 16  
12 and 16HC?

13 A. I will.

14 MR. KEEVIL: I'll even stipulate to it.

15 MS. SHEMWELL: Thank you.

16 BY MS. SHEMWELL:

17 Q. Do you have any corrections to your testimony,  
18 Mr. Gray?

19 A. Yes, I do. On page 3, line 18, the answer,  
20 take the yes comma out. It should start with MPC receives.

21 MR. KEEVIL: I'm sorry. Could you repeat  
22 that?

23 THE WITNESS: On line 18 of page 3, it starts  
24 off with, Yes, MPC. Take the yes comma out.

25 On line -- on page 4, line 22 of the highly

1 confidential, it starts out with, Transportation pipeline  
2 owned.

3 MS. SHEMWELL: Just a second. Are you getting  
4 in any --

5 JUDGE THORNBURG: Just those words, we're  
6 okay.

7 THE WITNESS: It should say, Transportation  
8 pipeline formerly owned.

9 On page 9, line 18, there's a smaller comma  
10 base population. You can take the comma out.

11 On page 10, lines 12 through 15, it should  
12 read, The numbers of residential customers receiving  
13 transportation service from MPC in Pulaski County might  
14 increase if more municipalities would take natural gas  
15 transportation service from MGC or if the current  
16 municipalities annexed more territory, thereby increasing  
17 their numbers of gas customers.

18 And on page 6, did I change line 11? It  
19 should be -- MPS should be MPC. That's all I have.

20 MR. KEEVIL: Could you go over the one on  
21 page 10 again?

22 THE WITNESS: What page, 10?

23 MR. KEEVIL: Page 10, line 12 through 15.

24 THE WITNESS: Okay. That's kind of long.

25 Sorry for that. The number of residential customers

1 receiving. I've added receiving transportation service from  
2 MPC.

3 MR. KEEVIL: MPC?

4 THE WITNESS: I guess it should be MGC. In  
5 Pulaski County might increase if more municipalities would  
6 take natural gas transportation service from MGC or if the  
7 current municipalities, and I changed the word from would  
8 annex to annexed, more territory, thereby increasing their  
9 numbers of gas customers.

10 BY MS. SHEMWELL:

11 Q. Mr. Gray, if I were to ask you the same  
12 questions today, would your answers be substantially the  
13 same?

14 A. Yes, they would.

15 Q. Is your testimony true and correct to the best  
16 of your knowledge and belief?

17 A. Yes, it is.

18 MS. SHEMWELL: Your Honor, I would offer 16  
19 and 16HC into evidence and tender the witness for cross.

20 JUDGE THORNBURG: Any objections to Exhibit 16  
21 and 16HC?

22 (No response.)

23 Hearing none, those exhibits will be received.

24 (EXHIBIT NOS. 16 AND 16HC WERE RECEIVED INTO  
25 EVIDENCE.)

1 JUDGE THORNBURG: Ms. O'Neill, do you have any  
2 questions for this witness?

3 MS. O'NEILL: No, your Honor.

4 JUDGE THORNBURG: Mr. Pendergast?

5 MR. PENDERGAST: No questions, your Honor.

6 JUDGE THORNBURG: Mr. Byrne?

7 MR. BYRNE: No questions.

8 JUDGE THORNBURG: Mr. Boudreau?

9 MR. BOUDREAU: Just a few. Thank you.

10 CROSS-EXAMINATION BY MR. BOUDREAU:

11 Q. Good afternoon, Mr. Gray.

12 A. Good afternoon.

13 Q. I just have a couple of questions for you.

14 Well, maybe more than two. Just a few.

15 You did not analyze the growth of the cities  
16 that are served by the pipelines, just the counties along  
17 the route that the pipeline is located?

18 A. That's correct.

19 Q. Would you agree with me that the LDCs that are  
20 served off that pipeline system generally serve incorporated  
21 communities?

22 A. Generally.

23 Q. And they don't generally -- in fact, to my  
24 knowledge, none of them serve an entire county-wide area, do  
25 they?

1           A.       That's correct.

2           Q.       Is it possible that any of the communities  
3 that are actually served by the pipeline have grown in  
4 population at a rate that is different than the county as a  
5 whole?

6           A.       Yes.

7           Q.       And would it be fair then to say that your  
8 analysis that's contained in your testimony concerning  
9 county growth over a ten-year period is -- excuse me. Did I  
10 misstate that?

11          A.       No.

12          Q.       -- is something of a proxy for actual city  
13 growth?

14          A.       Somewhat of a proxy.

15          Q.       I mean, you're looking at county growth and  
16 drawing some conclusions about whether or not there's going  
17 to be substantial growth in the incorporated communities  
18 that are served by the LDCs along this area, aren't you?  
19 That to me was -- that was my understanding of your  
20 testimony. Maybe I'm wrong.

21          A.       It's the -- I guess it could be considered  
22 that.

23          Q.       Considered a proxy?

24          A.       Uh-huh.

25          Q.       Thank you. You state, I think, on page 10 of

1 your testimony that county growth statistics, you used those  
2 simply because they were readily available; is that correct?

3 A. I also state because the city boundaries  
4 change over ten years, and I don't have that kind of  
5 information.

6 Q. Okay.

7 A. If I'd had it, I probably would have used it.

8 Q. Do you know whether that information is  
9 available through the Missouri Secretary of State's Office?

10 A. I receive it on the Internet from the U.S.  
11 Census site, yes. It probably should be. I don't know  
12 about Secretary of State's Office.

13 Q. That's what I'm asking. Do you know whether  
14 or not information about city populations or municipal  
15 populations is available through the Secretary of State's  
16 Office?

17 A. No, I don't know that.

18 Q. Did you check the official manual of Missouri,  
19 what's known as the Blue Book?

20 A. No, I did not.

21 Q. Let me ask you this. With respect -- let me  
22 try and limit this. Are you familiar with the nature of the  
23 area certificates that have been granted to my client,  
24 UtiliCorp's MPS eastern district service areas?

25 A. No, I did not look at the original



1 certificates.

2           Q.       So you don't know -- well, I'll tell you I  
3 don't know either right now, but you don't know whether or  
4 not those certificates are designed to incorporate a  
5 specific defined area as opposed to just the municipal  
6 boundaries at any particular period of time?

7           A.       No, I do not.

8           Q.       And on page 10, I just want to make sure that  
9 I understand what your testimony means. I think you've  
10 stated that you did not take into consideration in your  
11 analysis commercial or industrial growth?

12          A.       That's correct.

13                   MR. BOUDREAU: That's all I have. Thank you.

14                   JUDGE THORNBURG: Mr. Keevil?

15                   MR. KEEVIL: In order to stay true to my word  
16 that we'd get through with Mr. Gray in ten minutes, I have  
17 no questions.

18                   JUDGE THORNBURG: Commissioner Murray, do you  
19 have any questions?

20                   COMMISSIONER MURRAY: I have no questions.

21                   JUDGE THORNBURG: Ms. Shemwell, do you have  
22 any redirect?

23                   MS. SHEMWELL: Not at this point, your Honor.  
24 Thank you. If there are Commission questions certainly  
25 tomorrow, perhaps.

1 JUDGE THORNBURG: Okay. Mr. Gray, would you  
2 be available tomorrow if we need to call you downstairs for  
3 Commission questions?

4 THE WITNESS: Yes, I will be.

5 JUDGE THORNBURG: Okay. With that  
6 understanding, you're excused at this time. And also for  
7 the witnesses Burdette, Bolin, Lock and Gray, if we have  
8 questions from the Bench, we'll have another round of cross  
9 in response to that.

10 We'll begin at 8:30 tomorrow. Any questions  
11 before we adjourn? Okay. Thank you.

12 WHEREUPON, the hearing of this case was  
13 recessed until September 7, 2001.

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