

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 September 7, 2001
6 Jefferson City, Missouri
7 Volume 8
8

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

15 BEFORE:

16 KEVIN THORNBURG, Presiding,
17 REGULATORY LAW JUDGE.
18 KELVIN SIMMONS, Chair,
19 CONNIE MURRAY,
SHEILA LUMPE,
STEVE GAW,
COMMISSIONERS.

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

2 (Written Entries of Appearance filed.)

3 JUDGE THORNBURG: Ms. Shemwell, I believe
4 Staff witnesses are still up, and I'll probably just go
5 back up to the top and start in the order that you had
6 presented, unless there is some order you want to go out
7 of.

8 MS. SHEMWELL: We can start with John
9 Kottwitz, if that's what you would like to do, but Phil
10 Lock is also here in case there are questions from the
11 Bench.

12 JUDGE THORNBURG: Okay. I checked. We don't
13 have any questions yet, but --

14 MS. SHEMWELL: He will be available today.

15 JUDGE THORNBURG: -- some Commissioners may
16 have some questions later.

17 MS. SHEMWELL: We'll proceed with
18 Mr. Kottwitz.

19 JUDGE THORNBURG: Okay.

20 (Witness sworn.)

21 JUDGE THORNBURG: Thank you.

22 You may be seated.

23 JOHN KOTTWITZ testified as follows:

24 DIRECT EXAMINATION BY MS. SHEMWELL:

25 Q. Good morning.

1 A. Good morning.

2 Q. Would you please state your name for the
3 record.

4 A. John Kottwitz.

5 Q. Spell your last name, please.

6 A. K-o-t-t-w-i-t-z.

7 Q. For whom do you work, Mr. Kottwitz?

8 A. Missouri Public Service Commission.

9 Q. What do you do for them?

10 A. I'm an engineer in the Energy Department, the
11 Gas Safety Section.

12 Q. Did you prepare testimony that in this case
13 has been marked -- what did we mark --

14 JUDGE THORNBURG: Exhibit 14.

15 BY MS. SHEMWELL:

16 Q. -- Exhibit 14?

17 A. Yes.

18 Q. You did not prepare highly confidential
19 testimony; is that correct?

20 A. That's correct.

21 Q. Do you have any additions or corrections to
22 your testimony?

23 A. No.

24 Q. If I were to ask you the same questions today
25 that were asked in your testimony, would your answers be

1 substantially the same?

2 A. Yes, they would.

3 Q. Is your testimony true and correct to the best
4 of your knowledge and belief?

5 A. Yes.

6 MS. SHEMWELL: Your Honor, I would now like to
7 offer Exhibit 14 into evidence, and tender the witness
8 for cross.

9 JUDGE THORNBURG: Any objections to
10 Exhibit 14?

11 (No response.)

12 JUDGE THORNBURG: Hearing none, Exhibit 14
13 will be received into evidence.

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

15 MS. SHEMWELL: Thank you.

16 JUDGE THORNBURG: Ms. O'Neill, do you have any
17 questions for Mr. Kottwitz?

18 MS. O'NEILL: No, your Honor.

19 JUDGE THORNBURG: Mr. Pendergast?

20 MR. PENDERGAST: No, your Honor.

21 JUDGE THORNBURG: Mr. Byrne?

22 MR. BYRNE: No questions, your Honor.

23 JUDGE THORNBURG: Mr. Boudreau?

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

25 JUDGE THORNBURG: Mr. Keevil?

1 MR. KEEVIL: No questions.

2 JUDGE THORNBURG: Commissioner Lumpe?

3 QUESTIONS BY COMMISSIONER LUMPE:

4 Q. Yes, Mr. Kottwitz.

5 You are the one that prepared the three
6 conditions?

7 A. That's correct.

8 Q. And, to my understanding, the Company said
9 they have no problems with those three conditions, that
10 they would --

11 A. Yes. Mr. Ries stated in his Rebuttal
12 Testimony that he agreed to those.

13 Q. And you feel confident that they are going to
14 keep the same employees in the field that they currently
15 have, and so, therefore, there would not be a problem?

16 A. Right. The same field employees are going to
17 be offered positions and are expected to stay on.

18 Q. Okay. I think on the last page of your
19 testimony you talk about, you're hoping that MPC and MGC
20 would continue to use a relief detection instrument unit
21 if not required. Was that not in one of your
22 conditions?

23 A. No, it's not in one of my conditions. That
24 would only occur if the jurisdiction were to switch to
25 federal safety jurisdiction under the Office of Pipeline

1 Safety.

2 Q. So your hope then would be, should there be a
3 loss of jurisdiction here, that they would continue?

4 A. (Witness nodded head.)

5 Q. But will they continue to do it even if there
6 were not loss of jurisdiction?

7 A. They are required to do it under our
8 jurisdiction.

9 COMMISSIONER LUMPE: Under our jurisdiction.

10 Thank you. That clarifies it for me. Thank
11 you.

12 That's all.

13 THE WITNESS: You're welcome.

14 JUDGE THORNBURG: Ms. O'Neill, do you have any
15 follow-up?

16 MS. O'NEILL: No, your Honor.

17 JUDGE THORNBURG: Mr. Pendergast?

18 MR. PENDERGAST: No, your Honor.

19 JUDGE THORNBURG: Mr. Byrne?

20 MR. BYRNE: No, your Honor.

21 JUDGE THORNBURG: Mr. Boudreau?

22 MR. BOUDREAU: None. Thank you.

23 JUDGE THORNBURG: Mr. Keevil?

24 MR. KEEVIL: No. Thank you.

25 JUDGE THORNBURG: Ms. Shemwell, do you have

1 any redirect?

2 MS. SHEMWELL: I think just one question.

3 REDIRECT EXAMINATION BY MS. SHEMWELL:

4 Q. You were answering Commissioner Lumpe about
5 the continuation of field staff, and you've expressed
6 your concern that that will continue.

7 Is there any other -- are there any other
8 functions that you're concerned about?

9 A. We have a condition that we -- they should
10 continue that adequate number of personnel. We also
11 want to make sure that they are going to continue the
12 call center dispatch, emergency response, and state of
13 monitoring functions, and that's one -- the second
14 condition I proposed.

15 Q. Is there a particular concern about those
16 functions?

17 A. Yeah. They are crucial to the pipeline
18 operations and the antesafety, and they need to be --
19 the transition needs to be planned so that those will
20 continue on a 24-hour-a-day, seven-days-a-week,
21 365-days-a-year basis, that they continue and that
22 transition go smoothly if those continue to be provided.

23 Q. Are you comfortable that that will occur?

24 A. At this point in time I have no reason to
25 believe it won't occur. I understand that UtiliCorp is

1 going to provide -- continue to provide some of those
2 services in the transition if needed, and we will also
3 be -- since that is a concern and a condition, that is
4 something we would follow up on to make sure that it
5 does happen.

6 MS. SHEMWELL: Thank you very much, sir.

7 Nothing further. Thank you, your Honor.

8 JUDGE THORNBURG: Mr. Kottwitz, you may be
9 excused.

10 Thank you.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 JUDGE THORNBURG: Mr. Shemwell, you may start
14 with your next witness.

15 MS. SHEMWELL: Yes. Thank you, your Honor.

16 Staff would call Mark Oligschlaeger.

17 JUDGE THORNBURG: Mr. Oligschlaeger, I'm going
18 to have trouble with that name today.

19 (Witness sworn.)

20 JUDGE THORNBURG: Thank you.

21 You may be seated.

22 MARK L. OLIGSCHLAEGER testified as follows:

23 DIRECT EXAMINATION BY MS. SHEMWELL:

24 Q. Would you please state your name for the
25 record, and spell your last name.

1 A. Mark L. Oligschlaeger. My last name is
2 spelled O-l-i-g-s-c-h-l-a-e-g-e-r.

3 Q. For whom do you work?

4 A. I work for the Missouri Public Service
5 Commission.

6 Q. What do you do for the Commission?

7 A. I am a regulatory auditor within the
8 Accounting Department.

9 Q. In preparation for this case, did you prepare
10 and cause to be filed testimony that's been marked 17
11 and 17-HC?

12 A. Yes, I did.

13 Q. Is this testimony prepared by you or under
14 your direction?

15 A. Yes, it was.

16 Q. Do you have any corrections to your testimony?

17 A. I just have one minor change.

18 On Page 10, Line 14, within a quote made from
19 Mr. Ries's Direct Testimony, on Line 14, following the
20 word "adjustment," a quotation mark should be placed
21 there so that the phrase "acquisition adjustment" which
22 can be found on Lines 13 and 14 is enclosed with
23 quotation marks.

24 Q. Any others?

25 A. There are no others.

1 Q. If I were to ask you the same questions today
2 as were posed in your testimony, would your answers be
3 substantially the same?

4 A. Yes, they would.

5 Q. Is your testimony true and correct to the best
6 of your knowledge and belief?

7 A. Yes, it is.

8 MS. SHEMWELL: Your Honor, I would offer
9 exhibits marked as 17 and 17-HC into the record, and
10 tender the witness for cross.

11 JUDGE THORNBURG: Any objections to these two
12 exhibits?

13 (No response.)

14 JUDGE THORNBURG: Hearing none, Exhibit 17 and
15 17-HC will be received.

16 (EXHIBIT NOS. 17 AND 17-HC WERE RECEIVED INTO
17 EVIDENCE.)

18 MS. SHEMWELL: Thank you.

19 JUDGE THORNBURG: Ms. O'Neill, do you have
20 questions?

21 MS. O'NEILL: Just a few. Thank you.

22 CROSS-EXAMINATION BY MS. O'NEILL:

23 Q. Good morning, Mr. Oligschlaeger.

24 A. Good morning.

25 Q. In your -- as part of your prepared testimony,

1 you reviewed the pro forma financial statements filed by
2 Gateway in this case; is that correct?

3 A. Yes, I did.

4 Q. And on those pro forma statements -- in
5 reviewing those pro forma statements, you had some
6 concerns about debt coverage; is that correct?

7 MR. KEEVIL: Judge, I'm going to object to
8 this as friendly cross.

9 MS. O'NEILL: It is a foundational question.

10 MR. KEEVIL: I have some concerns about her
11 foundational question.

12 MR. PENDERGAST: Your Honor, if I could
13 interpose, I would also like to state that I made a
14 similar objection the other day when, I believe,
15 Mr. Boudreau was asking questions, and I believe that
16 objection was overruled.

17 JUDGE THORNBURG: Yeah. That's all right.

18 The objections is overruled.

19 You may answer.

20 THE WITNESS: Yes.

21 BY MS. O'NEILL:

22 Q. And were you present when Mr. Ries was
23 testifying earlier in this hearing?

24 A. Yes, I was.

25 Q. And were you present when he was discussing

1 the fact that -- he was talking about how depreciation
2 expense would be used to pay equity investors?

3 A. Yes, I was.

4 Q. And --

5 MR. KEEVIL: Judge, just for notice purposes
6 here, if we're getting into numbers, then we'll need to
7 go in camera.

8 MS. O'NEILL: I'm trying to do it without
9 numbers.

10 JUDGE THORNBURG: If we -- Mr. Oligschlaeger,
11 there was proprietary information supplied by the
12 Company regarding particular numbers. You need to
13 refrain from that in open session. If your answer is
14 going to necessitate getting into particular financial
15 numbers, we'll have to go in closed session.

16 I think Ms. O'Neill is going to try to
17 structure her questions to avoid that. But if we can't,
18 we'll have to pause and go in camera.

19 THE WITNESS: All right.

20 BY MS. O'NEILL:

21 Q. And what is depreciation expense?

22 A. Depreciation expense is an element of a
23 utility's or any company's income statement which
24 represents the rational and systematic allocation to
25 expense of the company's capital investment.

1 Q. And what is the purpose of the funds generated
2 as depreciation expense?

3 A. They are normally presumed to be available for
4 reinvestment within the business to meet whatever
5 ongoing capital needs the business may have.

6 Q. Including replacing depreciated plant and that
7 sort of thing? Would that be one of the things they
8 might be used for?

9 A. Yes.

10 Q. Is the purpose of depreciation expense to pay
11 return on equity investment?

12 A. No. Depreciation expense is not a component
13 of return on equity and it is not a substitute for
14 return on equity. If depreciation expense, for example,
15 were to be used to pay dividends, that would, in effect,
16 mean that the company would be taking capital out of the
17 business and the business would in, effect, be
18 shrinking.

19 Q. So if Gateway did intend hypothetically to pay
20 a return to equity investors out of the funds which are
21 counted toward depreciation expense, would this practice
22 be detrimental to the public interest?

23 A. In my opinion, yes.

24 Q. Why is that?

25 A. Well, for a couple of reasons. First of all,

1 as I've already alluded to, if funds for depreciation
2 are, in effect, used to pay a return to equity
3 investors, those funds are not available to be invested
4 in the business. Most utilities -- and I presume gas
5 line -- or gas pipeline companies are no different.
6 They have ongoing capital needs. And those moneys would
7 not be available to meet those needs if they were taken
8 out of the business and paid to equity investors.

9 More generally, any time that situation
10 happens where a company is paying dividends in excess of
11 its net income, I think that would raise concerns about
12 whether the company itself was a going concern and would
13 be in operation for the long-term.

14 Q. And as regulated interstate pipelines, is
15 it -- would MPC and MGC have an obligation to serve the
16 public interest over the long-term as a going concern?

17 A. That is my understanding.

18 MS. O'NEILL: Thank you.

19 I have no more questions.

20 JUDGE THORNBURG: Mr. Pendergast?

21 MR. PENDERGAST: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. PENDERGAST:

23 Q. Good morning, Mr. Oligschlaeger.

24 A. Good morning.

25 Q. As part of the Staff review of this

1 application, you were responsible for looking at the
2 financial aspects of the proposed transaction as well as
3 the financial picture should the proposed transaction be
4 approved?

5 A. Yes, along with some other Staff members.

6 Q. Okay. And you were asked a number of
7 questions about depreciation expense and what its
8 purpose is.

9 MR. PENDERGAST: If I could approach the
10 witness?

11 JUDGE THORNBURG: Yes, you may.

12 If that's off a highly confidential page,
13 you'll have to not reference particular numbers.

14 MR. PENDERGAST: Yes, your Honor. At this
15 time, could I ask that we go in camera?

16 JUDGE THORNBURG: Okay. And at this point we
17 may be talking about highly confidential proprietary
18 information. We're going to go in camera. Persons not
19 authorized to view this information and hear it will
20 need to vacate the hearing room.

21 (REPORTER'S NOTE: At this time, an in-camera
22 session was held, which is contained in Volume No. 9,
23 Pages 641 through 648, of the transcript.)

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1 JUDGE THORNBURG: And you may proceed.

2 MR. BOUDREAU: Thank you.

3 CROSS-EXAMINATION BY MR. BOUDREAU:

4 Q. Good morning, Mr. Oligschlaeger.

5 A. Good morning.

6 Q. My understanding is that there is really not
7 much of a dispute on what the legal standard at issue
8 here is; is that correct?

9 A. That's my impression, yes.

10 Q. And would you agree with me that the legal
11 standard by which this application has to be measured by
12 the Commission as to whether or not it creates a
13 detriment to the public interest?

14 A. Yes.

15 Q. Okay. And I believe that that topic has been
16 addressed in Ms. McKiddy's testimony; is that correct?

17 A. Yes.

18 Q. Thank you.

19 Would you be -- would you agree with me that
20 as a general proposition, there is no requirement that
21 an applicant in a case like this demonstrate that it
22 will run an enterprise any better than the -- than the
23 existing owner?

24 A. I would agree with them.

25 Q. So there -- let me skip that. Thank you.

1 Let me ask you this: Are you aware of any
2 decision in which this Commission has ever determined
3 that a purchaser of a utility property or stock has had
4 to demonstrate that it can operate the acquired utility
5 better than the existing owner?

6 A. I'm not aware of any such decision.

7 Q. And I take it that you kept in mind the
8 standard in preparing your testimony and recommendations
9 to the Commission?

10 A. Yes.

11 Q. In doing so, have you considered the
12 Commission's prior decisions involving the application
13 of that legal standard to the facts presented in this
14 case?

15 A. I believe so.

16 Q. Okay. And it's your testimony then, I take
17 it, that your recommendations are consistent with the
18 Commission's past orders, to the best of your knowledge?

19 A. Yes.

20 Q. I want to direct you to Page 3 of your
21 testimony where I believe that you note that both
22 companies operated at a net loss for calendar year 2000
23 under UtiliCorp's ownership; is that correct?

24 A. That's correct.

25 Q. And I believe you've also stated you don't

1 believe there is any evidence that's been presented of
2 Gateway's ability to improve the profitability of those
3 pipelines; is that correct?

4 A. No meaningful or substantive evidence, yes, I
5 would agree with that.

6 Q. Thank you.

7 So I take it it's not your testimony that the
8 sale of UPL's capital stock to Gateway will cause the
9 MPC or MGC operations to become unprofitable?

10 A. No, that is not my testimony.

11 Q. They are already unprofitable, aren't they?

12 A. That is true.

13 Q. So let's assume that your concern is correct;
14 that is, that on an ongoing basis MPC and MGC will
15 remain unprofitable. Let's just assume that for the
16 time being. Are you with me?

17 A. Yes.

18 Q. In that case, then, the sale of the capital
19 stock of UPL represents no change in the status quo,
20 does it?

21 A. Strictly in terms of profitability, the level
22 of revenues and expenses of the companies under
23 different ownership, assuming they stay the same, that
24 is true. However, because our belief is that Gateway's
25 cost of service is higher and, in effect, a shortfall

1 between what is earned by these businesses and what the
2 requirements of Gateway's investors are will be greater
3 than with UtiliCorp.

4 Q. I understand that. Thank you.

5 Would you agree with me that one, at least,
6 theoretical way to improve financial performance on the
7 MPC and MGC systems is to improve sales and by doing
8 that boost revenues?

9 A. Yes.

10 Q. I believe you've stated that it's possible for
11 Gateway to do exactly that; is that correct?

12 A. I assume it is possible, yes.

13 Q. You've also stated that you're skeptical that
14 they can do so?

15 A. Well, the reasons for my skepticism is, again,
16 that they have not presented anything beyond vague,
17 verbal assertions of their ability to do so.

18 Q. Yes. But you're not saying that they can't do
19 so. You're saying that you're skeptical about it?

20 A. I'm certainly not saying it's impossible for
21 them to do that.

22 Q. So, again, let me ask you this: Is it your
23 contention that Gateway must demonstrate that it can
24 improve current throughput and sales figures in order to
25 justify a sale of this stock?

1 A. No. What I -- my position is that Gateway
2 should present enough evidence of a reasonable
3 likelihood of being able to improve the financial
4 performance of these systems in order to offset the
5 additional costs associated with their capital structure
6 that is implicit in their application.

7 Q. I think you've also indicated -- well, I mean,
8 let me rephrase the question.

9 Would you agree with me another theoretical
10 way of increasing revenues would be to seek a rate
11 increase?

12 A. That's correct.

13 Q. And just so that we're clear, we don't have a
14 rate case before us here, do we?

15 A. That is true.

16 Q. And you would agree with me that Gateway is
17 not requesting in this case that rate schedules for MPC
18 or MGC be modified in any way?

19 A. That's correct.

20 Q. Has Gateway indicated that it intends to file
21 for a rate increase in order to improve revenue flow?

22 A. They have not indicated that.

23 Q. Okay. There would be nothing prohibiting
24 Gateway from causing MPC or MGC to file a rate case,
25 would there, if the sale is consummated?

1 A. Is there any prohibition to them seeking a
2 rate case?

3 Q. Yes, that is my question.

4 A. No, there is not.

5 Q. And there is nothing prohibiting UtiliCorp
6 right now from doing the same thing?

7 A. There is certainly no legal, statutory or
8 regulatory requirement that would prevent them from
9 doing that.

10 Q. So, again, the sale of UPL's common stock will
11 not cause any change in that particular circumstances,
12 will it?

13 A. Not solely as a result of this proceeding.

14 Q. Let's assume that those two operating
15 companies, in fact, do file for a rate increase or a
16 rate adjustment of some sort. Are you with me?

17 A. Yes.

18 Q. And, further, that the Commission decides to
19 grant that rate increase.

20 A. Yes.

21 Q. Would you agree with me that those rates would
22 be filed with and approved by -- excuse me. Let me
23 rephrase that.

24 Would you agree with me that those rates which
25 would be filed with and approved by the Commission would

1 by definition be fair and reasonable?

2 A. I'm not an attorney. That would be my
3 layman's understanding.

4 Q. Okay. And presumably the Commission in
5 approving any adjustments in rates would have taken into
6 consideration all relevant factors in authorizing such
7 rates; isn't that right?

8 A. I would assume so.

9 Q. Okay. You express a concern, I believe, on
10 Page 4 of your testimony that any rate increase -- and
11 I'll use your language -- may have the unintended result
12 of inducing current end users to convert to propane;
13 isn't that correct?

14 A. Yes.

15 Q. But the converse is also true. It may not
16 have that effect; isn't that right?

17 A. That would be dependent upon the relative
18 market prices of the gas service and the propane
19 service.

20 Q. Right. And have you not presented any, for
21 lack of a better term, feasibility study to analyze at
22 which level of rates there might be a tipping from one
23 fuel source to another, have you?

24 A. No, I have not.

25 Q. When you talk about rates to end users, I

1 assume that you're talking about the rates that would be
2 charged by the local distribution company or the
3 municipality that's served on the distribution system;
4 is that correct?

5 A. Can you refer me to where I use that term?

6 Q. Well, again, I think it's on Page 4 of your
7 testimony, and I believe -- let me locate it, so I can
8 point you to a line.

9 I believe the language appears on Line 16 of
10 your testimony where you say, ". . .may have the
11 unintended result of inducing current end users of gas
12 service to convert."

13 A. Yes. I see the reference.

14 In that context my reference was to the retail
15 customers of the local distribution companies served by
16 the pipelines.

17 Q. And that could be Laclede. Right? One LDC is
18 Laclede?

19 A. That's correct.

20 Q. Another one is AmerenUE? They have some
21 operations?

22 A. Yes.

23 Q. And another one is my client, UtiliCorp; is
24 that correct?

25 A. That's correct.

1 Q. Would you agree with me that the rates charged
2 by LDCs taking service off that pipeline system are a
3 function of the cost and revenue structure of that
4 individual company?

5 A. I would agree with that.

6 Q. And one of those costs would be gas
7 transportation costs; is that correct?

8 A. That's correct.

9 Q. But there would be others?

10 A. Yes.

11 Q. Commodity costs. Right?

12 A. Yes.

13 Q. The cost of capital? I mean, there is a
14 whole -- there's a whole bucketful of things that go
15 into that consideration, aren't there?

16 A. Yes.

17 Q. And there is really no cost information about
18 any of those companies before the Commission in this
19 case. Would you agree with me?

20 A. To my knowledge, there is not.

21 Q. Okay. So there is really no way to draw any
22 firm conclusion about what impact, if any, a theoretical
23 increase in gas transportation costs would cause in
24 terms of end user rates?

25 A. You would have to look at the entire financial

1 position or structure of the company, yes.

2 Q. Sure. And as you and I both well know, there
3 is some costs -- some costs can go up, and some costs
4 can go down, and in the end, it's just how it all shakes
5 out; isn't that correct?

6 A. That's true. My testimony was presumed on,
7 everything else being held equal, an increase in
8 transportation costs would not be beneficial in the
9 respect of inducing customers to stay with gas.

10 Q. Fair enough. Thank you.

11 I don't believe -- well, let me ask this
12 question first: Would you agree with me that another
13 way to improve profitability of the MPC and MGC
14 operations would be to control costs, to decrease costs?

15 A. That would be another way, yes.

16 Q. I don't believe your testimony addressed this
17 dynamic, though. Have you?

18 A. Well, except in the sense that my highly
19 confidential Schedule 2 does show a change -- a minor
20 change in expense levels compared to -- from UtiliCorp
21 to Gateway ownership.

22 Q. Okay. Fair enough. Thank you.

23 I want to leave aside now, for the time being
24 at any rate, the topic of the possibility of FERC
25 jurisdiction which has been discussed by a number of

1 witnesses, including yourself, I think, at least in
2 passing.

3 A. I touch upon it, yes.

4 Q. As I understand it, Staff's fundamental
5 financial concern is that the pipelines are unprofitable
6 and that they will continue to be unprofitable?

7 A. That there has really been no meaningful
8 evidence of a strategy to increase their profitability.

9 Q. And so, consequently, Staff is more
10 comfortable with UtiliCorp standing behind and
11 supporting its unprofitable enterprise than it would be
12 with Gateway; is that correct?

13 A. Well, in effect, because of the revenue
14 requirement and cost-of-service concerns we discussed
15 earlier, we do believe that the financial situation of
16 these systems will be worse under Gateway ownership than
17 under UtiliCorp ownership.

18 Q. So -- well, let me restate my question: So
19 Staff is more comfortable with UtiliCorp standing behind
20 this unprofitable enterprise than it is with Gateway?

21 A. Well, we believe it would be detrimental under
22 the facts we know at this time for Gateway to assume
23 ownership, so, yes, to your question.

24 Q. Okay. I think you state at Page 7 that you
25 perceive an increased risk of discontinuance of service

1 by MPC and MGC?

2 A. Under Gateway ownership?

3 Q. Under Gateway ownership.

4 A. Yes.

5 Q. And I think you also state on the following
6 page that UtiliCorp would be less likely to abandon gas
7 service; is that correct?

8 A. That is my belief.

9 Q. Okay. Now, you're not suggesting that it's
10 likely that UtiliCorp will abandon gas service, are you?

11 A. That was not my intent.

12 Q. Okay. Are you stating that Gateway will
13 abandon service along the MPC/MGC pipeline system if the
14 application is approved?

15 A. No, I am not stating that.

16 Q. It's just a possibility that you are concerned
17 with?

18 A. It is a possibility, which, once again, arises
19 because of the higher cost of service of Gateway
20 compared to UtiliCorp.

21 Q. Now, you also state, I believe, on Page 8 that
22 you believe UtiliCorp is less likely to abandon service
23 along the MPC/MGC system because it is Missouri Public
24 Service division has service areas that rely on that
25 source of transportation; is that correct?

1 A. That is correct.

2 Q. Doesn't that same fact suggest the degree of
3 confidence that UtiliCorp has from the prospective
4 purchaser? In fact, they are joint applicants to sell
5 this stock. Doesn't the fact that UtiliCorp is
6 comfortable doing so suggest to you that they are
7 perfectly comfortable with the prospects of the
8 prospective purchaser?

9 A. Well, UtiliCorp may be privy to more
10 information than is available to the Staff in terms of
11 its level of comfort about the future profitability of
12 this service under Gateway ownership, so --

13 Q. Okay. As a general matter, can a regulated
14 gas corporation discontinue service without the
15 Commission's authorization?

16 A. It is my understanding they cannot.

17 Q. So you're not suggesting that MPC or MGC now
18 or in the future, regardless of ultimate ownership, may
19 unilaterally abandon operations along the pipeline
20 system, are you?

21 A. Again, it's my understanding they cannot do
22 that.

23 Q. When you state at Page 7 that UtiliCorp will
24 be better able to withstand unfavorable financial
25 results, are you saying that UtiliCorp's MPS customers

1 should subsidize the operations of MPC and MGC?

2 A. No. My suggestion there was, because
3 UtiliCorp is a big company, much bigger than Gateway,
4 then losses in the short-term can be more easily
5 withstood by UtiliCorp than Gateway for the simple
6 reason that they are less material to UtiliCorp's
7 overall financial situation.

8 Q. Do you believe that UtiliCorp should be
9 expected to continue to make equity infusions into what
10 you characterize as a losing enterprise?

11 A. As long as UtiliCorp owns the property, they
12 need to make whatever investment is necessary to provide
13 safe and adequate service. Beyond that, I don't think
14 there is any legal requirement for them to make
15 investments.

16 Q. As a general proposition, would you agree with
17 me that MPC and MGC operations should be expected to
18 stand on their own two feet?

19 A. As a general proposition, yes.

20 Q. I think on Page 6 of your testimony -- I'm
21 going to avoid that because it gets me into an area that
22 I don't want to invoke the HC.

23 Let me gather my thoughts here.

24 I think you touch quickly on the topic of
25 acquisition adjustment around Page 10 of your testimony,

1 I believe. Isn't that correct?

2 A. Well, starting on Page 8 through 11 I address
3 that topic, yes.

4 Q. Okay. To your knowledge, is there any request
5 before the Commission in this case for any relief at all
6 with respect to acquisition adjustment?

7 A. Not to my knowledge.

8 Q. Okay. Would you agree that the regulated
9 companies, MPC and MGC, are being sold at basically net
10 book value?

11 A. That's my understanding.

12 Q. Okay. And so any acquisition adjustment
13 that's on the books is associated with unregulated
14 assets; is that correct?

15 A. Again, that's my understanding.

16 Q. There really is no basis at all at this time
17 for anybody to even come before this Commission and ask
18 for recovery of acquisition -- any acquisition
19 adjustment that may be associated with those assets; is
20 that correct?

21 A. Well, it's not in service now, and it's not
22 clear to me why they would ever come under Missouri
23 jurisdiction, so I would agree with that.

24 Q. Okay. I'm just looking at your Schedule 1.1.
25 You've testified in quite a number of cases.

1 A few of them -- well, let me ask you this:
2 In your experience, has the Commission ever denied an
3 application for approval of a stock acquisition for a
4 merger?
5 A. I'm not specifically aware of that
6 circumstance. That obviously doesn't mean it hasn't
7 happened.
8 Q. But none in your experience?
9 A. That's correct.
10 Q. You've been with the Commission for how long?
11 A. Approximately 20 years.
12 MR. BOUDREAU: I believe that's all I have for
13 this witness.
14 Thank you.
15 JUDGE THORNBURG: Thank you.
16 Mr. Keevil?
17 MR. KEEVIL: Judge, I'm going to try to start
18 out with general questions to avoid going back and forth
19 for the in camera stuff, so --
20 JUDGE THORNBURG: Thank you.
21 MR. KEEVIL: It may slow down my questioning,
22 but I think it may speed things up overall.
23 CROSS-EXAMINATION BY MR. KEEVIL:
24 Q. Good morning, Mr. Oligschlaeger.
25 A. Good morning, Mr. Keevil.

1 Q. Is it Oligschlaeger or Oligschlaeger?

2 A. Frankly, I've heard it both ways, and even
3 from people named with my last name.

4 My branch of the family prefers Oligschlaeger.

5 Q. --schlaeger. I thought you were from the
6 -schlaeger side of the clan. Having worked with you for
7 seven years, I thought that was how you pronounced it.

8 Speaking generally, Mr. Oligschlaeger, would
9 you agree that debt constitutes an expense in the form
10 of interest?

11 A. Interest expense is an expense associated with
12 debt, yes.

13 Q. And that's a -- that's an expense that must be
14 paid, correct, in cash, in the form of a cash outlay?

15 A. It's a cash expense that's normally expected
16 to be paid, yes.

17 Q. Okay. Would you also agree that, generally
18 speaking, an equity return is not guaranteed in any way
19 to the equity holders and only comes about if there is
20 money left over after the expenses and -- of a cash
21 nature are paid out?

22 A. It's my general understanding that equity
23 investors are last in line, yes.

24 Q. Okay. So in regard to a return on equity, the
25 risk there is to the equity holder whether or not they

1 get any return. Correct?

2 A. That's my understanding.

3 Q. And if they decide to invest it in enterprise,
4 that's their business. Correct?

5 A. I think that's how it generally works, yes.

6 Q. You mentioned a moment ago that -- I believe
7 you used the words that Gateway had a higher cost of
8 service than the pipelines do under current UtiliCorp
9 ownership; is that correct?

10 A. That's correct.

11 Q. And without getting into specific numbers,
12 which we probably will here in a few moments, but
13 without getting into specific numbers, do you agree
14 that -- well, first of all, in order to reflect any
15 higher cost of service that may or may not be there, a
16 rate case would be required?

17 A. To reflect in rates a higher cost of service,
18 yes.

19 Q. And in such a rate case, this Commission would
20 consider all of the evidence and make a decision as to
21 whether or not the cost of service was, in fact, higher
22 and whether rates should be raised to reflect that?

23 A. That is correct.

24 Q. Okay. Now, without getting into the specific
25 numbers, would you agree that under the Gateway

1 ownership, there would be lower interest expense than
2 under the current UtiliCorp ownership?

3 A. Based upon their pro forma finance statements,
4 it appears there will be less interest expense, yes.

5 Q. Okay. Again, without getting into specific
6 numbers, you have seen the term sheet from the lender
7 which was provided in response to a data request, have
8 you not?

9 A. Yes.

10 Q. And according to that term sheet, assuming the
11 highest applicable interest rate under that, the
12 interest expense will be lower than under UtiliCorp
13 ownership currently. Correct?

14 A. I can't say I've examined that document in
15 detail to be order -- in the detail necessary to agree
16 with that statement.

17 Q. Okay. We'll get into the numbers here in just
18 a second.

19 Would you agree that under Gateway's ownership
20 there would be a lower operations expense, again, as
21 reflected, I think, on your Schedule 2?

22 A. Okay. To a minor degree, based solely upon
23 just the numbers that appear on Gateway's pro forma
24 financial statements. I have no knowledge of the
25 assumptions that underlie that.

1 Q. Would you agree, Mr. Oligschlaeger -- I think
2 you stated this in response to questioning earlier, but
3 I just want to make sure.

4 Depreciation expense is not a cash outlay?

5 A. That is correct.

6 Q. So putting aside what the cash represented by
7 that expense is ultimately used for, that depreciation
8 expense which is not a cash outlay is actually cash
9 that's there in the bank?

10 A. Yes.

11 MR. KEEVIL: Judge, I think we're going to
12 have to go in camera now. I think the rest of this
13 stuff is going to get into the numbers.

14 JUDGE THORNBURG: That will be acceptable.

15 At this time, we're going to go in camera for
16 discussion of highly confidential proprietary
17 information. I would ask those persons not authorized
18 to hear this information to leave the hearing room.

19 (REPORTER'S NOTE: At this time, an in-camera
20 session was held, which is contained in Volume No. 9,
21 Pages 669 through 682, of the transcript.)

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1 JUDGE THORNBURG: Chair Simmons, do you have
2 any questions for Mr. Oligschlaeger.

3 COMMISSIONER SIMMONS: Yes, Judge. And you
4 may have to advise me as to whether or not my questions
5 may be HC, because I have a question in relationship to
6 the questions that were just asked by counsel, and my
7 question was in relationship to financial data as it
8 related to TCW, so --

9 JUDGE THORNBURG: Okay.

10 COMMISSIONER SIMMONS: We were in camera, I
11 think, when that line of questioning occurred.

12 JUDGE THORNBURG: Well, let's remain in
13 camera, and --

14 COMMISSIONER SIMMONS: Sorry.

15 JUDGE THORNBURG: I'm sorry. I need everyone
16 to go out, because I'm not certain we will have -- if
17 there is specific financial data presented, it very well
18 could be proprietary information or highly confidential.

19 (REPORTER'S NOTE: At this time, an in-camera
20 session was held, which is contained in Volume No. 9,
21 Pages 684 through 685, of the transcript.)
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1 JUDGE THORNBURG: So we're in public session
2 now.

3 COMMISSIONER SIMMONS: We're going to do a
4 dance at the door.

5 JUDGE THORNBURG: And our next Commissioner
6 questions would be from Commissioner Murray.

7 COMMISSIONER MURRAY: And I don't have any.
8 Thank you.

9 JUDGE THORNBURG: Commissioner Lumpe?

10 QUESTIONS BY COMMISSIONER LUMPE:

11 Q. Just a few, Mr. Oligschlaeger.

12 There was some discussion about if the Company
13 were to abandon the pipelines, would they not have to
14 come before this Commission.

15 If the FERC had jurisdiction, could they
16 abandon without going before the FERC, or would they
17 have to go before the FERC?

18 A. I do not know the answer to that question.

19 Q. Should I ask Ms. Morrissey?

20 A. Ms. Morrissey would probably be more versed in
21 that.

22 Q. Okay. So if we -- assuming we still had
23 jurisdiction, they may have to come before us, but we
24 don't know if the FERC were to assume jurisdiction, and
25 I'll ask Ms. Morrissey.

1 Okay. And you were asked a question about has
2 this Commission ever refused a stock purchase merger, et
3 cetera.

4 Have we frequently, though, put conditions on
5 those merger stock acquisitions?

6 A. In my experience, almost all such transactions
7 have conditions attached to them by the Commission.

8 Q. I think you raised three issues that -- on the
9 part of the Staff. One was the potential higher rates,
10 and that's been discussed somewhat. If UtiliCorp were
11 to keep it, it's possible it could come in and ask for
12 higher rates, which is the same possibility that Gateway
13 would have, again, assuming we retain jurisdiction.

14 If we did not have jurisdiction, if the FERC
15 had jurisdiction, that rate-making procedure is a lot
16 different, is it not?

17 A. That is my understanding.

18 Q. And I'll address that more with Ms. Morrissey
19 too.

20 A. Certainly.

21 Q. Okay. The more customers -- then, is it your
22 testimony that you -- what you have not seen is evidence
23 of how they are going to generate more customers?

24 A. Not -- not specifically more customers, though
25 that may be part of it.

1 How they are going to increase the throughput
2 or the sales on their system, which would obviously
3 increase the revenues levels.

4 Q. Right. Which, in effect, could cause a change
5 of fuel source depending if -- well, that would go to
6 the rates issue, if -- the rate issue. If they were to
7 increase the rates, then you get into the potential to
8 change a fuel source?

9 A. Yes.

10 Q. And we don't have an analysis of that where
11 the break line would be, or -- is that correct?

12 A. I did not perform such an analysis.

13 Q. Okay. And then increased sales to current
14 customers, would that depend on the -- using the
15 pipeline under the river? In other words, could they
16 provide more service without using that pipeline?

17 A. Okay. It's my understanding -- and keep in
18 mind, I certainly don't have an engineering background,
19 but the current pipelines are close to capacity, close
20 to full subscription.

21 I think it was discussed in testimony earlier
22 here that opening up the pipeline across the river may
23 have the impact of allowing more throughput through the
24 MPC and MGC systems. Now, how that would work or
25 operate, I'm not the person to address that.

1 Q. Okay. I think -- let me ask -- you mentioned
2 not having access to some of the data or the
3 assumptions, et cetera.

4 Was that data asked for and not provided,
5 or --

6 A. Well, yes. I mean, we specifically asked
7 questions concerning Gateway's expectations in terms of
8 how they would increase revenues and whether they
9 expected reductions in expense and so on. When we were
10 not satisfied with the responses, I put in a data
11 request and asked them to provide the specific
12 background, support, and assumptions that under--
13 that --

14 Q. Underlay?

15 A. -- that supported their pro forma financial
16 results that I've included in my testimony as
17 Schedule 2. And Gateway did not respond to that on the
18 basis that they believed the question was overbroad and
19 was improper for that reason.

20 Q. Oh, okay. So you really couldn't make an
21 analysis of -- of that without the underlying
22 assumption?

23 A. Certainly, we couldn't really get any kind of
24 level of comfort in terms of the reasonableness of their
25 projections for revenues and expenses and in rate base

1 without more information that was provided to us.

2 COMMISSIONER LUMPE: Thank you,
3 Mr. Oligschlaeger.

4 JUDGE THORNBURG: Is that all of the questions
5 you had Commissioner Lumpe?

6 COMMISSIONER LUMPE: Yes.

7 JUDGE THORNBURG: Commissioner Gaw?

8 COMMISSIONER GAW: Thank you, Judge.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Good morning.

11 A. Good morning.

12 Q. By the way, can you tell me who is the right
13 person to talk to with Staff regarding Commissioner
14 Lumpe's question about capacity of the pipeline?

15 A. In terms of additional throughput --

16 Q. Yes.

17 A. -- and how that --

18 My suspicion would be that would be either
19 Mr. Kottwitz or Mr. Lock and then possibly
20 Ms. Morrissey. All of them may be able to do a better
21 job than I could.

22 Q. All right. Okay. At this point in time, do
23 you have sufficient information to make predictions as
24 to the ability of Gateway to meet its debt service in
25 the future if this acquisition takes place?

1 A. I would say in general we're not satisfied
2 with the level of support we've been provided. Let me
3 add to that, because Gateway's projecting a capital
4 structure that it will use which has much more equity
5 and much less debt than what UtiliCorp is currently
6 utilizing for these pipeline systems, that perhaps the
7 concern more goes to the adequacy of the equity returns
8 as opposed to the ability to service debt.

9 Q. What do you know about the -- well, let's
10 throw that into the mix then.

11 Do you have sufficient information regarding
12 the need to return sufficient equity and -- and the debt
13 service in order to understand whether or not this --
14 this acquisition will work financially for -- for
15 Gateway?

16 A. I don't believe we do, and as an example, I
17 think that the BankOne term sheet that has been talked
18 to -- talked about in this hearing at several places
19 requires starting in the year 2003 --

20 MR. KEEVIL: Judge, are we still in camera
21 here?

22 JUDGE THORNBURG: We're in public.

23 COMMISSIONER GAW: I think most of my
24 questions will need to be probably in camera.

25 JUDGE THORNBURG: Okay. At this point --

1 COMMISSIONER GAW: If you see something
2 outside of that, please let me know.

3 JUDGE THORNBURG: The witness was about to
4 address specific details of the term sheets, so we need
5 to go in camera.

6 At this point, we'll go into in camera
7 session, and persons not authorized to access the highly
8 confidential information and proprietary information
9 will have to leave the hearing room.

10 (REPORTER'S NOTE: At this time, an in-camera
11 session was held, which is contained in Volume No. 9,
12 Pages 693 through 708, of the transcript.)

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1 QUESTIONS BY JUDGE THORNBURG:

2 Q. Are there any additional conditions on debt to
3 equity ratios of these companies or any type of
4 financial conditions that would some -- that might
5 somewhat ameliorate Staff's concerns?

6 A. We have not taken the approach of formulating
7 a concrete and comprehensive set of conditions in the
8 case the Commission would decide to approve this
9 application. It's my understanding that if the
10 Commission were desirous of such a thing, that could be
11 produced.

12 In terms of your specific areas, that would be
13 better addressed to Ms. McKiddy, though, the financial
14 equity type.

15 Q. The idea of some either short-term or
16 medium-term financial conditions, coming up with those
17 might be more appropriately addressed to Ms. McKiddy?

18 A. That is correct.

19 JUDGE THORNBURG: We've been -- are there any
20 other questions from the Commission?

21 (No response.)

22 JUDGE THORNBURG: We do need to take a break.
23 We have been in almost -- well, longer than we should
24 have been.

25 We'll take a break until 20 till 11:00. That

1 will give everybody time to stretch and get a cup of
2 coffee.

3 Thank you very much.

4 (A recess was taken.)

5 JUDGE THORNBURG: At this point, we'll go back
6 on the record, and we'll start with recross-examination
7 of this witness.

8 Do we have everybody?

9 Ms. O'Neill, do you have any questions?

10 MS. O'NEILL: I have a few. Thank you.

11 RECROSS-EXAMINATION BY MS. O'NEILL:

12 Q. Mr. Oligschlaeger, when Commissioner Lumpe was
13 asking you questions about conditions which the
14 Commission may wish to impose in the event that there
15 was an approval of this transaction -- do you recall
16 when she asked you that question?

17 A. Yes, I do.

18 Q. And you indicated that you did not have
19 sufficient information from the Applicants to be able to
20 make a recommendation for conditions for yourself; is
21 that correct? You don't -- you did not receive
22 sufficient information about this proposed transaction
23 to be able to make a recommendation?

24 A. Well, I think we cannot make an affirmative
25 recommendation to approve it with conditions based upon

1 the lack of information.

2 Q. And that's information that you sought to
3 obtain from Gateway, but they refused to provide to you;
4 is that correct?

5 A. They refused --

6 MR. BOUDREAU: I object to the
7 characterization of it.

8 JUDGE THORNBURG: What was the question again?

9 MS. O'NEILL: That was information that you
10 asked Gateway for and they refused to provide.

11 MR. KEEVIL: I'm sorry. Could we repeat the
12 question? What was the information?

13 MR. BOUDREAU: I'll renew my objection, by the
14 way.

15 JUDGE THORNBURG: Can you break your question
16 down and not characterize -- I'll sustain it, but I
17 think if you break the question down into two parts, you
18 can get the information you want.

19 BY MS. O'NEILL:

20 Q. You asked Gateway to provide you additional
21 information; is that correct?

22 A. That is correct.

23 Q. Gateway did not provide you the information
24 you requested; is that correct?

25 A. They either could not or would not provide the

1 information.

2 Q. You also indicated that this lack of
3 information was a problem, I believe, in answering
4 questions from Commissioner Gaw; is that correct?

5 A. Yes.

6 Q. And Commissioner Gaw also asked you some
7 questions regarding your concerns versus the size of
8 Gateway as opposed to UtiliCorp or perhaps a company the
9 size of Laclede. Do you recall that line?

10 A. Yes.

11 Q. And does Staff address all concerns and risks
12 that are present in each case?

13 A. Those that we are -- those that we perceive,
14 yes.

15 Q. Okay. And would it be fair to say that not
16 all companies face the same risks?

17 A. That is correct.

18 Q. So are the areas of concern different for
19 different companies?

20 A. The areas that we would look into, probably
21 there would be different emphasis given the different
22 situations of the acquiring and selling utilities.

23 Q. So there would be concerns that you would
24 address and try and assess risks regarding -- no matter
25 what company came in to try to acquire these pipelines?

1 A. That is correct.

2 Q. And, in general, are the risks that you would
3 be concerned about somewhat different for smaller
4 companies than larger companies?

5 A. Well, I think there's some specific risks that
6 are more prevalent with smaller acquirers as opposed to
7 larger acquirers, yes.

8 Q. They may have a different risk profile?

9 A. Yes.

10 Q. Okay. And this -- even companies of similar
11 sizes may have different risk profiles. Is that also
12 fair to say?

13 A. Yes.

14 Q. And, for example, a company the size of
15 Gateway, but one which had -- was an established company
16 with a financial history may have a different risk
17 profile than a newly formed company with no financial
18 history for that entity. Would that be --

19 A. I think it would be fair to say that would
20 affect our perception of the risk, and -- though, we
21 would still, obviously, look into those questions.

22 Q. And a company even of similar size to Gateway
23 which provided more information to address your concerns
24 may -- you may have fewer concerns about risks at the
25 end of that information discovery process; is that

1 correct?

2 A. That is certainly correct.

3 Q. And regarding economic issues for -- which may
4 be affected by opening up this Trans-Mississippi
5 Pipeline, you just don't have enough information to say
6 whether or not --

7 MR. KEEVIL: Objection. She's testifying in
8 her question. I'm not sure what Bench question that's
9 in relation to, anyway.

10 JUDGE THORNBURG: It's overruled.

11 By the way, though, if you --

12 MS. O'NEILL: It is in relationship to
13 Mr. Gaw's question.

14 JUDGE THORNBURG: I was going to say, if you
15 touch on the business plan -- instead of a general
16 question of opening the pipeline, if you touch on the
17 business plan, we'll have to go in camera.

18 BY MS. O'NEILL:

19 Q. You don't have enough real information on
20 whether opening TMP is an economic option. That's what
21 you told Commissioner Gaw; is that correct?

22 A. That is correct.

23 Q. And also just regarding questioning from
24 Mr. Gaw, you talked about some -- had some discussion
25 about the fact that many of the direct customers, the

1 LDCs, for example, that take gas off of these pipelines
2 have contracts at rates less than the tariffed rate; is
3 that correct?

4 A. That's my understanding.

5 Q. And whether or not there was any change
6 upstream on price of gas or anything like that, once
7 those contracts expire, this Company could charge up to
8 that tariffed rate without coming back in for a rate
9 case; isn't that correct?

10 A. That is my general understanding of how the
11 process would work for a company with flex rate tariffs.

12 Q. As long as they weren't seeking to charge an
13 amount over that maximum tariff rate, they would not
14 need to come back to the Commission for a rate case?

15 A. That is my understanding.

16 MS. O'NEILL: And was -- actually, that may
17 get into highly confidential, so I won't ask that
18 question.

19 Thank you.

20 JUDGE THORNBURG: Laclede Gas.

21 MR. PENDERGAST: Thank you.

22 RE-CROSS-EXAMINATION BY MR. PENDERGAST:

23 Q. Hello again, Mr. Oligschlaeger.

24 A. Hello again.

25 Q. You were asked a number of questions by

1 Commissioner Gaw regarding the potential benefits of the
2 Trans--

3 MR. PENDERGAST: Could we go into highly
4 confidential? I apologize.

5 JUDGE THORNBURG: At this time we'll go into
6 highly confidential or an in-camera session to review
7 highly confidential information. I'll ask that the
8 hearing room be cleared.

9 (REPORTER'S NOTE: At this time, an in-camera
10 session was held, which is contained in Volume No. 9,
11 Pages 717 through 723, of the transcript.)
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1 RE CROSS-EXAMINATION BY MR. BOUDREAU:

2 Q. Mr. Oligschlaeger --

3 A. Thank you.

4 Q. -- I believe -- I believe Commissioner Lumpe
5 asked you whether the Commission could impose conditions
6 on an order approving a transaction; is that correct?

7 A. Yes.

8 Q. And I believe your response was in the
9 affirmative?

10 A. Yes.

11 Q. I believe -- and correct me if I'm wrong, I
12 believe that you were also asked whether the Commission
13 had approved of transactions in the past imposing
14 conditions?

15 A. Yes.

16 Q. And I believe again you replied in the
17 affirmative; is that correct?

18 A. Yes.

19 Q. Okay. Did you have any particular case in
20 mind when you answered that, or was that just a general
21 response?

22 A. Where they have approved a transaction with
23 conditions?

24 Q. Yes.

25 A. Certainly two that come immediately to mind

1 were the Union Electric Company merger with CIPSCO, Inc.
2 and the Western Resources proposed merger with Kansas
3 City Power & Light Company. There are others.

4 Q. Let's take those two. The UE/CIPSCO case,
5 my -- let me ask you -- I won't tell you what my
6 recollection is, but let me ask you: Was that case a
7 settled case?

8 A. Yes.

9 Q. So the conditions that were imposed were
10 conditions that were agreed to by the parties and
11 submitted to the condition -- or to the Commission.
12 Excuse me. Is that correct?

13 A. That's my recollection.

14 Q. Okay. Let's talk about Western Resources and
15 KCP&L.

16 That was another case where the Commission
17 approved the merger proposal; is that correct?

18 A. Yes.

19 Q. And that, too, I believe, was pursuant to a
20 Stipulation and Agreement with a list of agreed-to
21 conditions submitted by the parties in that case; is
22 that correct?

23 A. Yes.

24 Q. Okay. Let's talk about some of the other
25 cases that you've mentioned. Excuse me.

1 MS. O'NEILL: Excuse me. I'm not sure he
2 mentioned any other cases specifically.

3 MR. BOUDREAU: I will clarify that.

4 BY MR. BOUDREAU:

5 Q. That you mentioned in your testimony, prepared
6 testimony. And, in particular, I'm looking at your
7 Schedule 1.

8 MS. SHEMWELL: Excuse me. Is this in response
9 to a Commission question?

10 MR. BOUDREAU: It relates to conditions
11 imposed on particular transactions, and I'm asking him
12 what his familiarity was. I believe he testified that
13 he was aware that there have been transactions approved
14 with conditions.

15 JUDGE THORNBURG: Okay. I think this is an
16 area you can continue in.

17 MR. BOUDREAU: There is a distinction I would
18 like to make. I won't belabor the point.

19 BY MR. BOUDREAU:

20 Q. Those are two settled cases that we just
21 talked about. Right?

22 A. Yes.

23 Q. You were also involved, according to your
24 schedule in Case No. WM-2000-222; is that correct?

25 A. That is correct.

1 Q. That was Missouri American Water Company's
2 acquisition of the capital stock of United Missouri
3 Water, Inc.; is that correct?

4 A. Yes.

5 Q. Was that a settled case?

6 A. No, it was not.

7 Q. Did the Commission impose conditions on
8 approval -- let me ask you this preliminary question:
9 They approved the transaction, did they not?

10 A. Yes.

11 Q. Did they impose conditions?

12 A. They may have. The Staff requested a specific
13 condition regarding acquisition adjustment, which they
14 declined to impose.

15 MR. BOUDREAU: Yes.

16 May I approach the witness?

17 JUDGE THORNBURG: You may.

18 BY MR. BOUDREAU:

19 Q. Mr. Oligschlaeger, I'm going to hand you a
20 document and ask you if you recognize that document?

21 A. Yes, I do.

22 Q. What is that document?

23 A. It is the report and order in Case
24 No. WM-2000-222 issued March 16th of 2000.

25 Q. I'm going to ask you to turn to the ordered

1 section of that order and summarize for me the
2 conditions the Commission imposed in that case.

3 A. There is a condition that Missouri American
4 Water Company takes some actions to supplement its
5 monthly surveillance reports in regard to the newly
6 acquired company.

7 There is also a provision about nothing in the
8 order being a finding for rate-making purposes, which
9 I'm not sure it's styled as a condition, but normally
10 the Staff would request that the Commission impose that
11 requirement as a condition.

12 Q. Thank you.

13 Let me -- any others other than those?

14 A. Not that I see upon reading it, no.

15 Q. Okay. Thank you.

16 Now, in order to speed this along, you
17 mentioned there are probably other cases out there as
18 well?

19 A. Yes.

20 Q. And the record -- the official record will
21 reflect what conditions the Commission has imposed
22 unilaterally versus imposed at the agreement of the
23 parties; is that correct?

24 A. Yes.

25 Q. Okay. And you, I believe, in response to a

1 question from Commissioner Gaw have stated that the
2 Staff has not made any recommendation to the Commission
3 in this case for approval of the transaction with any
4 particular set of conditions; is that correct?

5 A. Well, I think actually Mr. Kottwitz had some
6 conditions within his testimony which the Company
7 accepted, and I have several conditions in my testimony
8 in regard to acquisition adjustment. But, in general,
9 no, we have not attempted to formulate a full set of
10 conditions in case the Commission determines that
11 approval is appropriate.

12 Q. Right. So there is really nothing before them
13 in terms of a global suggested resolution, at least from
14 Staff's perspective; is that correct?

15 A. That is correct.

16 Q. And so what really they have before them is a
17 choice between approval and not approval at this point?

18 A. That's correct.

19 Q. Okay. And that's not saying that they can't
20 impose conditions, just that they haven't been given any
21 particular suggestion on Staff's part -- on Staff's
22 behalf; is that correct?

23 A. With the exception I noted earlier.

24 Q. Yes. I think -- let me check my notes.

25 I think in response to some questions that you

1 got from -- as a follow-up on that particular response
2 that the lack of a recommendation in this case is driven
3 by basically a feeling that you -- that you lack
4 sufficient information, is that correct --

5 A. Well --

6 Q. -- to make a recommendation?

7 A. I would put it this way: We believe there are
8 some inherent detriments in this transaction that may
9 have been overcome, but may not have been overcome as
10 well if more specific information on the financial
11 future of these systems was available.

12 Q. So your view is there is a presumption of a
13 detriment in this case?

14 A. I believe that, again, the circumstances in
15 which the Company -- or these systems are being turned
16 over to a company of much smaller size with a higher
17 revenue requirement is a detriment.

18 Q. And you don't believe that you've been able to
19 obtain any meaningful data, then, to address those
20 concerns?

21 A. No, we've not been presented with -- yes,
22 meaningful or substantive data from the Company to
23 overcome those concerns.

24 Q. Did you have any role in Commission Case
25 No. GM-89-151? And for more specificity, that was the

1 case when UtiliCorp acquired a company called Michigan
2 Energy Resources Company and merged with it.

3 A. I don't recall that, so my -- my best guess is
4 I was not involved in it.

5 MR. BOUDREAU: May I approach the witness?

6 JUDGE THORNBURG: You may.

7 BY MR. BOUDREAU:

8 Q. I'm going to hand you a document, sir, and ask
9 you if you recognize this document?

10 MS. O'NEILL: Mr. Boudreau, do you have a copy
11 of that document?

12 MR. BOUDREAU: I will as soon as I have it
13 marked as an exhibit. Let's see if he recognizes it.

14 THE WITNESS: I have no specific recollection
15 of this, but I will agree it is a memorandum from me.

16 MR. BOUDREAU: Okay. What I'd like to do at
17 this point is have this document marked as an exhibit.
18 Do you need that particular copy of it in order to do
19 that? I have some extra copies.

20 JUDGE THORNBURG: I need copies.

21 MS. SHEMWELL: Your Honor, it seems to me this
22 needs to be tied to questions from the Bench. This is
23 recross. I certainly haven't seen that.

24 MR. BOUDREAU: Let me make the tie-in. I
25 believe that Mr. Oligschlaeger's testimony in response

1 to questions from at least one of the Commissioners was
2 that the lack of a recommendation, or one of the
3 critiques here was that he didn't have enough meaningful
4 data to draw a conclusion. I think that topic was
5 discussed with two or three of the Commissioners. I can
6 look through my notes and get specific names.

7 MR. KEEVIL: I can tell you. It was discussed
8 in response to a question from Commissioner Lumpe as
9 well as Commissioner Gaw. It may have also been
10 discussed in response to Commissioner Murray.

11 JUDGE THORNBURG: I don't have any content of
12 the memo.

13 MR. BOUDREAU: What I would like to do is have
14 this document marked as an exhibit. I have lost track
15 of the numbers at this point. I believe the last
16 exhibit was 21 on my sheet.

17 MS. O'NEILL: Your Honor, perhaps while you're
18 marking that, Mr. Boudreau could distribute the copies
19 to other counsel.

20 JUDGE THORNBURG: Sure.

21 (EXHIBIT NO. 22 WAS MARKED FOR
22 IDENTIFICATION.)

23 JUDGE THORNBURG: Okay. This exhibit will be
24 marked as Exhibit No. 22. I'm just going to call it
25 Staff memorandum.

1 MR. BOUDREAU: May I continue?

2 JUDGE THORNBURG: Yes.

3 BY MR. BOUDREAU:

4 Q. Now, Mr. Oligschlaeger, as I recall your
5 comment just before we went through this mechanical
6 process of marking exhibits, it's that you don't have a
7 specific recollection of this document, but it does
8 appear to be a memorandum prepared by you in the -- in
9 Case No. GM-89-151?

10 A. That is correct.

11 Q. Do you have any reason to believe this is not
12 an accurate copy of a memorandum prepared by you and
13 filed in that case?

14 A. No, I do not.

15 Q. Okay. Is it fair to say that in that
16 memorandum you indicate that it's basically Staff's
17 experience that it's difficult --

18 MS. O'NEILL: Your Honor, I'm going to object
19 to this question as being asked to testify regarding a
20 document that's not in evidence. I'm also going to
21 object to the relevance of document in general. It does
22 not --

23 MR. BOUDREAU: I haven't offered the document
24 into evidence yet. I'm laying a foundation for getting
25 the document in evidence.

1 MS. O'NEILL: That was not a foundational
2 question. I object to the form of the question.

3 MR. BOUDREAU: I believe he's testified that
4 he's --

5 JUDGE THORNBURG: I'm going to overrule the
6 objection.

7 Proceed.

8 MR. BOUDREAU: Well, at this point, just to
9 make sure there is no uncertainty, I'm going to offer
10 Exhibit 22 into the record.

11 JUDGE THORNBURG: Any objections?

12 MR. BYRNE: Your Honor, I'm going to object to
13 that. I don't think he has laid a proper foundation.
14 He couldn't identify the document. The witness just
15 saying he has no reason to believe that it isn't what it
16 purports to be is not the same as identifying the
17 document. For all we know -- I mean, you know, we have
18 no reason to believe --

19 MR. BOUDREAU: Is Mr. Byrne suggesting that I
20 forged the document? It has Mr. Oligschlaeger's name on
21 it.

22 MR. KEEVIL: In fact, Mr. Oligschlaeger
23 admitted that it was a memo written by him, just one
24 that he did not at first recollect.

25 MR. BYRNE: Well, if he recollects it, then

1 the proper foundation --

2 MR. KEEVIL: It's a memo written by him.

3 JUDGE THORNBURG: That's enough. I think the
4 document has been sufficiently identified.

5 MS. O'NEILL: Your Honor, I also have an
6 objection before you rule on whether you're going to
7 admit the document.

8 JUDGE THORNBURG: Okay.

9 MS. O'NEILL: I join in the objection that's
10 just been made, and I know that although
11 Mr. Oligschlaeger acknowledged that the "from" line of
12 this memorandum has his name on it, there is no
13 signature. There is no -- there is a handwritten
14 attachment too. We don't know who wrote that. And for
15 those reasons, I believe that I join in the other
16 objection.

17 I also object on the grounds that this is not
18 relevant to the question of whether in this case Gateway
19 has provided sufficient information to overcome what it
20 is frankly our position, as well as Staff's position,
21 would be detrimental to the public interest, this
22 transaction, based on information provided or not
23 provided by Gateway and the other applicants in this
24 case. It is not responsive to questions from the Bench
25 regarding whether there is sufficient information in

1 this case.

2 We believe it is not relevant and we object to
3 its admission on those grounds as well.

4 MR. BOUDREAU: I believe it goes -- the
5 relevance of it goes to Mr. Oligschlaeger's testimony
6 that he doesn't have enough meaningful information in
7 this case to make a recommendation to the Commission.

8 MS. O'NEILL: This is an eleven-year-old
9 document.

10 JUDGE THORNBURG: Just a minute.

11 The objections are overruled, and the exhibit
12 will be received into evidence.

13 I recognize that it is an eleven- or
14 twelve-year-old document, and the relevance of it is
15 something that the Commission is going to weigh and
16 we'll take that into account.

17 (EXHIBIT NO. 22 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE THORNBURG: Mr. Boudreau, you may
19 continue.

20 BY MR. BOUDREAU:

21 Q. Let me see if I can do this.

22 Is it fair to say that the gist of this
23 memorandum filed in that case, prepared by you, is that
24 you made the conclusion there was not enough meaningful
25 information to make an analysis about future public

1 detriment --

2 MS. O'NEILL: I'm going to object. The
3 attorney is testifying.

4 BY MR. BOUDREAU:

5 Q. -- but also decided in this docket that it
6 wasn't a proper topic to be brought --

7 MS. O'NEILL: I'd ask that my objection be
8 ruled on.

9 JUDGE THORNBURG: And what is your objection?
10 He didn't finish his question. What is your
11 question?

12 MS. O'NEILL: That Mr. Boudreau is testifying.

13 MR. BOUDREAU: There is any number of times
14 the people have characterized -- I mean, I can have him
15 read it into the record. I mean, the text of it is in
16 the record, I suppose, in the sense that the exhibit has
17 now been admitted.

18 MS. SHEMWELL: Your Honor, perhaps it is more
19 appropriate to let Mr. Oligschlaeger characterize this
20 memo.

21 JUDGE THORNBURG: Okay. I'm going to sustain
22 the objection, and ask that you rephrase your question
23 and try to avoid characterizing the document.

24 MR. BOUDREAU: Okay.

25 JUDGE THORNBURG: The document speaks for

1 itself. It's in evidence. And if you have a question
2 about it, just ask it.

3 BY MR. BOUDREAU:

4 Q. Have you had a chance to review -- or read
5 the -- read the memorandum?

6 A. Yes, I have.

7 Q. Okay. Do you recall at this time whether or
8 not the Staff opposed the application that was filed in
9 that case by UtiliCorp for approval of the merger with
10 Michigan Energy Resources Company?

11 A. I do not have a recollection in terms of
12 whether the Staff opposed or supported that transaction.
13 All this memo reflects is that the Accounting Department
14 did not take a specific position with that transaction.

15 Q. Okay. And you're here representing the
16 Accounting Department of the Commission, is that
17 correct, the Commission Staff?

18 A. Well -- you mean here today?

19 Q. Here today.

20 A. Yes.

21 MR. BOUDREAU: Okay. That's all of the
22 questions I have.

23 Thank you.

24 JUDGE THORNBURG: Thank you, Mr. Boudreau.

25 Mr. Byrne, do you have any questions?

1 MR. BYRNE: No, your Honor.

2 JUDGE THORNBURG: Just to make sure -- I
3 already covered you. I'm sorry.

4 Mr. Keevil?

5 MR. KEEVIL: I thought for a second Mr. Byrne
6 got two cracks and I didn't get any.

7 JUDGE THORNBURG: No, no. I wasn't going to
8 give him two chances. I apologize.

9 MR. KEEVIL: I don't have too many questions,
10 Judge. I don't think it will take very long.

11 RECROSS-EXAMINATION BY MR. KEEVIL:

12 Q. Mr. Oligschlaeger, in response to questions
13 from Commissioner Gaw and Commissioner Lumpe, I know you
14 said you didn't -- you had not received additional -- or
15 sufficient information.

16 Isn't it true, Mr. Oligschlaeger, that early
17 in this proceeding that Gateway agreed voluntarily to
18 respond to data requests in 10 days as opposed to the
19 20 days provided for under the Commission's discovery
20 rule?

21 A. I have no knowledge of that.

22 Q. So you were not privy to discussions with your
23 counsel and your department regarding the agreements
24 which were made regarding the scheduling?

25 A. If there were such agreements, I'm not aware

1 of them.

2 Q. Are you aware of Gateway in this case
3 voluntarily providing copies of its data responses to
4 data requests received from other parties to Staff at
5 the time that it was responding to all other parties as
6 well?

7 A. I'm generally aware of that.

8 Q. The Staff has certainly filed no motions to
9 compel responses to data questions; is that correct?

10 MS. SHEMWELL: Your Honor, I'm going to
11 object. This doesn't go to the quality or the amount.
12 It's just procedural questions. It doesn't go at all to
13 the quality or amount of information received.

14 JUDGE THORNBURG: Mr. Keevil, what's -- what's
15 the purpose of this question?

16 MR. KEEVIL: Well, the implication seems to
17 me, Judge, to have been that Gateway has been
18 intentionally avoiding responding to data requests. And
19 my point is that information has been provided, was
20 provided when requested.

21 Staff's monitor throughout this case has been
22 that if you didn't have a booklet of information as tall
23 as this podium that it wasn't sufficient to respond --

24 MS. SHEMWELL: Your Honor, I'm going to
25 object --

1 MR. KEEVIL: I'm responding to an objection.

2 JUDGE THORNBURG: Mr. Keevil, I think these
3 are matters you could argue, but I think it's apparent
4 in some of the testimony yesterday that there was
5 additional information that Staff didn't have available.

6 MR. KEEVIL: That does not mean that Staff
7 requested it though, your Honor.

8 JUDGE THORNBURG: I'm going to overrule the
9 objection.

10 You can continue to ask this witness for
11 answers and he can try to answer, but you're opening up
12 something here --

13 MR. KEEVIL: I can move on if you want me to.

14 JUDGE THORNBURG: Well, ask him again.

15 MR. KEEVIL: I'm sorry. Go ahead.

16 JUDGE THORNBURG: You can continue with this.
17 I'm just saying there is some indication that we got
18 more information yesterday that we didn't have before.

19 Continue.

20 MR. KEEVIL: Okay.

21 BY MR. KEEVIL:

22 Q. Mr. Oligschlaeger, were you present in the
23 meeting in early June between Gateway representatives
24 and Staff and Public Counsel?

25 A. No, I was not.

1 Q. Okay. Did you -- you have seen the data
2 request responses Staff has received in this case, have
3 you not?

4 A. Yes, I have.

5 Q. Okay.

6 A. At least some of them. I'm not going to claim
7 all of them necessarily.

8 Q. Do you recall a question from Commissioner --
9 Chairman Simmons regarding your knowledge of TCW?

10 A. Yes, I do.

11 JUDGE THORNBURG: Would you like this marked
12 as an exhibit?

13 MR. KEEVIL: Yes, please.

14 JUDGE THORNBURG: Okay. The document -- the
15 next exhibit number is Exhibit 23, and this is a data
16 request.

17 MR. KEEVIL: It's a response to data request.

18 JUDGE THORNBURG: Okay. So I'll just
19 reference it as a response to a data request at this
20 point.

21 (EXHIBIT NO. 23 WAS MARKED FOR
22 IDENTIFICATION.)

23 BY MR. KEEVIL:

24 Q. Mr. Oligschlaeger, well, is this document, in
25 fact, what I represent it to be, a response to a data

1 request received from Staff?

2 A. Yes, it is.

3 Q. Okay. I'd like to have you turn to the last
4 two pages of that data response.

5 A. (Witness complied.)

6 Q. Are those two last pages of the data response
7 a company summary of TCW? And I realize it is a
8 summary, but is that what those are?

9 A. That's what they appear to be.

10 Q. Okay. If I could have you turn to the very
11 last page of the data request, the very last paragraph
12 under the section heading assets under management.
13 Could you read that paragraph into the record, please?

14 A. Yes. "As of December 31st, 2000, TCW had
15 total assets under management or committed to management
16 of approximately 80 billion, including over 50 billion
17 in the marketable securities division."

18 MR. KEEVIL: Judge, I would offer Exhibit 23.

19 JUDGE THORNBURG: Does this exhibit need to
20 have that highly confidential --

21 MR. KEEVIL: It was originally confidential,
22 Judge, but during the course either of this hearing or
23 your previous ruling on Public Counsel's motions to
24 declassify, I think the things that were originally
25 considered confidential have since been declassified.

1 JUDGE THORNBURG: Okay. Are there any
2 objections to this exhibit?

3 MS. O'NEILL: No.

4 JUDGE THORNBURG: Exhibit 23 will be received.

5 (EXHIBIT NO. 23 WAS RECEIVED INTO EVIDENCE.)

6 BY MR. KEEVIL:

7 Q. Mr. Oligschlaeger, so at least upon receipt of
8 this data request -- I realize you said you were not at
9 that meeting in June between Gateway and Staff
10 representatives, but at least as of the receipt of this
11 data request response, Staff would have been aware of
12 the involvement of TCW. Correct?

13 A. I think that's a reasonable assumption, yes.

14 Q. Okay. Did you attempt to obtain any
15 additional information regarding TCW upon becoming aware
16 of TCW's involvement in the proceeding?

17 A. No. I think that's an area of inquiry that
18 would have been more in Staff Witness McKiddy's scope.
19 I was more interested in the financial statement
20 analysis side of this investigation.

21 Q. Okay. So when you said that UtiliCorp had
22 \$16 billion in assets, you did not consider it
23 appropriate to compare that to the \$80 billion of TCW?

24 A. Well, actually, my statement is UtiliCorp has
25 14 billion in assets. And no, I did not find that a

1 relevant comparison.

2 Q. Okay. I take it you didn't bother to go to
3 www.TCW.com and obtain any additional information about
4 TCW?

5 A. No, I did not.

6 Q. Okay. A couple of times -- let's see. I
7 believe this was in response to Commissioner Gaw -- you
8 referred to what you believed to be Gateway's higher
9 cost of service, and then one time I think you said
10 higher revenue requirement.

11 But either way, whether you're talking about
12 increasing -- to obtain recognition of a higher cost of
13 service or a higher revenue requirement would require a
14 rate case before this Commission. Correct?

15 A. To reflect such a higher cost of service in
16 rates, that is correct.

17 Q. And such a higher cost of service would not be
18 reflected until after this Commission had considered all
19 of the relevant evidence and made a decision themselves.
20 Correct?

21 A. That is my understanding.

22 Q. And I believe you told me previously today
23 that it's your understanding that Gateway has a lower
24 interest expense than UtiliCorp and would have lower
25 operating expenses than UtiliCorp; is that correct?

1 A. Well, their pro forma statements indicate that
2 they have -- they project to have lower interest expense
3 and lightly lower operating expenses. They would,
4 however, have a higher equity requirement than
5 UtiliCorp.

6 Q. When you say "equity requirement," you mean
7 amount of equity in the capital structure?

8 A. Well, they would have -- they have a larger
9 amount of equity, and because equity has a higher cost
10 generally than debt, their revenue requirement
11 associated with their capital structure would be higher
12 than UtiliCorp's.

13 Q. But that would not be -- that would have
14 absolutely no impact until this future rate case that
15 we're talking about. Correct?

16 A. Well, a company's cost of service, I think, to
17 the extent they are not attain-- attaining a reasonable
18 profit upon their investment has an immediate impact,
19 but in terms of reflecting a higher cost of service in
20 rates, again, you have to go through the rate case
21 process.

22 Q. And to the extent that it has an immediate
23 impact, as you stated, that would be an immediate impact
24 upon the equity holder themselves. Correct?

25 A. Failure to object a reasonable return, yes.

1 Q. So it would be up to those equity holders to
2 make the decision whether or not that was something they
3 were going to assume. Correct?

4 A. I believe that's accurate.

5 MR. KEEVIL: Okay. Nothing further.

6 JUDGE THORNBURG: Thank you.

7 MR. KEEVIL: Judge, I believe I offered
8 Exhibit 23, did I not?

9 JUDGE THORNBURG: It was offered and received.
10 Ms. Shemwell?

11 MS. SHEMWELL: Thank you, your Honor.

12 REDIRECT EXAMINATION BY MS. SHEMWELL:

13 Q. Mr. Oligschlaeger, Mr. Boudreau was asking you
14 about the possibility of Gateway increasing revenues.
15 Is it your understanding that this system is fully
16 subscribed?

17 MR. BOUDREAU: Mr. Boudreau did?

18 MS. SHEMWELL: Yes, absolutely.

19 MR. BOUDREAU: Okay. I withdraw it. I'm
20 sorry. I think she's correct.

21 MR. KEEVIL: Whether Mr. Boudreau or whoever
22 did, if we're getting into revenues, I hate to do this,
23 but we may need to be in camera.

24 MS. SHEMWELL: I don't think so, but I would
25 encourage Mr. Keevil to continue to be vigilant, but I

1 don't think that this particular line will --

2 JUDGE THORNBURG: Okay. Continue, and we'll
3 see where we go.

4 BY MS. SHEMWELL:

5 Q. Is it your understanding that the system is
6 fully subscribed, I mean, close to it?

7 A. I believe it's close to fully subscribed.

8 Q. So how are they going to increase throughput
9 on that system?

10 A. My general understanding is you either need to
11 add compression to the system or build additional pipe.
12 I know there was some discussion earlier in this case
13 that opening up the TMP pipe may have the impact of
14 increasing the capacity somehow of these systems, but I
15 will cheerfully admit I don't have the engineering
16 knowledge to understand that.

17 Q. Could you refer the Commission to another
18 Staff witness for that information?

19 A. Yes. Again, I believe Mr. Kottwitz, Mr. Lock
20 or Ms. Morrissey would be able to respond there.

21 Q. There has been quite a bit of discussion,
22 again, I think by Mr. Boudreau about the imposition of
23 conditions.

24 Does Staff believe that if the Commission were
25 to impose conditions in this case, that would be

1 adequate to protect the public interest?

2 A. It's our position that such conditions would
3 not entirely eliminate the detriment to the public.

4 Q. Mr. Boudreau asked about your understanding
5 that Gateway could file a rate increase in this
6 proceeding. In other words, were there legal
7 impediments?

8 Could Gateway have filed a rate increase
9 request in this proceeding?

10 A. Based upon my knowledge of regulation in
11 Missouri, it is my understanding you cannot ask for a
12 change in rates in a non-rate docket, which this is.

13 Q. Mr. Boudreau asked you -- made specific
14 references to rate increases coming before this
15 Commission. Might such rate increases be requested
16 elsewhere?

17 A. Certainly if the jurisdiction over these
18 pipeline systems changes, then rate case could be
19 directed to the body that has jurisdiction over them.

20 Q. I think from Mr. Keevil there was at least
21 some implication that Staff got all of the information
22 it requested. Is that true? Is that accurate?

23 A. Well, no. As I mentioned before, there were
24 at least some responses which Gateway objected to. In
25 addition to that, there were some responses that we, I

1 mean, generally were not satisfied with or did not think
2 we got all of the information we needed. I'm not saying
3 that it was necessarily available, but we didn't get
4 what we would have liked to have gotten.

5 Q. I think Mr. Boudreau addressed UtiliCorp's
6 comfort level with this sale. Do you have any
7 information about UtiliCorp's comfort level with this
8 sale?

9 A. Nothing beyond the fact that they entered into
10 the transaction. Obviously, UtiliCorp's comfort level
11 cannot substitute for the Staff, but more importantly,
12 not the Commission's comfort level.

13 Q. Mr. Boudreau handed you a memo, and I don't
14 remember if it was admitted into evidence or not, but
15 we'll look at that memo, or I would refer to that.

16 JUDGE THORNBURG: That was Exhibit 23.

17 MS. SHEMWELL: Thank you.

18 JUDGE THORNBURG: It was admitted.

19 BY MS. SHEMWELL:

20 Q. Has Staff had experience with acquisitions in
21 the past ten years?

22 A. We've had a lot of experience with
23 acquisitions during the 1990s, and this is -- as this
24 memo reflects, and back into the mid- to late 1980s.

25 Q. Would it be fair to say that Staff's approach

1 to acquisitions has evolved during that time?

2 A. Well, certainly we've been through a lot of
3 major merger and acquisition cases and a lot of
4 different types of acquisition cases than what was the
5 subject of this memorandum.

6 Q. Mr. Keevil asked you earlier if having
7 2.5 million in the bank --

8 MR. KEEVIL: Whoa, whoa, whoa.

9 MS. SHEMWELL: I'm sorry.

10 MR. KEEVIL: Mr. Keevil asked that during
11 confidential --

12 JUDGE THORNBURG: Most of these questions were
13 in --

14 MR. KEEVIL: Those were all in -- when I
15 talked numbers, those were all in camera.

16 JUDGE THORNBURG: Do we need to go back in
17 camera?

18 MS. SHEMWELL: Probably for these questions.

19 JUDGE THORNBURG: Okay. At this point we'll
20 go in in-camera session. Those persons not in
21 compliance with the Commission's protective order on
22 highly confidential information need to leave the
23 hearing room.

24 (REPORTER'S NOTE: At this time, an in-camera
25 session was held, which is contained in Volume No. 9,

1 Pages 753 through 758, of the transcript.)

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1 JUDGE THORNBURG: I was inquiring of the
2 Commission if anyone had any questions for Ms. Bolin.

3 COMMISSIONER SIMMONS: I do not.

4 JUDGE THORNBURG: Ms. Bolin, you can be
5 excused for your afternoon appointment that you need to
6 make.

7 (Witness excused.)

8 MS. SHEMWELL: Would this be a good time to
9 inquire about questions of the Staff witnesses that went
10 yesterday?

11 JUDGE THORNBURG: Well, okay. In addition to
12 the -- Ms. Bolin, we also had Mr. Burdette, who was a
13 Public Counsel witness, and I could inquire.

14 Would there be any questions for Mr. Burdette?

15 (No response.)

16 JUDGE THORNBURG: I don't see any.

17 And the Staff Witnesses Phil Lock and James
18 Gray?

19 COMMISSIONER GAW: Judge, I think I may or may
20 not have questions, depending upon whether Carmen
21 Morrissey can answer the questions I have.

22 JUDGE THORNBURG: That was my impression also.

23 MS. SHEMWELL: They will be available.

24 JUDGE THORNBURG: They will be available.

25 Okay. And I don't think there was anyone else

1 that we covered yesterday.

2 Before we break for lunch, why don't we go
3 ahead and get -- would Ms. Morrissey be your next
4 witness?

5 MS. SHEMWELL: That's correct, your Honor.

6 JUDGE THORNBURG: Why don't we go ahead and do
7 the preliminary on that before we break for lunch and
8 we'll start with cross then after lunch.

9 Ms. Morrissey, before you take a seat, I need
10 to swear you in.

11 (Witness sworn.)

12 JUDGE THORNBURG: Thank you.

13 You may be seated.

14 Ms. Shemwell, you may proceed.

15 MS. SHEMWELL: Thank you, your Honor.

16 CARMEN J. MORRISSEY testified as follows:

17 DIRECT EXAMINATION BY MS. SHEMWELL:

18 Q. Please state your name for the record.

19 A. Carmen Morrissey.

20 Q. Where do you work, Ms. Morrissey?

21 A. I work for the Missouri Public Service
22 Commission.

23 Q. What do you do for the Commission?

24 A. I'm a utility policy analyst in the Energy
25 Department that specializes in federal matters.

1 Q. Are you the Carmen Morrissey that prepared and
2 caused to be filed in this case Exhibit 18 --

3 JUDGE THORNBURG: 18 and 18-HC.

4 BY MS. SHEMWELL:

5 Q. -- and 18-HC, and I would also note the
6 reclassified one?

7 A. Yes, I did file the Rebuttal Testimony. The
8 exhibit number I'm sure of.

9 Q. Do you have any correction to your testimony?

10 A. No.

11 Q. Ms. Morrissey, if I were to ask you the same
12 questions today, would your answers be substantially the
13 same?

14 A. Yes.

15 Q. Is your testimony true and correct to the best
16 of your knowledge and belief?

17 A. Yes.

18 MS. SHEMWELL: Your Honor, I will offer 18 and
19 18-HC into evidence, and tender the witness for cross.

20 JUDGE THORNBURG: Are there any objections to
21 Exhibits 18 and 18-HC?

22 (No response.)

23 JUDGE THORNBURG: Hearing none, those exhibits
24 will be received into evidence.

25 (EXHIBIT NOS. 18 AND 18-HC WERE RECEIVED INTO

1 EVIDENCE.)

2 JUDGE THORNBURG: And when we come back from
3 lunch, we will begin with cross.

4 Are there any matters that need to be brought
5 to my attention before we adjourn?

6 (No response.)

7 JUDGE THORNBURG: Does anybody anticipate
8 extensive cross of both Ms. Morrissey and Ms. McKiddy?

9 (No response.)

10 JUDGE THORNBURG: I'm just gauging on if we're
11 going to be able to finish by five and the impact that
12 might have on the length of our lunch break. I'm not
13 asking for a firm commitment.

14 MR. BOUDREAU: For what it's worth, I don't
15 anticipate a lot for either witnesses.

16 JUDGE THORNBURG: And Mr. Keevil?

17 MR. KEEVIL: I would say the same thing;
18 however, Judge, I would encourage -- rather than take
19 the chance of not getting done today, I would encourage
20 to take a shorter lunch break, if those are of choices,
21 take a chance of not finishing or take a shorter lunch.

22 JUDGE THORNBURG: Okay. We're going to
23 adjourn for lunch, and I realize that we open up areas
24 that the Commission may also lengthen the cross.

25 We'll come back at five until one and get

1 started just before 1:00 that way at 12:55.

2 Thank you.

3 (A recess was taken.)

4 JUDGE THORNBURG: We'll go back on the record
5 now.

6 And unless there's any preliminary matters,
7 we'll proceed to cross examination, and -- Ms. O'Neill?

8 MS. O'NEILL: Thank you.

9 CROSS-EXAMINATION BY MS. O'NEILL:

10 Q. Good afternoon, Ms. Morrissey.

11 A. Good afternoon.

12 Q. I just had a couple of questions because
13 there's something I wasn't sure of, and I'll refer you
14 to your reclassified testimony at Page 7. And there is
15 a question there at Lines 14 and 15 where you're asked
16 if there are any positive effects of having a Missouri
17 company come under FERC jurisdiction. Do you see that?

18 Okay. I'm sorry. You don't see that.

19 A. No. I have the August 10th version.

20 Q. Okay.

21 A. I apologize.

22 MR. BOUDREAU: I think I have a clean copy she
23 can refer to.

24 THE WITNESS: Thanks.

25 MR. KEEVIL: Judge, just for my edification, I

1 was under the impression there was no difference between
2 the two versions.

3 JUDGE THORNBURG: There should be no
4 difference.

5 THE WITNESS: I think the line numbers --

6 MS. O'NEILL: The line numbers may be
7 different.

8 THE WITNESS: -- are different.

9 JUDGE THORNBURG: It's possible when you
10 delete the little asterisks and brackets and things, it
11 might have shifted things a little bit. But certainly
12 if there is any difference on words that appear on the
13 pages, the parties are free to bring that to my
14 attention.

15 MS. O'NEILL: Actually, when I look at the old
16 one, it does look like that question starts on Line 16,
17 but the reason I was referring to the reclassified is
18 this has been reclassified as non-proprietary; is that
19 correct?

20 THE WITNESS: Right.

21 JUDGE THORNBURG: And this is also the version
22 we're going to deal with. I realize the earlier filing
23 is in the file, but this is our record for the hearing.
24 So referring to the reclassified is going to be a little
25 bit easier for everyone.

1 BY MS. O'NEILL:

2 Q. Okay. Anyway, now do you find where that
3 question is?

4 A. Yes.

5 Q. And the answer begins with the word "yes"; is
6 that correct?

7 A. Yes.

8 Q. All right. When you answered that question
9 "yes," was -- as I -- as I just -- there's a couple of
10 issues here that you cite. When you were answering the
11 question "yes," was that from the perspective of the
12 Commission Staff?

13 A. Yes. I'm testifying here on behalf of the
14 Commission Staff, and it's a matter of time, more
15 choices as to what you spend your time on. If it is a
16 case before this Commission, then the Staff has a
17 heavier obligation and burden to review many things;
18 whereas at the FERC, we have the option of picking and
19 choosing issues.

20 Q. And, in fact, at the FERC, the Missouri Public
21 Service Commission Staff has the option of whether to
22 participate at all; is that correct?

23 A. Yes. And we act on behalf of this Commission.
24 We don't act as Staff at the Federal Commission.

25 Q. Okay. And the -- when you act on behalf of

1 the Commission at the FERC, that's a different interest
2 in some situations than what may be best for an end user
3 of one of these utility's services. Would that be fair
4 to say?

5 A. That's possible, yes.

6 Q. So it may be that it's a benefit to Commission
7 Staff not to engage in a matter before the FERC even
8 though there may be some possibility of detriment to an
9 end user of the utility's service here in Missouri?

10 A. That's possible, yes.

11 Q. And is that kind of the -- is that what you
12 meant when you said that that was a benefit to FERC
13 jurisdiction?

14 A. It's a matter that there is -- maybe it can be
15 a more efficient use of time. Many times in cases
16 before this Commission, no matter how small the issue or
17 how small the company, the Staff has an obligation to
18 review many things; whereas, at the Federal Commission,
19 our Commission here can choose which issues warrant our
20 time or where there is some cost benefit to doing so.

21 Q. Okay. And also at Lines 20 through 22 -- I
22 think you address the second sentence here with that
23 answer, but in Lines 20 through 22 there is a sentence
24 to that answer. Could you read that, please, that
25 starts "If a decision"?

1 A. Yes. It says, "If a decision is made at FERC
2 which adversely affects Missouri, such as a rate
3 increase, then the Missouri PSC is not responsible or
4 accountable for that action."

5 Q. So there could be adverse effect to the public
6 customers of the Missouri utility, but it would not be
7 an adverse -- they would not be able to come to this
8 Commission to complain about the rate increase; is
9 that --

10 A. They could come here and complain, but it
11 would not be the fault or based on a decision that this
12 Commission issued.

13 Q. So the Commission takes itself out of the fray
14 as it were as far as the FERC decision on a rate
15 increase?

16 A. If the decision is contrary to a position that
17 we've taken or that we took no position on.

18 Q. But, still, that could be an adverse effect on
19 customers here in Missouri of regulated utilities?

20 MR. KEEVIL: Asked and answered, Judge.

21 MS. O'NEILL: This is to a different issue.

22 JUDGE THORNBURG: I'm going to overrule it,
23 but that's very similar to what you've asked.

24 Go ahead and answer, if you can.

25 THE WITNESS: Yes.

1 MS. O'NEILL: Thank you.

2 JUDGE THORNBURG: Mr. Pendergast?

3 CROSS-EXAMINATION BY MR. PENDERGAST:

4 Q. Good afternoon, Ms. Morrissey.

5 A. Good afternoon.

6 Q. You indicate in your testimony what some of
7 the differences are between FERC jurisdiction and
8 Commission jurisdiction, and I think your discussion now
9 just indicated when it comes to FERC jurisdictional
10 companies, the Commission is put in the role of being an
11 advocate as opposed to the decision-maker. Is that
12 essentially the case?

13 A. Yes. That generally captures the difference.

14 Q. Okay. And to the extent the Commission has
15 certain policy preferences -- by "Commission," I mean
16 the Missouri Public Service Commission -- it can
17 advocate those policy positions to the FERC, can it not?

18 A. Yes, it can choose to do that.

19 Q. But it will be up to the FERC to decide
20 whether or not it wants to adopt or go along or reject
21 those policy preferences, is that correct?

22 A. Yes.

23 Q. And you're aware in this case that there has
24 been discussion about continuation of a -- for want of a
25 longer phrase, an anti-bypass condition contained in the

1 existing certificate of UtiliCorp?

2 A. Could you repeat that question?

3 Q. Yes. Are you aware that one of the items that
4 has been discussed in this proceeding is the current
5 condition that prohibits MPC and MGC from directly
6 connecting with the end users not served by the LDC?

7 A. I've -- I haven't been sitting in at all
8 times. I'm aware that bypass issues have been arising,
9 yes.

10 Q. Okay. Can you tell me what FERC's position is
11 on bypass?

12 A. They generally permit bypasses. They pretty
13 much take the opinion that if a customer wants to
14 connect to a pipeline, then that's their prerogative and
15 they believe that serves competition to permit that.

16 Q. And are you aware of any instances in Missouri
17 where Missouri LDCs have opposed bypass and been
18 unsuccessful in doing that before FERC?

19 A. Yes.

20 Q. Okay. And those bypasses were permitted to go
21 forward?

22 A. Yes.

23 Q. You also talk in your testimony about in
24 addition to FERC's policy preferences obviously being
25 the ones that FERC moves forward with when its deciding

1 cases, that it can take a while to go ahead and have
2 matters that its deciding ultimately resolved and
3 reflected in rates; is that correct?

4 A. Yes.

5 Q. And I'd like to ask you for an example of
6 that. Are you familiar with the issue of market entry
7 costs that we had some discussion on earlier in these
8 proceedings?

9 MR. KEEVIL: Judge, I'm going to object to
10 this. Ms. Morrissey filed testimony, and it says
11 nothing about market entry costs. He's getting beyond
12 the pale of Miss Morrissey's testimony, and if this is
13 permitted to continue, we may not ever finish this case.

14 MR. PENDERGAST: Your Honor, I don't intend to
15 take very long, but I think I have a fundamental right
16 to do some cross-examination, and I think one of those
17 fundamental rights is to go ahead and ask the witness
18 questions about what she means by a particular sentence
19 and give me an example.

20 MR. KEEVIL: Where does she say anything in
21 her testimony about market entry?

22 MR. PENDERGAST: She doesn't say anything --

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

25 You may proceed.

1 MR. PENDERGAST: Thank you, your Honor.

2 BY MR. PENDERGAST:

3 Q. Are you familiar with the issue of market
4 entry costs as it has affected LDCs in Kansas and
5 Missouri and the pipeline that used to be regulated by
6 the Kansas Corporation Commission that is now regulated
7 by FERC?

8 A. I'm generally familiar with that --

9 Q. Okay.

10 A. -- issue, yes.

11 Q. And do you recall what those market entry
12 costs were?

13 A. Do you mean in dollar value or --

14 Q. No.

15 A. -- in what --

16 Q. In concept.

17 A. They were basically costs associated with --
18 attached to a previous owner's holding of a pipeline and
19 then a new owner taking over and claiming that there
20 were items that hindered it from effectively competing
21 and obtaining the revenues and profits that it felt like
22 it could have had had those situations not been in
23 effect.

24 Q. Okay. And did Missouri Public Service
25 Commission oppose the inclusion of those market entry

1 costs in the initial rates of the FERC jurisdictional
2 company that used to be Kansas Pipeline?

3 A. Yes, at the FERC, we did.

4 Q. Okay. And did the KCC also oppose that, to
5 your knowledge?

6 A. I -- I cannot tell you for sure.

7 Q. Okay.

8 A. I know it was an issue heatedly debated at the
9 Kansas Corporation Commission.

10 Q. Let me ask you this: Are they opposing
11 costs -- market entry costs today and their inclusion in
12 the FERC jurisdictional rates?

13 A. I believe they are.

14 Q. Okay. And do you know whether those costs are
15 included in FERC jurisdictional rates today of the
16 Riverside/Kansas Pipeline Company?

17 A. The rates they are charging today?

18 Q. Yes.

19 A. They probably -- there are probably some
20 there, yes.

21 Q. Okay. And would those be costs that, as you
22 said, the Missouri Commission opposed and the Kansas
23 Court of Appeals upheld disallowance of by the Kansas
24 Corporation Commission when the utility was Kansas
25 jurisdictional?

1 MR. BOUDREAU: Judge, at this point I'm going
2 to object on the grounds of relevance. Where is this
3 going?

4 MR. PENDERGAST: It's demonstrating policy
5 differences and how those policy differences can change
6 once you get at FERC versus what you had at a state
7 level.

8 JUDGE THORNBURG: Is there some indication
9 that the Company has asked for market entry costs here?

10 MR. PENDERGAST: They had asked for -- no.
11 The indication is that the owner of -- one of the main
12 owners of the Company has asked for market entry costs
13 on his past pipeline project.

14 JUDGE THORNBURG: Can you wrap this up pretty
15 quick?

16 MR. PENDERGAST: I can. I'm almost done.

17 JUDGE THORNBURG: All right. You can
18 continue.

19 The objection is overruled. We're getting a
20 little beyond --

21 MR. PENDERGAST: I think it's my final
22 question.

23 THE WITNESS: I'm sorry. I lost track of what
24 the question was.

25 MR. PENDERGAST: I lost track of what it was.

1 Can we have the court reporter read it back?

2 (THE PENDING QUESTION WAS READ BY THE COURT
3 REPORTER.)

4 QUESTION: Okay. And would
5 those be costs that, as you said,
6 the Missouri Commission opposed
7 and the Kansas Court of Appeals
8 upheld disallowance of by the
9 Kansas Corporation Commission
10 when the utility was Kansas
11 jurisdictional?

12 THE WITNESS: Yes, but I feel like I have to
13 condition that. As I recollect that the court was not
14 happy with the justification the Commission -- the
15 Kansas Commission used for permitting inclusion of those
16 costs, but ultimately the costs got included through a
17 settlement that transpired, and so it's in that form
18 that those costs become included in the rates that are
19 now being charged.

20 BY MR. PENDERGAST:

21 Q. Okay.

22 A. And that FERC then agreed to --

23 Q. And --

24 A. -- to permit in the initial rates filed by
25 that pipeline at the FERC?

1 Q. Okay. But the Missouri Commission opposed?

2 A. The Missouri Commission opposed them at that
3 point.

4 MR. PENDERGAST: Okay. Thank you very much.

5 JUDGE THORNBURG: Mr. Byrne?

6 MR. BYRNE: No questions.

7 JUDGE THORNBURG: Mr. Boudreau.

8 MR. BOUDREAU: Thank you. Just a couple.

9 CROSS-EXAMINATION BY MR. BOUDREAU:

10 Q. Good afternoon, Ms. Morrissey.

11 A. Good afternoon.

12 Q. I have just a couple questions for you.

13 You are not an attorney, are you not?

14 A. No, sir. I'm an accountant.

15 Q. Let me see if I understand the gist of your
16 testimony.

17 You have, I believe -- let me ask you if this
18 is a correct characterization: Is the purpose of your
19 testimony to describe in contrast FERC-style regulation
20 with Missouri PSC-style regulation?

21 A. I don't know as it's so much style as just the
22 procedures and the perspectives that are used by each.

23 Q. So what you've offered is something of a -- of
24 an explanation in the form of contrast, how they do
25 things perhaps somewhat differently than this Commission

1 does them when they are done on the state level versus
2 the federal level?

3 A. Right.

4 Q. And it's almost my understanding that you have
5 not in your testimony offered any view about whether or
6 not under any scenario that's been discussed if you've
7 been involved in any of -- let me ask you this as a
8 preliminary question: Have you been able to sit through
9 some of the prior discussions that have taken place?

10 A. On a very limited basis. I came in late
11 yesterday afternoon and then this morning.

12 Q. Have you read -- I take it that you've read
13 the other Staff testimony that's been filed in the
14 context of this case other than your own?

15 A. Quite frankly, not in detail.

16 Q. Okay.

17 A. On a --

18 Q. Let me ask you this --

19 A. -- quick scan.

20 Q. -- without getting into any HC material, are
21 you generally familiar with the circumstance in which
22 the issue of FERC jurisdiction has come to be a topic?

23 A. Generally, yes.

24 Q. All right. With that, it's my understanding
25 that you're not offering any view -- you haven't offered

1 any view about whether or not any scenario that's been
2 discussed or any scenario that's at issue would result
3 in the FERC actually asserting jurisdiction over
4 anything; is that correct?

5 A. That's correct.

6 MR. BOUDREAU: Okay. I have no further
7 questions.

8 Thank you.

9 JUDGE THORNBURG: Thank you.

10 All right. That was unexpectantly brief.

11 Mr. Keevil?

12 MR. BOUDREAU: I'm trying.

13 CROSS-EXAMINATION BY MR. KEEVIL:

14 Q. Good afternoon, Ms. Morrissey.

15 A. Good afternoon, Mr. Keevil.

16 Q. I wasn't originally going to ask you this, but
17 Mr. Pendergast referred to a Kansas pipeline that used
18 to be regulated by Kansas and became subject to FERC
19 jurisdiction, so I feel like I need to ask you this -- a
20 couple of simple questions on that.

21 You're aware that there is testimony in this
22 proceeding that the assertion of FERC jurisdiction over
23 that Kansas pipeline was brought about due to the filing
24 of a complaint by Williams Natural Gas Company against
25 that pipeline; is that correct?

1 A. I don't know if there is testimony in this
2 case --

3 Q. Okay. Are you aware --

4 A. -- to that effect, but that's -- that is what
5 happened, yes.

6 Q. That is what happened.

7 Okay. And are you also -- or would you also
8 agree that that Kansas pipeline which ultimately FERC
9 asserted jurisdiction over involved an interstate
10 pipeline crossing the river in Missouri into Kansas,
11 traveling across the entire state of Kansas, and then I
12 believe there were two actual border crossings across
13 the Oklahoma/Kansas border, and then pipelines going
14 down into Oklahoma so that ultimately what you had was
15 gas being transported from Oklahoma across the state of
16 Kansas and delivered into Missouri. Is that your
17 understanding of that situation?

18 A. There were small segments, two small segments
19 crossing the Kansas/Oklahoma border, that's correct, one
20 small border segment that crossed the Missouri/Kansas
21 border, and from my knowledge of that system, a good
22 part of the gas -- some of the gas was coming from
23 Kansas; some of it from Oklahoma. It wasn't all coming
24 from Oklahoma, so all of the gas wasn't flowing across
25 three states. A portion of it was.

1 Q. Okay. Now, you state in your testimony, and
2 your line numbers may be off here, apparently, from
3 going from one version to another. I think I have --
4 yes, I have your reclassified, so the line numbers may
5 be wrong here, but Page 4, and in this version of your
6 testimony, it begins on Line 5.

7 You state that there is -- well, let me just
8 read it. "If all of the gas the pipeline" -- and there
9 I believe you're referring to an intrastate pipeline; is
10 that correct?

11 MS. SHEMWELL: What page are we on, please?

12 MR. KEEVIL: Page 4, Line 5.

13 THE WITNESS: I'm describing a Hinshaw.

14 BY MR. KEEVIL:

15 Q. Which would be Hinshaw?

16 A. Which falls under the context of an
17 intrastate.

18 Q. Right. And if all the gas that intrastate
19 pipeline receives from out of state is consumed within
20 the state and the state -- excuse me -- and the pipeline
21 is regulated by that state Commission, that intrastate
22 pipeline is not subject to FERC jurisdiction; is that
23 your testimony?

24 A. Exactly.

25 Q. Okay. Are you familiar with the situation

1 involving OneOk which has an intrastate subsidiary in
2 the state of Texas by the name of Westar Transmission
3 and another subsidiary intrastate pipeline in the state
4 of Oklahoma by the name of Oklahoma Gas Company which
5 are connected by yet another OneOk subsidiary named
6 OkTex Gas Transmission, which is an interstate pipeline
7 crossing the Texas/Oklahoma border connecting those two
8 intrastate affiliates?

9 A. I'm not familiar with that.

10 Q. Not familiar with that one.

11 Okay. Are you familiar with the CMS Energy
12 situation which has a -- Panhandle Eastern is one of its
13 subsidiaries as well as Trunkline, which are both
14 interstate pipes and cross the border into Michigan and
15 hook up with the CMS subsidiary by the name of Consumers
16 Gas?

17 A. I'm generally familiar with that.

18 Q. Okay. And Consumers is an intrastate, and
19 FERC has not asserted jurisdiction over it due to its
20 connection with its sister company Panhandle or
21 Trunkline, which are interstate. Correct?

22 A. Correct.

23 Q. Okay. Are you familiar with the example of
24 Dominion Energy which owns Dominion Gas Transmission and
25 a FERC interstate pipeline?

1 A. No.

2 Q. You don't know that one?

3 How about Pacific Gas and Electric owning
4 PG&E, a California intrastate pipeline which receives
5 gas from its subsidiary -- not its subsidiary, but a
6 subsidiary of its parent by the name of PGT, which is a
7 FERC-regulated subsidiary pipeline?

8 MR. PENDERGAST: Your Honor, I think I'm going
9 to object. We have questions being asked here that seem
10 to go into significant detail about corporate structures
11 and -- and, you know, you can go ahead and string a
12 pretty long story together by asking an incredibly long
13 question, but he's giving evidence because he's saying
14 what the relationships are between various companies and
15 whether they are FERC jurisdictional or not, and I don't
16 know those to be the case.

17 And I think if he just asked if she's familiar
18 with some company and whether they have a subsidiary or
19 not and proceeds in that fashion, it's one thing, but if
20 he's going to make indications about what these
21 corporate structures are, I think that's inappropriate.

22 JUDGE THORNBURG: Mr. Keevil?

23 MR. KEEVIL: Well, whether Mr. Pendergast
24 knows it to be the case or not is, first of all,
25 irrelevant. He's not the witness.

1 Second of all, in order to present
2 Ms. Morrissey with these factual situations, I think she
3 needs the facts in the situation.

4 JUDGE THORNBURG: Okay. How many more of
5 these examples do you have?

6 MR. KEEVIL: Not many. I don't think she's
7 answered the last one yet.

8 JUDGE THORNBURG: I would prefer if you -- I
9 guess I'm going to sustain the objection at this point.

10 If you ask the witness if she's familiar with
11 these companies so she can answer based on her own
12 knowledge. If you want to give her a hypothetical
13 situation that covers these, she can give her opinion on
14 what she thinks the jurisdiction would be. But you need
15 to -- you need to ask the witness based upon her
16 knowledge.

17 MR. KEEVIL: Okay.

18 JUDGE THORNBURG: I'll sustain the objection.

19 MR. KEEVIL: I'm trying to think of a more
20 general question.

21 JUDGE THORNBURG: If you want to ask about
22 these companies, if she's familiar with them, she can
23 tell us about them, and what jurisdiction they are,
24 that's fine.

25 MR. KEEVIL: I thought that's what I was

1 doing, your Honor. I apologize.

2 BY MR. KEEVIL:

3 Q. Okay. Let me try this: Ms. Morrissey, are
4 you familiar with Northern Indiana Public Service?

5 A. Generally, I've heard of NIPSCO. Is that the
6 same?

7 Q. Well, who is -- let me ask you this: Do you
8 know who its parent company is?

9 A. No.

10 Q. Okay. Are you familiar with Crossroads
11 Pipeline?

12 A. No.

13 Q. Okay. Are you familiar with any examples of
14 intrastate pipelines receiving gas from interstate
15 pipelines which -- where the intrastate pipeline is
16 affiliated with the interstate but not owned -- not
17 under the same -- the intra does not own the interstate
18 portion, but is, say, a sister company?

19 A. The Kansas Pipeline example that we've already
20 talked about. I am aware of -- I've read several FERC
21 orders that dealt with questions like this in the
22 Florida region, the state of Florida.

23 Q. So there are Hinshaw pipelines out there? I
24 mean, this isn't just some --

25 A. Yes, there are a number of Hinshaw pipelines.

1 MR. KEEVIL: Okay. I think that's all I have,
2 Judge.

3 JUDGE THORNBURG: Thank you.

4 That's all of the cross.

5 Commissioner Gaw, do you have any questions?

6 COMMISSIONER GAW: Yes. Thank you, Judge.

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. Good afternoon, Ms. Morrissey.

9 A. Good afternoon.

10 Q. Help me to understand the concerns or the
11 potential risk that is involved in regard to the
12 connection of this Trans-Mississippi Pipeline with --

13 MR. KEEVIL: Judge, do we need to go in
14 camera?

15 COMMISSIONER GAW: Whatever you need to do.

16 JUDGE THORNBURG: I think these questions get
17 into the details of the business plans, so we'll go into
18 in-camera session.

19 We may be discussing highly confidential or
20 proprietary information, so any persons that are here
21 that are not authorized access under the Commission's
22 protective order will have to leave the hearing room.

23 (REPORTER'S NOTE: At this time, an in-camera
24 session was held, which is contained in Volume No. 9,
25 Pages 785 through 794, of the transcript.)

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1 JUDGE THORNBURG: And, Commissioner Murray, if
2 you have some questions, you can proceed, please.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Ms. Morrissey, do I understand that you do not
5 believe that FERC asserting its jurisdiction is likely
6 if this Trans-- if this application is approved, that
7 you think it is rather unlikely that FERC would assert
8 its jurisdiction?

9 A. No, I really haven't testified what the
10 likelihood is because it -- based on what I know, it's
11 not clear as to who will own that TMP line, and exactly
12 what the plans are as far as how that line would be
13 operated.

14 COMMISSIONER MURRAY: Are we needing to be in
15 camera?

16 JUDGE THORNBURG: Not as to -- well, I don't
17 know so much as to who owns it but as to operational
18 aspects, probably.

19 Do you have other questions that go into how
20 that would be operated, the possibilities?

21 COMMISSIONER MURRAY: Well, we may be getting
22 there.

23 JUDGE THORNBURG: We'll go back in camera.

24 I'm sorry. We can talk more freely that way,
25 so I think that's a good idea.

1 (REPORTER'S NOTE: At this time, an in-camera
2 session was held, which is contained in Volume No. 9,
3 Pages 797 through 806, of the transcript.)

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1 JUDGE THORNBURG: And I had three more
2 questions by Commissioner Lumpe.

3 QUESTIONS BY JUDGE THORNBURG:

4 Q. Under -- when a pipeline is under FERC
5 jurisdiction, can that company abandon the line without
6 FERC approval?

7 A. No. They have to obtain --

8 Q. They have to have regulatory approval to
9 abandon?

10 A. To abandon, yes. There is a formal
11 application that has to be filed.

12 Q. Okay. And I think your testimony may have
13 addressed this, but can you describe the rate
14 proceedings in a FERC jurisdiction pipeline? And
15 perhaps somewhat in contrast to the Missouri
16 proceedings, but, briefly, just an overview.

17 A. Right. I think I alluded to that in my
18 Rebuttal Testimony.

19 Here at the Missouri Commission, we have an
20 operation of law date, so if a utility files a rate
21 increase application or a rate application, rate change
22 application, then this Commission must issue a decision,
23 I believe it's within eleven months. At the FERC, there
24 is no such requirement.

25 So typically what happens is when a utility

1 files a rate change, let's say it's in the context of a
2 complete rate case, typically those rates then go into
3 effect subject to refund six months after the
4 application is filed. And then the evidentiary hearing
5 process begins, and parties can either fully litigate
6 that or settle, much as here, but that can go on.

7 You may not get -- let's say it's a fully
8 litigated case. It may take two and a half, five years.
9 It can be a very lengthy process; whereas here, there is
10 a decision issued within eleven months.

11 So ratepayers are paying higher rates subject
12 to refund during that period of time, not knowing what
13 the final rate is going to be at the conclusion of that
14 rate case proceeding.

15 Q. Okay. So it's fair to say the significant
16 differences are the length the rate case may be pending
17 and then also the fact that under FERC the rates go into
18 effect sooner?

19 A. Subject to refund; whereas, here they go into
20 effect when the rates have been finally determined.

21 Q. Okay. Earlier, we had some testimony, and I
22 don't know if you were here or not, but, generally, they
23 submitted two scenarios describing FERC -- how FERC
24 would approach jurisdictional issues, and in -- and
25 there are two views presented in this question.

1 One view would be FERC is not interested in
2 taking over pipelines, taking jurisdiction of them
3 unless forced to for some reason, some circumstances, or
4 the second way of looking at it is that FERC wants to
5 assert jurisdiction at every opportunity as a means of
6 opening as many pipelines as possible to its
7 jurisdiction to its view on how competition should
8 occur.

9 What do you -- do you think either of those
10 two views is more accurate, or -- and I don't mean
11 accurate in fact, but just a color -- the color of the
12 regulatory viewpoint?

13 A. I think it has in the past and in the future
14 it will continue to be a gray area. It varies greatly
15 on what the Federal Commissioners' views of what the
16 National Energy Policy ought to be and the things that
17 are happening at the time they are needing to make
18 decisions on items like this. And it just depends on
19 particular Commissioners' viewpoints at certain points
20 in time and who those Commissioners are.

21 Q. So whether the FERC is eager to assert
22 jurisdiction or reluctant to assert jurisdiction, that's
23 a fluid situation?

24 A. That's been my observation, yes.

25 Q. Okay. Then I have a couple of questions.

1 I had been trying earlier to figure out what
2 the Hinshaw exemption was, and I think at Page 4 of your
3 reclassified Rebuttal Testimony you pretty much
4 described that.

5 And is this Hinshaw status -- would you just
6 tell me what Hinshaw status is. You may be repeating
7 what's in your testimony, but it will help me.

8 Can you tell me what a Hinshaw status means?

9 A. It's an exemption that exists in federal law
10 that keeps a pipeline that crosses a state border from
11 becoming FERC's jurisdictional automatically. It's an
12 exemption that if this pipeline flows all of its gas
13 over into one state, just the fact that the source of
14 the gas comes in another state, across the border, if
15 all of that gas is then transported and consumed --
16 transported to and consumed by one state, then it's
17 deemed a Hinshaw pipeline and does not fall under FERC
18 jurisdiction.

19 Q. Okay. And that's consistent with the
20 testimony, and that answers my question.

21 If a customer chooses to bypass their local
22 distribution company, and I think you've covered this
23 somewhat, but what's -- what type of negative effect
24 does that have on the local distribution company?

25 A. It reduces the amount of revenues that it's

1 receiving from that customer. They lose those revenues,
2 and they are left to then spread the remaining costs --
3 if that LDC chooses -- if it's significant enough of a
4 loss for the local distribution company, it may
5 precipitate them to come in, file a rate case, and
6 attempt to recover its costs over the remaining
7 customers that it has.

8 Q. So they may lose a certain of amount of
9 revenues, and some costs might be fine, but there are
10 going to be some costs they will no longer recover from
11 the customer --

12 A. No longer recover.

13 Q. -- and they may be spread over other
14 customers?

15 A. Right. It's going to the choice of the local
16 distribution company. Is it something they can afford
17 to absorb themselves, that loss of revenue?

18 Q. And to follow up on that, if a large
19 industrial commercial customer of an LDC does bypass the
20 LDC, then that presents the potential for a negative
21 effect on the remaining customers of the LDC if there is
22 a rate case and those costs are spread over those
23 customers; is that correct?

24 A. Yes, if the LDC chooses to file a case and
25 seek recovery.

1 JUDGE THORNBURG: Okay. We're going to go
2 with recross and see how far we get, and then we're
3 going to take a break.

4 Office of the Public Counsel. Ms. O'Neill?

5 MS. O'NEILL: Thank you.

6 RECROSS-EXAMINATION BY MS. O'NEILL:

7 Q. You were just discussing with Judge Thornburg
8 some issues regarding bypass. You recall that?

9 A. Yes.

10 Q. Okay. And -- well, let's try this:
11 Hypothetically, if there was an LDC in Waynesville who
12 had as a large industrial customer a -- I don't think
13 they have one, but, like, a Saturn assembly plant --

14 A. Okay.

15 Q. -- and the Saturn assembly plant was being
16 served by the LDC. The Saturn assembly plant seeks
17 bypass and gets it. What -- is that going to be a
18 significant effect on the revenue for that LDC?

19 MR. BOUDREAU: I'm going to object to the
20 question in the sense that there is not near enough
21 detail being given to draw any reasonable conclusion
22 from that. We have no idea what sort of revenues are
23 involved. We have no idea what the size of the LDC is.
24 I mean, I -- this is the most open-ended thing I think
25 I've ever heard.

1 MS. O'NEILL: I can try to be more specific.

2 JUDGE THORNBURG: I'll sustain the objection.

3 See if you can be more specific. I think this
4 has been covered, but it doesn't hurt to follow it up a
5 little bit, if you can provide any more detail than
6 that.

7 BY MS. O'NEILL:

8 Q. Ms. Morrissey, are you at all familiar with
9 Waynesville, Missouri, or how big that is?

10 A. No. I know the Fort is in that vicinity,
11 Pulaski County, or thereabouts. That's about all I
12 know.

13 Q. You know it's in Pulaski County?

14 A. Uh-huh.

15 Q. And if there was a major industrial customer
16 in Waynesville that had a need for -- a significant need
17 for natural gas, would you expect that to be a fairly
18 large account for that LDC?

19 A. That -- if it was a large factory or customer,
20 yes, I would expect it to be.

21 Q. Would you expect that for a small service
22 area, small LDC like that, losing a large industrial
23 customer through a bypass would be more detrimental than
24 it would be for an LDC in a larger metropolitan area?

25 MR. BOUDREAU: I'm going to object.

1 Detrimental to whom, would be my question. I
2 mean, I just --

3 MS. O'NEILL: Let me rephrase it.

4 BY MS. O'NEILL:

5 Q. Would you believe that that loss of revenue
6 may impact more significantly on a small -- on an LDC of
7 a small service territory versus one with a large
8 service territory?

9 A. I would expect that to be the case generally,
10 yes.

11 Q. And -- and understanding that you're not
12 really familiar with Waynesville, you understand that --
13 is it your understanding that Interstate 44 does go
14 through Pulaski County in the general vicinity?

15 If you don't know, I'll withdraw it.

16 A. I don't know for sure.

17 Q. Okay. We had some testimony about someone
18 knowing about the interstate going through an area
19 yesterday, but I'll move on.

20 I want to talk to you a little bit about some
21 questions -- I think that they were requests that
22 Judge -- Commissioner Lumpe asked Judge Thornburg to
23 ask. Excuse me. It's getting -- it's Friday
24 afternoon -- talking about this interim rate increase
25 procedure that FERC has.

1 A. Yes.

2 Q. When those interim rates take effect, are
3 those the rates requested by the company who is filing
4 the rate case?

5 A. Typically, it is. In between the company
6 filing their application at FERC and the company moving
7 those rates into effect six months later, the FERC
8 can -- if it identifies blatantly improper costs that
9 require no evidentiary hearing, they may condition or
10 require the pipeline to remove those costs before
11 implementing the motion rates. That happens once in a
12 while.

13 Typically, the issues are involved enough that
14 they have to go through the hearing process, but there
15 can be some modifications made.

16 Q. Something that they can just look at the piece
17 of paper and say that obviously should be in rates?

18 A. Reject out of hand.

19 Q. But things that would require analysis
20 typically do not get thrown out in that six-month
21 period?

22 A. They do not. And that's the typical type of
23 issue that -- or issues that exist in a rate case, yes.

24 Q. And once those take effect, they can be in
25 effect for three or four years, perhaps, until the case

1 is finally resolved?

2 A. I am aware of even going on five years or
3 more.

4 Q. Okay. And when that case is finally resolved,
5 is it sometimes the case that those interim rates are
6 reduced to a more proper level?

7 A. Quite often, yes.

8 Q. And you say that that interim increase is
9 subject to refund. Who are those excess moneys refunded
10 to?

11 A. First, let me make a point here. Generally,
12 if there are refunds to be made, they go to the pipeline
13 customers, which would be local distribution companies
14 or any customers served by the pipeline. Then in the
15 case of refunds receive by local distribution companies,
16 then there are procedures here at the state level for
17 distributing those refunds to the appropriate LDC
18 customers.

19 Q. After some period of regulatory lag following
20 the five years or whatever?

21 A. Right. I think that depends on the size of
22 the refund and the LDC's tariffs, the amounts that
23 trigger a refund fairly quickly, and there are instances
24 where the refund might be small enough or the way the
25 tariff is structured it might take longer to flow

1 through to customers.

2 You know, you're assuming that if the rates
3 that ultimately come out of a FERC proceeding are lower
4 than what the company filed for, that there are refunds,
5 and generally that's the case. But there are certain
6 situations where if the rate found to be reasonable by
7 FERC is even below the rates that were being charged
8 before the rate case is filed, customers get no refunds.

9 Q. So --

10 A. It's called a rate refund floor situation.

11 Q. So the refunds can't go below what the initial
12 rate was before the interim entries?

13 A. Right. So if there is a lag, the longer the
14 lag, and if you have a situation where that could
15 potentially happen or does happen, then customers,
16 meaning LDCs and ultimately the LDCs' customers get the
17 lower rates prospectively, but they will not get refunds
18 below that refund floor.

19 Q. Will they get refunded the amount between the
20 interim increase and the original rate?

21 A. Yes.

22 Q. Okay. So they will get some money back?

23 A. They will get some money.

24 Q. But they will not get what the just and
25 reasonable rate that FERC finally determines would have

1 been appropriate?

2 A. Right.

3 Q. Unless someone then comes in and requests a
4 rate reduction, and then there is a whole new procedure,
5 I would assume? Is that -- or does that ever happen?
6 Is there ever a procedure that happens after -- as a
7 result of that where a party would come into the FERC
8 and say, These rates are too high. Please lower them?

9 A. They have complaint procedures --

10 Q. Okay.

11 A. -- much like this Commission here does.

12 Q. And when those refunds are ordered to be paid,
13 they are paid by whoever owns the pipeline at the time
14 of that final order; is that true?

15 A. That would typically be what's expected. If
16 you had a pipeline purchased while a case is pending,
17 which given the long period of time that it sometimes
18 takes to resolve these items, you may have a new company
19 acquiring a pipeline and it may -- it may have the
20 effect on who is paying -- going to actually pay. The
21 refunds may be in the agreement between the purchaser
22 and seller.

23 Q. Pending the final resolution of a FERC rate
24 case after the interim rates have gone into effect, is
25 there any restriction that the FERC places on the money

1 that's part of that interim rate increase to make sure
2 it's available in the event of a refund?

3 A. I'm aware of a bonding provision that is
4 rarely, if ever, used. I can think of an instance
5 where -- a couple of instances where it was requested
6 where parties were concerned about the ongoing liability
7 of the particular pipeline company during a pending rate
8 case proceeding, and customers sought bonding to cover
9 or provide assurance that the refunds would be there,
10 and they were denied. I know that process is available,
11 but I -- I've never seen it implemented.

12 Q. So even though a party affected or perhaps a
13 state Commission coming into the FERC presents a --
14 could request a bond --

15 MR. BOUDREAU: Your Honor, I think I'm going
16 to object to continuing along this line of questioning,
17 particularly -- it's basically on the grounds of
18 relevance, particularly given the fact that this witness
19 said she's not rendering any opinion on the probability
20 or likelihood of FERC jurisdiction. In fact, the only
21 thing she has touched on is in response to Commissioner
22 Gaw's question where she basically said that if the -- I
23 believe, if -- that the primary consideration is if all
24 of the sales -- you know, the destination of the sale is
25 in the state of Missouri, it's highly improbable this

1 would even happen.

2 Now, I know FERC jurisdiction has been talked
3 about in her prepared testimony. I just think that
4 we're beating this thing to death on the most remote of
5 speculation at this point. There is really nothing that
6 would suggest the thing is going to become FERC
7 jurisdictional.

8 JUDGE THORNBURG: I'm going to overrule the
9 objection.

10 The Commission opened this up with the
11 questions we had on the proceedings.

12 However, you're getting into a lot of detail.

13 MS. O'NEILL: I'm getting to the end of this.
14 I'm getting ready to move on. But I would yet -- but
15 she can answer this question; is that right?

16 JUDGE THORNBURG: Do you remember the
17 question? What was the question?

18 MS. O'NEILL: I was hoping you remembered.

19 BY MS. O'NEILL:

20 Q. So although a party could request that FERC
21 invoke this bonding procedure, there is no guarantee
22 that the FERC would actually require a bond; is that
23 correct?

24 A. That's correct.

25 Q. There was some questions from -- from

1 Commissioner Gaw and I think also from Judge Thornburg
2 about the status of this pipeline and what's a Hinshaw
3 and what's not a Hinshaw pipeline, and I just wanted to
4 clarify something that I believe you said in your
5 response, and I'm -- but my notes aren't that great,
6 frankly.

7 In order for pipelines to have Hinshaw status,
8 do they have to be regulated by a state Commission?

9 A. Yes, they do. And I probably in my testimony,
10 previous testimony, verbally here failed to mention
11 that, but that is --

12 Q. I thought maybe you had, but I wasn't sure, so
13 I just wanted to double check.

14 So if the pipeline that goes underneath the
15 river between Missouri and Illinois was to have Hinshaw
16 status, it would have to be regulated by a state
17 Commission?

18 A. Yes.

19 Q. And if it was regulated by the FERC, it could
20 not have Hinshaw status, if -- that part that went under
21 the river, whether or not there is another way that it
22 could avoid the whole thing being FERC jurisdictional as
23 far as that under-the-river portion?

24 A. Yes. If it ends up delivering gas on the
25 Illinois side to an LDC or another interstate pipeline,

1 then it will not come under FERC jurisdiction. If -- if
2 it does something other than that, it will. And the
3 FERC may need to issue it a Section 311 transportation
4 rate kind of under its authority for doing that.

5 Q. So the FERC would have to make a decision
6 about whether to accept jurisdiction of that pipeline if
7 it's activated probably, or at least there is a
8 likelihood of that?

9 A. Only if someone brought it to FERC's attention
10 that it should maybe take jurisdiction.

11 Q. So if the pipeline that goes under the river,
12 just that portion of the pipeline that I think we've
13 talked about, and I don't know if you were here, the
14 Trans-Mississippi Pipeline, that would not necessarily
15 have to be regulated by a Commission at all?

16 A. It will have to be regulated by a Commission
17 somewhere.

18 Q. Okay.

19 A. Yes.

20 Q. And when you -- there were a couple of
21 questions that you were asked from the Bench where it
22 appeared that you had not been able to have some
23 information regarding what some of the other witnesses
24 had filed in this case.

25 Was it -- is your part in this case basically

1 just to discuss this issue of -- and try to lay out for
2 the Commission what FERC's jurisdiction is and does and
3 may mean if a pipeline goes in that direction?

4 A. Yes.

5 Q. And is it fair to say that you -- would it be
6 fair to say that other witnesses may have other pieces
7 of the puzzle that they are presenting for this picture
8 before the Commission?

9 A. Most definitely there are others that have
10 dealt heavily into the financial aspects and -- and
11 multitude of things. My focus was very limited.

12 MS. O'NEILL: Okay. Thank you.

13 I don't have anything further.

14 JUDGE THORNBURG: Thank you.

15 Mr. Pendergast?

16 I would just suggest, just to speed things
17 along, I think as we're getting tired, there is a
18 tendency to preface the questions with a lot of
19 information. To go a little faster, if you could just
20 ask your questions. And sometimes you do have to
21 preface the question, but to the extent you just
22 present the questions, we'll move a little quicker.
23 Thank you.

24 MR. PENDERGAST: Thank you, your Honor. I'll
25 try and be brief.

1 RE CROSS-EXAMINATION BY MR. PENDERGAST:

2 Q. You were asked a question about whether or not
3 the involvement of Mr. Langley in this acquisition had
4 any impact on your particular recommendation, and I
5 believe you said you've had difficulties before. Do you
6 recall that?

7 A. Yes, I recall mentioning that.

8 Q. Okay.

9 A. The context or -- I did use the word
10 "difficulties," yes.

11 Q. Let me ask you about the context.

12 Are you familiar with the testimony that was
13 presented by Dr. Pflaum in this proceeding?

14 A. I did read that testimony, yes.

15 Q. And did you read the excerpt from the FERC
16 order that purported to go ahead and characterize the
17 Missouri Public Service Commission's position in one of
18 the FERC proceedings?

19 A. Yes.

20 Q. And where it referenced the owners of the KPC
21 system, previous owners and their impact, their negative
22 impact on consumers, regulators and others, was one of
23 those former owners Mr. Langley?

24 A. Yes. He was --

25 Q. Okay.

1 A. -- the primary owner.

2 Q. Are those characterizations that are in the
3 FERC's order an accurate depiction of the Missouri
4 Commission's position in that case?

5 A. Yes. It quoted testimony that I filed on
6 behalf of this Commission.

7 Q. Okay. Do you still stand by that testimony
8 today?

9 A. Yes.

10 Q. And do you think that that's a factor the
11 Commission can and should take into consideration?

12 A. If they choose to, yes.

13 Q. Okay. Can you tell me, when you talk about a
14 pipeline crossing state lines and being entitled to a
15 Hinshaw exemption, is it your understanding that if a
16 pipeline takes all of its supplies within a state and
17 delivers all of its supplies in a state, that it's
18 absolutely free of FERC jurisdiction?

19 A. If its facilities lie within a state's
20 boundary --

21 Q. Entirely within the state, right.

22 A. -- and it's a pipeline, more than likely it
23 will remain under state jurisdiction, unless it's
24 connected with affiliates and other things come into
25 play.

1 Q. Okay.

2 A. But if it's a simple, straightforward
3 situation where --

4 Q. And not connected to any affiliate?

5 A. -- not connected to any affiliate and other
6 problems don't arise, then it's state jurisdiction.

7 MR. PENDERGAST: Okay. Thank you.

8 I have no further questions.

9 JUDGE THORNBURG: Mr. Byrne?

10 MR. BYRNE: I just have one question, and it's
11 sort of -- it's related to the Hinshaw issue.

12 RECROSS-EXAMINATION BY MR. BYRNE:

13 Q. The question is this: Can a Hinshaw pipeline
14 cross a state boundary?

15 A. (Witness nodded head.)

16 Q. It's your understanding it can?

17 A. It's my understanding it can.

18 Q. Okay.

19 A. That is -- that's the distinction between a
20 pure intrastate and something that's called a Hinshaw
21 pipeline, under my understanding.

22 Q. So it's not true that -- it's not true that a
23 Hinshaw pipeline takes gas at the border of the state?
24 You're saying it can also cross the border of a state?

25 A. It can cross the border of a state, in my

1 understanding, yes.

2 MR. BYRNE: Okay. Thank you.

3 JUDGE THORNBURG: Okay. Before we take up the
4 questions from Gateway, we'll take a break, and, say,
5 until ten until 3:00. Thank you.

6 MR. BOUDREAU: Excuse me. I didn't hear you.

7 JUDGE THORNBURG: Ten till 3:00 by this clock
8 in the back.

9 (A recess was taken.)

10 JUDGE THORNBURG: Let's go back on the record.

11 Mr. Boudreau, do you have some recross?

12 MR. BOUDREAU: Oh, yeah. I will try to keep
13 it short.

14 JUDGE THORNBURG: It would be appreciated.

15 MR. BOUDREAU: Are we ready to go?

16 RECROSS-EXAMINATION BY MR. BOUDREAU:

17 Q. Hello again.

18 A. Hello.

19 Q. I want to ask you a question, or maybe a
20 series of questions, about some dialogue that you had
21 with Commissioner Gaw.

22 A. Okay.

23 Q. And I believe the topic was what -- he asked
24 you what the sort of factors are that may or may not
25 trigger the assertion for FERC jurisdiction. Do you

1 recall that?

2 A. Yes.

3 Q. And I believe when you were talking about
4 that, you said the primary issue in your view was the
5 location of ultimate deliveries of gas. Do you recall
6 that?

7 A. Yes.

8 Q. And I believe you said that if gas is being
9 brought into the state of Missouri across state lines
10 that -- and -- excuse me -- for ultimate delivery in the
11 state of Missouri, I believe you said in your view
12 nothing would change as far as the jurisdictional status
13 of the pipelines; is that correct?

14 A. As long as all of the gas flowing through that
15 line was coming in for ultimate consumption here in
16 Missouri, yes, that was my testimony.

17 Q. That's how I recall it. Thank you.

18 And I don't recall that you qualified that
19 view in any way based on the affiliation of any pick
20 piece or segment of pipeline; is that correct?

21 A. That's correct.

22 Q. Okay. I believe in response to some questions
23 that you got from Commissioner Murray you touched on the
24 topic of right of first refusal. Do you remember that?

25 A. Yes.

1 Q. And I believe I heard you to say that in the
2 context of interstate pipelines, the right of first
3 refusal is a matter of contract between the pipeline and
4 the shipper?

5 MR. PENDERGAST: I'm going to object because I
6 think it mischaracterizes her answer. I don't believe
7 she said that.

8 BY MR. BOUDREAU:

9 Q. And that's what I'm asking you. I believe
10 that's what I heard. Did I hear that incorrectly?

11 JUDGE THORNBURG: I'll overrule that.

12 To clarify the question -- I mean, clarify an
13 earlier answer, that's what you're trying to do?

14 MR. BOUDREAU: I wanted to confirm my
15 understanding, because it led to another question. But
16 now it's apparent to me that I may have misheard her
17 testimony.

18 What I will do --

19 JUDGE THORNBURG: Proceed.

20 BY MR. BOUDREAU:

21 Q. Did I mishear or misunderstand your testimony?

22 A. I believe so. The word "contract" did come
23 up, but it's a tariffed right that's given to a customer
24 and it comes into play when contract termination is
25 going to occur.

1 Q. Okay.

2 A. That's when that right of first refusal then
3 comes into play.

4 Q. Okay. So the right of first refusal --

5 A. It's not a contract right. It's a tariffed
6 right.

7 Q. And I thought I heard -- and that's why I am
8 asking the question. I thought I heard the term
9 contract.

10 So what you're saying now is that it's really
11 a tariffed provision that's keyed in when a contract is
12 entered into?

13 A. When a contract is terminating.

14 Q. Do you know whether or not there is any right
15 of first refusal in the current tariffs of either
16 Missouri Pipeline Company or Missouri Gas Company?

17 A. I don't know what their tariffs have, no.

18 Q. Okay. In response, I believe, to a -- I
19 believe it was a question from Commissioner Lumpe but
20 delivered by the Hearing Examiner, the issue of one of
21 the -- let me rephrase the question. I'm trying to stay
22 out of highly confidential material, is what I'm doing,
23 so I'm going to stay somewhat generic.

24 I believe you mentioned difficulties with an
25 individual or disagreements with a particular

1 individual. Do you recall that?

2 You were asked about whether -- I think from
3 Commissioner Lumpe whether a particular individual's
4 involvement factored into any of the views you expressed
5 or the Staff expressed. Do you recall that?

6 A. Yes.

7 Q. And do you recall -- I think your response was
8 that you -- that there had been some disagreements with
9 this individual in certain context in the past?

10 A. In the context of -- of FERC proceedings, yes.

11 Q. And one of those things was -- and I think you
12 said it might have been disagreements over -- I think it
13 was regulatory issues and, in particular, recovery of
14 certain costs in rate-making proceedings?

15 A. Yes.

16 Q. Do you recall that?

17 A. Yes.

18 Q. Let me ask you this. It's just kind of a
19 broad question. Isn't it fair to say that in rate
20 proceedings there are frequently disagreements between
21 members of the Staff of this Commission and members of
22 the utilities that are advocating some sort of rate
23 treatment for a particular cost or expense?

24 A. Yes. There's different perspectives,
25 different interests.

1 Q. So there is nothing unique about having
2 disagreements over regulatory treatment of costs in rate
3 cases, is there?

4 A. That's not unique to have differences. Maybe
5 the number, the size, and the way in which they are
6 dealt with --

7 Q. And is it fair to say that --

8 A. -- may be the difference.

9 Q. -- different utilities may have different
10 approaches to rate cases?

11 A. Yes. Yes.

12 Q. Some may litigate more cases than others?

13 A. Yes.

14 Q. And that's true even of the regulated
15 companies here in the state right now? You're FERC
16 jurisdictional, but wouldn't it be fair to say that
17 different utilities have different approaches to
18 regulation?

19 A. Most certainly.

20 Q. Okay. And is it not the purpose of this
21 Commission when those issues are brought before it to
22 decide who has got the better of a particular argument?

23 A. Yes.

24 Q. Here or before the FERC; isn't that correct?

25 A. Decisional authority --

1 Q. Is there anything inherently evil about
2 disagreements over rate-making issues?

3 A. The decisional authority -- I'm going to go
4 back and answer your first question that I never got to
5 answer.

6 Yes, it's up to the decisional authority to
7 sort through the positions and determine the best and
8 most reasonable.

9 Q. Okay. Thank you.

10 I think you also mentioned in response to a
11 question posed by Commissioner Lumpe that the FERC, as
12 well as this -- well, you said the FERC. I won't
13 compound the question -- the FERC requires that its
14 approval be obtained before an interstate pipeline
15 abandons service; is that correct?

16 A. Yes.

17 Q. They don't have the latitude to just turn off
18 the spigot at their discretion?

19 A. Technically, the answer is yes. As a
20 practical matter, I guess an operator could do that. An
21 operator could --

22 Q. But legally speaking, they are required to
23 seek FERC approval for quitting services?

24 A. Legally speaking.

25 Q. And is there any reason to believe that the

1 FERC would not take into -- in your experience, take
2 into account the needs of customers or shippers or end
3 users along a particular pipeline in deciding whether or
4 not to grant a petition for abandonment?

5 A. I would expect them to give that due
6 consideration, yes.

7 MR. BOUDREAU: Okay. Thank you.

8 I have no further questions.

9 Thank you.

10 JUDGE THORNBURG: Thank you.

11 Mr. Keevil?

12 MR. KEEVIL: I'm going to attempt to beat
13 Mr. Boudreau for brevity.

14 JUDGE THORNBURG: He did a very good job.

15 MR. BOUDREAU: As opposed to just beating me.

16 MR. KEEVIL: If only everyone else would give
17 it this yeoman effort that Mr. Boudreau and I did.

18 RECROSS-EXAMINATION BY MR. KEEVIL:

19 Q. Ms. Morrissey, just a couple of real quick
20 questions.

21 In response to some questions from
22 Commissioner Murray, the subject of bypass under FERC
23 jurisdiction came up. And my question to you is, to the
24 extent that FERC has a policy concerning bypass,
25 Williams, MRT, Panhandle, NGPL are already subject to

1 that policy and can already bypass pursuant to whatever
2 the FERC's policy is. Correct?

3 A. That's correct. Excuse me. That's correct.

4 Q. I believe you stated in response to
5 Mr. Boudreau that you are not aware whether any LDC
6 currently has a right of first refusal on MPC or MGC
7 pursuant to the MPC or MGC tariffs?

8 A. Right, I said I did not know.

9 MR. KEEVIL: I've got a real quick in-camera
10 question.

11 JUDGE THORNBURG: Okay. At this point we're
12 going to be discussing highly confidential and
13 proprietary information. I'd ask the area to be vacated
14 by those individuals not authorized to hear this.

15 (REPORTER'S NOTE: At this time, an in-camera
16 session was held, which is contained in Volume No. 9,
17 Pages 836 through 839, of the transcript.)

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1 JUDGE THORNBURG: And I believe that concludes
2 the recross-examination.

3 Ms. Shemwell?

4 MS. SHEMWELL: Thank you.

5 REDIRECT EXAMINATION BY MS. SHEMWELL:

6 Q. Ms. Morrissey, in response to Commissioner
7 Murray's question about FERC jurisdiction and your
8 concerns, is it your experience that the FERC Staff
9 takes the concerns of the Missouri consumers as
10 seriously as this Commission does?

11 MR. BOUDREAU: I'm going to object to the form
12 of the question.

13 MS. SHEMWELL: I can restate it, your Honor.

14 JUDGE THORNBURG: Okay. Restate it.

15 BY MS. SHEMWELL:

16 Q. How seriously does the FERC Staff take the
17 concerns of Missouri consumers?

18 MR. KEEVIL: Judge, what's the relevance of
19 this? It seems to me Ms. Morrissey already covered it
20 quite fully. I'm not disagreeing or agreeing with it.

21 JUDGE THORNBURG: I think Ms. Shemwell can
22 follow up with this.

23 But in relation to what? I mean, it's too
24 open-ended.

25 MS. SHEMWELL: Well, Commissioner Murray had

1 asked about her concerns about FERC jurisdiction, and
2 I'm just following up on the conversation they had about
3 how the FERC --

4 JUDGE THORNBURG: Is your question in
5 comparison to state jurisdiction?

6 MS. SHEMWELL: Yes.

7 JUDGE THORNBURG: Okay.

8 THE WITNESS: It depends on what the FERC
9 staff -- what other commitments it has. Typically, they
10 are going to have other interests that they are
11 concerned about, not just Missouri's. And many times
12 the pipelines that serve Missouri that are
13 FERC-regulated are small in comparison to the other
14 pipelines that the FERC is having to deal with, and so
15 sometimes our cases may not seem as important to them
16 as -- as they do to us. Other times, they are very
17 involved.

18 BY MS. SHEMWELL:

19 Q. And when you say "they seem to us," are you
20 referring to this Commission?

21 A. This Commission.

22 Q. Was it your testimony earlier, I believe, in
23 response to Commissioner Gaw's question -- was it your
24 testimony that you think that the FERC acquiring
25 jurisdiction is extremely remote?

1 A. I'm trying to recollect the context that
2 discussion was in.

3 It all depends on the circumstances, and I
4 don't know which certain circumstances we were
5 discussing when the "extremely remote" came up.

6 Q. Is this a complicated issue, Ms. Morrissey?

7 A. Yes.

8 Q. Mr. Boudreau characterized it in an objection
9 (sic) that he said FERC jurisdiction was extremely
10 remote, and I'm trying to ask if -- if that is -- was
11 your overall testimony, that --

12 A. No. My testimony -- prepared testimony did
13 not say that, and if I said that, I would need to know
14 the context in which -- the circumstances and the
15 situation that we were discussing at the time that came
16 up. I wouldn't generally say that, no.

17 Q. The issue of abandonment has come up from
18 several questioners, and you've said legally an operator
19 cannot abandon a pipeline. They have to go to the FERC
20 or, I guess, would come here.

21 Do you know what happens if they would go
22 bankrupt -- the operator would go bankrupt? I'm sorry.

23 A. There have been instances where pipelines --
24 interstate pipelines were going through that, and the
25 instances I can think of really didn't -- they weren't

1 seeking abandonment.

2 You know, it's hard to know. If a company is
3 truly suffering and all of a sudden just closes down,
4 obviously, FERC would become involved, and that pipeline
5 is obligated to go to the FERC, but that doesn't mean it
6 won't close its doors the next day. There is nothing
7 there. But they have a legal obligation.

8 MS. SHEMWELL: Thank you, Ms. Morrissey.

9 THE WITNESS: Yes.

10 JUDGE THORNBURG: Thank you, Ms. Shemwell.

11 Ms. Morrissey, I think you may be excused.

12 Thank you for your testimony today.

13 (Witness excused.)

14 JUDGE THORNBURG: You may call your next
15 witness.

16 MS. SHEMWELL: Thank you, your Honor.

17 I would call Ms. McKiddy to the stand.

18 (Witness sworn.)

19 JUDGE THORNBURG: Thank you.

20 You may be seated.

21 ROBERTA A. McKIDDY testified as follows:

22 DIRECT EXAMINATION BY MS. SHEMWELL:

23 Q. Please state your name for the record.

24 A. Roberta McKiddy.

25 Q. Where do you work?

1 A. The Missouri Public Service Commission.

2 Q. What do you do for the Commission?

3 A. I am a public utility financial analyst.

4 Q. Did you prepare testimony in this case,

5 Rebuttal Testimony, that has been marked 19 and 19-HC?

6 A. Yes, I have.

7 Q. Was this prepared by you or under your

8 direction?

9 A. Yes, it was.

10 Q. Did you also file reclassified testimony that

11 reclassified some of the information from HC to public?

12 A. Yes, I did.

13 Q. And I believe that will be the HC version that

14 we'll be using.

15 If I were to ask -- I'm sorry.

16 Do you have any corrections to your testimony?

17 A. No, I do not.

18 Q. If I were to ask you the same questions today,

19 would your answers be substantially the same?

20 A. Yes, they would.

21 Q. Is your testimony true and correct to the best

22 of your knowledge and belief?

23 A. Yes, it is.

24 MS. SHEMWELL: Your Honor, I would offer

25 Exhibits 19 and 19-HC into evidence, and tender the

1 witness for cross.

2 JUDGE THORNBURG: Are there any objections to
3 Exhibits 19 and 19-HC?

4 (No responses.)

5 JUDGE THORNBURG: Hearing none, the exhibits
6 will be received into evidence.

7 (EXHIBIT NOS. 19 AND 19-HC WERE RECEIVED INTO
8 EVIDENCE.)

9 JUDGE THORNBURG: Thank you, Ms. Shemwell.

10 MS. SHEMWELL: Thank you.

11 JUDGE THORNBURG: Ms. O'Neill?

12 MS. O'NEILL: No questions at this time.

13 JUDGE THORNBURG: You can't reserve cross.

14 MS. O'NEILL: No questions. I'm not
15 anticipating I might get another round.

16 JUDGE THORNBURG: Mr. Pendergast?

17 MR. PENDERGAST: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. PENDERGAST:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. There were some questions earlier, and I know
22 that you did some of the financial analysis in this case
23 in conjunction with Mr. Oligschlaeger, and I think he
24 deferred to you on questions he was asked regarding
25 Exhibit 23.

1 Are you familiar with that exhibit?

2 A. If that's Mr. Ries's Schedule 17, I think I
3 am.

4 Q. No. Actually --

5 A. It's something else.

6 Q. This is the one that included the Company's
7 summary of TCW, one of the investors in this project?

8 A. Yes.

9 Q. Do you have a copy of that?

10 A. No, I do not.

11 Q. And I just want to ask you a couple of
12 questions.

13 There was some comparisons between UtiliCorp
14 and their capital assets that they own and what were
15 reported to be the assets of TCW, and could you turn to
16 the last page of Exhibit 23?

17 A. I'm there.

18 Q. Okay. And at the bottom of that, it says, "As
19 of December 31st, 2000, TCW had total assets under
20 management or committed to management of approximately
21 80 billion, including over 50 billion in the marketable
22 securities division."

23 Is it your understanding that those are assets
24 that are owned by TCW?

25 A. Based on the information here, it is unclear

1 to me whether that would actually be the assets
2 appearing on any financial statements of TCW.

3 Q. And if you look at the rest of this handout,
4 does it indicate that TCW provides an investment
5 management service?

6 A. Yes, I believe that appears in the first
7 sentence under the subsection titled "Business."

8 Q. So from your conclusion, would these
9 \$80 billion worth of assets simply be assets they are
10 managing, or is that a possibility as opposed to assets
11 that they own?

12 A. I believe that is a possibility.

13 Q. And if they were hypothetically assets that
14 they simply manage rather than assets that they own,
15 would those assets be completely distinguishable from
16 the assets that UtiliCorp owns?

17 A. Repeat that question, please.

18 Q. Yes. If they were assets that they were
19 simply managing rather than owned, would those in your
20 view be distinguishable from the assets that UtiliCorp
21 owns?

22 A. I would believe they would be classified
23 differently.

24 Q. Do you know, does TCW have any facilities --
25 utility facilities in Missouri?

1 A. I don't believe they operate facilities. I
2 believe they just provide investment management.

3 Q. And do you know, does the Commission have any
4 regulatory supervisory powers over TCW at all?

5 A. I do not believe so.

6 Q. Would that be in contrast to UtiliCorp?

7 A. Yes, it would be.

8 Q. And would the ownership of assets -- utility
9 assets in Missouri also be a contrast with UtiliCorp?

10 A. State that again, please.

11 Q. And would the fact that they have no utility
12 facilities in Missouri also distinguish them from
13 UtiliCorp?

14 A. Yes, it would.

15 Q. And do you know -- have you seen any written
16 agreement of any kind that purports to commit TCW to
17 investing additional funds in this company and Gateway
18 should the need arise for additional funds?

19 A. I have seen no such agreement.

20 Q. What have you seen regarding TCW's commitments
21 to this project?

22 A. Nothing.

23 Q. Not a single piece of paper?

24 A. Well, there's been some information given
25 regarding an amount they intend to infuse as an equity

1 investment.

2 Q. Okay. But the terms and conditions under
3 which they will do it you have not seen?

4 A. No. I do not know if that is secured by
5 underwriting of debt or whether that is, in fact,
6 equity. And I also don't know that they have an
7 agreement existing that fully commits that. I just know
8 it's been related to me that that is what they intend to
9 invest. I don't know that it will happen for a fact.

10 Q. And you haven't seen any commitment paper for
11 them or signed contract or signed agreement or anything
12 of that nature?

13 A. I don't believe I have.

14 MR. PENDERGAST: Okay. Thank you very much.

15 JUDGE THORNBURG: Mr. Byrne?

16 MR. BYRNE: No questions, your Honor.

17 JUDGE THORNBURG: Mr. Boudreau?

18 MR. BOUDREAU: Yes. Thank you.

19 Just a few, I think.

20 CROSS-EXAMINATION BY MR. BOUDREAU:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. My first question to you is, can I have my
24 copy of that exhibit back?

25 A. Sure, you may.

1 MR. BOUDREAU: Thank you.

2 MR. PENDERGAST: Sorry.

3 BY MR. BOUDREAU:

4 Q. My topic du jour is I'd like to explore in
5 general the concepts of collateralization and
6 foreclosure --

7 A. Okay.

8 Q. -- just so you know where I'm going. And
9 that's the only place I'm going, by the way.

10 My understanding is that you are a financial
11 analyst for the Commission?

12 A. Yes, I am.

13 Q. And in that capacity, it's your responsibility
14 to, well, among other things become familiar with the
15 financial practices and status of the various utilities
16 that are subject to its jurisdiction?

17 A. That's generally true, yes.

18 Q. And would one of those responsibilities
19 include reviewing financing applications of various
20 types that come in for the Commission's approval from
21 time to time?

22 A. Yes. I have done a couple applications, yes.

23 Q. Okay. Just to kind of -- I'm sorry. I want
24 to follow up on that.

25 A couple of applications?

1 A. Uh-huh.

2 Q. How long have you been with the Commission?

3 A. I've been with the Commission a little over

4 six years.

5 Q. Okay.

6 A. I've been with Financial Analysis for the past

7 three. There really haven't been that many finance

8 applications in the last three years.

9 Q. And that's why I'm following it up. I would

10 have thought there would have been more.

11 A. There's been only two major ones that I have

12 dealt with.

13 Q. Fair enough.

14 Let me ask you this: In any of those

15 circumstances with which you're familiar that you just

16 alluded to, did any of them involve a secured-type

17 financing?

18 A. Yes, I believe it did.

19 Q. Okay. For instance, mortgage bonds? Can you

20 get specific?

21 A. Yes, mortgage bonds.

22 Q. And the only reason I ask you that is that the

23 concept of a utility mortgaging its properties to secure

24 capital through indebtedness, that's not an unusual

25 concept, is it?

1 A. No, it's not.

2 Q. And in the event there were a foreclosure of
3 any utility that has bonded indebtedness or other types
4 of secured financing, there is always the possibility of
5 a default and a foreclosure, isn't there?

6 A. Are you speaking strictly in the context of
7 regulated utilities?

8 Q. Yes, I am.

9 A. And can you repeat your question then?

10 Q. I guess my question is, in the context of a
11 regulated utility that has bonded indebtedness as part
12 of its capital structure, isn't it -- isn't it by nature
13 the type of indebtedness that if there is a
14 foreclosure -- or a default, excuse me, that there can
15 be a foreclosure on the assets that secure the
16 indebtedness?

17 A. I would assume that would be true, also
18 knowing that a regulated utility would have the option
19 of coming in and filing a rate case if they get in such
20 a financially distressed situation.

21 Q. Certainly. Fair enough.

22 But, typically, the mortgages that -- and I
23 realize your personal experience is somewhat limited,
24 but the mortgages are given to financial institutions
25 like banks; isn't that so?

1 A. I would assume that could be true.

2 Q. Based on your personal experience, can you
3 tell me what types of financial institutions to which a
4 mortgage or -- or a security has been given?

5 A. Sometimes it's banks. Sometimes it's through
6 investment firms.

7 Q. Uh-huh. But what the mortgage does, much like
8 a mortgage on a house, is it gives the lender security,
9 doesn't it?

10 A. Correct, if it is secured debt.

11 Q. And if the lender -- if there is a default on
12 the note and it's not secured, the lender has the option
13 of seeking foreclosure; isn't that correct?

14 A. It could depend greatly on the arrangement
15 made between the lender and the borrower as to exactly
16 what would happen.

17 Q. I'm speaking generally. Isn't that the whole
18 idea behind the -- behind secure indebtedness is to give
19 the lender the option, if it comes to that, of
20 foreclosing on the property and either operating it
21 itself or selling it?

22 A. Foreclosure would be an option to them, yes.

23 Q. And, of course, the specifics, as you pointed
24 out, are set out in whatever the mortgage document is?

25 A. Correct, if you're referring to the

1 indentures.

2 Q. Yes. So the prospect generally of a financial
3 institution ending up owning utility assets as the
4 consequence of a default and the foreclosure is
5 something that already exists probably in numerous
6 situations already here with Missouri utilities, isn't
7 it?

8 A. I would agree that, yes, it is a possibility,
9 but from my knowledge, I do not believe there has been
10 such a situation in Missouri with a regulated utility
11 other than a small water company that occurred maybe six
12 years ago.

13 Q. Okay. Do you know whether or not the Empire
14 District Electric Company is secured -- or is financed
15 with substantial bonded indebtedness?

16 A. I believe it has both secured and unsecured
17 debt.

18 Q. And I believe you're correct.

19 Well, I'm not going to beat that.

20 Have you done any financing applications filed
21 by telephone companies?

22 A. I seem to recall one that involved Mark Twain
23 Telephone Company that occurred probably three years ago
24 when I first came into the department.

25 Q. Do you recall what the source of the financing

1 was? Was it through REA, by any chance?

2 A. I really don't recall, but that is a high
3 probability that it was, at a reduced interest rate.

4 Q. And the REA is the Rural Electrification
5 Administration; is that correct?

6 A. I believe that's true.

7 Q. And that's a federal agency that makes
8 available sources of fund-- of borrowed funds, to my
9 knowledge, to small rural telephone companies?

10 A. Yes. It provides funds at reduced rates.

11 Q. Yes. Do you know whether or not those
12 obligations are secured by company assets or stock or
13 anything of the sort?

14 A. I really don't know.

15 Q. In your -- in your capacity as a financial
16 analyst with the Commission, have you made yourself
17 familiar with the operative statutes governing the
18 requirements of a public utility to obtain Commission
19 approval for various types of financing?

20 A. I'm generally familiar with the statutes and
21 rules, yes.

22 Q. Do you know whether or not there is a
23 provision in Chapter 393, which is the applicable
24 chapter, I believe, for gas utilities?

25 A. I believe that's true.

1 Q. Are you aware of whether or not there is a
2 provision that specifically contemplates the pledge of
3 stock to secure indebtedness?

4 A. I don't know that that's particularly
5 mentioned, no.

6 Q. Okay.

7 A. It's been some time since I've done a finance
8 case, so I'm really not familiar with that statute.

9 Q. Let me do this. I don't think we need to go
10 through this.

11 The statutes say what they say. Correct?

12 A. Correct.

13 Q. And if it's in there, it's in there?

14 A. Correct.

15 MR. BOUDREAU: I'll just brief the issue.

16 Thank you.

17 That's all of the questions I have for this
18 witness. Thank you.

19 JUDGE THORNBURG: Thank you, Mr. Boudreau.

20 Mr. Keevil?

21 MR. KEEVIL: I apologize, Judge and
22 Ms. McKiddy. I was in the middle of taking a note and
23 was called to the podium.

24 JUDGE THORNBURG: I guess Mr. Boudreau was
25 unexpectedly brief.

1 MR. KEEVIL: No. Actually, I expected him to
2 be brief, but -- let's see.

3 I'm going to try to do this without having to
4 go in camera.

5 CROSS-EXAMINATION BY MR. KEEVIL:

6 Q. Ms. McKiddy, you were asked some questions by
7 Mr. Pendergast just a few minutes ago regarding TCW.

8 And my question to you is, whether the
9 \$80 billion in assets is owned by TCW or shows up on
10 their books or whether it's simply managed for other
11 people, do you have any reason to dispute that TCW is a
12 large sophisticated company with a significant staff
13 which is able and qualified to evaluate their
14 investments?

15 A. I will agree that they are a large
16 corporation. As to their opinions about investments, I
17 have no knowledge of what that might entail.

18 Q. Again, trying to stay out of any confidential
19 material, as I understand your testimony, one of, if not
20 the main concern you express in your testimony, is that
21 Gateway's cost of capital would be higher if the
22 transaction is approved than under current UtiliCorp
23 ownership; is that correct?

24 A. Based on the information that was provided to
25 me, I believe the cost of capital would be higher.

1 Q. Correct. Now, my question, I guess, is, is
2 there any provision in this -- this case for Gateway or
3 MPC or MGC to recover a higher cost of capital?

4 A. I don't believe there is.

5 Q. To your knowledge, has Gateway or MPC or MGC
6 indicated that they intend to do that in this case or
7 have requested that in this case?

8 A. I don't believe they have.

9 Q. And in the event that they ever at some future
10 point in time sought to receive a higher cost of capital
11 in the form of higher rates, that would necessitate a
12 rate case before this Commission?

13 A. That is true.

14 Q. Okay. And at that time the Commission would
15 be in a position to examine all elements regarding the
16 costs and the expenses and make a decision of its own
17 regarding what the capital of capital, the rate of
18 return and the cost of debt should be allowed?

19 A. That's true.

20 MR. KEEVIL: Thank you.

21 JUDGE THORNBURG: Commissioner Gaw, do you
22 have any questions for this witness?

23 COMMISSIONER GAW: Yes, I do. Thank you.

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Ms. McKiddy, are you familiar with TCW in any

1 way?

2 A. I'm familiar with the data response
3 information that Gateway provided to me.

4 Q. All right. And is that the extent of your
5 knowledge is the data response that you have?

6 A. I have also been out on their website only to
7 familiarize myself with the corporation. I've done no
8 analysis of their credit worthiness.

9 Q. Okay. And so when you -- when you say that
10 you know that they are -- that they have a large staff
11 or that they have a number of employees, is that from
12 information that you have gathered or is that an
13 assumption? I'm just trying to gather what you're
14 basing that on?

15 A. That's information that is found on their
16 website. They also do give a small listing of some of
17 their clients, which are fairly large corporations.

18 Q. Corporations that were known to you?

19 A. Not until I looked on their website.

20 Q. Do you know whether or not the investment of
21 TCW is -- well, let me -- let me start over.

22 Are you familiar with the method of investment
23 used by TCW or how it invests money for the clients it
24 has?

25 A. From what I read, both in the material

1 supplied in the data response and what I read on the
2 website, it appears to me that TCW makes investments on
3 behalf of their clients.

4 Q. Do you know -- can you characterize or were
5 you able to characterize the type of investment? Is it
6 a mutual -- is it a company that has mutual funds or --

7 A. Yes.

8 Q. Can you go into that just a little based upon
9 what you have observed?

10 A. From what I read out there, they do have a --
11 I don't know if they would call it a subsidiary or an
12 affiliate that does specialize in mutual funds. As to
13 the extent of whether those investments may rely solely
14 on mutual funds, I do not know. That level of detail
15 was not available.

16 Q. And where are they headquartered? Do you
17 know?

18 A. I don't believe I know that.

19 Q. And are you familiar with whether or not this
20 type of an investment is an unusual investment for this
21 company to make in regard, first of all, to its size?

22 A. From what I saw on their website, it's not
23 TCW's policy to disclose the types of investments that
24 they make, per se. They are very protective of their
25 clients' information, investment information. So I

1 don't know that I would be able to tell you
2 specifically.

3 Q. That's okay. I'm just seeing what the basis
4 of your knowledge is.

5 And so you would not know, for instance,
6 whether or not this investment was for specific
7 investors that TCW might manage or whether it was a part
8 of some sort of a group of investments that they might
9 be managing for some of their clients?

10 A. Correct. Again, TCW holds their client
11 information very closely and does not disclose that.

12 Q. Are you familiar with the arrangement that TCW
13 has in regard to its equity interest in this venture
14 that's in front of us?

15 A. I'm only informed about the dollar amount that
16 is intended to be invested. I have seen no formal
17 agreements that they are committed to making that
18 investment.

19 Q. So you do not have knowledge other than some
20 testimony that may have occurred in this proceeding
21 regarding the equity shares and equity amounts without
22 going into the amount of that?

23 A. Correct. It would be only from information I
24 received either through Mr. Ries's testimony or in
25 response to a data request.

1 Q. All right. Now, as we're looking at some of
2 the testimony that you have given regarding your
3 assessment of the potential for additional revenue needs
4 if this transaction takes place for the companies
5 involved in the transaction, I want to go -- just
6 briefly go into the distinction between debt and equity
7 and the need for -- and the relevance of that in regard
8 to your testimony.

9 A. Okay.

10 Q. As you're examining the debt involved in this
11 case, can you tell me how that impacts your concern
12 about the future of this company or this group of
13 companies?

14 A. I believe the main concern I was bringing out
15 when I spoke of the debt amount was the interest expense
16 associated solely with that debt amount as compared to
17 what UtiliCorp proposed when it bought the properties.
18 That's really the only comparison I did on the debt
19 issue.

20 What drove my concern was the overall cost of
21 capital and how it impacted the revenue requirement cost
22 of service.

23 Q. I want to get to that in just a moment.

24 A. Okay.

25 Q. But when we're looking at the risk of the

1 amount of debt that's contemplated here --

2 COMMISSIONER GAW: Do I need to go into HC?

3 Am I getting into -- pardon me, Ms. McKiddy.

4 JUDGE THORNBURG: I think you are still in
5 general questions. If you ask about specific numbers,
6 we can go in camera.

7 COMMISSIONER GAW: Just be ready.

8 JUDGE THORNBURG: Okay.

9 BY COMMISSIONER GAW:

10 Q. Ms. McKiddy, in regard to the amount of debt
11 that's proposed here, if we set aside your concerns
12 about how -- the potential impact on a rate case for the
13 moment --

14 A. Uh-huh.

15 Q. -- what concerns do you have, if any, about
16 the amount of debt in relation to the value of the
17 assets that we're discussing and the potential for this
18 company to meet its debt service with the revenues that
19 you -- that you believe this company will have access to
20 over the next few years?

21 A. In a normal analysis, the debt servicing would
22 be a concern to me. What I would have normally liked to
23 have done was done a pretax interest coverage ratio
24 analysis, and I would have also liked to have done an
25 analysis of the indenture requirements, which is the

1 fixed charge ratio, as well as the senior debt to -- I
2 can't remember the exact term. I would have looked at
3 those two ratios.

4 The problem I encountered in doing that
5 analysis was that I did not have sufficient evidence or
6 data response information to be able to perform those
7 calculations.

8 Q. And, in general, what were you missing?

9 A. As Mr. Oligschlaeger said this morning, we
10 were missing principal payment information, for one
11 thing.

12 Q. And today that information is still not
13 available to you?

14 A. That is correct.

15 Q. Do you have sufficient information regarding
16 the anticipated revenues to make that assessment?

17 A. Well, we know what level of projections
18 Gateway has provided to us. Now, as to whether we could
19 translate that into an ability to meet the ratio
20 coverages, I don't believe we have sufficient
21 information.

22 Q. It's your understanding -- is it your
23 understanding that the amount of debt that we're talking
24 about in this case --

25 COMMISSIONER GAW: I'm going to get into

1 the -- I have to get into the numbers. I'm sorry.

2 JUDGE THORNBURG: At this point we'll go into
3 in-camera session, and we will be discussing highly
4 confidential information, so I'll ask the hearing room
5 be vacated of those individuals not authorized to hear
6 this information.

7 (REPORTER'S NOTE: At this time, an in-camera
8 session was held, which is contained in Volume No. 9,
9 Pages 866 through 874, of the transcript.)

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1 JUDGE THORNBURG: And we have recross based on
2 questions from the Bench.

3 Ms. O'Neill?

4 MS. O'NEILL: Yes. Thank you.

5 (A DISCUSSION WAS HELD OFF THE RECORD.)

6 JUDGE THORNBURG: Ms. O'Neill, I believe you
7 may continue.

8 MS. O'NEILL: Okay.

9 RECROSS-EXAMINATION BY MS. O'NEILL:

10 Q. Ms. McKiddy, did you have a copy of Exhibit 23
11 there with you?

12 A. No. I believe it was taken away from me.

13 Q. Would you like it back? I have a couple of
14 questions to ask.

15 A. I have one now. Please.

16 Q. Commissioner Gaw was asking you some questions
17 regarding TCW, and I know that you were specifically
18 directed to one page of this exhibit at an earlier time,
19 but I want to direct you to the first page of the
20 company summary of TCW, which is the second-to-the-last
21 page of that exhibit.

22 And the first paragraph under the -- under the
23 word "background" --

24 A. Yes.

25 Q. -- it indicates that TCW is chartered by the

1 state of California, is that correct, in the third line?

2 A. Yes, that's true.

3 Q. Do you know whether that's where they are also
4 physically located?

5 A. No, I do not know that.

6 Q. Okay. But there is some California connection
7 that we can be aware of TCW's?

8 A. I believe I've heard that --

9 MR. KEEVIL: Objection. Irrelevant.

10 JUDGE THORNBURG: Where are you going with
11 this?

12 MS. O'NEILL: Following up -- she had
13 indicated she wasn't sure where they were. Mister --
14 Commissioner Gaw seemed to ask this question, and I just
15 was seeing if we could clear that issue up.

16 JUDGE THORNBURG: Okay. I'll overrule the
17 objection at this point, but if you can't tie this in
18 within a couple of questions, we will discontinue.

19 MS. O'NEILL: That was the question.

20 JUDGE THORNBURG: Okay.

21 THE WITNESS: I believe I've been made aware
22 that the Trust Company of the West, which is one of the
23 subsidiaries, has some ties to California, but as to
24 whether TCW group has ties to California and is
25 physically located there, I do not know that.

1 BY MS. O'NEILL:

2 Q. Okay. And TCW's primary business is managing
3 investments for other entities; is that correct?

4 A. That's what they indicate.

5 Q. And they describe some of the types of
6 entities that they invest for in that paragraph headed
7 with the word "Business"; is that correct?

8 A. Yes, that is correct.

9 Q. Okay. And they manage --

10 MR. KEEVIL: Judge, she is reading from
11 Exhibit 23. I don't know about Ms. O'Neill, but I would
12 like to go home sometime this weekend, and since this is
13 already in the record, all she's doing -- it speaks for
14 itself.

15 JUDGE THORNBURG: That's enough, Mr. Keevil.

16 I was thinking the same thing. If you are
17 just going to rehash what's in this exhibit, it's in
18 the -- this has been introduced.

19 MS. O'NEILL: In the -- in the interest of not
20 having longer objections than my questions, I think I
21 don't have any further questions at this time.

22 JUDGE THORNBURG: Okay. Thank you.

23 Mr. Pendergast?

24 MR. PENDERGAST: Thank you, your Honor.

25 I'll try and be very brief.

1 REXCROSS-EXAMINATION BY MR. PENDERGAST:

2 Q. On this TCW investment, once again, what's the
3 magnitude of this investment and the project?

4 MR. KEEVIL: Objection -- or not objection,
5 sorry, but that's in-camera.

6 MR. PENDERGAST: Excuse me. You're right.

7 JUDGE THORNBURG: Do we need to go in camera?

8 MR. PENDERGAST: No, because I'll withdraw the
9 question. The record will speak for itself on that.

10 BY MR. PENDERGAST:

11 Q. Is it possible under this arrangement -- I
12 notice that it says, For a private client services
13 group, customized investment management services are
14 provided to high net worth individuals and family
15 officers."

16 Do you know whether or not under TCW's
17 approach if I wanted to go ahead and invest in a
18 particular project I could come in, I could open up an
19 account, I could go ahead and put \$5, \$10 million in
20 that account, and I could say, I want you to manage that
21 on my behalf. This ownership interest will be in TCW's
22 name. It will be limited to the amount of money I put
23 in the account. When that money is gone, so is your
24 investment. Is that a possibility?

25 MR. BOUDREAU: I think I'm just going to offer

1 an objection to the form of the question.

2 MR. KEEVIL: I'm going to object because she's
3 already testified she doesn't know the answer to that
4 question. She doesn't know how they operate their
5 investments.

6 JUDGE THORNBURG: Let's find out if she knows.
7 I'll overrule it.

8 THE WITNESS: I know your question was
9 lengthy, and I will try to answer what I think you
10 asked.

11 With the scenario you've given I believe if
12 you read the paragraph entitled "Business," it does
13 allude to some scenario similar to that where it says
14 individuals through a number of broker/dealer managed
15 account programs that that could be a possible scenario.

16 BY MR. PENDERGAST:

17 Q. Okay. So as far as we know, instead of
18 \$80 billion in assets standing behind this, the only
19 thing that's standing behind it is potentially one
20 investor who has come in and said, Here's some money.
21 I'd like you to go and invest it. Invest it in this
22 specific project, and they are doing it on that
23 investor's behalf. Is this a possibility?

24 MR. KEEVIL: Judge, this is pure speculation.

25 MR. PENDERGAST: Well, your Honor, if it's

1 pure speculation, then what we have is a pure
2 speculation owner trying to go ahead and buy a critical
3 pipeline facility in Missouri.

4 JUDGE THORNBURG: If you want to establish
5 whether or not any of those facts are known to the
6 witness, if I'm understanding your question, you can do
7 that. You can ask the question. But you are
8 speculating about things that aren't in evidence, so I'm
9 going to sustain the objection.

10 Do you want --

11 MR. PENDERGAST: Well --

12 JUDGE THORNBURG: It may be the issue that the
13 witness doesn't know, so it's not in the record at all.

14 BY MR. PENDERGAST:

15 Q. Do you have any idea what the nature of the
16 monetary commitment is behind this TCW investment?

17 A. If you're asking whether I have seen a
18 document that commits TCW to that investment to Gateway,
19 I do not have such a document.

20 Q. Or what magnitude of -- of assets stand behind
21 it?

22 A. No, I do not have that information.

23 Q. Or whether it's an individual or a group of
24 individuals?

25 A. I do not have that information.

1 Q. Do you know whether it could be Mr. Langley?

2 A. It's always a possibility.

3 MR. PENDERGAST: Thank you.

4 I have no further questions.

5 JUDGE THORNBURG: Mr. Byrne?

6 MR. BYRNE: No questions, your Honor.

7 JUDGE THORNBURG: Mr. Boudreau?

8 MR. BOUDREAU: Maybe just one. Thank you.

9 RECROSS-EXAMINATION BY MR. BOUDREAU:

10 Q. Ms. McKiddy, I may have inadvertently created
11 a little bit of confusion. It wouldn't be the first
12 time.

13 I believe in response to a question you got
14 from the Judge, he inquired about whether or not there
15 was any pledge of assets that was kind of part of this
16 whole package. Do you recall that?

17 A. Yes. It was actually the issue of whether
18 this Commission even had jurisdiction.

19 Q. And I may be -- I'm afraid I may have created
20 a little bit of confusion.

21 You and I had some discussion about mortgaging
22 of assets by utilities; is that correct?

23 A. Correct.

24 Q. And I probably failed to ask you this and to
25 bring some context to what I was asking about if the

1 mortgaging of assets is a point of confusion.

2 Would you agree with me that the pledging of
3 stock to secure a loan is just another way -- another
4 mechanism of securing capital through secured financing?

5 Are you familiar with pledges of stock?

6 A. Yes. But as I said before, it is our opinion
7 that this stock is, in fact, tied to the assets, and
8 it's, in our opinion, one in the same.

9 Q. Well -- and I guess that's my point. The
10 answer -- and I think what you're saying, and I'm not
11 sure I disagree with you here, is that the value of the
12 enterprise that the stock represents is based on the
13 business that the enterprise is engaged in. Correct?

14 A. Correct.

15 Q. And that enterprise, if we're talking about
16 pipelines in this case, are the pipeline assets?

17 A. Correct.

18 Q. But, in fact, the mechanism for securing
19 financing is a pledge of the stock; isn't that correct?

20 A. In this particular instance, that is the
21 mechanism that is being used.

22 MR. BOUDREAU: Okay. That's all I have.

23 Thank you.

24 JUDGE THORNBURG: Mr. Keevil?

25 MR. KEEVIL: I Never heard you call that time.

1 JUDGE THORNBURG: I did.

2 RECROSS-EXAMINATION BY MR. KEEVIL:

3 Q. Ms. McKiddy, just a couple quick ones, I hope.
4 I'm going to try to keep this general enough so we don't
5 have to go in camera.

6 I think I heard you say in regard -- or in
7 response to some questions from Commissioner Gaw that
8 you, I assume it's as Staff, did not have sufficient
9 information to determine principal payments or debt
10 coverage ratios required under Gateway's agreement with
11 its lender.

12 Did I misunderstand you, or did you say that?

13 A. No. I did say that.

14 Q. Okay. You have seen the term sheet that's
15 been attached to -- or the Staff DR 3810 and I think
16 it's attached to Mr. Ries's testimony?

17 A. Yes, I've seen those terms.

18 Q. And would you agree that one of those
19 provisions in the term sheet is for the amortization of
20 the principal provides how the principal is to be paid
21 back to the lender?

22 A. I don't recall that specifically, but if you
23 say it's there, I would have no reason to doubt you.

24 Q. Okay. And would you also agree that in that
25 same document there is a provision that -- under the

1 heading of "Financial Covenants" that specifically
2 spells out the coverage ratios, debt service coverage
3 ratios, fixed in the terms --

4 A. Considering I saw two versions of that, I'm
5 not -- I know that the definitions are there, but I
6 believe there is also some caveat language in there that
7 says that something is yet to be defined.

8 Q. Well, would you agree that that document, I
9 believe, is in the record?

10 A. Yes.

11 Q. And so, if that's in there, it's there, I
12 believe.

13 A. Right.

14 Q. When you go back to -- you said you've seen
15 two versions of the document. Just to real quickly
16 cover that, I believe, and correct me if I'm wrong, that
17 originally you were provided with a preliminary,
18 one-page sheet prior to a final term sheet having been
19 reached with the bank, and then once the final term
20 sheet was reached, you were provided with the final term
21 sheet; is that correct?

22 A. That is correct.

23 Q. I just didn't want to leave the impression we
24 were changing documents on you to try to confuse things.

25 A. No. However, the ratio coverages did change.

1 The definitions changed.

2 JUDGE THORNBURG: Mr. Keevil, just to get it
3 on the record so there is a reference to it, the term
4 sheet that you're referencing, which exhibit is that
5 attached to? Is it attached to Rebuttal?

6 MR. KEEVIL: I believe it's Rebuttal
7 Testimony, but it would be highly confidential.

8 JUDGE THORNBURG: I understand.

9 THE WITNESS: I believe it was offered in the
10 record as a DR response, though.

11 MR. KEEVIL: I don't know if she ever offered
12 it. We talked about it.

13 MS. O'NEILL: We talked about it. I didn't
14 offer it into evidence, but it's -- we had some
15 discussion. I think we ended up deciding it was
16 Schedule 19 to the Rebuttal, but that number could be
17 wrong.

18 JUDGE THORNBURG: And I had seen this, but I
19 just wanted to make clear where it was. So it's an
20 attachment to highly confidential Exhibit 5 on one of
21 the schedules, and I just wanted a reference at this
22 point in the transcript so I'll be able to find it.

23 MR. KEEVIL: Is it Schedule 19?

24 JUDGE THORNBURG: It's Exhibit 5, and it's
25 Schedule 19. That's correct. And it was attached as

1 part of the response to a Data Request No. 3810.

2 BY MR. KEEVIL:

3 Q. Ms. McKiddy, did I also hear you say in
4 response to Commissioner Gaw that the allocation --
5 since MPC and MGC will not be issuing their own debt,
6 that the allocation of interest expense -- no.

7 Actually, I believe you said the allocation of
8 interest percentage is not currently known. And I was
9 wondering if I misunderstood you or what you meant by
10 that?

11 A. Well, I guess my response was somewhat
12 confusing.

13 I know what level of long-term debt Gateway
14 has proposed to allocate to the capital structures of
15 MPC and MGC. Now, the interest expense is not
16 specifically known because the interest rate has not
17 been set yet. There's still a range.

18 Q. Okay. But you know the maximum possible
19 interest rate within that range?

20 A. Correct.

21 Q. Okay. And you know the basis upon which the
22 percentage will be allocated as between MPC and MGC down
23 from the parent level. Correct?

24 A. Yes.

25 MR. KEEVIL: Okay. Thank you.

1 That's all.

2 JUDGE THORNBURG: Okay. Ms. Shemwell?

3 MS. SHEMWELL: I need a minute with my

4 witness, please, and it will just be a minute.

5 JUDGE THORNBURG: It will just be a minute.

6 Let's keep going, and you take a minute up front here.

7 You can stretch and move around a little bit,

8 but please stay in the room.

9 (A recess was taken.)

10 JUDGE THORNBURG: I believe everyone is back

11 in the room.

12 Ms. Shemwell, you may proceed with your

13 redirect.

14 MS. SHEMWELL: Thank you, your Honor.

15 REDIRECT EXAMINATION BY MS. SHEMWELL:

16 Q. Ms. McKiddy, in response to Mr. Keevil's

17 questions, what additional information would you need to

18 do an amortization schedule?

19 A. I would need to have known the exact term of

20 the loan.

21 MS. SHEMWELL: That's all I have.

22 Thank you, your Honor.

23 JUDGE THORNBURG: Okay. Has anyone asked just

24 one question today?

25 MS. SHEMWELL: I get the gold star.

1 JUDGE THORNBURG: Okay. The request for the
2 transcripts, that they be expedited, has been made and
3 the court reporters are going to try to have these
4 available Monday.

5 In the Commission's prior order modifying
6 procedural schedule dated August 2nd, we have
7 simultaneous briefs due on September 17th. It's going
8 to be helpful for me, I think, and also for the
9 Commission, obviously, to address the issue that has
10 been brought forward today, but I think Mr. Boudreau is
11 addressing the public detriment standard, burden of
12 proof and how that proof may shift, that it was helpful,
13 and if the parties could address that in their briefs
14 would be helpful.

15 The jurisdictional issue with FERC, of course,
16 is -- is a matter of some concern.

17 If Mr. Keevil has some information from his
18 client on which way the gas flows, like I said, that
19 might make some impact on that, and that would be
20 helpful to know.

21 We have the issue with the interpretation of
22 the condition in the certificate in the earlier case. I
23 believe that was the 1989 case, and there was some spin
24 or interpretation of that in the 1994 case, but it's
25 been made clear, I think, in this record that that's not

1 actually in the certificate, but it's significant what
2 the parties said at the time. I agree that might have
3 been mentioned in the settlement, but it was repeated in
4 the order, and so that's part of it. I mean, it's not
5 in the certificate, but that '94 interpretation is --
6 that's fair to comment on also.

7 MS. O'NEILL: Your Honor, are you suggesting
8 that we should address whether that statement you just
9 made is the correct -- is the current status of the
10 certificate, or are you ruling on the current status of
11 the certificate?

12 JUDGE THORNBURG: I'm just saying it seems in
13 the later order, in the '94 numbered order, that's
14 something to argue about what that means, but the actual
15 language is in the certificate and that's what's really
16 important.

17 MS. O'NEILL: So you are asking us to address
18 that as an issue. You're not ruling on that issue at
19 this time.

20 JUDGE THORNBURG: I'm not ruling on it.

21 MS. O'NEILL: Okay.

22 JUDGE THORNBURG: If somebody wants to
23 disagree with me, that's fine. But, to me, I think it's
24 important to focus on the language that's in the order
25 that granted the certificate. The later order is

1 important also, but -- and you're free to disagree with
2 me, but the language is out there in that later order
3 and, certainly, it's fair to address that also. To me,
4 it's going to be more helpful to address the '89 order,
5 as well as the later order.

6 MS. O'NEILL: Has anyone placed the
7 certificates into evidence at this time?

8 JUDGE THORNBURG: I have copies of these
9 orders and -- they are Commission orders.

10 MS. SHEMWELL: The certificates?

11 MR. BOUDREAU: The topic was put at issue in
12 Rebuttal Testimony.

13 MS. O'NEILL: The topic is at issue. Will the
14 Commission just be taking notice of what's contained in
15 the orders certificating these matters?

16 JUDGE THORNBURG: We certainly would. You can
17 provide us --

18 MS. O'NEILL: Otherwise, before we go, I'll go
19 up and make copies of the cases and introduce them, but
20 I didn't think that was going to be necessary.

21 JUDGE THORNBURG: That's not necessary. I
22 have copies of the cases, but if you want to attach
23 copies as part of your argument, you sure can.

24 MS. O'NEILL: That's fine. I'm sure we'll
25 kill enough trees in this briefing as it is.

1 JUDGE THORNBURG: Are there any other matters
2 the parties want to bring to me?

3 MR. BOUDREAU: Just so I'm clear, you've
4 mentioned three topics that you would like to see
5 addressed, standard of approval, burdens of proof and
6 other sorts of burden that are applicable being one;
7 FERC jurisdiction being another, the language of the
8 certificate being another. Did I miss anything?

9 JUDGE THORNBURG: No, other than the substance
10 of the case itself.

11 MR. BOUDREAU: Certainly.

12 JUDGE THORNBURG: And, certainly, on some of
13 these issues I mentioned, not the standard which should
14 apply, but the jurisdictional issues and the
15 interpretation of the Commission, if a party wants to
16 assert the jurisdictional issue, that it shouldn't even
17 be a factor, that's fine, but you probably ought to
18 address jurisdiction in the alternative, the FERC
19 jurisdiction.

20 I could see a party asserting that that's not
21 even anything we should look at, but, in the
22 alternative, you should also address it if you want to
23 be thorough.

24 MR. KEEVIL: I assume when you said the
25 ultimate issue, that would be the -- whether the

1 transaction should be approved?

2 JUDGE THORNBURG: And whether it's not
3 detrimental or detrimental to the public interest, yes.
4 That's the ultimate outcome.

5 MS. SHEMWELL: It's on the list of issues.

6 JUDGE THORNBURG: It's on the list of issues,
7 that's correct, and there was some disagreement on the
8 issues. But we have everybody's opinion on the issues,
9 everybody filed. And so we can deal with those.

10 All right. There are some hard decisions
11 here, but there was not a lengthy list of decisions, and
12 we'll get through those.

13 Okay. If there is nothing further --

14 MR. KEEVIL: September 17th is the briefing
15 date. Right?

16 JUDGE THORNBURG: Yes.

17 MR. KEEVIL: Okay. You had previously
18 indicated that you were attempting -- I realize this is
19 not entirely within your control, but you would probably
20 be attempting to get something on the agenda sometime
21 the week of the 24th or 25th, somewhere in that time
22 range. Is that still --

23 JUDGE THORNBURG: I could try to have
24 something ready for the Commission for the end of
25 September.

1 MR. KEEVIL: Okay.

2 JUDGE THORNBURG: I can't promise it's going
3 to be done.

4 MR. KEEVIL: I understand that's not up to
5 you.

6 JUDGE THORNBURG: But the Staff and the Public
7 Counsel made an effort to expedite this, as did the
8 parties, and the Commission made a similar effort, and
9 we'll try to do that.

10 MR. PENDERGAST: Your Honor?

11 JUDGE THORNBURG: Yes.

12 MR. PENDERGAST: I just wanted to inquire, do
13 you have it noted that all of the exhibits offered have
14 been received?

15 JUDGE THORNBURG: I have marked all of the
16 exhibits as received --

17 MR. KEEVIL: I don't -- except 20.

18 JUDGE THORNBURG: Exhibit 20 was not offered
19 and it was not received, and that was an article out of
20 some industry publication.

21 MR. BOUDREAU: That's my recollection.

22 MS. SHEMWELL: That's right.

23 JUDGE THORNBURG: But all of the other
24 exhibits have been received.

25 In the arguments there has been some talk on

1 the conditions. We have the safety conditions, which I
2 think everybody agreed to. But to the extent there
3 are -- the briefing order provides for the option of
4 Proposed Findings and Conclusions in the ordered
5 paragraphs. If there are things that should be included
6 in the ordered paragraphs similar to or in the nature of
7 conditions, you can present those in your briefs or in
8 the proposed ordered paragraphs, and that will get those
9 in front of the Commission also. They are in front of
10 us, anyway, but it will bring it to our attention.

11 Okay.

12 In that case, we will be -- I think we've
13 covered everything. We will be adjourned at this time,
14 and the record is closed.

15 WHEREUPON, the hearing of the case was
16 concluded.

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