

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

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
August 5, 1997
Jefferson City, Missouri
Volume 2

In the Matter of Missouri Public)
Service's Tariff Revisions to)
be Reviewed in Its 1994-1995 Actual)
Cost Adjustment.)

L. ANNE WICKLIFFE, Presiding,
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE.
KARL ZOBRIST, Chairman,
HAROLD CRUMPTON,
SHEILA LUMPE,
COMMISSIONERS.

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

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

APPEARANCES: _____

DEAN COOPER, Attorney at Law
Brydon, Swearengen & England, P.C.
P.O. Box 456
312 East Capitol Avenue
Jefferson City, Missouri 65102-0456

FOR: UtiliCorp United, Inc., d/b/a Missouri
Public Service.

DOUGLAS MICHEEL, Deputy Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102-7800

FOR: Office of the Public Counsel
and the Public.

CHERLYN D. MCGOWAN, Assistant General Counsel
P.O. Box 360
Jefferson City, Missouri 65102

FOR: Staff of the Missouri Public
Service Commission.

MICHAEL T. REIDY, Attorney at Law
Polsinelli, White, Vardeman & Shalton
700 West 47th Street, Suite 1000
Kansas City, Missouri 64112-1802

FOR: Missouri Gas Energy.

1

P R O C E E D I N G S

2

(EXHIBIT NOS. 1 THROUGH 17 WERE MARKED FOR

3

IDENTIFICATION.)

4

ALJ WICKLIFFE: We're on the record this

5

morning in Case No. GR-95-273, in the matter of the

6

purchased gas adjustment clause of UtiliCorp United,

7

Inc., d/b/a Missouri Public Service.

8

At this time the attorneys will please make

9

their entries of appearance beginning with the

10

company.

11

MR. COOPER: My name is Dean Cooper. I'm

12

from the law firm of Brydon, Swearngen & England,

13

mailing address P.O. Box 456, Jefferson City, Missouri

14

65102. I'm here representing UtiliCorp United, Inc.,

15

which does business in the state of Missouri under the

16

name Missouri Public Service.

17

ALJ WICKLIFFE: Commission Staff?

18

MS. MCGOWAN: Cherlyn McGowan representing

19

the Staff of the Missouri Public Service Commission,

20

P.O. Box 360, Jefferson City, Missouri 65102.

21

ALJ WICKLIFFE: Office of the Public

22

Counsel?

23

MR. MICHEEL: Douglas E. Micheel appearing

24

on behalf of the Office of the Public Counsel and the

25

Public, P.O. Box 7800, Jefferson City, Missouri

1 65102-7800.

2 ALJ WICKLIFFE: And Missouri Gas Energy?

3 MR. REIDY: Michael Reidy of the law firm of
4 Polsinelli, White, Vardeman & Shalton. Mailing
5 address is 700 West 47th Street, Suite 1000, Kansas
6 City, Missouri 64112, and I am appearing on behalf of
7 Missouri Gas Energy, a division of Southern Union
8 Company.

9 ALJ WICKLIFFE: Thank you.

10 There are some preliminary matters that we
11 need to handle first. The Office of the Public
12 Counsel has filed a Motion to Late File Their
13 Late-Filed Hearing Memorandum. Any objections to the
14 granting of that motion?

15 (No response.)

16 ALJ WICKLIFFE: Hearing none, the motion is
17 granted, and the Late-Filed Hearing Memorandum has
18 been added to the record and will be offered later as
19 an exhibit.

20 There's also an Application to Intervene Out
21 of Time filed by Missouri Gas Energy. There are
22 objections pending to that motion. That will be taken
23 up when the Commissioners join us. Mr. Reidy will be
24 allowed to argue his motion, and the parties will be
25 allowed to respond.

1 Anything else we need to handle before we go
2 off the record?

3 (No response.)

4 ALJ WICKLIFFE: We're off the record.

5 (Discussion off the record.)

6 ALJ WICKLIFFE: On the record.

7 We're on the record to take up the
8 Application to Intervene Out of Time filed by Missouri
9 Gas Energy. Mr. Reidy, would you like to argue your
10 motion, please?

11 MR. REIDY: Commissioners and Judge
12 Wickliffe, my name is Michael Reidy. I'm an attorney
13 with Polsinelli, White in Kansas City, and I'm
14 appearing on behalf of Missouri Gas Energy, a division
15 of Southern Union Company filing this Motion to
16 Intervene.

17 I filed the motion early this morning, and I
18 understand that it's unlikely that you've had a chance
19 to read it. However, I do have copies of the motion
20 if you would like me to distribute those to you.

21 ALJ WICKLIFFE: Please do.

22 MR. REIDY: I understand that the motion is
23 out of time and not in accordance with the procedural
24 schedule set in this case and not within the 30 days
25 as set by administrative rule.

1 However, the Commission undoubtedly has the
2 discretion to grant a Motion to Intervene out of time,
3 and Missouri Gas Energy has good cause to intervene at
4 this time, the good cause being that while we knew
5 that there was a proceeding going on specifically as
6 to Missouri Public Service concerning their ACA filing
7 to examine revenue requirements and rates of Missouri
8 Public Service, we did not realize that, and there's
9 no way that we could anticipate that certain standards
10 concerning transactions among affiliated utilities in
11 Missouri would become a part of this case.

12 And Missouri Gas Energy has a very strong
13 interest in any case where part of the Order might
14 include standards for affiliated transactions, and not
15 only Missouri Gas Energy, but any utility doing
16 business within the state of Missouri would also have
17 a similar interest.

18 As to the standards for intervention, we
19 have an interest unique from that of the general
20 public. We are a very large natural gas utility
21 operating within Missouri. We have nearly a half a
22 million customers within western Missouri, and we seek
23 to intervene on that basis.

24 And I would also like to state that we feel
25 that this issue of standards for affiliated

1 transactions is more appropriately taken up in a
2 general proceeding with more formal rulemaking
3 procedures involved so that Missouri Gas Energy and
4 other utilities who might be affected by the
5 precedential value of an Order of this regard can make
6 comments.

7 We seek to intervene, and if we are granted
8 intervention we will seek to strike any testimony
9 concerning standards of conduct for utilities entering
10 into affiliated transactions.

11 Thank you.

12 ALJ WICKLIFFE: Opposition, Office of the
13 Public Counsel?

14 MR. MICHEEL: May it please the Commission,
15 Judge Wickliffe?

16 The Office of the Public Counsel didn't
17 receive a copy of this motion until about 9:50 today.
18 So bear with me as I page through the motion and look
19 at our Commission rules.

20 But the Office of the Public Counsel is
21 opposed to this intervention not because we are
22 fearful of anything that Missouri Gas Energy will
23 bring to the table. Quite frankly, we don't believe
24 that Missouri Gas Energy's Motion to Intervene brings
25 anything different to the table in this proceeding.

1 Its position is clearly aligned with the
2 position of Missouri Public Service Company in this
3 proceeding.

4 First of all, I think it would behoove us to
5 look at this Commission's rules, 4 CSR 240-2.075 on
6 intervention. Now, as Mr. Reidy readily admits, this
7 company, his client, Missouri Gas Energy, had
8 constructive notice of this proceeding. This
9 proceeding has been on file. Mr. Hubbs' direct
10 testimony has been filed since April 25th. Clearly it
11 is outside of the 30 days.

12 Now, setting that argument aside, let's look
13 at the Commission's standards for intervention. First
14 of all, in subsection 4A, the applicant has an
15 interest in this proceeding that is different than the
16 general public.

17 Mr. Reidy's articulation of that is, if I
18 caught him right, they're a large utility and they
19 have 500,000 customers in Missouri. Certainly that's
20 not significant, and that is not enough of an interest
21 to make them different than the interest of the
22 general public.

23 Secondly, let's not lose sight of what we're
24 doing here today and what has been proposed here today
25 in this docket. What has been proposed here today are

1 company-specific rules. They don't apply to Missouri
2 Gas Energy. They don't apply to Laclede Gas Company.
3 They apply to no other utility in this state.

4 Now, the assumption behind MGE's argument
5 is, well, if this Commission determines -- and we
6 haven't even heard the evidence, and I don't know what
7 your determination is going to be in this proceeding.
8 If this Commission determines that Mr. Hubbs and
9 Mr. Trippensee's proposals are appropriate and orders
10 MoPub to file tariffs consistent with that, that by
11 fiat Missouri Gas Energy or any other natural gas
12 utility LDC in the state of Missouri will have to
13 follow those rules.

14 First of all, I have more faith in you as a
15 Commission. I think that you will be able in a
16 proceeding, if indeed someone does propose these types
17 of rules or similar rules for MoPub or for MGE or any
18 other utility, to base your decision on the facts and
19 evidence in that proceeding.

20 And that's important here, Commissioners.
21 We're not setting an industry-wide standard. This is
22 an ad hoc rulemaking.

23 Secondly, if you look at the body of MGE's
24 order, or Motion for Leave to Intervene Out of Time,
25 it says MGE opposes the proposal regarding affiliated

1 transaction standards of conduct advanced in the
2 direct testimony of Staff witness Hubbs.

3 I'm sure you're all familiar with the
4 testimony of MoPub witness Mr. Jurek. That's what he
5 says, Commissioners. How is their interest any
6 different from what MoPub says? It's not. It is the
7 same. So to the extent that you can differentiate any
8 different position, they have none.

9 They're flatly opposed to any sort of rules
10 like this. That's what Mr. Jurek says. That's why
11 Mr. Cooper is here. He'll have an ability to
12 cross-examine Mr. Hubbs and Mr. Trippensee on those
13 issues. Certainly there's no unfair prejudice to
14 Missouri Gas Energy or any other LDC, and that's the
15 key.

16 They say, well, this might have precedential
17 value. Well, Commissioners, in a rate case if you
18 determine, for example, on the cost of capital rate of
19 return that you prefer the discounted cash flow
20 method, that has precedential value in another case,
21 but the decision you make is based on the facts and
22 evidence of the specific case you're hearing.

23 That's not an unfair prejudice, and that's
24 what it has to be to allow Missouri Gas Energy to
25 intervene. It's out of time, and I don't think that

1 Mr. Reidy or Missouri Gas Energy has shown any unfair
2 prejudice in denying their request to intervene.

3 Now, I note at the bottom of their Order in
4 the wherefore clause, and this is important because it
5 gives me a little bit of heartburn, they ask that they
6 be allowed to fully participate in this proceeding
7 through filing of testimony, the entry of evidence,
8 cross-examination of witnesses. When are we going to
9 file this testimony? When are we going to hear from
10 their witnesses?

11 Simply put, it is not unfairly prejudicial
12 to present -- to prevent Missouri Gas Energy from
13 intervening. This is a case-specific case. I have
14 faith that this Commission, based on the facts and
15 evidence before it in another case, will make whatever
16 decision it thinks is appropriate.

17 And they have not met the standards of
18 4 CSR 240-4.075. They should be denied intervention.
19 This is beyond the 11th hour. This is the 11th hour,
20 59 minutes, 59 seconds.

21 ALJ WICKLIFFE: Thank you. Other
22 objections?

23 MS. MCGOWAN: Staff, as did Public Counsel,
24 just got this motion today, and I cannot think of
25 anything I could add to the emotional statements made

1 by Mr. Micheel on behalf of Public Counsel.

2 Staff would simply state that they agree
3 with those statements that MGE has failed to meet its
4 burden to justify intervention.

5 Staff would also like to state that any
6 intervention granted at this late hour, if it were to
7 be granted, should not in any way be allowed to delay
8 these proceedings because it's Staff's position that
9 the issues which they are interested in are legal
10 issues and should not affect any of the testimony,
11 filings or delay this proceeding in any way.

12 Thank you.

13 ALJ WICKLIFFE: Thank you.

14 MR. COOPER: May I add some comments in
15 support of MGE's motion?

16 My name is Dean Cooper. I'm here today
17 representing UtiliCorp United, Incorporated, which
18 does business in the State of Missouri as Missouri
19 Public Service.

20 In spite of Mr. Micheel's comments, it's not
21 mere speculation that the affiliated transaction rules
22 that have been proposed in this docket may have
23 precedential value. The Staff has stated that it will
24 eventually recommend that these standards apply to
25 every Missouri local distribution company.

1 Because they arose in an ACA case, the
2 various companies that may be affected by such rules
3 have not had formal notice. None of the companies
4 which may be affected have had formal notice.

5 It's my belief that a company would
6 correctly assume that if it was currently a party to
7 the generic affiliated transactions docket which is
8 open at this time, that it would be a part of the
9 development of affiliated transaction rules.

10 That's not the case because of the way this
11 proposal has come before the Commission. For this
12 reason, MPS would support MGE's motions and, if not
13 grant them intervention status, at least grant them
14 participation without intervention so that they may
15 make their feelings felt in briefs and in an opening
16 statement.

17 ALJ WICKLIFFE: I have a question before you
18 sit down.

19 MR. COOPER: Certainly.

20 ALJ WICKLIFFE: Your company is a party to
21 case 00-96 -- 00-96-329?

22 MR. COOPER: I believe that's correct, your
23 Honor.

24 ALJ WICKLIFFE: Thank you. Questions from
25 Commissioners before we take further arguments?

1 CHAIRMAN ZOBRIST: Mr. Micheel, what about
2 the suggestion of simply allowing them to participate,
3 file briefs and make an opening statement, otherwise
4 not intervene in the case?

5 MR. MICHEEL: Well, quite frankly,
6 Mr. Chairman, I don't think they have anything to add
7 other than saying, "No rule. We don't want an
8 affiliated transaction rule. And if we do get an
9 affiliated transaction rule, we should do it in a
10 rulemaking."

11 And, you know, there are two ways this
12 Commission can set policy. They can do it on an ad
13 hoc basis through contested case hearings like this or
14 they can do it in a rulemaking. And when you do it in
15 a contested case hearing like this, you do it company
16 specific. You tailor it to the company.

17 I don't -- I would oppose that. I just
18 don't think that they have anything different and
19 unique to add to the proceedings.

20 CHAIRMAN ZOBRIST: Well, MGE is somewhat
21 different in that it is only an LDC. It does not have
22 an affiliated company; am I correct?

23 MR. MICHEEL: That's not correct, your
24 Honor. They have an affiliated gas marketing company
25 named Marcotto, Inc., and that's an affiliate of

1 Southern Union. So they have an affiliated gas
2 marketing company.

3 Now, I'm not aware of whether or not they've
4 been active in the Missouri market. I haven't --
5 that's the one part of MGE that I haven't had an
6 occasion to dissect lately, but I did in the rate
7 case.

8 CHAIRMAN ZOBRIST: But the facts of -- let
9 me ask you, Mr. Reidy, you're here on behalf of MGE as
10 a division of Southern Union; is that correct?

11 MR. REIDY: That's right.

12 CHAIRMAN ZOBRIST: And you're not here on
13 behalf of Southern Union Company doing business as an
14 unregulated -- pardon me -- in a capacity other than
15 as a Missouri regulated company? You're not in that
16 other capacity, are you?

17 MR. REIDY: No, I'm not. I'm here solely on
18 behalf of Missouri Gas Energy.

19 CHAIRMAN ZOBRIST: Okay. Thank you.

20 ALJ WICKLIFFE: Questions from other
21 Commissioners?

22 Mr. Reidy, are you proposing to file
23 testimony or offer witnesses?

24 MR. REIDY: Not today I'm not. And the only
25 way that we would become involved in that manner is

1 that if some of our -- the testimony that we seek to
2 strike is not stricken, then we would like to become
3 involved for the sole purpose of discussing this rule
4 of general applicability concerning standards of
5 affiliated transactions.

6 ALJ WICKLIFFE: The Motion to Strike we'll
7 have to take up in a separate argument.

8 MR. REIDY: I understand.

9 ALJ WICKLIFFE: Let's just deal with one
10 issue at a time. You are not prepared today to offer
11 witnesses; is that correct?

12 MR. REIDY: That's correct.

13 ALJ WICKLIFFE: Please let me ask my
14 questions.

15 Okay. Would MGE be amenable to accepting
16 participation rather than intervention?

17 MR. REIDY: If participation would
18 adequately protect our interests in commenting on
19 these standards for affiliated transactions, then that
20 would be fine.

21 ALJ WICKLIFFE: Participation would be
22 limited to making a brief opening statement and filing
23 briefs.

24 MR. REIDY: Would that allow us to comment
25 on testimony as well as seek the ability to strike

1 testimony?

2 ALJ WICKLIFFE: You would not be allowed to
3 cross-examine, only to file a brief at the end.

4 MR. REIDY: Would it allow us to strike
5 testimony?

6 ALJ WICKLIFFE: That is a separate argument.

7 MR. REIDY: Assuming that there isn't any
8 stipulation to which we're a party and which binds us,
9 would it allow us to strike testimony?

10 ALJ WICKLIFFE: No.

11 MR. REIDY: A participant can't strike
12 testimony?

13 ALJ WICKLIFFE: No.

14 CHAIRMAN ZOBRIST: You don't strike
15 testimony anyway. You move to strike testimony.

16 MR. REIDY: I understand. I mean, if -- we
17 would like to be an intervenor if this case is going
18 to involve rules of general applicability. However,
19 if you aren't going to let us intervene, we would
20 certainly accept participation.

21 ALJ WICKLIFFE: Do you have any response to
22 Mr. Micheel's statement, which is correct according to
23 the documents, that the testimony that you are
24 concerned with was filed in April? Do you have any
25 response to why testimony filed in April, and I don't

1 know whether you saw the testimony, but why you're
2 only now filing a Motion to Intervene?

3 MR. REIDY: It's my understanding that
4 Missouri Gas Energy only become aware of this
5 testimony last week, and they've also filed similar
6 Motions to Intervene in another case, an ANG case
7 involving similar testimony, and they filed that on
8 July 31st of last week.

9 ALJ WICKLIFFE: Is it MGE's position that
10 Missouri Public Service is not able to adequately
11 represent MGE's interests in this case?

12 MR. REIDY: Yes. That's correct. I mean,
13 MGE has its own interests and would like to make
14 individual comments in regard to these standards for
15 affiliated transactions, and MGE has a fear that --
16 first of all, that these are rules of general
17 applicability which should allow all utilities doing
18 business in Missouri to make comments, No. 1.

19 No. 2, it's the type of rule that should be
20 taken up, since it does have general applicability,
21 should be taken up in formal rulemaking procedures as
22 opposed to an ad hoc basis.

23 ALJ WICKLIFFE: To your knowledge, is MGE a
24 party in OO-96-329?

25 MR. REIDY: Yes, to my knowledge they are a

1 party to that proceeding.

2 ALJ WICKLIFFE: Is OPC a party to that case?

3 MR. MICHEEL: Certainly.

4 ALJ WICKLIFFE: Is Staff a participant in
5 that case?

6 MS. MCGOWAN: It's my understanding that
7 they are.

8 ALJ WICKLIFFE: Mr. Micheel, do you have
9 something you'd like to add?

10 MR. MICHEEL: I just wanted to point out
11 one, what I think is a misstatement in what Mr. Reidy
12 says. He continues to refer to these proposed rules
13 by Mr. Hubbs and Mr. Trippensee as, quote, rules of
14 general applicability.

15 They are not. These rules would only apply
16 to Missouri Public Service Company. And if based on
17 the evidence and facts in this case you as a
18 Commission determine it's appropriate that this
19 language should be inserted in MoPub's tariffs, they
20 would only apply, only apply to Missouri Public
21 Service.

22 So they're not rules of general
23 applicability. They certainly maybe have some
24 underlying principles that might be true throughout
25 the industry, but they don't apply to MGE or Laclede

1 or any other LDC.

2 ALJ WICKLIFFE: Mr. Reidy, did you want to
3 respond to that?

4 MR. REIDY: Yes, I would like to respond to
5 that. I mean, undoubtedly the rules of precedence and
6 stare decisis are relaxed a little bit for
7 administrative orders. However, they still exist.
8 And these are more closely analogous to rules of
9 general applicability than to any other type of rule.

10 I mean, there is a proceeding undergoing
11 before this Commission as we speak concerning these
12 rules, and there's a fear that Staff or Public Counsel
13 could back door these rules and have an adverse effect
14 on my client as well as several other utilities within
15 the state of Missouri.

16 I mean, undoubtedly there is some, a certain
17 degree of stare decisis involved in precedential value
18 on the abuse of discretion standard, and we feel that
19 it's necessary for us to participate and comment in
20 this proceeding if that's going to be an issue in the
21 proceeding to protect our interests.

22 ALJ WICKLIFFE: Thank you. Staff?

23 MS. MCGOWAN: It seems like we've actually
24 been arguing the Motion to Strike. But he made a
25 comment that they are rules of general applicability.

1 Staff would like to add that, as Mr. Micheel, they are
2 company-specific, and they're specifically designed to
3 address specific types of affiliated relationships
4 that Missouri Public Service has with its particular
5 affiliates.

6 Several utilities in Missouri have
7 affiliates. There are different types of affiliates
8 with different functions and have different inter-
9 relationships with affiliates.

10 And there's a lot of affiliate transactions
11 that go on that the rules proposed for Missouri Public
12 Service would not cover, and for those companies we
13 would have to structure different recommendations.

14 ALJ WICKLIFFE: Anything further on this --
15 on this matter, strictly the Application to Intervene?

16 (No response.)

17 ALJ WICKLIFFE: All right. Mr. Reidy,
18 you've also attempted to make a Motion to Strike.

19 Off the record.

20 (Discussion off the record.)

21 ALJ WICKLIFFE: Back on the record.

22 I'm going to read into the record an Order
23 called Notice Regarding Motions to Strike which was
24 issued on July 23. The Order states: By agreement of
25 the parties, all motions to strike prefiled testimony

1 shall be filed no later than July 25, 1997. Responses
2 to motions to strike shall be filed no later than
3 August 1, 1997.

4 Point out that this Motion to Strike was
5 filed this morning, which is August the 5th, the day
6 of the hearing. Mr. Reidy, I understand you would
7 still like to make an argument regarding your Motion
8 to Strike. You may do so.

9 MR. REIDY: Regarding the Commission's Order
10 that testimony be filed on a date prior to today or
11 that Motions to Strike be filed on a date prior to
12 today, I would just say -- like to say that
13 undoubtedly that would bind all parties to the
14 proceeding at that time, particularly if it was based
15 upon stipulation among the parties at that time.

16 And assuming that MGE is granted some sort
17 of intervenor status, it doesn't seem that that
18 Stipulation or Order should necessarily apply to MGE
19 who wasn't a party at the time that the Stipulation or
20 the Order was entered into.

21 Regarding the Motion to Strike, certain
22 testimony has been prefiled by the Staff, the Staff
23 witness Mr. Hubbs, and the testimony regards standards
24 for affiliated transactions among utilities.

25 There is -- we've discussed it previously.

1 There's a proceeding undergoing in front of the
2 Commission as we speak, not at this moment
3 necessarily, but it is pending, and that concerns the
4 examination of whether standards for affiliated
5 transactions should be adopted for utilities doing
6 business within Missouri.

7 The testimony of Mr. Hubbs is directly on
8 point with that pending case, and it is more
9 appropriate that those proposals be made within that
10 case so that all utilities who may be affected by such
11 orders or rules coming out of that proceeding can
12 comment and participate in the proceedings, which may
13 have some sort of an effect, whether adverse or not,
14 down the road.

15 And on that basis we would seek to strike
16 the testimony of Wendell Hubbs concerning the
17 standards for affiliated transactions as they may
18 apply to Missouri Public Service.

19 Thank you.

20 ALJ WICKLIFFE: Thank you. Objections,
21 Mr. Micheel?

22 MR. MICHEEL: I'll just respond. I find it
23 highly unusual that another party, MoPub had its
24 opportunity to strike this testimony. Indeed, I asked
25 Mr. Cooper, I asked Ms. McGowan if we couldn't come to

1 some sort of agreement so we could dispense with this
2 kind of monkey business on hearing day since we have
3 prefiled testimony. That's the whole purpose of
4 prefiled testimony that we lay it out.

5 Now, what we have here is a party that wants
6 to get in -- I don't know if they're in or out now --
7 asking that specific testimony relating to Missouri
8 Public Service be stricken, and Mr. Reidy quite
9 readily admits it only applies to Missouri Public
10 Service.

11 First of all, I don't think they have any
12 standing, whether or not they're a party, to even ask
13 that that testimony be stricken.

14 Secondly, to the extent that MoPub, the
15 party in interest, seems to believe the testimony is
16 relevant and has made no objection. In fact, they've
17 agreed that any motion they were going to file to
18 strike they'd have by August 1, and they didn't file a
19 motion. So they seem to think, the party who has, in
20 their belief, items at risk, thinks it's appropriate.

21 So on that basis alone, even if you allow
22 MGE intervention, which you shouldn't, you clearly
23 should not grant their Motion to Strike.

24 ALJ WICKLIFFE: Thank you.

25 MR. MICHEEL: And I just point out that they

1 did not file a Motion to Strike Mr. Trippensee's
2 rebuttal testimony, and, you know, it is just a little
3 strengthening of Staff's.

4 ALJ WICKLIFFE: Thank you. Staff?

5 MS. MCGOWAN: The Staff strongly objects to
6 the Motion to Strike. Mr. Reidy correctly states that
7 there is a docket open before the Commission to
8 address whether uniform affiliated transaction
9 requirements should be made in the formation of a
10 rule.

11 However, the key is uniform affiliated
12 transaction requirements that will be applied across
13 the board to all regulated utilities in the gas arena.

14 In this docket we're not dealing with
15 uniform standards. We're dealing with specific
16 standards to address specific affiliated transactions
17 that occur in a given company, and whether the
18 Commission chooses to adopt those standards is before
19 the Commission in this case.

20 It's not deciding any other case or any
21 other standards to any other company and certainly not
22 a uniformly applicable standard.

23 Further, it will be before the Commission
24 whether they decide to adopt that, but the Commission
25 should review the legal arguments of all parties

1 before it decides whether it wants to adopt specific
2 standards for UtiliCorp in this case or whether it
3 would rather wait and address that in a uniform
4 docket.

5 The Commission only has one legal argument
6 before it right now, and that would be the argument
7 presented to all the parties and the Commission early
8 this morning. And that argument could just as easily
9 be made in a Brief if the Commission determines that
10 MGE has a significant interest different than other
11 companies and grants them intervention, or rather even
12 participation.

13 This is a legal issue. It's a legal issue
14 for the Commission to determine where it wants to
15 address it. And Staff does not believe that this
16 Commission should let this proceeding be delayed at
17 this late date by striking testimony or by allowing a
18 party that intervenes to file subsequent testimony.

19 But basically the Staff just states that the
20 Commission will have this issue before it and will
21 have the authority and the power to decide when and
22 where it wants to enact affiliated transactions, and
23 that the Staff feels that, in addition to
24 Mr. Trippensee's testimony, the Commission should also
25 consider the testimony presented by the Staff on that

1 issue in making its decision.

2 Thank you.

3 ALJ WICKLIFFE: Thank you. Mr. Cooper?

4 MR. COOPER: Yes, your Honor. I think if,
5 as Staff and OPC have suggested, that MPS is going to
6 be the only party that has to comply with these
7 complex affiliated transactions rule, that raises a
8 whole new set of concerns for my client.

9 I would like to set one thing straight. The
10 Commission should not take too much from MPS' failure
11 or its strategic decision to make a Motion to Strike
12 these parts of the testimony. MPS did file responsive
13 testimony that states that it believes that the more
14 appropriate place for these subjects is in the generic
15 docket addressing affiliated transactions.

16 We continue to believe that, and for that
17 reason we'd support this Motion to Strike.

18 ALJ WICKLIFFE: Anything else from the
19 parties?

20 MR. REIDY: I would like to make one more
21 statement, if I may, Judge, and that's concerning
22 Mr. Trippensee's testimony, which I have not reviewed
23 but which I do have a copy of and have obtained this
24 morning.

25 I understand that Mr. Trippensee's testimony

1 is responsive to the testimony of Mr. Hubbs and that
2 the logical progression would be that any responsive
3 testimony concerning these affiliated transactions
4 would also be stricken from the record, assuming that,
5 that the testimony concerning affiliated transactions
6 of Mr. Hubbs be stricken.

7 ALJ WICKLIFFE: So are you asking to amend
8 your motion?

9 MR. REIDY: No. Mr. Trippensee's testimony
10 was brought up, and I think what I'm stating is that,
11 assuming that the foundation or underlying testimony
12 is stricken, underlying testimony regarding the same
13 topic would necessarily be stricken also.

14 ALJ WICKLIFFE: Thank you. Anything further
15 from the Bench?

16 COMMISSIONER LUMPE: I have one question.
17 Mr. Reidy, I think I heard you say you were just
18 informed of these proceedings last week?

19 MR. REIDY: No.

20 COMMISSIONER LUMPE: When?

21 MR. REIDY: I don't know exactly when MGE
22 became informed of these proceedings. However, they
23 just became informed of this topic of affiliated
24 transactions among -- or for utilities, standards of
25 affiliated transactions for utilities being

1 implemented or inserted into these proceedings.

2 COMMISSIONER LUMPE: Last week?

3 MR. REIDY: That's my understanding, yes.

4 COMMISSIONER LUMPE: And how were you

5 informed last week?

6 MR. REIDY: How the company was informed, I

7 do not know.

8 COMMISSIONER LUMPE: Thank you.

9 ALJ WICKLIFFE: Anything else from the

10 Bench? Anything else of importance from the parties?

11 MS. MCGOWAN: Can I make one statement?

12 ALJ WICKLIFFE: One statement.

13 MS. MCGOWAN: Since the Staff just got this

14 document today and has not had the opportunity to

15 review the legal justification for striking the

16 testimony, prior to the Commission even considering

17 striking the testimony the Staff would like an

18 opportunity to respond in writing.

19 CHAIRMAN ZOBRIST: No. I vote no for that.

20 We need to make a decision.

21 ALJ WICKLIFFE: Off the record.

22 (A recess was taken.)

23 ALJ WICKLIFFE: We're going to go on the

24 record and announce the ruling. Missouri Gas Energy's

25 Motion for Leave to Intervene Out of Time and Motion

1 to Strike are denied in their entirety.

2 Off the record.

3 (Discussion off the record.)

4 ALJ WICKLIFFE: We'll begin now with opening
5 statements. We're on the record. Mr. Cooper, would
6 you like to make an opening statement?

7 MR. COOPER: Yes, your Honor. May it please
8 the Commission?

9 As I stated earlier, my name is Dean Cooper.
10 I'm an attorney with the law firm of Brydon,
11 Swearingen & England here in Jefferson City. I
12 represent in this proceeding UtiliCorp United, Inc.,
13 which does business in Missouri under the name
14 Missouri Public Service.

15 I was asked earlier by Judge Wickliffe to
16 give a little additional explanation of what Missouri
17 Public Service is. Missouri Public Service is not a
18 separate corporation from UtiliCorp. It is instead
19 the name for an operating division of UtiliCorp which,
20 among other things, is engaged in the provision of
21 natural gas utility service to three districts in the
22 state of Missouri, a northern, a southern and an
23 eastern district.

24 I'll attempt to refer to this operating
25 division as MPS throughout my opening statement and

1 going forward during the questions today.

2 This case represents the review of MPS'
3 annual cost adjustment filing for all three districts
4 for the period beginning September 1, 1994 and ending
5 August 31, 1995. As a result of the review of these
6 filings by the Staff and the Office of the Public
7 Counsel, several issues have surfaced for your
8 decision.

9 These issues fall primarily into three
10 categories, adjustments, the ordered production of
11 certain documentation, and Staff's proposal to add
12 certain affiliated transaction rules to MPS' tariffs
13 which were discussed earlier today.

14 The adjustment issues revolve around two
15 situations that existed during the ACA period. The
16 first pertains to the transfer of unneeded pipeline
17 capacity from MPS to an affiliate of UtiliCorp which
18 does gas marketing. This corporation is called
19 UtiliCorp Energy Solutions, Inc., or UES as it's
20 referred to in the testimony and will be referred to
21 in my opening statement.

22 These transfers which were done in
23 accordance with the FERC mandated framework are
24 currently recorded on MPS' books as a credit
25 representing the market rate for such capacity at the

1 time of the transfer. UES then attempts to find a
2 buyer for this capacity.

3 In this ACA case, the Staff proposes for the
4 first time to account for this transfer in a
5 significantly different manner. The Staff proposes
6 that the credit to MPS not be based upon the market
7 rate but rather be based upon the amount eventually
8 received by UES if and when the capacity is sold but
9 only if the capacity is sold at a price greater than
10 the market rate.

11 The proposal is based upon one fact and one
12 fact only, that being that UES is an affiliate of
13 UtiliCorp United.

14 Currently when capacity is similarly
15 released to non-affiliate marketers, MPS receives
16 credit at the market rate. This would not change
17 under the Staff's proposal.

18 The Staff's proposal would create a double
19 standard between releases to affiliates and
20 non-affiliates which would have two effects. First,
21 it would force UES to obtain its capacity from a
22 source other than MPS so that it can continue to pay
23 no more than the market rate.

24 Second, it will force MPS to find a
25 non-affiliated purchaser for the capacity formerly

1 purchased by UES. MPS will still be credited for
2 whatever capacity is sold to a non-affiliate at the
3 market rate, the same amount it currently receives.

4 The end result in this best-case scenario
5 will be that MPS' customers will receive capacity
6 credit equal to the amount they currently receive, the
7 market rate.

8 There will be the high likelihood, however,
9 that because UES would not be purchasing this
10 capacity, that for at least some of the capacity a
11 non-affiliated purchaser would not be found. Thus, a
12 more likely result would be that MPS' customers will
13 receive lower capacity transfer credit as a result of
14 the Staff recommendations.

15 An additional adjustment issue concerns the
16 pipeline capacity and supply obtained for the eastern
17 district for the Rolla service area. The Staff relies
18 upon the Order obtained in Case GA-94-325, which is
19 the case where MPS was granted a certificate to serve
20 the Rolla area, to assert the position that MPS should
21 bear any transportation costs which in hindsight
22 appear to be unnecessary.

23 MPS on the other hand believes that it
24 should be able to recover in this ACA proceeding all
25 of its prudently incurred commodity costs.

1 It is true that UtiliCorp shareholders bear
2 and accept the risk that their investment in the Rolla
3 service area may not be profitable. However, they
4 should not bear the risk of prudent decisions involved
5 in arranging for reliable gas supplies for human needs
6 customers.

7 MPS' conversion projections at the time of
8 the Rolla certificate case were viewed by the
9 Commission to be reasonable. The pipeline capacity
10 and supply obtained based upon these figures was
11 appropriate, and the evidence shows that these -- let
12 me back up.

13 The evidence shows that these projections
14 were not reached because of construction delays which
15 were beyond MPS' control.

16 MPS' decisions to obtain capacity for this
17 period were based upon customer conversion projections
18 which were reasonable as a result of MPS' expansion
19 experience in other areas of the state.

20 MPS' decisions and preparation for this
21 expansion were thus prudent, and its rate should not
22 be adjusted to remove the costs associated with these
23 decisions.

24 As to the second major area, the
25 documentation issues, MPS is willing to work with the

1 Staff to provide the additional information it
2 desires. However, MPS would ask the Commission to
3 remember the time period being addressed in this case.
4 This is the 1994 through '95 ACA case. The 1996
5 through 1997 ACA period is almost concluded.

6 Thus, to the extent that MPS is asked to
7 develop new information, it would likely first be able
8 to provide this information in the 1997-1998 ACA
9 review.

10 The last area of dispute in this proceeding
11 concerns extensive agency billing requirements and
12 affiliated transactions standards of conduct which the
13 Staff proposes to add to MPS' tariffs.

14 MPS does not believe that this is the
15 appropriate forum for discussion and implementation of
16 such detailed requirements. The Staff has stated that
17 it will eventually recommend that these standards
18 apply to every Missouri local distribution company.

19 Such matters of general regulatory policy
20 should be addressed in a generic proceeding with
21 general applicability where all potentially affected
22 parties can be given appropriate notice rather than
23 moving forward on a piecemeal basis.

24 If this is not the case, if these rules will
25 not apply to all Missouri local distribution

1 companies, MPS has an additional concern. There's no
2 evidence on the record that MPS has abused its
3 affiliate relationships.

4 Imposing the proposed requirements on MPS in
5 this case would place it and its affiliates at a
6 disadvantage in relation to their competitors for no
7 apparent reason.

8 If the Commission believes that there is a
9 general need for affiliated transaction rules, MPS
10 recommends that they be addressed in a proceeding
11 which would provide for a wide range of comments and
12 across-the-board applicability to ensure that this
13 playing field remains level across the state of
14 Missouri.

15 Thank you.

16 ALJ WICKLIFFE: Thank you. Ms. McGowan?

17 MS. MCGOWAN: May it please the Commission?

18 Mr. Cooper correctly stated that the eight
19 issues are divided into the three categories
20 referenced. The first deal with adjustments.

21 First, the Staff recommends that the
22 Commission order Missouri Public Service to reduce its
23 southern and northern system gas costs to
24 appropriately compensate Missouri Public Service's
25 firm, captive, residential and commercial customers

1 for paying the transportation and fixed reservation
2 charges on gas that Missouri Public Service has
3 released to their affiliate, UES. That same gas UES
4 then sold to Missouri Public Service's end user or
5 transportation customers.

6 To understand the reason for this
7 adjustment, you must look at the way companies like
8 Missouri Public Service reserve capacity and pay for
9 transporting gas.

10 First, Missouri Public Service determines
11 what the maximum amount of gas its firm, captive,
12 residential and commercial customers would need in the
13 peak usage day. MPS would then contract with
14 interstate pipeline companies to insure that they have
15 sufficient gas on such a day.

16 Since Missouri Public Service would ideally
17 contract for or reserve another transportation
18 capacity to ship the gas needed to meet its peak-day
19 requirements, it reserved more capacity on interstate
20 transmission pipeline than it would generally need to
21 supply its firm, captive, residential and commercial
22 customers' needs.

23 Even if Missouri Public Service does not use
24 all the transportation capacity it has reserved, it
25 would not -- and it would not generally be expected to

1 do so, as stated before.

2 However, even if it doesn't use this
3 capacity, it must pay a fee to reserve that capacity
4 because ideally the interstate transportation
5 pipelines would have been able to sell that capacity
6 to another customer.

7 If the reserved capacity is not used to
8 transport gas, the price paid to reserve this gas and
9 capacity is ultimately paid by Missouri Public
10 Service's firm transportation residential -- excuse
11 me -- firm residential and commercial customers.

12 The Staff does not oppose this generally
13 because those customers are the ones that that gas is
14 reserved for. But in this instance Missouri Public
15 Service did use the gas that it reserved capacity for.
16 However, it did not use it to serve its captive
17 residential and commercial customers.

18 Instead, it released it off the system to
19 its affiliate, UES, and UES then sold the gas,
20 collecting fees for transportation services to
21 Missouri Public Service's firm transportation
22 customers.

23 Although UES does not -- excuse me.
24 Although UES does make a small payment for the release
25 capacity which ultimately goes to Missouri Public

1 Service's firm captive customers, UES does not
2 compensate those firm customers for the transportation
3 and reservations charges that they paid.

4 Accordingly, UES is using Missouri Public
5 Service's firm transportation and reservation
6 contracts to offer Missouri Public Service's end user
7 customer a bundled service.

8 This service includes gas costs,
9 transportation costs, taxes and local distribution
10 charges, and then UES keeps the profits associated
11 with bypassing the related reservation charges that
12 were again paid by Missouri Public Service's captive
13 customers.

14 Generally, the Staff believes Missouri
15 Public Service's customers should be credited for the
16 transportation and reservation charges that they paid
17 if the gas in issue is sold off system.

18 In this instance, the Staff has even more
19 reason for concern. First the company obtaining and
20 reselling the released gas is an affiliate. As stated
21 before, Missouri Public Service is a division of
22 UtiliCorp United, Inc. UES is wholly owned by
23 UtiliCorp United, Inc.

24 Logically there's concern when the customers
25 of a regulated utility are paying premiums to reserve

1 capacity and the benefits from the payment of these
2 premiums are flowing not to those customers but to an
3 affiliate of the regulated utility, and further the
4 affiliate is not a regulated entity.

5 The level of concern is greatly increased
6 when one realizes that although numerous companies in
7 Missouri offer services similar to those offered by
8 UES in marketing, that the vast majority of UES --
9 excuse me -- of UtiliCorp or Missouri Public Service's
10 gas supplies that are released are released to UES.
11 In fact, off the Williams Pipeline I believe the
12 figure for the ACA period is 94 percent.

13 Accordingly, the Staff believes any profits
14 which UES makes on the transportation charges
15 collected from Missouri Public Service's end user
16 customers should be flowed back to those customers to
17 compensate them for paying the fixed reservation
18 charges necessary to allow UES to make the bundled
19 sales to MPS' end user customers.

20 Second, if the Commission agrees that
21 Missouri Public Service's captive customers did
22 receive an inappropriate credit for these releases and
23 should, therefore, be given the additional money in
24 the 1994-'95 ACA period, the Staff proposes that such
25 release credit should be applied beginning in the

1 current docket for the 1994-1995 ACA period.

2 The Staff's position is based upon the fact
3 that these releases occurred during that period and
4 the releases in issue are before the Commission in
5 this proceeding as well as a determination as to
6 whether those issues are reasonable.

7 Any future ACA proceeding in which such
8 releases occur would have a separate docket
9 established, and in that docket those future release
10 capacity credits should be reviewed.

11 For the Staff's final adjustment, the Staff
12 proposes that Missouri Public Service should not be
13 allowed to recover gas costs associated with its over-
14 estimation of actual customer conversions for its
15 Rolla service area, which is also noted as its eastern
16 district.

17 In Commission Case GA-94-325, the Commission
18 allowed Missouri Public Service to extend into the
19 Rolla area in spite of Staff's projections that the
20 project was not economically feasible.

21 The Staff projections in that case were
22 based in part upon its contention that the customer
23 conversions projected by Missouri Public Service were
24 not reasonable. However, the expansion was authorized
25 with the understanding that Missouri Public Service's

1 shareholders would bear the risk that the project was
2 not feasible.

3 In the Commission's Order approving the
4 Rolla application case, the Commission indicated that
5 Missouri Public Service would bear most of the risk if
6 it underestimated the economic feasibility of the
7 project.

8 Similarly, in Missouri Public Service's
9 Salem application case, Commission Case GA-95-216, the
10 Commission similarly stated that the expansion into
11 that area would be allowed but solely at the risk of
12 the shareholders of Missouri Public Service.

13 The failure to achieve the expected customer
14 conversions in issue is a risk inherent in the
15 application to serve any new service area.
16 Accordingly, the Staff does not believe it's
17 appropriate for Missouri Public Service to attempt to
18 renege on the agreements made in the application case
19 in issue by trying to shift the risk to its Missouri
20 customers.

21 Related to documentation issues, the Staff
22 first proposes that the Commission should order
23 Missouri Public Service in all future ACA dockets to
24 provide the Staff with a variety of information
25 relating to marketing affiliates and pooling versus

1 spot gas.

2 The Staff believes the Commission should
3 order UtiliCorp to provide this type of documentation
4 in future ACA cases because during its audit of
5 Missouri Public Service in this case in this ACA
6 period the Staff had difficulty obtaining UES
7 contracts and pricing data as well as information
8 relating to Missouri Public Service's allocation
9 methodology between its three divisions or districts.

10 The Staff points out that these are basic
11 informational requirements which the Staff would
12 require in order to perform a thorough audit of
13 Missouri Public Service's future ACA filings.

14 Next the Staff recommends that the
15 Commission order Missouri Public Service to document
16 its bidding process for spot market gas with regard to
17 spot supplies related to its 1994-'95 and '95-'96 ACA
18 filings.

19 The Staff believes that proper documentation
20 is essential in determining the lowest spot price and
21 provides evidence for evaluating supplies which are
22 ultimately selected by Missouri Public Service.

23 Proper documentation would include bids
24 solicited from various supplies, the bids received,
25 bids selected and the reasons why each bid was

1 selected. This evidence is especially important
2 considering that many of the companies that UtiliCorp
3 deals with are its affiliates.

4 Without such documentation, the Staff cannot
5 properly evaluate the reasonableness of the prices
6 paid for the spot market gas supplies. Because
7 Missouri Public Service has been unwilling to provide
8 such information in the past, the Staff believes the
9 Commission should order Missouri Public Service to
10 provide this type of information in all future ACA
11 periods.

12 Finally, the Staff believes Missouri Public
13 Service should be required to provide a variety of
14 information related to reliability of its system. The
15 Staff's concern relating to reliability on the MPS
16 system is primarily based on two findings.

17 First, the Staff is concerned about Missouri
18 Public Service's apparent shift toward dependence upon
19 spot market purchases and deliveries to secondary
20 delivery points to meet the demands of its human needs
21 customers in the mid-winter.

22 Second, the Staff is concerned about
23 Missouri Public Service's capacity to redirect or
24 divert a portion of supplies and/or transportation
25 capacity that were originally allocated to serve one

1 customer to another customer or LDC. LDC would be a
2 local distribution company.

3 The documentation in issue is necessary for
4 the Staff to determine whether its concern on these
5 issues are valid. Absent the production of this data,
6 the Staff has the feeling that something's going on.
7 We have absolutely no idea of the interactions between
8 the companies.

9 Finally, in relation to the highly
10 controversial tariff language, the Staff has proposed
11 two additions to UtiliCorp's -- excuse me -- Missouri
12 Public Service's tariff in this proceeding.

13 Under the first tariff issue, the Staff
14 attempts to address concerns related to Missouri
15 Public Service's transportation customers purchasing
16 gas using a marketer as their agent. The Staff
17 believes the Commission should order Missouri Public
18 Service to add the following language to its tariff:

19 In a situation where a marketer is an agent
20 for the end user customer, parentheses transporter,
21 the company may send the agent, parentheses marketer,
22 the bill for the customer's local distribution service
23 when it has received an agency agreement between the
24 customer and a customer's agent specifically
25 requesting such. In all such agency billing

1 situations, the company will additionally send a copy
2 of the detailed bill to its end use customer.

3 The first sentence is proposed by the Staff
4 to ensure that the company has an executed agreement
5 from its customer to send its bill to the marketer.
6 Without such agreement, sending the bill to the
7 marketer would be a violation of Missouri Public
8 Service's current tariff in the Staff's position.

9 The second sentence is proposed to help make
10 sure that the customer is fully aware of the detail
11 and the total amount of the company's monthly charges.
12 Absent this information, the customer will not be
13 assured that the marketer is not reselling
14 transportation service at a profit.

15 Finally, the Staff recommends that the
16 Commission order Missouri Public Service to place in
17 its tariff the infamous standards of conduct for
18 Missouri Public Service set out in the direct
19 testimony of Staff witness Randall R. Hubbs -- excuse
20 me -- Wendell R. Hubbs.

21 The Staff believes these standards will help
22 ensure that all transporting parties and Missouri
23 Public Service are aware of the standards applicable
24 to Missouri Public Service when participating in
25 transactions with its marketing affiliates and the

1 customers of marketing affiliates as well.

2 The standards would also enable the
3 Commission to timely obtain the documentation
4 necessary for the Commission to determine that such
5 transactions have been provided in a prudent manner
6 and on a nondiscriminatory basis.

7 Based upon the statements today and the
8 Staff's position set out in its testimony filed in
9 this proceeding and the Hearing Memorandum, the Staff
10 recommends that the Commission adopt the adjustments
11 proposed by the Staff, order UtiliCorp to produce the
12 documents in issue, and to order UtiliCorp to
13 incorporate the tariff language set out in the Hearing
14 Memorandum and Wendell Hubbs' testimony into their
15 tariffs.

16 Thank you.

17 ALJ WICKLIFFE: Thank you. Mr. Micheel?

18 MR. MICHEEL: May it please the Commission,
19 Judge Wickliffe?

20 My opening statement will be limited to the
21 standard of conduct for transactions between MoPub and
22 marketing affiliates of UtiliCorp, and that's been
23 denoted in the Hearing Memorandum as Issue C2.

24 Public Counsel through the testimony of our
25 witness Russell Trippensee has proposed standards

1 similar to the Staff but different in two important
2 aspects.

3 First of all, Public Counsel's proposed
4 standards of conduct has a section relating to the use
5 of a regulated utility's brand name recognition by a
6 marketing affiliate.

7 Secondly, Public Counsel's proposed
8 standards of conduct has a requirement that MoPub
9 develop a cost allocations manual.

10 Why are these two items important along with
11 all the other items? First of all, the brand name
12 MoPub or MPS is exclusive and has been funded by
13 captive utility ratepayers.

14 Secondly, as we move or transition to
15 competition, Public Counsel feels it behooves us to
16 have a level playing field for all the parties, all of
17 the marketers, all the incumbent utilities, and not
18 allowing a marketing affiliate to trade off of a brand
19 name serves to level that playing field.

20 Secondly, the Cost Allocation Manual is
21 important because it serves as a road map, rules of
22 the road. I think some of the Commissioners are
23 probably familiar with the Cost Allocation Manuals
24 that we have in the telephone industry on how we're
25 going to separate out the costs.

1 This prevents hassling about how the costs
2 are going to be separated up front and allows all the
3 players, the Staff, the Company, Public Counsel and
4 this Commission to know how costs will be allocated
5 for certain functions.

6 To be sure, we may argue about whether or
7 not those functions go into those -- you know, how to
8 functionalize them, but we'll know once we determine
9 what function they are where they go. And that's an
10 up-front road map so everyone, all players know.

11 Now, what are MoPub's problems with these
12 proposed standards of conduct? Well, first of all,
13 they say this should be addressed in a generic
14 proceeding, in a rulemaking.

15 First of all, I'd like to read to the
16 Commission from MoPub's Entry of Appearance in Case
17 No. 00-96-329, which is entitled In the Matter of the
18 Development of Affiliated Transaction Rules for Gas,
19 Electric, Water and Sewer Companies, what MoPub stated
20 on the issue of a rulemaking.

21 MoPub states at paragraph 3, and I quote,
22 MPS does not believe that a rule regarding affiliated
23 transactions is needed, close quote.

24 What does that tell you? That tells me
25 perhaps we should do it on an ad hoc basis because

1 MoPub doesn't believe a rulemaking is appropriate. So
2 here we are today, Commissioners. We have a
3 specifically tailored rule to MoPub.

4 MoPub's seen the rule. They've had the
5 ability to file testimony, tell this Commission what
6 they don't like about the rule, what's unique about
7 them. And let's remember what they're saying in the
8 rulemaking docket, Commissioners. We don't need a
9 rule.

10 Secondly, MoPub says that an affiliated
11 transaction rule will put them at a competitive
12 disadvantage.

13 First of all, I think we're all well aware
14 that MoPub has a certified service territory. They're
15 not seeing any competition right now at their level.
16 The testimony of Mr. Jurek doesn't delineate what kind
17 of competition or competitive disadvantage they're put
18 at. They just raise that flag up there and say, hey,
19 we're at a competitive disadvantage.

20 What competition is Missouri Public Service
21 facing? We haven't unbundled behind the citygate,
22 Commissioners. They're not facing any competition.
23 Perhaps UES, their marketer is facing competition, but
24 these rules are specifically to level that playing
25 field and prevent their affiliated marketer from

1 getting an unfair advantage.

2 That's what we want. That's what Public
3 Counsel and Staff are striving for, a fair and level
4 playing field that protects the captive customer.

5 Third, MoPub argues that there are going to
6 be additional costs. First of all, I know you've all
7 read Mr. Jurek's testimony. He doesn't quantify those
8 costs. He doesn't tell us how much. We have no idea.
9 But I'm here to tell you that an ounce of prevention
10 sure beats a pound of cure.

11 The Company says it can't afford these
12 affiliated transaction rules, but be sure that the
13 captive customer can't afford these either, and that's
14 who we're here to protect.

15 Fourth, the Company says, hey, there's no
16 evidence that we've done any of this evil conduct. So
17 please, don't put the rules in place.

18 First of all, we should not wait until a
19 problem arises. We should take some action now to put
20 the rules in place so we know we don't have a problem.
21 I'm constantly hearing local distribution companies
22 say they don't want to know, they don't want to do
23 anything until they get the ground rules up front.

24 A recent example is the use of the futures
25 market to limit gas costs. I heard LDC after LDC say

1 on the record "We can't do that because we don't know
2 the ground rules." Well, let's put the ground rules
3 in here. Let's prevent something bad from happening
4 before it happens. Let's be proactive about it.

5 Now, those are Missouri Public Service's
6 problems with the proposal regarding the standards of
7 conduct. They're not well-defined, they're not
8 delineated, and they're essentially asking this
9 Commission please do nothing and put it off into a
10 rulemaking. The time is now. MoPub is here. You
11 have the ability to do that.

12 In weighing these claims against the need
13 for the standards of conduct as articulated by Public
14 Counsel witnesses Trippensee and Staff witness Hubbs,
15 I hope that the Commission will keep in mind the
16 admonition of the Court in State ex rel Crown Coach
17 vs. Public Service Commission, 179 SW2d 123, 1944.

18 The Court stated: In the legislation
19 regulating public utilities, the dominant thought and
20 purpose is the protection of the public, the
21 protection given the utility being merely incidental.
22 In fact, the court stated, the guiding star of the
23 Public Service Commission law and the dominating
24 purpose of utility regulation are the promotion and
25 conservation of the interests and convenience of the

1 public.

2 Commissioners, these standards of conduct do
3 that. The minimal cost increases that may or may not
4 occur to UES should come and be subservient to this
5 purpose. These are standards of conduct to protect
6 the public, and I urge that you adopt them.

7 ALJ WICKLIFFE: Thank you. Off the record.

8 (The noon recess was taken.)

9 ALJ WICKLIFFE: On the record.

10 At this time we'll recognize Ms. McGowan
11 from Staff.

12 MS. MCGOWAN: Yes. The Staff would like to
13 move that the hearing memorandum marked Exhibit 1 be
14 admitted into the record.

15 ALJ WICKLIFFE: Any objections?

16 Hearing none, Exhibit 1 is received into the
17 record.

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

19 ALJ WICKLIFFE: Mr. Micheel.

20 MR. MICHEEL: Public Counsel will move that
21 its late-filed hearing memorandum, Exhibit 2, be
22 admitted in the record.

23 ALJ WICKLIFFE: Objection?

24 Hearing none, Exhibit 2 is received.

25 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

1 ALJ WICKLIFFE: Mr. Cooper, would you like
2 to call your first witness?

3 MR. COOPER: Yes, your Honor. MPS would
4 call Mr. Daniel Warnock.

5 ALJ WICKLIFFE: Off the record.

6 (Discussion off the record.)

7 (Witness sworn.)

8 ALJ WICKLIFFE: Thank you.

9 DANIEL W. WARNOCK, testified as follows:

10 DIRECT EXAMINATION BY MR. COOPER:

11 Q. Would you please state your full name?

12 ALJ WICKLIFFE: Wait a minute.

13 (Discussion off the record.)

14 ALJ WICKLIFFE: On the record.

15 Proceed, Mr. Cooper.

16 BY MR. COOPER:

17 Q. Would you please state your full name?

18 A. My full name is Daniel W. Warnock.

19 Q. And by whom are you employed and in what
20 capacity?

21 A. I am employed by Utilicorp United, Inc., as
22 the Vice-President of Gas Supply.

23 Q. Do you have before you what has been marked
24 for identification as Exhibit 3?

25 A. Yes.

1 Q. Is Exhibit 3 the prefiled rebuttal testimony
2 that you prepared for the purposes of this case?

3 A. Yes, it is.

4 Q. Are there any changes or corrections which
5 you'd like to make to your testimony at this time?

6 A. No.

7 Q. If I were to ask you today the same
8 questions that are contained in Exhibit 3, would your
9 answers be the same as those reflected therein?

10 A. Yes.

11 Q. Would those answers be true and correct to
12 the best of your knowledge and belief?

13 A. Yes.

14 MR. COOPER: Your Honor, I would offer
15 Exhibit 3 into evidence and tender Mr. Warnock for
16 cross-examination.

17 ALJ WICKLIFFE: Objection to Exhibit 3?

18 Hearing none, Exhibit 3 is received into
19 evidence.

20 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

21 ALJ WICKLIFFE: Mr. Micheel.

22 MR. MICHEEL: I have no questions for this
23 witness, your Honor.

24 ALJ WICKLIFFE: Ms. McGowan.

25 MS. MCGOWAN: Just one moment.

1 Just a few.

2 CROSS-EXAMINATION BY MS. MCGOWAN:

3 Q. I'd like you to look at your rebuttal
4 testimony now marked Exhibit 3. Do you have that
5 before you?

6 A. Yes, I do.

7 Q. On page 5, lines 20 and 21, you indicate
8 that Panhandle is a constrained pipeline; is that
9 correct?

10 A. That's correct.

11 Q. Okay. Did you perform a study in reaching
12 the conclusion that Panhandle was a constrained
13 pipeline?

14 A. I didn't need to perform a study. We have
15 asked them several times for additional firm capacity
16 and recently have done that, and the answer has been
17 that it's not available except on when they're
18 affiliate pipelines and doing a backhaul -- the
19 backhaul on a pipeline. So that's an indication -- a
20 good indication that they don't have any capacity
21 that's constrained.

22 Q. Okay. Let's see. At page 5 again of your
23 rebuttal testimony, lines 21 and 22, you indicate that
24 Panhandle capacity is valued more highly by acquired
25 shippers and there is more competition to obtain it;

1 is that correct?

2 A. Yes.

3 Q. If you in any way consider this to be highly
4 confidential; I don't believe so.

5 Are you aware that during the 1995 -- or
6 actually is it correct that during the 1995-'96 ACA
7 period that UES acquired the majority of Missouri
8 Public Service's es-- excess capacity on Panhandle?

9 A. I don't know that for a fact. I assume
10 that's right.

11 Q. Okay. So would you agree that UES not only
12 is obtaining the majority of the excess capacity on
13 Williams, but UES is also as of the 1995-'96 ACA
14 period obtaining the majority of the excess capacity
15 on the constrained Panhandle pipeline as well?

16 A. UES is the ready market for MPS's customers
17 for that capacity.

18 Q. So is that yes?

19 A. Yes.

20 MS. MCGOWAN: Okay. Thank you.

21 No further questions.

22 ALJ WICKLIFFE: Mr. Warnock, I have -- I'm
23 sorry.

24 Chairman, do you have questions for
25 Mr. Warnock?

1 CHAIRMAN ZOBRIST: Not right now.

2 ALJ WICKLIFFE: Commissioner Lumpe.

3 CHAIRMAN ZOBRIST: This is Mr. Warnock?

4 ALJ WICKLIFFE: Yes, Mr. Warnock.

5 QUESTIONS BY ALJ WICKLIFFE:

6 Q. I have some questions for my own education.

7 You stated on page 3 that nonaffiliated
8 marketers provide rebundled sales services on MPS's
9 system, and by that you mean that they purchase
10 released capacity, rebundle it, with transportation,
11 et cetera, and sell it to an end user of their own; is
12 that correct?

13 A. Right.

14 Let me give you a little fuller explanation,
15 because, again, in an educational vein, I want to make
16 sure that you understand it.

17 What the pipelines were forced to do in late
18 '93, early 1994 was unbundle all of their services.
19 That would be storage, transportation, gathering,
20 et cetera.

21 And so when they were forced to unbundle
22 that, you still had customers such as MPS's end-use
23 customers. That they didn't want each of those
24 individuals. They just want give me my gas supply and
25 tell me what my price is.

1 And so marketers will turn around and take
2 those unbundled services, rebundle them and provide
3 the services that the customer wants.

4 Q. Am I understanding that marketers usually
5 service the larger customers, industrial customers or
6 big commercial customers; is that right?

7 A. Yes, because at this point in time that's
8 the only thing, at least in MPS's service territory,
9 that they can get to. Across the nation you're seeing
10 it going to mass markets though.

11 Q. So what a marketer would do is basically
12 rebundle the services, sell it back to the industrial
13 user in the same way that a residential user gets a
14 bundled set of services?

15 A. That is correct.

16 CHAIRMAN ZOBRIST: Let me just ask a couple
17 of questions.

18 QUESTIONS BY CHAIRMAN ZOBRIST:

19 Q. On page 3 you testified that UES provides
20 the same or similar services to customers served by
21 nonaffiliated LDCs in Missouri.

22 Can I ask you in open session who those
23 other LDCs are, or is that a highly confidential
24 matter?

25 A. Let me read that sentence.

1 In Missouri there, for example, UES will
2 offer services to Union Electric, so it would be other
3 LDCs. That's the one that comes to mind. I think
4 there is others, but I'm not sure what they are.

5 Q. All right. On page 5 you talked about MPS
6 releasing capacity subject to recall on both the
7 Panhandle and Williams' systems and indicated that
8 capacity is often recalled during cold weather.

9 Did you do so during the winter of '97-'97,
10 this past winter?

11 A. Did we recall capacity?

12 Q. Yes.

13 A. I am not sure on that answer.

14 Q. Well, the reason I ask that is that looking
15 at the -- well, MoPub did not choose to come in to
16 seek variations in its PGA rate this winter, and I'm
17 wondering if the reason for that was the buy-back
18 of -- the recall of capacity, if that had any effect
19 on your prices during the winter.

20 A. Again, I just don't know if we did recall.
21 I will say this: That's the way we sell it is to
22 recall it during those cold periods.

23 Q. Would any of the other witnesses from the
24 company know that?

25 A. Maybe Mr. Ono for the Panhandle side of the

1 business.

2 CHAIRMAN ZOBRIST: Okay. Mr. Ono seems to
3 be nodding, So I'll hold that question for him. And I
4 appreciate that. I think that that's important for
5 the Commission to know.

6 BY CHAIRMAN ZOBRIST:

7 Q. MPS contends in objecting to Staff's
8 proposal, which has been endorsed by Public Counsel,
9 that it would have to sell -- or that MPS could expect
10 to release capacity for a rate above the market base
11 price if Staff's recommendation were accepted; is that
12 correct?

13 A. If we were to do it to UE-- if we were to
14 release it to UES, based on Staff recommendation, we'd
15 have to do it above a market price.

16 Q. In other words, if you were to have an
17 affiliated transaction between Missouri Public Service
18 and UES, you say it would be above the market-base
19 price?

20 A. That's what they're recommending, yes.

21 Q. That's because it would have to be in
22 accordance with the full FERC tariff; is that right?

23 A. That's -- that's what their recommendation
24 would indicate.

25 Would it -- Commissioner Zobrist, would it

1 be of value for me to go through the capacity release
2 process that we go through? Because I'm very
3 concerned that terms like "market" and that are being
4 thrown around and you aren't going to get the full
5 picture.

6 Q. Well, yeah, that would help because that's
7 what I'm asking about, market, because to me market is
8 the varying price that you get off the bulletin board,
9 whatever.

10 A. Exactly.

11 Q. When I see something that tells me this is
12 going to be above market price, I think the
13 Commissioners need to understand, what is that going
14 to be? Is that a hypothetical figure? Is it the full
15 tariffed rate under the interstate? What is it?

16 A. A very good question.

17 If you don't mind, I'd like to go use the
18 board here, if I could.

19 Q. That would be fine.

20 A. I think I can speak loud enough. May I
21 acquisition those pens? Thank you.

22 I think this is a very critical discussion,
23 so I'm glad I have the opportunity to put it together.
24 But -- and I may have to digress just a minute. I'll
25 try not to make this a very long presentation, but I

1 think it's worth discussing.

2 CHAIRMAN ZOBRIST: Let me just say,
3 Mr. Trippensee, if you want to come up and take a look
4 at this, or can you see where you're at?

5 MR. TRIPPENSEE: That's fine.

6 CHAIRMAN ZOBRIST: Or any of the other
7 witnesses. I don't mean to just isolate you.

8 THE WITNESS: Before I get to the actual
9 capacity release itself, let me talk about how we
10 determine the firm entitlement, because that has some
11 play into this discussion.

12 Every year, really about this time of the
13 year, Missouri Public Service goes through a design-
14 day analysis. And the design-day analysis comes out
15 and says, Based on a certain philosophy this is the
16 amount of firm entitlement that MPS has to purchase
17 from Panhandle Eastern and from Williams to cover that
18 cold day for its northern, eastern, southern
19 districts. And so generally in most cases, not all,
20 but generally most cases we're going to have to pay
21 full rates.

22 Now, any rates that I use up here are
23 definitely just made up, so you won't be able to find
24 them in a tariff, although we could do this using
25 tariff rates.

1 Let's take, for example, the Williams'
2 systems. And when we decide that we have to buy a
3 certain amount of entitlement to cover our human-needs
4 customers on a cold day, we'll go out and say, let's
5 say we have to buy 50,000 MCF for the winter, we go to
6 Williams and buy that. Now, some of that is on
7 term -- most of it, in fact, is on a term contract.

8 And so when we buy that, we have to pay
9 generally full rates. So in our example, we'll just
10 say that's \$15.

11 That's \$15. And assuming that there's no
12 question from the Staff in the various hearings that
13 we've got, that that 50,000 is the right number. And,
14 again, these are all made-up numbers.

15 For Williams that will be covered by the
16 general system or the human-needs residential/
17 commercial firm customers. That's how rate design
18 works.

19 Okay. Of course, as was mentioned earlier
20 in an open statement, this 50,000 is based on a
21 temperature that doesn't happen, frankly, all that
22 often.

23 You know, generally if you look at a
24 temperature design here -- and I'll change colors on
25 you just to put it off to the side -- what you're

1 seeing is, this is your temperature. So here maybe
2 it's 50 degrees out, here's it's 20 degrees out.

3 When you get out to the top, it's something
4 below zero. Well, most of you know in this particular
5 are you don't have that very often. Maybe you only
6 have it two or three days. So maybe this level is
7 only two or three days and maybe down here it's only
8 ten or fifteen days. So many days during the winter
9 you're not going to need that capacity.

10 And so as we do studies on that, we go ahead
11 and release that capacity on all of our pipelines,
12 Panhandle and Williams. We release it always
13 recallable. Because we have to know that on certain
14 days we're going to have to call it back from whoever
15 we sell that to.

16 Okay. How do we determine what to release?

17 Well, first of all, we base it on normal
18 weather conditions. So when we go into a month, we
19 say, based on normal weather conditions, I'm not going
20 to need 50,000 all of the time. I only maybe need to
21 be 40,000. So I go ahead and I release 10,000.

22 And how do I determine the price that I
23 should get for the 10,000 that I release?

24 Well, what I do is I go out to the market.
25 And the market is other LDCs, other marketers out

1 there. And so I have a staff that goes out and says,
2 What do you think the value of this capacity is? And
3 somebody might say, Well, I think the value of it, and
4 they usually give it on a volumetric basis, rather
5 than this is a demand charge a monthly demand charge
6 is \$15, they generally give it on a volume basis,
7 Volumetric basis.

8 So the price they give me, they'll say, We
9 think it's only worth, let's say, 12 cents. So let's
10 put that bogey up there as 12 cents.

11 Now, I'll be honest --

12 BY CHAIRMAN ZOBRIST:

13 Q. 12 cents per --

14 A. Per MCF. Per MCF.

15 Whereas this rate -- just so we clear this
16 up -- this rate is \$15 per MCF per month. Now, to
17 make these apple to apples let's convert it to --
18 let's convert the \$15 to a volumetric charge.

19 So if you say generally there's 30 days in
20 a month, let's divide this by 30, and I think that
21 gives us 50 cents, if my numbers are right there.

22 Okay. So full-rate basis, my residential
23 and commercial firm customers will pay 50 cents, are
24 paying 50 cents for that, assuming we've been showing
25 that it's a prudent purchase.

1 But for whatever reason it's only worth
2 12 cents on the market based on calls to the various
3 LDCs, and secondly, based on reviewing the electronic
4 bulletin boards on Williams' and Panhandles'.

5 Now, will everybody sell at 12 cents? No,
6 probably not. Some will sell it at, you know, maybe
7 10 cents.

8 That's not going to show up for some in the
9 back.

10 Some will sell, say, at 14 cents. So
11 there's going to be numbers in there that will vary.
12 There's never one bogey number.

13 And so -- because all I have is what I
14 call -- all I have is what I see on the electronic
15 bulletin board, I have given my people that release
16 this capacity the authority to say, Put it in the
17 range there, make sure it's in a range, in that area
18 there, based on as you call.

19 If most people are saying it's roughly
20 12 cents, then make it 12 cents, but make sure you get
21 market value. And when I say market value -- and I
22 hope when others say market value -- that's what I'm
23 including. This to me is the cost of that. This to
24 me is the market value.

25 Q. You need to be specific for the record.

1 A. Okay. The cost is the rate that my
2 residential and commercial firm customers pay to the
3 pipeline based on the negotiations.

4 Q. 50 cents?

5 A. The 50 cents is. The 50 cents is. And that
6 that's usually based on the tariff rate, the pipeline
7 charges for firm capacity.

8 The 10 to 14 cents -- and then I just use a
9 point range of 12 cents -- is the market value. In
10 other words, it's what a willing arm's length party is
11 willing to sell and/or buy that capacity for on the
12 even market, on the open cry market, which is what the
13 secondary market.

14 It is -- if I try and push this on somebody
15 and say, Well, this is -- Utilicorp is going to sell
16 it for 50 cents, Sorry, Charlie, but it's 10 to
17 14 cents. 12 cents is what the market is giving. So
18 why should I pay you 50 cents when the market is
19 giving 10 to 14 cents?

20 And so that's what we're doing on a monthly
21 and sometimes daily basis, always on recallable.

22 So for clarity purpose, I want to make sure
23 we understand, market is what arm's length parties are
24 willing to pay for that capacity. Not what UES is
25 willing to pay us for that capacity. What other

1 nonaffiliated transactions -- or transactors are
2 willing to pay for that capacity.

3 Q. What I would like you to illustrate using
4 these figures, if that's appropriate, is what are you
5 doing now and what do you interpret Staff's
6 recommendation calling upon you to do?

7 A. Very good.

8 QUESTIONS BY ALJ WICKLIFFE:

9 Q. Before you do that, one more point for
10 clarification. The 50 cents is what the customer is
11 paying for a firm supply?

12 A. Correct.

13 Q. The 12 cents is market price for capacity
14 release, which is not a different product but it has a
15 different value because it's not firm --

16 A. Exactly the point.

17 Q. And availability is always up in the air?

18 A. Yeah.

19 Now, if I -- let me say this: Ours is
20 always done recallable, because I can't be in a
21 situation where I can't have this one -- the first
22 call on is my customer. So ours is always done
23 recallable.

24 Q. As long as we're on that point --

25 A. Okay.

1 Q. -- there are a lot of other people releasing
2 capacity out there too.

3 A. Yes.

4 Q. Is most of that sold subject to recall or is
5 a lot of that just sold outright?

6 A. The vast majority is sold subject to recall.

7 Q. Okay. So the price varies also depending on
8 whether it's subject to recall or not?

9 A. If it is not subject to recall, it will be a
10 higher price than what I'm choosing here, because it's
11 a greater value. That's -- that's the issue. It's a
12 greater value.

13 THE WITNESS: Okay. Now, I think you had a
14 question, Commissioner.

15 QUESTIONS BY CHAIRMAN ZOBRIST:

16 Q. What I want you to illustrate for me using
17 these figures, if it's appropriate, what UES is doing
18 right now and what it's paying back to MoPub and what
19 MoPub believes it is going to have to do if Staff's
20 recommendation is accepted by the Commission.

21 A. Okay. As I understand the proposal, what we
22 do now is we take this 12 cents that we recover out of
23 this 50 from capacity release and we credit that total
24 amount back to the firm residential and commercial
25 customers.

1 As I understand the Commission's -- I'm
2 sorry -- the Staff's proposal, what they would propose
3 is that not only do we credit the 12 cents, but we
4 also credit the 38 cents difference. And it might
5 even be that it's whatever UES is making above this
6 12 cents, credit that back to the firm residential and
7 commercial customers.

8 Again, as -- and again, I'm not real clear.
9 As I recall, this might be just -- let's say -- let's
10 say UES makes 40 cents here. They don't get the full
11 50 cents. And then what Staff is saying is, take that
12 difference there and give that back to the firm
13 residential and commercial customers.

14 Q. The difference between the 40 cents and the
15 12?

16 A. Yeah, right. And I need to look at their
17 testimony. Because as I understand it, that would be
18 what they would be talking about.

19 Q. Okay. Okay.

20 A. And our -- just to carry it out a little bit
21 further, our concern with that is, is if that is
22 what -- we don't have to do this with a nonaffiliate.
23 If this was a nonaffiliate, all I have to give back is
24 12 cents, as I understand their proposal.

25 If this is UES, what you can clearly see is

1 going to happen is UES is going to say, I'm not going
2 to use your capacity anymore, because I'm not paying
3 40 cents. I'm going to go find somebody that is
4 nonaffiliated and I'm going to pay 12 cents.

5 So what it does is it shuts down for
6 Missouri Public Service's customers a ready market.
7 In longer term I believe that's detrimental to the
8 customers.

9 Any other questions on this? I've kind of
10 gone through mine.

11 Q. Why in your view is it detrimental to the
12 customer?

13 A. Okay. Because right now I have a ready
14 market in UES. They're saying, as long as you will
15 give us market-based rate capacity -- in our example
16 12 cents -- I'm going to let you sell capacity to me.

17 Anytime you want to charge me something --
18 let's say for whatever reason I said, Well, I've got
19 to do 40 cents now, they're going to say, I'm not
20 going to buy it from you; I'm going to buy it from
21 somebody else. So then I've got all of this capacity.

22 Now, I may be able to sell it to a
23 nonaffiliated supplier. But, for example, on Williams
24 Pipeline, where it's not very constrained, I may not
25 be able to sell it. I mean, we don't always sell all

1 of our capacity, because there's a lot of capacity
2 compared to the desire for that capacity. So we're
3 not always able to sell that.

4 Whereas now I have a ready entity that's
5 willing to pick that back up and take it from us as
6 long as we're within this market range. So if we lose
7 that market, there is a potential that we wouldn't be
8 able to sell this at 12 cents. Maybe we wouldn't be
9 able to sell it at all, because other nonaffiliated
10 parties, Enron, Western, Astra -- they're the same
11 company -- Vesta (phonetic sps.), all of those
12 companies, they may go someplace else. Maybe somebody
13 else they've kind of done a prearranged deal with
14 already.

15 Q. Well, why wouldn't they have an incentive to
16 take MPS as a customer?

17 A. You mean the nonaffiliated?

18 Q. Right.

19 A. They would. I'm just saying we wouldn't be
20 their first choice; whereas, UES we are, as long as
21 we're at market. We have a ready market.

22 Vesta has no reason to get it from me versus
23 Western Resources or MGE or anybody like that. They
24 don't have any reason to get it -- get it from me
25 versus anybody else.

1 So maybe somebody else for whatever reason
2 says, Well, I'll give it to you at 10 cents. I say,
3 Well, I think the market is 12 cents and that's what
4 I'm going to release it for. So whoever was willing
5 to go at 10 cents, that's who they'll go to, the
6 cheapest person that will give it to them at that
7 price.

8 Q. Well, does UES right now have a contract
9 with MoPub to sell all of its excess capacity?

10 A. No, sir, they don't. They are not obligated
11 to me in any way to buy my capacity. They do it
12 because it's an ease of transaction. It's there.
13 They don't have to pick up the phone and call around
14 to other entities. It's there. As long as we're
15 willing to do it market, they can meet the needs of
16 their customers.

17 Q. What you're saying is, is that MPS does it
18 because it is an affiliate transaction, because you're
19 in close proximity, you know, to each other, it's
20 easier for you to carry out the contract?

21 A. They'll send us their needs, and say, I need
22 20,000 a day. Just like any other nonaffiliate would.
23 And we say, Well, it's available, we can do it. If
24 you're willing to take it at market, we'll give it to
25 you.

1 It is an ease question. There's no
2 question. I mean, if this -- if the affiliate will go
3 along and we have to follow this, there won't be any
4 business between UES and MPS, because we're out of
5 market. I can guarantee that to happen.

6 Q. Well, so the public understands and believes
7 that it is not paying a premium for this affiliate
8 transaction, isn't that the reason why we need to have
9 some types of standards, so that the public doing
10 business with any of Utilicorp's companies, but
11 particularly a regulated entity like MPS, understands
12 that it's not being subject to price manipulation?

13 A. That there is some -- we're doing something
14 that we wouldn't be willing to do to somebody else.
15 Is that your question?

16 Q. Right. So that --

17 A. Right.

18 Q. -- that they can be assured that there are a
19 set of standards out there --

20 A. Right.

21 Q. -- that Missouri Public Service is going to
22 adhere.

23 So if anybody in the Kansas City Star or
24 somebody complains about, Well, you guys are just
25 doing an intracorporate deal to benefit your

1 shareholders, you can say, No. We follow those
2 principles. We have produced these documents to the
3 Staff of the Missouri Public Service Commission, and
4 this was in the best interest, not just of our
5 shareholders but of the ratepayers.

6 Q. But my -- that's absolutely correct,
7 Commissioner Zobrist, absolutely correct.

8 What I am failing to make the connection
9 with the Commission Staff on their position is, I
10 think we have presented this information. There is
11 EBBs out there. There is documentation that says this
12 is what the market rate went for.

13 So they can pick up that issue that we're
14 not giving an eight-cent deal down here and giving our
15 affiliate and we wouldn't do that with anybody else.
16 That's not our policy. And I think we've presented
17 that. Maybe we haven't, but I think we have, that
18 says, That is, quote, market rate. So we're not
19 giving our affiliate a sweetheart deal.

20 CHAIRMAN ZOBRIST: Thank you.

21 THE WITNESS: You're welcome.

22 ALJ WICKLIFFE: Off the record.

23 (Discussion off the record.)

24 ALJ WICKLIFFE: On the record.

25 I have a couple of questions for you on your

1 diagram.

2 CHAIRMAN ZOBRIST: Could we have the diagram
3 marked for the record, please?

4 ALJ WICKLIFFE: Yes.

5 Off the record.

6 (Discussion off the record.)

7 ALJ WICKLIFFE: Back on the record.

8 Commissioner Lumpe, do you have questions?

9 COMMISSIONER LUMPE: Just one question.

10 QUESTIONS BY COMMISSIONER LUMPE:

11 Q. On the 50,000, is that considered prudent
12 that you set that amount as though every day were a
13 peak day so that you know you have this excess
14 capacity?

15 A. Commissioner Lumpe, if we -- the pipeline
16 has set up how they are going to allow a company to
17 buy from them.

18 And generally what they'll do is make you
19 select an amount and then take it for at least a year.
20 Sometimes they'll let you do less, but generally it's
21 at least a year, and many times it's five to ten
22 years.

23 And so we don't know when that day is going
24 to come, these two or three days. We don't know when
25 it's going to come that we're going to need that

1 50,000, but we do know it's going to come at some
2 period of time.

3 And so we have -- basically we've done this
4 design-day study every year, and as far as I know, the
5 Commission -- the historical precedent has been to
6 allow the local distribution company to buy that even
7 though they know that they won't be using that very
8 often during the time.

9 So that's something -- every time we go
10 through these ACA proceedings, that's an issue at
11 hand. As far as I know, at this point in time there's
12 been no question about the prudence of that amount.

13 COMMISSIONER LUMPE: Thank you.

14 QUESTIONS BY ALJ WICKLIFFE:

15 Q. When MPS decides to price its capacity
16 release capacity, how many inputs do you get? You
17 said you call LDCs and other interested parties.

18 A. Oh, I don't know for sure, but I'd say --
19 I'll say five to ten, maybe more. But I'd say roughly
20 five to ten is the number. And some people call and
21 say I don't have any to give and they won't give you a
22 quote.

23 Q. So essentially you're finding out what other
24 people are charging today --

25 A. Right.

1 Q. -- for capacity that they're releasing
2 today?
3 A. That's correct.
4 Q. Or yesterday?
5 A. Or for a month. Or for a month.
6 And is it recallable or is it nonrecallable?
7 Q. Okay. You made a statement in your
8 testimony on page 4, at line 12, MPS would likely be
9 unwilling to transfer capacity to UES if it were
10 required to reflect higher-than-market-established
11 credit.
12 Would that be true if UES were willing to
13 pay higher-than-market prices?
14 A. No, it would not be true.
15 Q. You said that UES would not be willing to
16 buy the capacity release at higher-than-market prices,
17 for instance, at 40 cents.
18 Would that also be true of a nonaffiliated
19 marketer; they would also not be willing to buy at
20 40 cents?
21 A. That's a general statement. But I'd answer
22 this way: The quick answer is no, and the reason that
23 would be is why would they pay 40 cents when they can
24 get it for 12?
25 Q. Okay. Now, I would like you to draw another

1 picture.

2 A. Okay.

3 Q. Okay?

4 I want to see a picture with Panhandle on
5 it, MPS, UES and where the agreements are, where the
6 money flows, how this transaction of capacity release
7 takes place, who calls whom and says we have capacity
8 or does UES call you and say we need capacity. How
9 does it happen?

10 A. Okay. I will say, I'm not at all -- because
11 I'm not an employee of UES, I'm not in all of the
12 transactions, but I'll give you a general feeling of
13 what I think happens here.

14 Q. I understand that. You can rip that off.
15 It's a full pad.

16 A. Okay. Let's draw the proverbial pipeline
17 here.

18 Let's say this is an end-use customer. I'll
19 just say a factory of some type, factory end-use
20 customer.

21 Forgive my writing. I'll clean it up.

22 Distribution system; i.e., MPS's
23 distribution system, pipeline and your example, PEPL.

24 Okay.

25 CHAIRMAN ZOBRIST: Is that the Kansas City

1 Gate, where that second --

2 THE WITNESS: Yes, City Gate here.

3 CHAIRMAN ZOBRIST: Why don't you make that
4 red or something.

5 THE WITNESS: Right. MPS City Gate.

6 And then just to finish the -- I'll quit
7 using yellow, because that's probably hard to see.
8 We'll just say this is what we call into the pipe.
9 And generally what happens is back behind this area --
10 I'll draw it just educationalwise -- there's all of
11 these wells down here that has a gathering system.
12 Those wells connect and come into that major pipe, and
13 we call that into the pipe. That's how we buy a lot
14 of our supplies is into the pipe.

15 Okay. So the capacity release -- well, let
16 me go through the process. End-use customers has been
17 getting sales gas for a long time, been happy about
18 that, but all of a sudden somebody comes and says, I
19 think I can beat your price. I think I can get you a
20 better deal. Your paying MPS \$2 and -- well, probably
21 more than that -- \$4.50 cents for your sales gas. I
22 think I can do it better for you.

23 And so the end-use customer says, Oh, great.
24 Okay. Quote me a price. And so he -- the UES, or
25 nonaffiliated marketer, they all play the same way,

1 they say, Okay. Rather than \$4.50, I can get it to
2 you for four bucks.

3 Well, what goes into that \$4? Well, what
4 goes into it is the cost of gas, because they have to
5 go out and buy gas, very similar to what MPS does on
6 the regulated side. They buy gas. And then they
7 decide, Well -- then they decide how much can I get
8 for released capacity here? And then they have to add
9 on the distribution charge, which I believe -- I think
10 the rates are the same between sales and transports.
11 I'm not sure. We have eight different tariffs.

12 But I think that's the case, that it's the
13 same whether they're transport or whether they're
14 sales, they're going to pay this distribution charge
15 to get from the City Gate to the factory.

16 So the two things that are in play to beat
17 my regulated sales rate that's approved by the
18 Commission is to say, I get a better gas deal and/or I
19 better transportation.

20 Okay?

21 And so what they do is they find out, they
22 go out and buy gas, they go about and they get
23 capacity release from us or some other party. And
24 they add that into the equation. They add our
25 distribution charge on. They add whatever markup

1 they're going to put in there, and that's the price
2 they give to the customer.

3 Now, certainly we've got to believe in most
4 cases this customer is better off under this
5 transaction; otherwise, I don't know why they'd do it.
6 So you have to believe that they're getting an overall
7 better rate than what MPS is serving under their sales
8 rate.

9 Now, does that get to your question or what
10 more can I --

11 BY ALJ WICKLIFFE:

12 Q. That was part of my question.

13 A. Okay.

14 Q. Okay. Now, on any given day, or for a
15 particular month, who is actually likely to initiate
16 the capacity release transaction?

17 A. Okay.

18 Q. The person -- well, it will go both ways.

19 The person that needs the capacity will call
20 us, UES, Enron, whoever, and say, I need 10 million a
21 day for the month of August. How much will you charge
22 me, and is it recallable or is it nonrecallable?

23 And by the way, there's one other factor:
24 Are you going to do it on a demand-charge basis or a
25 volumetric basis?

1 It can either be done on a demand charge,
2 where they get charged whether they take it or not, or
3 a volumetric, which is whenever they do take it,
4 they'll get charged. Otherwise they don't. So it
5 will go both ways.

6 Or it will happen another way.

7 My folks will look at that 50,000 MCF number
8 and they'll say, Today it's 50 degrees out. I don't
9 need 50,000. I need 25,000 to serve my firm
10 customers' needs, go out and release 25,000.

11 Okay. So they can do that in a couple of
12 ways. They can put it on the electronic bulletin -
13 board, or -- that's one method -- or they can go out
14 and call. They can do both. They can go out and call
15 Enron, UES, whoever and say, I have 25,000 today. I'm
16 willing to release it at what appears to be about
17 12 cents, which is what our price discovery says is
18 market right now. Do you want it?

19 So it can go either way.

20 And so when you say, generally, it's hard
21 for me to say generally it's the marketer that is
22 doing it. Because obviously we have an obligation to
23 get rid of it if we can, because that's our obligation
24 to you as a Commission. So it will go both ways.

25 Q. Okay. You said sometimes you put it on the

1 electronic bulletin board; you don't always. Is that
2 correct?

3 A. That's correct.

4 Q. Sometimes you just call somebody that you
5 know needs it?

6 A. Well, or we may just call and say, We've got
7 25-- we don't know if they need it or not. But we'll
8 say, We have 25,000 a day. Are you interested in it?

9 Q. Okay. Is there anyone on your list besides
10 UES to call first?

11 A. Ab--oh, to call first?

12 Q. Do you call UES first?

13 A. On a day-to-day I can't answer that we call
14 UES. Is UES a ready market? Yes.

15 So they would be a likely one. But do we
16 call others? Yes. Sometimes UES doesn't need it, so
17 we go someplace else.

18 Q. All right. I need you to explain to me how
19 this transportation charge works. In someplace in the
20 testimony it talks payments from UES to Panhandle or
21 Williams, but then there seems to be -- what Staff
22 seems to want is for MPS to give this money, this
23 transportation charge, back to the captive end
24 customer.

25 My question is, who is actually getting this

1 transportation fee, what is the pipeline -- how is the
2 pipeline involved in this transaction?

3 A. Okay. Two ways to do it.

4 If you release it out of the EBB, the
5 electronic bulletin board, of the pipeline, what will
6 automatically happen is the pipeline will issue a new
7 contract under that capacity release. They will
8 credit me for the value that I got for that 12 cents
9 in my example. They will require a payment for
10 whoever takes over that contract, so the marketer will
11 have to pay the pipeline directly.

12 Okay?

13 Q. Like is it subleasing an apartment?

14 A. Exactly. Yeah, only the thing is, as I
15 understand it, in subleasing an apartment they
16 probably still pay the lessee, the first lessor, who
17 then will take care of the guy that owns it; whereas,
18 in this case -- I don't know that for sure. Maybe I'm
19 wrong about that.

20 But in this case when you release it, the
21 releasing party steps out of that transaction as long
22 as it's in the release stage and the pipeline steps
23 into their shoes for the collection purposes.

24 Q. Okay.

25 A. If it's a transfer to -- without -- go

1 ahead.

2 Q. Before you go past that, but the price is
3 set as between the releasing party and the purchasing
4 party?

5 A. Correct.

6 Q. Okay. Go ahead.

7 A. Correct.

8 Another method is where we will transfer it
9 to UES without the pipeline. And basically what will
10 happen is they'll run their capacity on that
11 transportation -- on our transportation contract. We
12 will bill them for the 12 cents; they will pay us; and
13 we will pass that on as a credit to our firm
14 residential and commercial customers.

15 Q. So that's more like a resale --

16 A. Yeah. Yes.

17 Q. -- by MPS?

18 A. Yes.

19 Q. Okay.

20 A. This may need to be cleaned up to clear up
21 in your mind. I talked before I wrote everything.

22 Q. Okay. Mark that Exhibit 19.

23 And would you please add to that something
24 representing marketer?

25 A. (Witness complied.)

1 Okay. Just put marketer. What else would
2 you like on that?

3 Q. A very good question.

4 A. Meaning -- in effect, it's almost like it
5 needs a little writeup on how -- the difference
6 between a customer that says -- starts with sales and
7 then goes to transport, because that's what starts
8 this process.

9 MS. MCGOWAN: I've seen Staff draw diagrams
10 representing marketers. They'll put a dash line out
11 to a dot, make a triangle between MPS and the factory
12 with the marketer. It doesn't really move, but the
13 marketer in effect takes the gas from MPS and sells it
14 to the factory.

15 THE WITNESS: Okay. That's fine. So they
16 transport it across MPS's system, that's right.

17 Which, by the way, there was something said
18 along the way in some of these statements, it talked
19 about the transportation of MPS.

20 Unless there's a bypass situation, this
21 marketer, UES or anybody, is paying MPS the value of
22 that transportation. That's not at issue in capacity
23 release here. But let's say.

24 Okay. So this is marketer. I'll just write
25 it out here. Marketer transports on MPS for end use.

1 By the way, that can be done in a number of
2 ways too. We may find out where the end-use customers
3 is the holder of the transportation and the marketer
4 delivers here. So there's just a variety of ways that
5 this can be done.

6 ALJ WICKLIFFE: Okay.

7 Commissioner Lumpe, do you have any other
8 questions on the diagram?

9 COMMISSIONER LUMPE: I'm not sure I even
10 know how to formulate it at this point.

11 QUESTIONS BY COMMISSIONER LUMPE:

12 Q. Looking at the pipeline, and you're dealing
13 with numbers such as 50 cents and 12 cents, in your
14 first -- or in your agreement with the pipeline, what
15 part of the 50 cents is the pipeline's? Where is
16 the --

17 A. Good question.

18 Q. -- incentive for them to want this release
19 of capacity to -- where do they figure in?

20 A. The pipelines?

21 Q. Yes.

22 A. Okay. The 50 cents that I talked about is
23 right here. That's the full tariff rate to transport
24 from here to here on Panhandle Eastern Pipeline.

25 And again, I've stated it volumetrically.

1 Generally in a tariff it's \$15 per month. So this is
2 per MCF per month. This is 50 cents per MCF. It's a
3 daily-type figure.

4 The incentive for the pipeline is already
5 taking care of here, because their rate of return,
6 their profit and everything is built into this
7 50 cents.

8 Q. They get the 50 cents regardless?

9 A. That's right. That's right. They do get
10 the 50 cents. Again, assuming there's not where they
11 have to discount the rates because of a competitive
12 situation. They're going to give that 50 cents.

13 Now, the question that the ALJ asked was,
14 How does the 12 cents work? Well, again, under
15 electronic bulletin board, what happens is -- so this
16 is capacity release.

17 The pipeline says, Okay. We will release
18 MPS out of their contract. We'll create a new
19 contract. We will charge that new customer -- we'll
20 just say marketer -- 12 cents. Okay? And we will
21 credit MPS the 12 cents.

22 So 50 cents minus the 12 cents equals
23 38 cents, if my numbers are right. So they still get
24 their 50 cents. And then this credit goes back to the
25 commercial -- I'm sorry -- the residential, commercial

1 firm customers.

2 So their effect on that particular
3 circumstance is they only pay 38 cents for that
4 transportation capacity when we release it.

5 Now, if we don't release it, then they're
6 going to pay -- "they" being the residential and
7 commercial firm, are going to pay that full 50 cents.

8 That's why it's very important that we try
9 the best we can to release it, because it's reducing
10 the cost to these customers.

11 QUESTIONS BY ALJ WICKLIFFE:

12 Q. All right. Now let's get to the crux of the
13 matter.

14 A. All right.

15 Q. Staff's argument is that UES is paying the
16 full -- is charging their end user customer. Is that
17 UE --

18 A. Uh-huh.

19 Q. -- is charging the factory the full tariffed
20 rate, the 50 cents?

21 A. If it's a sales -- as a sales customer.

22 Q. Okay. And what Staff is saying, is that if
23 UES is going to charge that factory who is an end user
24 of MPS, the full 50 cents then the 38 cents should be
25 remitted as well to the captive end customer. Is that

1 correct?

2 A. That's their argument, yes.

3 Q. Okay.

4 A. Now, to carry on with that: My position is,
5 whatever this customer agrees to is their business
6 between UES and any marketer and this customer;
7 whereas, in the sales rate you-all, Commissioners,
8 approve that. That's all I can charge them.

9 But when they step out of the regulated
10 sales rate and go to transportation, in my opinion the
11 only thing regulated there is the costs of the
12 distribution system. By contract the customers and
13 the marketer will decide what the end-use rate is by
14 contract.

15 And if any marketer -- and they all do --
16 can go to a customer and say, you're getting charged
17 4.50 on the sales rate, I'll give you \$4, and in that
18 \$4 they can still make 38 cents, that's -- that's the
19 competitive environment that we live in.

20 And that's our whole contention is, whatever
21 UES makes it once we release it isn't under our
22 control, and it goes out into the competitive arena
23 because there's alternatives. That's our position.

24 What is under our control is how we work
25 hard to get this at a market rate. And whether we

1 sell it to UES or a nonaffiliated marketer, we're
2 getting market for it.

3 ALJ WICKLIFFE: Other questions on this
4 exhibit?

5 QUESTIONS BY COMMISSIONER LUMPE:

6 Q. In effect, are you competing against
7 yourself then if UES sells to your former end-use
8 customer at a lower rate?

9 A. Commissioner Lumpe, that's exactly right.
10 Not just UES but any other marketer out there.

11 What we're competing for is a competitive
12 rate to this factory end-use customer. And built into
13 our -- built into our rates -- let's say this factory
14 is a factory that burns gas day after day after day,
15 the same amount. They don't go up and down with
16 temperature. Well, I don't have a mechanism to adjust
17 my sales rate to reflect a higher load factor
18 customer; whereas UES, or a nonmarketed affiliate
19 does.

20 And so for that reason I have to put costs
21 into my rate, like storage, to take into account this
22 up and down movement because of heat-load customers.

23 The factory worker says -- the factory plant
24 manager says, I don't want to pay for that. I don't
25 use it. I use the same amount after day.

1 So they'll say, I'll step out of your sales
2 rate cost and I'll go into the unbundled
3 transportation role and I'll buy from the marketer
4 what I need, which is basically gas and
5 transportation. I don't need storage. So their rate
6 will naturally be lower. There's no question. So
7 that's what we're competing against.

8 ALJ WICKLIFFE: I think you can sit down,
9 but I do have a couple more questions.

10 QUESTIONS BY ALJ WICKLIFFE:

11 Q. Okay. Conceivably your factory could be
12 taking some transportation from MPS and some
13 transportation service -- bundled service from the
14 marketer or UES or any other marketer. Correct?

15 A. Let me clarify so I make sure. You're
16 saying they could take sales, the regulated sales?

17 Q. No, not sales, but interruptible service.

18 A. Oh, yes, absolutely.

19 Q. And they could supplement it with capacity
20 release purchase for them through a marketer?

21 A. Right, absolutely.

22 Which, by the way, I didn't mention it but
23 it does happen, Panhandle has the right to sell
24 interruptible transportation on their pipe, which is
25 another way to get up their pipe.

1 It doesn't have quite the same value as
2 capacity release. So that just IT is another method
3 for moving transportation up the pipeline.

4 Q. Okay. Your testimony on page 7, line 19,
5 the question was, Are all transportation customers in
6 MPS served by UES? And your statement was, No, that
7 only 23 of the 41 total transportation customers are
8 served by UES.

9 Does that mean the rest are dependent
10 completely on MPS or are they buying from other
11 marketers or mixing their -- for instance, buying some
12 from the pipeline direct?

13 A. I would say they're dependent on other
14 marketers.

15 Q. Okay. On page 9 of your testimony, line 20,
16 you made the statement that MPS's capacity transfer
17 process has been in existence and followed since '93.

18 Was there a different process before that?

19 A. That was the beginning of Order 636 in this
20 capacity release process.

21 Q. That was my question.

22 A. Yes.

23 Q. Data 636?

24 A. Yes.

25 Q. Schedule DWW-1, these are nonaffiliated

1 marketers to whom MPS released capacity?

2 A. Correct.

3 Q. During what period, the 1994-95 period?

4 A. Yes.

5 Q. Okay. Do you have quantities or percentages

6 that not on this sheet, quantities or percentages

7 reflected elsewhere in your testimony?

8 A. No.

9 Q. Okay. What communities are in the Eastern

10 district? Is it just Rolla and Salem?

11 A. During this time period I think it was just

12 Rolla.

13 Q. Just Rolla?

14 A. But eventually it will be Rolla, Salem,

15 Owensburg.

16 Q. Owensville?

17 A. Owensville.

18 Q. Owensville is also in there now?

19 A. Yes.

20 ALJ WICKLIFFE: Okay. That's all of the

21 questions I have.

22 Anything else from the bench?

23 Mr. Cooper, redirect?

24 MR. COOPER: Yes.

25 ALJ WICKLIFFE: Redirect precedes recross.

1 MR. COOPER: Okay. And then I get --

2 ALJ WICKLIFFE: No.

3 MR. COOPER: I don't get a redirect at the
4 very end after the --

5 ALJ WICKLIFFE: Not unless there are further
6 questions from the bench.

7 REDIRECT EXAMINATION BY MR. COOPER:

8 Q. Mr. Warnock, let's go back to Exhibit 18,
9 which is the first sheet you were writing on.

10 There was a question from the Commission
11 about this 50,000 figure that you have on there and
12 whether it's -- I think the question really was
13 whether it was prudent for that number to be an
14 overshoot or greater than what your needs might be on
15 any -- on most days.

16 Could you explain for us what the
17 consequences are if that number is not large enough,
18 if you have peak days which exceed that number?

19 A. The penalties are very severe. If you only
20 had 40 -- or let's say we'll use the 50, and I went
21 over that by one MCF, the penalties can be as much as
22 \$225 in MCF, depending on which pipeline you're on,
23 like Panhandle. So it can be a very severe penalty
24 for going over.

25 Q. Is there any possibility that you might not

1 be able to obtain enough capacity to suit your needs?

2 A. Absolutely. Particularly on Panhandle.

3 Q. Let's hang this back up for a minute.

4 ALJ WICKLIFFE: Off the record.

5 (Discussion off the record.)

6 ALJ WICKLIFFE: Back on the record.

7 BY MR. COOPER:

8 Q. Using Exhibit 18 and the numbers that you
9 wrote on there previously, would you explain to us
10 again with the -- with the Staff's recommendation --
11 let's start with the other.

12 Currently if capacity is released to UES,
13 which figure is it that gets credited back to the
14 Missouri Public Service customers?

15 A. This is currently as we do it?

16 Q. Right.

17 A. It would be the 12 cents.

18 Q. Which means that what the Missouri Public
19 Service customers end up paying is the 38 cents.
20 Correct?

21 A. Correct.

22 Q. Okay. Under the Staff's proposal, what
23 number would be credited back to the Missouri Public
24 Service customers?

25 A. As I understand the proposal, this is why we

1 wrote the 40 cents over here. If UES goes out to that
2 customer and makes 40 cents on that customer, the
3 difference will be what UES made on that customer --
4 well, what I understand their position would be is the
5 full 40 cents would go back to the residential and
6 commercial firm customers.

7 Q. So essentially, under the Staff's proposal,
8 UES, rather than paying 12 cents for that capacity,
9 would pay 40 cents. Correct?

10 A. That is correct.

11 Q. Okay. And there would be no profit -- no
12 profit for UES under the Staff's proposal?

13 A. As I understand it, that's correct.

14 Q. Okay. In your testimony you talk about the
15 likely consequence of the Staff's proposal.

16 What is the likelihood that UES, if it has
17 to pay 40 cents for capacity, would continue to buy
18 capacity from MPS Missouri Public Service?

19 A. An absolute guarantee they will not buy it.
20 No question about it.

21 Q. Who would MPS be likely to sell its capacity
22 to at that point?

23 A. Well, we could -- we could do -- we could go
24 out and put it on the EBB and see who would buy it.
25 Obviously it wouldn't be UES. It will be Enron,

1 Vesta. It might be other LDCs that might need it. It
2 will be anybody that isn't affiliated with Utilicorp.

3 Q. And under your example, if it is sold -- if
4 the capacity is sold to one of those entities, Enron,
5 one of the other nonaffiliated marketers that you
6 talked about, what is the amount of the credit that
7 will go back to Missouri Public Service's customers?

8 A. Under Staff's proposal, as I understand it,
9 it would be 12 cents.

10 Q. Okay. That's not where I thought you were
11 going with that initially.

12 Okay. So it would still be the 12 cents
13 that is currently received by the Missouri Public
14 Service customers. Correct?

15 A. Correct.

16 Q. Do you anticipate that if the ready market
17 of UES was not available, that you would be able to
18 sell all of the capacity that you would have -- or
19 that you would be able to release all of the capacity
20 that you have available?

21 A. It would be -- it would be difficult for me
22 to speculate what I could and couldn't do.

23 It will not -- it will not be as easy. It
24 will be less likely that we would sell it all back,
25 all that we sold now. Because I don't know what

1 markets will be out there, it will be hard for me to
2 speculate absolutely that, no, I couldn't sell it.
3 No, I know it would be more difficult.

4 Q. Let's start with this: Let's say
5 hypothetically that you are able to sell the same
6 amount -- or release the same amount of capacity to
7 nonaffiliated marketers as you do currently.

8 A. Uh-huh.

9 Q. What will be the net benefit, if any, for
10 Missouri Public Service's customers?

11 A. State that again.

12 Q. Hypothetically let's assume that, although
13 it may not be likely, that you can sell or can release
14 the same amount of capacity to nonaffiliated marketers
15 as you currently release to a combination of
16 affiliated and nonaffiliated. Is there any net
17 benefit to Missouri Public Service's customers under
18 that scenario?

19 A. The 12 cents --

20 Q. Which is --

21 A. -- which we're getting out?

22 Q. Right.

23 A. (Nods head.)

24 Q. What if you were not able to release to
25 nonaffiliated marketers an equal amount of capacity,

1 it's some amount less than that, what is the net
2 effect on Missouri Public Service's customers?

3 A. It will be detrimental to them, because, in
4 effect, rather than paying 38 cents for this capacity,
5 they're going to be paying 50 cents for it.

6 MR. COOPER: If you could give us just a
7 moment, your Honor.

8 BY MR. COOPER:

9 Q. Earlier you answered some questions about
10 how many contacts you make to establish the market --
11 the market rate.

12 Is there any doubt in your mind that your
13 releases to UES are done at the market rate?

14 A. No.

15 Q. Can you go into why that is, why there is no
16 doubt in your mind, what steps have been taken?

17 A. Again, the steps that we've taken are to
18 call around for price discovery, find out what other
19 people are selling and/or find out what is on the
20 electronic bulletin boards. So that gives us a
21 measure.

22 There are also beginning to have
23 publications now which will print some of what the
24 costs are for capacity release. And based on a review
25 of all of those things, and, in fact, based on a

1 review of my people's actions, I am confident that we
2 are selling it at market rate.

3 In fact, we've had a recent example where
4 UES has wanted to buy capacity at something less than
5 a market rate, and we flatly told them to go find
6 something else. They actually had a deal in hand and
7 they said, We'll give you first shot at it if you
8 still want it, they -- the market was at 12 cents;
9 they were at 9 cents. I told them, take the 9 cents
10 and be happy with it, because we're going to sell it
11 at market.

12 MR. COOPER: That's all of the questions I
13 have at this time.

14 ALJ WICKLIFFE: Recross, Mr. Micheel.

15 RECROSS-EXAMINATION BY MR. MICHEEL:

16 Q. Where to start, Mr. Warnock.

17 ALJ WICKLIFFE: Just a reminder, recross is
18 based only on questions from the bench. I realize
19 that gives you thousands of --

20 MR. MICHEEL: I've got plenty from this
21 colloquy.

22 BY MR. MICHEEL:

23 Q. Chairman Zobrist started off by asking you
24 about your firm entitlements on your various
25 pipelines. Do you recall those questions?

1 A. Uh-huh.

2 Q. And if I understand the MoPub system, it's
3 divided into a northern, southern and eastern
4 district, is that correct, Mr. Warnock?

5 A. It is correct.

6 Q. And just so the record can be crystal clear,
7 the two pipelines that we've been talking about at
8 least so far in response to Ms. McGowan's questions
9 and the Commission's questions are Panhandle Eastern
10 Pipeline and Williams Natural Gas Pipeline, is that
11 correct, sir?

12 A. That's correct.

13 Q. Could you take me through district by
14 district starting with the northern district, and so
15 the record can be crystal clear, which pipelines,
16 interstate pipelines, starting with the northern
17 district, which interstate pipelines serve your
18 northern district?

19 A. Panhandle Eastern Pipeline is the only
20 pipeline serving the northern district.

21 Q. And could you give me ideas, sir, of where
22 your northern district is? There's a map up on the
23 wall that I believe Judge Wickliffe has provided us,
24 and if you could tell me the major cities that you
25 have in your northern district.

1 A. I was wondering if they have it listed here.

2 This is on -- here it is. MPS is up in this
3 area here.

4 CHAIRMAN ZOBRIST: You need to be specific.

5 BY MR. MICHEEL:

6 Q. I'm asking for some specific city names.
7 I've seen the map, sir.

8 A. Well, this is here is Utica, Trenton,
9 Chillicothe, Brunswick, Salisbury, New Cambria.

10 Is that good enough?

11 Q. Yeah, I'm trying to get a flavor for where
12 the northern district is.

13 And that's only served by Panhandle Eastern
14 Pipeline; is that correct?

15 A. That's correct.

16 Q. And I believe that you agreed with
17 Ms. McGowan earlier that capacity on that pipeline is
18 constrained; is that correct?

19 A. That's correct.

20 Q. And so it would the logical extension from
21 that is when that capacity becomes available, it's
22 more valuable because that pipeline capacity is
23 constrained; is that correct?

24 A. In the capacity release?

25 A. That's correct.

1 Q. Let's talk about your southern district.
2 Where is that and what interstate pipelines serve that
3 district?

4 A. The interstate pipeline on the southern is
5 Williams only, and that's -- the names in here, like,
6 Clinton, Leeton. That looks like that's the main part
7 of it.

8 Q. Okay. And do you know if that's a very
9 populated area, Mr. Warnock?

10 A. I'm not intimately familiar with that area.

11 Q. Do you know how many transportation
12 customers there are on your system in that area, sir?

13 A. No, not the exact number.

14 Q. Could you give me an idea, a ballpark?
15 You're the direct gas supply; is that right?

16 A. That's right.

17 Q. Could you give me a ballpark idea of how
18 many transportation customers?

19 A. I really don't know.

20 Q. Would Mr. Jurek know?

21 A. No.

22 Q. Would Mr. Ono know?

23 A. Probably not on the southern district.

24 Q. Do you think you have a whole large group of
25 industrial transportation customers in that district,

1 sir?

2 A. As I answered you several times, I don't
3 know.

4 Q. Okay. Do you know if that's a really
5 industrial part of Missouri?

6 A. I don't know.

7 Q. Okay. Let's talk about your eastern
8 district, sir. Could you tell me which pipelines,
9 interstate pipelines or intrastate pipelines, serve
10 your eastern district and where that's elected?

11 A. Panhandle is the interstate pipeline.
12 Intrastate pipeline is Missouri Pipeline, our
13 affiliate.

14 Q. And that's your affiliate. And could you
15 give me an idea of what cities are served in your
16 eastern district, sir?

17 A. During this time period it was Rolla.

18 Q. Okay. And is Rolla served only by Panhandle
19 Eastern or are they also served by Missouri Pipeline?

20 A. The Panhandle is the interstate that brings
21 gas to Missouri Pipeline.

22 Q. And again, we've established that pipeline
23 is constrained; isn't that correct?

24 A. That's correct.

25 Q. Give me an idea of the number of

1 individuals -- how many customers do you have, if you
2 know, in your northern district, total customers?

3 A. I wouldn't know the exact count.

4 Q. Same for all of the districts?

5 A. Uh-huh. Right.

6 Q. Okay. All right.

7 I believe it's been marked for purposes of
8 identification as Exhibit 18, and I think we've
9 labeled it firm cost, capacity market release, and I
10 believe your counsel, Mr. Cooper, has tacked it up
11 over there.

12 And the Commissioners had various questions,
13 and I believe Judge Wickliffe did also, about the 50-
14 cent cost, and I know that your counsel had a
15 follow-up.

16 And is it your testimony, sir, that the
17 12 cents capacity release price is based on market
18 conditions and that's market price; is that correct?

19 A. It is my contention.

20 Q. Okay. And you would have no problem, nor
21 would your company, sir, in providing to the Staff and
22 the Public Counsel all of the information that your
23 folks utilized to determine that the 12 cents was a
24 market price, is that correct, all of the various
25 inputs that you discussed with both Chairman Zobrist

1 and Judge Wickliffe?

2 A. It depends on what information you're
3 talking about.

4 Q. Let's unpack that.

5 What information are you willing to share
6 with my office and the Staff's so we can determine
7 that indeed the 12 cents is the market price?

8 A. I am willing to share with you any published
9 data that is out there that establishes what the
10 market price is.

11 Q. But you're not willing to share any
12 interoffice memos or to require your people to take
13 notes of what they did to establish that 12 cents; is
14 that correct?

15 A. I do not require my people to take notes on
16 the price that they're discovering for market rates.

17 By the way, there is an EBB out there which
18 also establishes market rates.

19 Q. Let's talk a little bit now about -- I guess
20 it's Exhibit 19, and I don't even know if we've got a
21 name for that exhibit.

22 ALJ WICKLIFFE: Off the record.

23 (Discussion off the record.)

24 ALJ WICKLIFFE: On the record.

25 We are titling Exhibit 19 Gas Market

1 Structure.

2 You may proceed, Mr. Micheel.

3 BY MR. MICHEEL:

4 Q. I'm referring to Exhibit 19, which now we've
5 called Gas Market Structure, and there were numerous
6 questions about various stopping points along from
7 gathering to our end hypothetical factory.

8 And my question to you, sir, is what is the
9 transportation threshold? How much does -- on MoPub's
10 system, how much gas does factory have to take before
11 it can become a transport customer?

12 A. I -- frankly, because we have so many
13 tariffs, I'm not sure. Some are 500, some are 250,
14 some are 5,000. I don't know.

15 Q. But you would agree with me that we could go
16 to the tariff books and we could find out what
17 threshold factory would have to be taken; is that
18 correct?

19 A. Yes, that's correct.

20 Q. And factory cannot be a transporter until it
21 meets that threshold; is that correct?

22 A. That's correct.

23 Q. Okay. I believe in a response to
24 Commissioner Lumpe's question about factory -- again,
25 our good friend factory -- that UES and MPS are

1 competing for that load. Do you recall that question?

2 A. Yes.

3 Q. Would you agree with me, Mr. Warnock, that
4 MPS has the ability to request special contracting
5 rates so it can vary its price?

6 I believe in response to Commissioner Lumpe,
7 you said there's no way that MPS can vary its price.
8 It's got to give the full tariff price.

9 Would you agree with me that you can ask for
10 special contracting provisions?

11 A. I imagine you could, yes.

12 Q. And are you aware of whether or not your
13 company, Missouri Public Service, has any special
14 contracting rates or variable rates in place?

15 A. I'm not aware, no.

16 Q. They could though?

17 A. I'm not intimately familiar with the tariff.
18 They can come to the Commission and ask anything.

19 Q. Sure.

20 Let's talk about the 50 cents per MCF
21 maximum price that you see there on Panhandle Eastern.
22 Okay?

23 A. Okay.

24 Q. And that's set by the Federal Energy
25 Regulatory Commission; is that correct?

1 A. That is correct.

2 Q. And you would agree with me, would you not,
3 Mr. Warnock, that that's a maximum price; isn't that
4 correct?

5 A. In my example, that's correct.

6 Q. And you will agree with me that under the
7 guise of Order 636 and 436, that Panhandle Eastern is
8 allowed to flex their rates below the maximum rate;
9 isn't that correct?

10 A. That is correct.

11 Q. I guess one last question. Are you certain,
12 Mr. Warnock, that you're describing the Staff proposal
13 for crediting properly?

14 A. Well, as I said, as I understand it.

15 MR. MICHEEL: Very good. Thank you very
16 much.

17 (Discussion off the record.)

18 ALJ WICKLIFFE: Back on the record.

19 Ms. McGowan?

20 RE CROSS-EXAMINATION BY MS. MCGOWAN:

21 Q. First, you stated that under Staff's
22 proposal that there would be no motivation for UES to
23 purchase gas from MPS. That would be if they had to
24 give back the other 38 cents to Missouri Public
25 Service's firm customers, credit that back; is that

1 correct?

2 A. As I understand your proposal, they have to
3 give back everything they make off that customer,
4 that's correct.

5 Q. Earlier you stated that there were two ways
6 in which UES or any marketer could profitably sell a
7 service as a marketer bypassing the LDC or Missouri
8 Public Service in this case; they either had to
9 receive a better gas rate or a better transportation
10 rate. Is that a correct representation of your
11 statement?

12 A. Well, they have to beat our sales rate, MPS'
13 sales rate.

14 Q. So even if UES were to have to return the 38
15 cents, are you saying that they're still not going to
16 have a profit margin?

17 A. Generally, for the industry, the place where
18 a marketer is going to make their money is on the
19 transportation side, and the reason that is is
20 because, although they can make money on the gas side,
21 the gas supply piece of the business is very
22 transparent.

23 In other words, that end-of-the-pipe price
24 over here is very transparent, usually trades within
25 cents. We're buying on the same market unless we do a

1 long-term. So generally they're making it on the
2 transportation side, but they could make it some on
3 the supply side.

4 Q. When you were discussing earlier, you stated
5 that Missouri Public Service, for example, generally
6 when they enter contracts with pipelines would have to
7 enter longer term contracts where they would have to
8 request a large volume?

9 A. MPS?

10 Q. Uh-huh.

11 A. Yes.

12 Q. To meet their peak flow. Well, if Missouri
13 Public Service -- at the time period when Missouri
14 Public Service would have a surplus, for example the
15 cooler seasons of the month, and they would have the
16 capacity to release, wouldn't that also be the same
17 type of period where Panhandle might have extra
18 capacity or have extra gas flowing through its pipes
19 and might be willing to offer a discounted rate?

20 A. Well, if it wasn't a constrained pipeline,
21 your theory would be correct. But keep in mind
22 Panhandle in your example is capacity constrained.
23 It's sold out. So it no longer has the right to sell
24 that capacity. MPS does.

25 Q. That's not true of the Williams Pipeline?

1 A. That's true. That's not true of the
2 Williams Pipeline. In most sections that's not true
3 of the Williams Pipeline.

4 Q. Okay. With a release from the Missouri
5 Public Service to UES, when they get the profit, let's
6 say UES keeps for itself the 38 cents in your example
7 as its profit margin. At whose expense is that 38
8 cents received as profit? Would you agree that that
9 38 cents is received at the expense of its affiliate's
10 captive firm customers?

11 A. Absolutely not. I would not agree with
12 that. That factory customer is not captive to
13 anybody, only from a -- from a transportation
14 distribution standpoint.

15 Q. I said the firm customers are the ones that
16 pay the 38 cents.

17 A. You mean under the 50 cents rule?

18 Q. Uh-huh.

19 A. That's right.

20 Q. And the 38 cents profit that UES is
21 retaining was paid by UtiliCorp's customers?

22 A. No, ma'am.

23 Q. Or by Missouri Public Service?

24 A. I will not agree with that. The reason I
25 won't agree with that is because the only value that

1 most people will pay for that capacity, not most
2 people, the vast majority of people, would be its 12
3 cents. That's all the firm residential customers can
4 get back from that under a market-based rate.

5 Q. Okay. That leads me to my next set of
6 questions. You stated that basically UES is always,
7 you know, up with the market. It's only paying or
8 purchasing at the market rate.

9 Well, if this is true that UES is competing
10 on a level playing field, then why is the majority of
11 Missouri Public Service's releases going to UES
12 instead of one of the other marketers?

13 A. I have no idea whether it's because -- maybe
14 they've got the best price. I don't know.

15 Q. Do you have any records to show that that
16 same similar prices were offered to other marketers?

17 A. For the capacity?

18 Q. Uh-huh.

19 A. We'd have some EBB information.

20 Q. But you didn't put any of that type of
21 evidence to support the fact that it was offered to
22 other -- unequal playing field to other marketers into
23 evidence?

24 A. Not that I'm aware of.

25 Q. Okay. One final thing. When you -- in

1 response to some of the questions you stated that your
2 opinion of Staff's position was that they wanted you
3 to give back the full 38 cents for the capacity
4 release, and that was all that UES was offering to its
5 customers.

6 A. Yeah. I said assuming, and I went to the 40
7 cents, assuming that's what they were getting from the
8 customers. That's right.

9 Q. Are you aware that the Staff's position is
10 that UES is actually offering -- Staff's position as
11 set out in Mr. Wallis' testimony if that clarifies it
12 for you -- that UES is actually offering the customers
13 more than just capacity release but actually a bundled
14 type service in a niche market and, therefore, in
15 Staff's opinion, more valuable than a standard
16 marketer?

17 A. UES is -- UES is just one of a number of
18 marketers that can offer those same rebundled
19 services. If your contention is that UES can offer --

20 Q. Excuse me. Are you aware that that's
21 Staff's position? Have you read Mr. Wallis'
22 testimony?

23 A. I have read Mr. Wallis' testimony. I
24 disagree with it.

25 Q. Well, you disagree with the testimony, but

1 you do agree that would be Staff's position in this
2 case?

3 A. State Staff's position again.

4 Q. That the Staff believes UES is offering more
5 than just the release of the capacity, that it's
6 actually functioning in a niche-type market, which is
7 Staff's reason -- or the Staff's belief how come it
8 has such a large percentage of the market.

9 A. Okay. Yes, I understand that's your
10 position.

11 Q. I just wanted to clarify what Staff's
12 position is. It's not just that we want them to pay
13 more, but we think they actually have a somewhat
14 different service to offer, whether you agree with
15 that, and we can argue about that.

16 A. Is that in your testimony where they do?

17 Q. That what?

18 A. Have you proved that they do?

19 Q. That's Staff's position as set out in
20 Mr. Wallis' testimony, just as it is your position
21 unsupported by documentation.

22 A. Okay.

23 MS. MCGOWAN: Thank you. No further
24 questions.

25 ALJ WICKLIFFE: Chairman?

1 QUESTIONS BY CHAIRMAN ZOBRIST:

2 Q. If we accept the hypothetical figures up
3 here, particularly the 38 cents -- and I'm sure we'll
4 talk with the Staff witnesses about their view on that
5 as well. But if I understand what you're saying --
6 let me see if this is your position.

7 If Staff's position were adopted and UES
8 would have no incentive to buy the released capacity
9 from Missouri Public Service because it couldn't make
10 a profit, MPS still has an obligation, if it intends
11 to release this capacity because it has no use for it,
12 it needs to go out in the market and try to sell that,
13 right?

14 A. Absolutely. No question about that.

15 Q. Because if it didn't, that would be deemed
16 imprudent --

17 A. Absolutely.

18 Q. -- arguably by the Commission?

19 A. Absolutely.

20 Q. And what you're saying is that it's the
21 Company's position that if there are not adequate
22 incentives for MPS to deal not only with the
23 unaffiliated marketers but also this particular
24 affiliated company, that Missouri Public Service might
25 be arguably placed in a position of imprudence because

1 it couldn't sell all that excess capacity --

2 A. I wouldn't want --

3 Q. -- or release capacity?

4 A. In your terminology, I wouldn't -- I guess I
5 wouldn't want to say that MPS would be placed into
6 that position. I think MPS would be faced with going
7 out and -- could possibly be faced with going out and
8 trying to sell that and not finding a market. So it
9 couldn't -- I mean, it would try as hard as it could,
10 but it may not be able to sell it.

11 Q. And your position is that if Staff's
12 position worked this way, that would build
13 inefficiencies into the system that ultimately would
14 not benefit the ratepayers?

15 A. Absolutely.

16 CHAIRMAN ZOBRIST: Okay. Thank you.

17 QUESTIONS BY ALJ WICKLIFFE:

18 Q. Just to go back to one point raised by
19 Commissioner Lumpe earlier, penalties are for overruns
20 on contracts that you have with your suppliers and
21 transporters, correct?

22 Well, let me remind you of the context. Her
23 question was whether it was prudent to contract for
24 more than you actually were going to use every day so
25 that you have capacity to release, and your statement

1 was if you don't contract for enough to meet your peak
2 day demands, then there are significant penalties, and
3 those penalties go to the people you contract with,
4 correct?

5 A. You pay the penalties to the -- the pipeline
6 is basically what you're paying them to, that's
7 correct, yes.

8 ALJ WICKLIFFE: Anything else? Redirect
9 based on the last four or five questions from the
10 Bench?

11 MR. COOPER: If you'd give us a moment.

12 ALJ WICKLIFFE: Okay.

13 MR. COOPER: No questions, your Honor.

14 ALJ WICKLIFFE: Recross based on the last
15 four or five questions from the Bench, Mr. Micheel?

16 MR. MICHEEL: None.

17 ALJ WICKLIFFE: Ms. McGowan?

18 MS. MCGOWAN: No questions.

19 ALJ WICKLIFFE: Thank you. You may step
20 down, sir.

21 (Witness excused.)

22 ALJ WICKLIFFE: Off the record.

23 (Discussion off the record.)

24 (Witness sworn.)

25 ALJ WICKLIFFE: Back on the record.

1 Mr. Cooper?

2 MR. COOPER: At this time, your Honor, I
3 would like to offer into evidence Exhibits 18 and 19
4 as demonstrative evidence.

5 ALJ WICKLIFFE: Objections?

6 MR. MICHEEL: I would just state, your
7 Honor, for the record that as long as -- and I think
8 Mr. Cooper termed it as demonstrative evidence, and I
9 just want to make clear that as long as these are not
10 offered for the truth of anything but just demonstrate
11 these ideas, I don't have an objection.

12 ALJ WICKLIFFE: Any other objections?

13 (No response.)

14 ALJ WICKLIFFE: Objections are overruled.
15 Exhibits 18 and 19 are admitted as demonstrative
16 evidence.

17 (EXHIBIT NOS. 18 AND 19 WERE RECEIVED INTO
18 EVIDENCE.)

19 ALJ WICKLIFFE: Let the record reflect now
20 that Mr. Ono is on the stand. Mr. Cooper, you may
21 begin.

22 Off the record.

23 (Discussion off the record.)

24 ALJ WICKLIFFE: On the record.

25 HARRY ONO testified as follows:

1 DIRECT EXAMINATION BY MR. COOPER:

2 Q. Will you please state your full name.

3 A. Harry F. Ono.

4 Q. By whom are you employed and in what
5 capacity?

6 A. UtiliCorp United, Inc. I am a Director of
7 East Supply Services.

8 Q. Do you have before you what has been marked
9 for identification as Exhibit 4?

10 A. Yes, I do.

11 Q. Is Exhibit 4 the prefiled rebuttal testimony
12 that you prepared for the purposes of this case?

13 A. Yes, it is.

14 Q. Are there any changes or corrections which
15 you would like to make to your testimony at this time?

16 A. No.

17 Q. If I were to ask you today the same
18 questions that are contained in Exhibit 4, would your
19 answers be the same as those reflected therein?

20 A. Yes.

21 Q. Would those answers be true and correct to
22 the best of your knowledge and belief?

23 A. Yes.

24 MR. COOPER: I would offer Exhibit 4 into
25 evidence at this time and tender Mr. Ono for

1 cross-examination.

2 ALJ WICKLIFFE: Objections to Exhibit 4?

3 (No response.)

4 ALJ WICKLIFFE: Hearing none, Exhibit 4 is
5 received into the record.

6 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

7 ALJ WICKLIFFE: Mr. Micheel?

8 MR. MICHEEL: Yes, your Honor.

9 CROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Mr. Ono, I note on page 1 of your rebuttal
11 testimony, it says that you're responsible for
12 regulatory affairs for Michigan Gas Utilities; is that
13 correct, sir?

14 A. Yes, it is.

15 Q. And are you aware in that capacity whether
16 or not Michigan Gas Utilities is required to follow
17 any sort of affiliated transaction rules in the State
18 of Michigan?

19 A. No, they are not.

20 Q. Are you aware in that capacity whether or
21 not there are any tariff requirements relating to
22 Michigan Gas Utilities' dealings with affiliates of
23 the corporate parent, UtiliCorp United?

24 A. No.

25 Q. Okay. Were you involved in Michigan Gas

1 Utilities' last rate proceeding?

2 A. No, I wasn't.

3 Q. Okay. So you're not aware whether or not
4 Michigan Gas Utilities was ordered by the Michigan
5 Commission to provide agency agreements between the
6 utility and a transportation customer to the customer;
7 is that correct?

8 A. That is correct. Is it transportation
9 customers --

10 Q. Yes.

11 A. -- or is it wholesale LDC customers?

12 Q. Transportation customers.

13 A. That's correct.

14 Q. Okay. So in Michigan, is it your testimony
15 that you're required to file those agency agreements;
16 is that correct?

17 A. Not from -- in my area of responsibility,
18 no.

19 Q. Okay. So really, your only area of
20 responsibility relates to the gas purchasing
21 activities of Michigan Gas; is that correct?

22 A. Gas purchasing and transportation.

23 MR. MICHEEL: That's all I have. Thank you
24 very much.

25 ALJ WICKLIFFE: Ms. McGowan?

1 CROSS-EXAMINATION BY MS. MCGOWAN:

2 Q. A couple questions to clarify a few things.

3 In the 1994-'95 ACA filing that we're
4 discussing in this hearing, did you initially or did
5 the Company initially allocate Panhandle Eastern
6 Pipeline contract 13382 reservation costs to the
7 Eastern District based on volumes delivered to the
8 Eastern District?

9 A. I believe there was a problem with
10 misallocation.

11 Q. But you initially allocated it to the
12 Eastern District, and then you later determined that
13 that was misallocation?

14 A. No. I think it was the other way around. I
15 think there was a misallocation to the Northern
16 District, and through an accounting review found out
17 that it was inappropriate and should have been
18 allocated to the Eastern District.

19 Q. Okay. And the volumes transported under
20 that contract are reserved capacity requirements for
21 the Eastern District, is that correct, or what
22 Missouri Public Service assumed would be the
23 requirements for that district; is that correct?

24 A. Yes.

25 Q. Let's see. In the 1994-'95 ACA filing, did

1 you allocate the 13382 reservation costs to the
2 Northern District during certain months?

3 A. Yes. I believe I just said that.

4 Q. And that was a misallocation?

5 A. Yes.

6 Q. Okay. So you have reallocated all of those
7 volumes back to the Eastern District?

8 A. We've reallocated the costs to the Eastern
9 District.

10 Q. Okay. Can you explain what a propane
11 conversion study is for me?

12 A. From my perspective, it's an analysis that
13 is done to evaluate whether or not it's economical to
14 convert customers from propane usage over to natural
15 gas usage.

16 Q. Okay. Missouri Public Service indicated
17 that they could only arrive at a projected peak day
18 estimate by using a propane conversion study. Then
19 later it was indicated that Missouri Public Service
20 did not have historical data needed to conduct that
21 type of a study.

22 Are you aware of those problems that Staff
23 and the Company had?

24 A. Yes, I am. I'm aware of their testimony.

25 Q. How did Missouri Public Service then develop

1 a reliable peak day study without using a propane
2 conversion study?

3 A. I believe we used a propane conversion study
4 not necessarily coming out of a peak day design study.
5 We anticipated the number of customers that we would
6 convert during the time period in question and used
7 the corresponding unit of consumption per customer
8 type to come up with a peak day requirement.

9 Q. So not a historical study but a
10 hypothetical?

11 A. Well, hypothetical based on usages that were
12 accepted in previous testimony.

13 Q. Okay. Let's see. Let me back up to
14 questions from a couple people. Okay. This is
15 related to the over-estimation of customer conversions
16 in the Eastern District. Did you perform a customer
17 conversion study for the Eastern District?

18 A. I personally didn't, but people in our
19 company did.

20 Q. Okay. Did you perform a per-customer usage
21 study as well, or did someone in your area?

22 A. We -- I got that information from previous
23 testimony.

24 Q. Okay. Between November of '94 and August of
25 '95, did the Eastern District convert the number of

1 customers projected?

2 A. It was my understanding that no, they did
3 not.

4 Q. During that same time period, did the
5 Eastern District use the quantity of natural gas that
6 was projected?

7 A. No, they did not.

8 Q. What factors do you believe contribute to
9 the Eastern District's lower than projected growth
10 rate?

11 A. I believe in my rebuttal testimony I stated
12 that there were construction delays, delays in getting
13 the initial order, and weather also contributed to
14 delays in ultimate construction of the facility.

15 Q. Just one more minute. If UtiliCorp was a
16 nonregulated utility, would it have to bear risks
17 associated with construction delays such as you've
18 just outlined, the cost of economic feasibility based
19 on construction delays and delaying?

20 A. In a particular project?

21 Q. Uh-huh.

22 A. If we were unregulated, I would assume, yes.

23 Q. Okay. I have some questions related to
24 Missouri Public Service's contention that they
25 shouldn't be required to provide the reliability data

1 that the Staff requested.

2 Can I ask you, what is the secondary
3 delivery point?

4 A. Secondary delivery point, when an entity
5 contracts with an interstate pipeline for firm
6 entitlement, they generally have to designate a
7 primary receipt point where they will receive supplies
8 and a primary point where they will deliver those
9 supplies so that the pipeline can make sure that they
10 have adequate facilities to deliver that amount of
11 volume.

12 Q. What are the differences between the primary
13 and the secondary delivery points? Is one a backup?

14 A. A secondary delivery point would be anything
15 other than primary on that particular pipeline.

16 Q. Are secondary delivery points as reliable as
17 primary delivery points?

18 A. No, they're not.

19 Q. When the numerous districts that UtiliCorp
20 serves all experience a near-coincidental peak, what
21 happens to the districts that are depending upon some
22 portion of a different district's capacity?

23 A. Each district gets their amount of
24 entitlement. If MPS is paying for a certain amount of
25 entitlement, that's what they will get as they need

1 it.

2 Q. In each district?

3 A. Yes.

4 Q. So the entitlement goes district by district
5 with no overflow or cross between?

6 A. Not when they hit similar peak day.

7 MS. MCGOWAN: That's all I have right now.

8 Thank you.

9 ALJ WICKLIFFE: Chairman?

10 QUESTIONS BY CHAIRMAN ZOBRIST:

11 Q. On the reliability issue, you stated at the
12 end of your testimony on page 8 that although the
13 Company did not mind beginning to provide the
14 information requested during the 1997-'98 ACA review,
15 you are resisting the request to begin it with the
16 '96-'97 period because information may not be
17 available for this period. What information may not
18 be available?

19 A. Specifically I don't know, but it may not be
20 available exactly in the form that Staff is
21 requesting. We may not be keeping our records in that
22 fashion.

23 Q. Right. Well, anything that is available, am
24 I correct that the Company does not object to
25 providing?

1 A. That's correct.

2 Q. Is there anything that you can tell us right
3 now that cannot be provided because it's not available
4 for the '96-'97 period?

5 A. It would be tough for me to anticipate the
6 request, but no, I don't know what would not be
7 available.

8 CHAIRMAN ZOBRIST: That's all I have.

9 ALJ WICKLIFFE: Commissioner Lumpe?

10 CHAIRMAN ZOBRIST: Oh, I was just going to
11 ask Mr. Micheel if you could give us a citation on the
12 Michigan case? I think I've seen it and probably have
13 it in the file.

14 MR. MICHEEL: Yes, your Honor. In Public
15 Utility Reports Advance Sheet 177B14, No. 2,
16 July 15th, 1997, it's found at page 229.

17 CHAIRMAN ZOBRIST: Thank you.

18 QUESTIONS BY ALJ WICKLIFFE:

19 Q. You stated that MPS determined the projected
20 need for this project based on experience in prior
21 expansions, and I believe you made reference to prior
22 testimony. What communities are we talking about?
23 Did you look at Missouri communities in making the
24 projections?

25 A. Yes. I believe Missouri communities were

1 involved as well as other experience that the Company
2 had possibly in Kansas as well.

3 Q. Okay. So what you did was develop what data
4 you had and compared it to prior experience; is that
5 correct?

6 A. Uh-huh.

7 Q. The construction delays that you
8 experienced, are these totally unusual on a project of
9 this size?

10 A. I don't know. I'm not an engineer by
11 nature.

12 Q. Okay. You're not aware of a similar project
13 where similar construction delays have taken place?

14 A. Well, I assume that could happen. Nothing
15 in detail, though.

16 Q. But you don't know of anything in
17 particular?

18 A. No.

19 Q. And I believe you said when you answered
20 Ms. McGowan something about a delay in the initial
21 order. Were you talking about --

22 A. What was anticipated, receiving the initial
23 order.

24 Q. From the Commission?

25 A. Right.

1 Q. Approving the certificate?

2 A. Right.

3 Q. You also stated on page 6, line 18, that MPS
4 has implemented eight other natural gas expansion
5 projects in the last three years, and the conversion
6 rate there on these projects is averaging over 90
7 percent.

8 Do you know, if you know, how long it took
9 to get to the 90 percent? Is that within the first
10 year, within the first two years?

11 A. No, I don't know on a time frame basis.

12 Q. Okay. My understanding on the reallocation
13 of costs from the Northern to the Eastern District,
14 that's not an issue in dispute, correct?

15 A. That's right.

16 Q. I understand that the rationing provision
17 allows you to gradually increase your needs as a
18 project perhaps expands or more people convert. Is
19 that what a rationing provision is?

20 A. Yes.

21 Q. Does it have an equivalent provision which
22 would allow you to decrease your needs?

23 A. No.

24 Q. Okay. On page 5 of your testimony you
25 stated that MPS did not have the necessary historical

1 propane usage for the customers expected to convert.

2 The reason you did not have that was because?

3 A. You're dealing with residential customers.

4 A lot of them didn't keep those type of records.

5 Q. You would have had to go to each customer,
6 is that what you're saying, in order to get this
7 information?

8 A. Yes, I believe so.

9 Q. The propane company wasn't willing to share?
10 (Laughter.)

11 And if you had had that data, you could have
12 converted that to natural gas usage; is that the way
13 you normally --

14 A. Yes.

15 Q. -- use that information?

16 A. Right.

17 Q. Other than the construction delays and the
18 fact that you did not receive your certificate as
19 early as you were expecting, those are the only
20 factors you are aware of that have caused a lower
21 conversion rate in Rolla?

22 A. We did experience some price competitiveness
23 with propane. Obviously they -- the marketers,
24 propane marketers did not want to let those customers
25 go easily, and we did find some price competition

1 there that we didn't initially anticipate.

2 Q. This was responsive to your coming into the
3 area?

4 A. Exactly.

5 ALJ WICKLIFFE: All right. Anything else?

6 CHAIRMAN ZOBRIST: I've got one more that I
7 forgot to ask.

8 QUESTIONS BY CHAIRMAN ZOBRIST:

9 Q. I asked a question of Mr. Warnock and he
10 referred it to you. I think it had to do with the
11 capacity recalls during the '96-'97 winter.

12 A. Yes.

13 Q. What can you tell me about that?

14 A. On Panhandle we did recall capacity, and I
15 believe it was during the week of December 18th
16 through the -- through December 23rd, if my memory
17 serves me.

18 Q. Didn't do any during January or February of
19 '97?

20 A. I don't believe we had to. The weather was
21 a little bit milder during those months. We had an
22 early hard winter, and then it gradually got warmer as
23 the winter went on.

24 Q. But there were also several severe drops in
25 temperature during that time?

1 A. Uh-huh.

2 Q. I don't have my calendar with me, but I can
3 remember driving down from Columbia when it was pretty
4 awful.

5 In any event, so you only recall the recalls
6 occurring in that week before Christmas 1996?

7 A. Right.

8 Q. Did --

9 A. There may have been others.

10 CHAIRMAN ZOBRIST: Thank you.

11 ALJ WICKLIFFE: Commissioner Lumpe?

12 QUESTIONS BY ALJ WICKLIFFE:

13 Q. For my own personal education, when you sell
14 capacity release subject to recall, do you have to
15 give some sort of a refund when you recall it or is
16 that just built into the lower price?

17 A. That goes to the level of service. It goes
18 in the lower price. And if we recall it, obviously we
19 cannot credit back anything to MPS during the time
20 period that we recall it because MPS is utilizing that
21 capacity.

22 ALJ WICKLIFFE: Okay. Thank you. Redirect?

23 MR. COOPER: Yes, your Honor.

24 REDIRECT EXAMINATION BY MR. COOPER:

25 Q. Mr. Ono, you were asked earlier a question

1 by the Staff attorney about whether an unregulated
2 company would bear the risk for construction delays.
3 Do you remember that?

4 A. Yes, I do.

5 Q. Is the price charged by an unregulated
6 company controlled by a commission?

7 A. No, it is not.

8 MR. COOPER: I don't have any further
9 questions.

10 ALJ WICKLIFFE: Recross based on questions
11 from the Bench, Mr. Micheel?

12 MR. MICHEEL: None.

13 ALJ WICKLIFFE: Ms. McGowan?

14 MS. MCGOWAN: No questions.

15 ALJ WICKLIFFE: You may step down.

16 (Witness excused.)

17 ALJ WICKLIFFE: Off the record.

18 (Discussion off the record.)

19 (Witness sworn.)

20 ALJ WICKLIFFE: On the record. Mr. Cooper?

21 STEVEN M. JUREK testified as follows:

22 DIRECT EXAMINATION BY MR. COOPER:

23 Q. Would you state your full name, please.

24 A. Steven M. Jurek.

25 Q. By whom are you employed and in what

1 capacity?

2 A. UtiliCorp United, Inc. as Director of
3 Regulatory Services.

4 Q. Do you have before you what has been marked
5 for identification as Exhibits 5, 6 and 7?

6 A. Yes.

7 Q. Are Exhibits 5, 6 and 7 the prefiled direct,
8 rebuttal and surrebuttal testimony respectively that
9 you prepared for the purposes of this case?

10 A. Yes.

11 Q. Are there any changes or corrections which
12 you would like to make to your testimony at this time?

13 A. No.

14 Q. If I were to ask you today the same
15 questions that are contained in Exhibits 5, 6 and 7,
16 would your answers be the same as those reflected
17 therein?

18 A. Yes.

19 Q. Would those answers be true and correct to
20 the best of your knowledge and belief?

21 A. Yes, they would.

22 MR. COOPER: I offer at this time
23 Exhibits 5, 6 and 7 into evidence and tender Mr. Jurek
24 for cross-examination.

25 ALJ WICKLIFFE: Objections to Exhibits 5, 6

1 or 7?

2 (No response.)

3 ALJ WICKLIFFE: Hearing none, Exhibits 5, 6
4 and 7 are received into the record.

5 (EXHIBIT NOS. 5, 6 AND 7 WERE RECEIVED INTO
6 EVIDENCE.)

7 ALJ WICKLIFFE: Cross-examination,
8 Mr. Micheel?

9 CROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Mr. Jurek, you're the Director of Rates and
11 Tariffs for all of UtiliCorp United, is that my -- is
12 my understanding correct, sir?

13 A. I think your understanding is incorrect.

14 Q. Okay. What states are you the director for
15 rates in?

16 A. I am not officially the Director of Rates
17 for any particular state jurisdiction. My
18 responsibilities really involve the -- as I indicated
19 in my direct testimony, my responsibilities involve
20 supervision of the automatic cost adjustment
21 mechanisms in each state, and then I also have
22 involvement in all of the UtiliCorp states on issues
23 like transportation, efforts that commissions may
24 undertake to initiate proceedings to look at how to
25 expand transportation services to all customers.

1 Q. Would part of your duties be to take part in
2 any affiliated transaction rulemakings related to
3 transportation customers or any rulemakings related to
4 transportation customers?

5 A. Possibly.

6 Q. Okay. Let me just unpack for the record so
7 we have a clear idea of what states our good friends
8 UtiliCorp do business in and what states you're
9 familiar with. I've got their, their being UtiliCorp
10 United's handy dandy 1996 report. And I'm just going
11 to talk about the gas parts.

12 And obviously you're active in Missouri; is that
13 correct? I mean, you have regulated gas in Missouri,
14 correct?

15 A. Yes.

16 Q. And in West Virginia?

17 A. Yes.

18 Q. Are you familiar with the regulation in West
19 Virginia?

20 A. Generally.

21 Q. Michigan?

22 A. Yes.

23 Q. Are you familiar with the regulatory
24 initiatives in Michigan?

25 A. Yes.

1 Q. Minnesota?

2 A. Yes.

3 Q. Are you familiar with the regulatory
4 initiatives in Minnesota?

5 A. Yes.

6 Q. The great Hawkeye state, Iowa, are you
7 familiar with the regulatory initiatives in Iowa?

8 A. Yes.

9 Q. And you have gas service in Iowa?

10 A. We do.

11 Q. Nebraska?

12 A. Yes. Yes, I'm familiar with the regulation,
13 although in Nebraska it's a little bit different, as
14 you're probably aware, than it is in the other states
15 where we distribute gas at retail. But I'm generally
16 familiar with the situation there, and also we do
17 provide retail gas service in Nebraska.

18 Q. And then I'm just sticking with the
19 continental United States. You provide gas service in
20 Colorado; is that correct?

21 A. That's correct.

22 Q. And are you familiar with the initiatives in
23 Colorado?

24 A. Yes.

25 Q. Okay. Let's start with Colorado. Are you

1 aware, Mr. Jurek, whether or not the Colorado
2 Commission has promulgated some rules as it relates to
3 gas transportation customers?

4 A. If your question is have they done it in any
5 case, specific case of UtiliCorp, I'm not familiar
6 that they have done it in a case-specific instance.
7 Now, they have had some generic proceedings in
8 Colorado. I think there's been generic proceedings in
9 Iowa, and there could be some generic proceedings in
10 some other states.

11 Q. Let's just stick with Colorado for right
12 now.

13 A. Okay.

14 Q. Would you agree with me that in Colorado
15 they've promulgated rules relating to gas
16 transportation and they're found at 4 ECR 723-17?

17 A. I think that's correct.

18 MR. MICHEEL: Mr. Cooper, if I may, Judge,
19 approach the witness to let him look at what I'm
20 looking at.

21 ALJ WICKLIFFE: You may.

22 BY MR. MICHEEL:

23 Q. I've got a copy that I obtained of the gas
24 transportation portions of the Colorado rule,
25 Mr. Jurek, and if you would just -- or at least what

1 I've been led to believe are the gas transportation
2 portions of the rule. If you could just take your
3 time and look at those and tell me if I've got those.

4 A. Yeah. Those appear to be rules from the
5 State of Colorado regarding transportation.

6 Q. Okay. And you're familiar with the
7 regulatory environment in Colorado; is that correct?

8 A. Somewhat. I should point out that as
9 regards transportation, UtiliCorp is not really that
10 active with transportation in Colorado because we
11 don't have very many transportation customers out
12 there. At times there's been two. At times there's
13 been as few as one. So it's really just not an area
14 that we get all that involved with in Colorado.

15 Q. Would you agree that if you were involved in
16 Colorado, the Colorado Commission's promulgated rules,
17 for example, prohibiting anti-competitive conduct and
18 discriminatory behavior and preferential treatment by
19 a public utility?

20 A. I wouldn't -- I would not dispute that. I
21 guess I would -- I would just offer the comment, if
22 your intent is to set in front of me affiliate rules
23 that have been adopted in all the UtiliCorp states, I
24 guess I'm ready to concede that rules have been
25 adopted or proposed in certain UtiliCorp states.

1 I guess the point I'm trying to make is that
2 it hasn't been my recollection that that was ever done
3 in any UtiliCorp specific proceeding in any of those
4 states. Now, we have been involved in generic
5 proceedings in all those states --

6 Q. Mr. Jurek --

7 A. -- where rules were adopted.

8 Q. That wasn't my question, and I appreciate
9 your desire to answer some other question, but I'd
10 really appreciate it, and Mr. Cooper's very able. And
11 I assure you, if you would just answer my questions,
12 it's going to go a whole lot faster.

13 A. Right.

14 Q. Okay?

15 A. Right.

16 Q. In the State of Iowa, is it correct that you
17 have recordkeeping and cost allocation and other
18 affiliated transaction rules that the UtiliCorp
19 affiliate up in Iowa has to follow; is that correct?

20 A. That's correct. I guess the other thing I
21 would point out is whether they're consistent with
22 Missouri or what's been proposed in this case, I can't
23 really say that they're totally consistent with that.

24 They could differ greatly. Some aspects
25 could be similar. I don't think you should assume

1 from that answer that what's being proposed here is
2 what we're living with in Iowa.

3 Q. I don't want to live with what we're living
4 with in Iowa. I want to live with something that's
5 tailor made to you here that we're going to thrash out
6 in this hearing room over the next two days. I just
7 -- that's the Iowa rule as I found it. It was found
8 at 147 PUR 4 page --

9 ALJ WICKLIFFE: Excuse me. Do you have
10 copies of these for all counsel?

11 MR. MICHEEL: I have a copy for Mr. Cooper,
12 and I've placed it on his desk, but I do not have a
13 copy for Ms. McGowan. I apologize. I figured these
14 are at least kind of friendly to their position, so I
15 didn't kill the tree.

16 ALJ WICKLIFFE: Are you planning to offer
17 these as exhibits?

18 MR. MICHEEL: I was not planning on offering
19 them as exhibits. If the Commission wishes me to do
20 that, I will make the copies. I will put them into
21 the record. Quite frankly, I didn't --

22 ALJ WICKLIFFE: Plan on making -- what
23 you're talking about is nearly irrelevant to the
24 Commission if we don't know what you're talking about
25 specifically. If you want to make it an exhibit, you

1 have to have copies for all of the Commissioners and
2 for all counsel.

3 MR. MICHEEL: Well, the ones, your Honor,
4 that are found in the PUR, I felt that I would cite
5 them in my Brief. What I'm trying to draw out in my
6 cross-examination, I think Mr. Jurek has admitted,
7 that UtiliCorp has affiliated rules in other states,
8 be it ad hoc or on a rulemaking basis.

9 ALJ WICKLIFFE: Okay. Proceed.

10 BY MR. MICHEEL:

11 Q. And just for the record, those Iowa rules
12 are found at 147 PUR 4th 330.

13 And would you agree with me, Mr. Jurek, that
14 that's part of the recordkeeping and cost allocation
15 rules in Iowa?

16 A. Yes.

17 Q. And would you agree with me in Iowa that
18 you're required to keep a Cost Allocation Manual, you
19 being UtiliCorp?

20 A. Yes.

21 MR. COOPER: Your Honor, could I make a
22 suggestion at this point? Would it be possible that
23 we could -- maybe Mr. Micheel could ask for
24 administrative notice of these provisions and then
25 just allow the provisions to speak for themselves?

1 MR. MICHEEL: I would do that, but I don't
2 know that this Commission can take administrative
3 notice of Colorado rules or Iowa rules.

4 MR. COOPER: That may be.

5 ALJ WICKLIFFE: I think that's probably
6 correct.

7 MR. MICHEEL: I mean, if it would make the
8 record clearer and make you more comfortable,
9 Mr. Cooper, I would gladly make the seven copies of
10 the Colorado rule and the seven copies of the Iowa
11 rule and file those first thing in the morning as
12 late-filed exhibits if that's -- if that's what
13 everybody wants. I hadn't planned on doing that, but
14 I'm --

15 ALJ WICKLIFFE: From my perspective, I
16 intensely dislike listening to people give testimony
17 on things that I can't see. So that's -- that would
18 be my preference that you prepare them as exhibits.
19 They don't have to be late-filed if you want to bring
20 them in the morning.

21 MR. MICHEEL: You can have my copies so you
22 can follow along with us. And I will -- then I would
23 ask, I guess, that the Colorado rule be marked as late
24 Exhibit 20.

25 ALJ WICKLIFFE: One minute, please.

1 Mr. Micheel, can you complete your cross-examination
2 and bring these in in the morning? Are there any
3 objections to that from other counsel?

4 MR. MICHEEL: Yes, I can complete it and
5 bring it in in the morning.

6 ALJ WICKLIFFE: Are you okay with that,
7 Mr. Cooper?

8 MR. COOPER: Let me speak to Mr. Jurek.

9 ALJ WICKLIFFE: Let's go off the record.
10 (Discussion off the record.)

11 ALJ WICKLIFFE: Back on the record. We've
12 had an off-the-record discussion about some exhibits
13 that Mr. Micheel will be bringing in in the morning
14 such quantities for everyone.

15 You may proceed.

16 BY MR. MICHEEL:

17 Q. Mr. Jurek, would you agree with me that both
18 on an ad hoc and a rulemaking basis in the State of
19 Minnesota, that UtiliCorp's sub up there has been
20 required to utilize some affiliated transaction
21 guidelines?

22 A. You know, I think guidelines is -- I don't
23 know if that's too strong a word or not. I think
24 there's a -- if memory serves me, I think there's a
25 very short, simple filing we make once a year. I

1 think Iowa's got a similar requirement that, again,
2 it's fairly short. It's fairly simple.

3 And as I said before, I think I conceded in
4 an earlier answer that we are under some affiliate
5 rules in other states, whether they're more -- again,
6 whether they're more comprehensive, less comprehensive
7 than what's being proposed here, I think that sort of
8 ranges all over the map.

9 Q. Are you aware whether or not UtiliCorp
10 Energy Services is active in Iowa?

11 A. I believe they are.

12 Q. Okay. And they have an affiliated
13 transaction type of rule in Iowa, don't they?

14 A. Not necessarily related to the activities of
15 UES. I think the affiliate rule they have in Iowa
16 really goes more towards services that the utility may
17 offer, such as appliance repair, that sort of thing.

18 In fact, I think in the legislative session
19 last year, perhaps it was the year before, there was
20 actually a bill introduced and passed that was aimed
21 at really more the appliance repair sort of thing that
22 really didn't address the gas brokering activities.

23 Q. And the gas brokering activities I was
24 talking about or at least the item that I gave you,
25 that was passed, at least on my copy, whichever one

1 we'll have tomorrow, November 10th, 1993; is that
2 correct?

3 A. Right. And again, I -- it was my
4 recollection that I was involved in some of the
5 activities back in '93 that gave rise to these rules.
6 And again, it was my recollection that they really had
7 nothing to do with marketing companies as much as the
8 appliance repair and other sorts of services that a
9 utility might offer.

10 Q. Let's talk about Michigan. Are you aware of
11 whether or not there are any affiliated transaction
12 rules either ad hoc or in a rulemaking nature in the
13 State of Michigan?

14 A. Well, there certainly isn't anything that I
15 can recall that's come up in any of our cases. There
16 might be some generic things that are going on. I'm
17 just -- I'm not as familiar with Michigan as I am with
18 some of our other states.

19 Q. So you're not familiar whether or not there
20 was a discussion in a Michigan Gas Utilities case that
21 was recently decided?

22 A. It very well could have been that the Staff
23 may have been requesting some information that's
24 similar to what's being requested in this proceeding,
25 but I just don't know a lot of specifics about it.

1 Q. Fair enough. I think I've captured all of
2 your states. How about West Virginia, do you have an
3 affiliate transaction rule in West Virginia?

4 A. There may be one there, but, again, I think
5 if there is it's -- my recollection is it's more
6 similar to Iowa where it deals maybe with the
7 appliance repair and doesn't address the gas marketing
8 activities.

9 Q. So the only one that you're aware of that
10 addresses gas transportation and gas marketing would
11 be the Colorado one; is that correct?

12 A. Right. And as I said before, we're not
13 really very active in transportation out there.

14 Q. Now, is it your position in this proceeding
15 that if we're going to have standards of conduct as
16 proposed by Mr. Hubbs and Mr. Trippensee, that we
17 should be doing it in a rulemaking proceeding?

18 A. It's been my recommendation and my testimony
19 that I think the more appropriate forum is in a
20 generic proceeding, yes.

21 Q. Would you agree with me that MoPub doesn't
22 believe that a rule regarding affiliated transactions
23 is even needed?

24 A. Well, I was -- I guess I was in the hearing
25 room earlier this morning when you read that excerpt.

1 I didn't read -- hadn't seen the whole document, or I
2 don't recall seeing it. I don't know if that was an
3 out-of-context excerpt or just what the context of
4 that was.

5 Q. Well, why don't we just get that marked as
6 an exhibit so we can put it in context.

7 A. We'll do that.

8 (EXHIBIT NO. 20 WAS MARKED FOR
9 IDENTIFICATION.)

10 BY MR. MICHEEL:

11 Q. I've hand you what's been marked for
12 purposes of identification, I believe it will be
13 Exhibit --

14 ALJ WICKLIFFE: 20.

15 BY MR. MICHEEL:

16 Q. -- 20. And that is Entry of Appearance in
17 Case No. OO-96-329; is that correct, Mr. Jurek?

18 A. Yes, that's correct.

19 Q. And is that UtiliCorp United, d/b/a Missouri
20 Public Service's Entry of Appearance?

21 A. It appears to be, yes.

22 MR. MICHEEL: I would move for the admission
23 of Exhibit 20, Entry of Appearance, at this time.

24 THE WITNESS: I just had one other comment I
25 wanted to make on this document because I do think it

1 contains a provision, if I could just make one
2 comment.

3 ALJ WICKLIFFE: Sir, you weren't asked a
4 question.

5 Objections to admission of Exhibit 20?

6 (No response.)

7 ALJ WICKLIFFE: Hearing none, Exhibit 20 is
8 admitted.

9 (EXHIBIT NO. 20 WAS RECEIVED INTO EVIDENCE.)

10 BY MR. MICHEEL:

11 Q. And just to read the whole paragraph 3 in
12 context, it says, whether you agree, MPS does not
13 believe that a rule regarding affiliate transactions
14 is needed. The Commission has numerous statutory,
15 administrative and rate case provisions and remedies
16 already in place if particular situations arise. Is
17 that correct?

18 A. Yes.

19 Q. Would you agree with me, Mr. Jurek, that
20 those rate case and statutory items that are already
21 in place are after the fact, after the event has
22 occurred; is that correct?

23 A. Right. One comment, though, you didn't read
24 the whole paragraph. There was one other sentence
25 that said MPS is, however, willing to meet and discuss

1 issues raised by the Staff and others and believes
2 that the informal workshop approach is appropriate.

3 And I certainly would agree with that. I
4 think if the State of Missouri or if the Commission
5 wants to initiate a generic proceeding in a workshop
6 basis, I'm in agreement with the statement here. I
7 think that would be appropriate.

8 Q. Super. And it says what it says and we've
9 all read it, correct?

10 A. Well, you just had indicated earlier let's
11 read the whole paragraph, and you didn't read the last
12 sentence of the paragraph.

13 Q. All right. Is there any other part of this
14 document that you'd like me to read into the record to
15 make it crystal clear, Mr. Jurek?

16 A. Well, let me just say, I don't think we're
17 really splitting hairs here. You seem to suggest that
18 I'm splitting hairs with you, and I don't think I am.

19 I think the last sentence is pretty
20 critical, and I think it's consistent with my
21 testimony in this case, that -- can you point me in my
22 testimony to any place where I say that affiliate
23 rules are completely unneeded, not necessary, it would
24 be totally inappropriate for the Commission to adopt
25 them?

1 Q. Let's say I ask the questions here. My
2 question to you is, sir, before we got off on this
3 tangent -- and I apologize for getting off on the
4 tangent. It's probably my fault. I didn't mean to
5 split hairs with you.

6 Would you agree with me, sir, that the
7 statutory and rate case provisions, rules and
8 proceedings that we have are after-the-fact remedies
9 of problems?

10 A. Well, could you explain that a little
11 further?

12 Q. Sure. For example, in this proceeding we're
13 doing what we call a prudence review. So we're
14 looking at what your company has done real time in
15 this case, what year is the ACA, 1995 --

16 A. Uh-huh.

17 Q. -- '96. So we're already a year back. So
18 it's post hoc, after the fact, and that's the kind of
19 things that we can do right now; isn't that correct?

20 A. Yes.

21 Q. Now, if we had -- assume for me that -- and
22 I understand you want to go into informal workshops
23 and things like that, and I -- I don't have a problem
24 with that.

25 But let's assume that we have this

1 particular tariff in place. Would you agree with me,
2 whether or not you agree with the substance of the
3 tariff, that your company would know, per what the
4 tariff said, what its obligations were as it related
5 to its standards of conduct?

6 A. If it was in the tariff, we would know. I
7 guess I'd have a concern if we were the only company
8 with that in our tariff.

9 Q. And so that would be something that we would
10 be doing on a going-forward-type basis where you would
11 have a road map before and we could perhaps dispense
12 with some of this what I've heard utilities complain
13 is post hoc prudence review; is that correct?

14 A. Could you repeat the question? I'm not sure
15 I followed your point there.

16 Q. Well, would you -- would you agree with me
17 that if -- assume we have these particular standards
18 of conduct tariffs in place. Okay. Missouri Public
19 Service would know its rights, obligations and duties
20 under its tariffs. I'm sure that your company strives
21 to follow your tariffs.

22 A. Absolutely.

23 Q. And now we're kind of in what I want to
24 call -- you guys don't know on an up-front basis what
25 you can and can't do. You have to wait until Staff or

1 my office files and says in a proceeding like this,
2 hey, that was imprudent, what you did in 1995, or
3 something like that; is that correct?

4 A. Well, that's the -- you know, that's the
5 mechanism that I guess we live with here, and there is
6 some element of after the fact to it, yes.

7 Q. And do you have an opinion on whether or not
8 setting out a road map or standards through the
9 tariffed standards of conduct would give your company
10 a better guide, a better road map on what it can and
11 cannot do?

12 A. I don't necessarily disagree with that. I
13 think there's a lot of different ways you might go
14 about doing that, though.

15 Q. Certainly. And I've reviewed your
16 testimony. You didn't specifically comment either in
17 your rebuttal or surrebuttal about any specific
18 provision either in Mr. Hubbs' proposed standards of
19 conduct tariffs or Mr. Trippensee's, did you, sir?

20 A. I have concerns, I guess. I think there's
21 elements to them where reasonable people could
22 probably disagrees on certain aspects of them, but as
23 far as getting into a lot of detail in testimony, no,
24 I didn't indicate.

25 Q. I just wanted to make sure for the record

1 because I read your testimony. I was trying to see
2 what specific parts of either Mr. Hubbs' or
3 Mr. Trippensee's proposal that you had a problem with,
4 and I didn't find it there.

5 A. Okay.

6 Q. And it's not in your testimony, your
7 prefiled testimony; is that correct?

8 A. Right. As I said a minute ago, I do frankly
9 have some concerns, and I think there's areas where we
10 certainly wouldn't be in agreement, but no, it's
11 not -- it's not specifically laid out there.

12 I think the emphasis was more on the type of
13 proceeding that should be used, not necessarily on the
14 specifics of their proposals.

15 Q. Would you agree with me generally that
16 whether it's industry-wide or MoPub-specific, that
17 this Commission should, either on an ad hoc basis or
18 through a rulemaking, promulgate some affiliated
19 transaction rules?

20 A. Well, I think a good first step would be
21 just to get some of the key people together, some of
22 the key industry segments.

23 One of the concerns I have is on issues of
24 policy like this, I'm not sure a contested case
25 process like this is the best way to get at what the

1 right kind of rules are, and I can give you some
2 examples of why I would answer that way.

3 Q. That's all right.

4 MR. MICHEEL: Thank you very much,
5 Mr. Jurek.

6 ALJ WICKLIFFE: Are you finished?

7 MR. MICHEEL: Yes.

8 ALJ WICKLIFFE: Ms. McGowan?

9 MS. MCGOWAN: I don't believe the Staff has
10 any additional questions for this witness.

11 ALJ WICKLIFFE: Chairman?

12 QUESTIONS BY CHAIRMAN ZOBRIST:

13 Q. Mr. Jurek, on the transportation customer
14 billing points, I guess I really don't understand why
15 this would be such a burden. I mean, I thought what
16 Mr. Hubbs filed in his surrebuttal, that was a
17 reasonable accommodation, that if you've got a
18 customer who is sophisticated, who has business savvy,
19 they can say I don't want this.

20 But as we go into this competitive era,
21 there are going to be people out there that are going
22 to be suspicious of this rebundled project. And I
23 guess I don't -- I don't see the harm and I don't
24 really see a quantification of the burden or confusion
25 that the company sees.

1 Can you elaborate on your feelings on that
2 issue?

3 A. Yes. Mr. Hubbs filed his surrebuttal, I
4 think, after we filed ours, and I don't have really
5 frankly any problem with what he's suggesting.

6 The one issue I guess I would bring up is
7 that it may not work exactly the way he wants it to
8 work. In other words, if an agent signs a contract
9 with a customer to do all the billing, as I understand
10 Mr. Hubbs' proposal, he would then want us if the --
11 if the marketer produced evidence to us that the
12 customer wanted them to consolidate billing and
13 whatnot, we would then need to send a letter to the
14 customer saying "We got a letter from your agent
15 saying you wanted us to consolidate billing. Is that
16 really what you want us to do?"

17 Now, there's a number of things, I guess,
18 that could happen once you send a letter like that.
19 The customer could lose it. The customer could get
20 upset and say, "Well, I contracted with an agent, and
21 I wanted them to represent me to the utility. Now
22 here I have the utility turning around saying when you
23 entered this agency agreement, is that really what you
24 wanted to do."

25 So I guess my only concern is, what he's

1 suggesting on its face sounds reasonable. I guess I
2 just -- I don't know what the customer reaction to
3 it's going to be.

4 Q. Well, you know, we've got provisions in the
5 law that require the courts to go to an attorney and
6 say, "You bring your client in here, and I want to
7 know if the client is agreeing to this proposition."

8 And the attorney either voluntarily, or
9 usually voluntarily or reluctantly goes and says, you
10 know, "I'm sorry, you know, Mrs. Client, but the law
11 and the court require me to do this." That happens
12 all the time.

13 A. Right.

14 Q. There are situations particularly when
15 you're having minor settlements and wrongful death
16 settlements where you've got to have the client come
17 in and offer that assurance to the legal authority
18 that proper disclosure's been made.

19 And I understand your point, but it's also
20 easy to blame the Public Service Commission and say,
21 you know, it's those folks that want to do it, and
22 there's a prophylactic goal here that's fulfilled.
23 And I would think that, you know, even the wealthy
24 industrials out there, you know, would understand
25 that.

1 A. Maybe they would, and there's certainly a
2 lot of them that would, and there may be even a lot of
3 them that wouldn't. And I guess I'm just suggesting
4 that I think one of the reasons a customer would
5 contract with an agent is to eliminate, for want of a
6 better term, some bureaucratic hurdles that they have
7 to jump over.

8 And in responding to another piece of paper
9 that gets sent to them by the utility, it may strike
10 some of them as overkill. But again, I don't
11 necessarily think that there's anything unreasonable
12 about what Mr. Hubbs has suggested.

13 CHAIRMAN ZOBRIST: I'm going to pass the
14 baton. I just lost my train of thought.

15 QUESTIONS BY COMMISSIONER LUMPE:

16 Q. I want to follow up on the same area, and I
17 believe I heard you say earlier you do follow the
18 tariff. You just follow the tariff. In other words,
19 that's what you want to be in compliance with, right?

20 A. Yes.

21 Q. And what I was reading in Mr. Hubbs' direct
22 testimony on page 3, when he was asked why he's
23 proposing that language, and it says: The first
24 sentence is proposed to ensure that the Company has an
25 executed agreement from its customer to send its bill

1 to the customer's marketer, thereby not violating its
2 tariff.

3 As I read that, he was suggesting that not
4 doing this would be in violation of the tariff which
5 you say you don't want to violate. Do you read it
6 differently, that what you're doing is not in
7 violation of your tariff?

8 A. I have never been completely certain what
9 provision of the tariff Mr. Hubbs referred to when
10 he's made that statement. You know, it would be
11 interesting to know just precisely what part of the
12 tariff he's referring to that would say that sending a
13 bill or having a bill sent to an agent is somehow in
14 conflict with the tariff. I just have never known
15 what part of the tariff he was referring to there.

16 I guess my opinion is I don't think sending
17 the bill to the agent really does conflict with the
18 tariff, but, you know, that's an issue we can probably
19 have a pretty good discussion on.

20 Q. I can ask him to clarify that.

21 COMMISSIONER LUMPE: Thank you.

22 QUESTIONS BY ALJ WICKLIFFE:

23 Q. You stated in your testimony that applying
24 these affiliate standards of conduct only to MPS would
25 put UES at a competitive disadvantage. Do you recall

1 saying that on page 5?

2 A. Of the rebuttal?

3 Q. Rebuttal.

4 A. Let me just get that reference. Yes.

5 Q. UES is an unregulated company, correct?

6 A. Uh-huh.

7 Q. Is there any reason why this Commission
8 should be concerned about a competitive disadvantage
9 to UES?

10 A. Well, they are a competitor in the
11 marketplace, and while I don't think your concern
12 should be in protecting them in any fashion, I think
13 there should be a concern that they not be treated any
14 different or any worse than any other competitor.

15 So I guess the only point I was really
16 trying to make there, at least one of the points I was
17 trying to make is let's just treat UES the same as we
18 treat any other unregulated competitors.

19 Q. When you talked about the expenses, the same
20 piece of testimony on page 2, mailing, timekeeping,
21 bill tracking, computer time, etc. --

22 A. Right.

23 Q. -- that would be involved with this
24 additional tariff language, has MPS attempted to
25 quantify these costs?

1 A. No. About the best answer I can give you at
2 this point is I'm sure it would be more than zero, but
3 trying to fix a specific dollar number I haven't done.

4 Q. Okay. If those costs were incurred, how
5 would they be recovered ultimately?

6 A. Well, I -- if I'm understanding Mr. Hubbs'
7 proposal correctly, those would be expenses that MPS
8 would incur.

9 Q. From what customer group would they be
10 recovered ultimately?

11 A. Well, I think probably all -- in some
12 fashion all Missouri Public Service customers would
13 pay the cost of that.

14 Q. You mentioned interference of a contractual
15 relationship. This is on page 2, line 7. Explain to
16 me how this is an interference with contractual
17 relationship, and what contractual relationship are we
18 talking about?

19 A. Well, the contractual relationship I guess I
20 had in mind there was the relationship that the end
21 use customer enters into with the agent that's going
22 to consolidate their billing for them.

23 Q. With the marketer?

24 A. Right. And that if Missouri Public Service
25 or any other utility was required to obtain any sort

1 of written agreements or other acknowledgements from
2 the customer, that that would in a sense be
3 frustrating the effort of the customer to hand off the
4 administrative burdens to the agent.

5 ALJ WICKLIFFE: The Chairman has remembered
6 his question.

7 QUESTIONS BY CHAIRMAN ZOBRIST:

8 Q. This is an ACA proceeding, and at least to
9 my mind it's arguable that maybe this particular
10 proceeding or at least at this stage of it is not the
11 best forum to adopt a rule, although I think we
12 certainly have the authority to do that.

13 Just speaking for myself, one of the
14 problems in rulemakings is that sometimes the
15 procedure can be, if not endless, at least long. It
16 can be lengthy. You can have a lot of participants.
17 The proceeding can become unwieldy. Sometimes there
18 are institutional concerns with the General Assembly
19 that we experience.

20 How would the Company entertain an Order by
21 this Commission to sit down and come back to us in 60
22 or 90 days with a -- to try to work out a proposal?
23 I'm not sure what the vehicle would be. I'm sort of
24 speaking off the top of my head.

25 But sometimes it's difficult to come to the

1 right solution, as Mr. Micheel said, for Missouri
2 based upon what we're trying to do here in the
3 litigated concept. Whereas, if we order the parties
4 to -- just these parties to come down and try to
5 formulate a rule that UtiliCorp felt it could live
6 with, borrowing the best from other states and perhaps
7 adopting it to Missouri conditions, what would the
8 Company's reaction be to that type of proposal?

9 A. Well, I think we'd definitely be open to
10 that. I suppose if we were doing that in one of the
11 glassed-in conference rooms out here you'd have a lot
12 of the other LDCs sort of with their nose pressed up
13 against the glass to see what was going on in that
14 room with just the two parties.

15 I'm assuming when you say get together it
16 would be the Company with OPC and the Staff to try to
17 work out something that makes sense for everybody, and
18 I think we'd definitely be open to something like
19 that.

20 I think one of the byproducts could be, as
21 we saw this morning, though, that you'd have other
22 LDCs wanting to be somehow involved in that process.

23 Q. Well, that's why I'm saying in this
24 proceeding because, as far as I'm concerned, we
25 indicated on the record this morning how we wanted

1 this proceeding to go.

2 A. Right. Well, and then, you know, if it's
3 just going to be UtiliCorp, then I think the
4 Commission probably needs to get comfortable with the
5 idea of is there something about UtiliCorp that makes
6 it acceptable that they would somehow be under
7 affiliate standards that maybe other LDCs would not
8 have to abide by.

9 Q. Well, one of the issues that I assume you
10 would be discussing would be the timing of that rule
11 and how it would be implemented in a fashion that
12 would not prejudice your company versus other
13 companies in this state.

14 A. Well, I think if we could -- if we could
15 work through those issues, that certainly would be a
16 preferable way to do it.

17 Q. Well, I just -- I'm using you as a vehicle
18 to offer that suggestion, and perhaps the parties and
19 their attorneys could address it in the briefing
20 stage.

21 CHAIRMAN ZOBRIST: Thank you.

22 ALJ WICKLIFFE: Commissioner Lumpe?

23 COMMISSIONER LUMPE: No.

24 ALJ WICKLIFFE: One other question.

25 QUESTIONS BY ALJ WICKLIFFE:

1 Q. Do you know what the current rate of
2 conversion to natural gas is in Rolla?
3 A. I don't believe I do.
4 Q. If I recall, Mr. Ono, would he know what the
5 current rate of conversion is?
6 A. He might.
7 ALJ WICKLIFFE: Thank you.
8 MR. COOPER: Not without consulting some
9 sort of materials.
10 ALJ WICKLIFFE: Okay. Thank you. Redirect,
11 Mr. Cooper?
12 MR. COOPER: None, your Honor.
13 ALJ WICKLIFFE: Recross, Mr. Micheel?
14 MR. MICHEEL: None, your Honor.
15 ALJ WICKLIFFE: Ms. McGowan?
16 MS. MCGOWAN: Just on one area. I didn't
17 intend to put this in the record, so I do not have
18 copies. This is a copy of the tariff in response to
19 the question Commissioner Lumpe was asking. May I
20 approach the witness to show him the tariff?
21 ALJ WICKLIFFE: Can you tell us what tariff
22 you're --
23 MS. MCGOWAN: It is Missouri Public
24 Service's Tariff Sheet No. 21. It's the first revised
25 tariff sheet. Would it be easier for me to mark this

1 on the record tomorrow?

2 ALJ WICKLIFFE: Off the record.

3 (Discussion off the record.)

4 ALJ WICKLIFFE: We're on the record.

5 MS. MCGOWAN: May I approach the witness?

6 ALJ WICKLIFFE: Yes.

7 CROSS-EXAMINATION BY MS. MCGOWAN:

8 Q. I'm standing over your shoulder since that
9 is the only copy that I have.

10 Will you read on Sheet 21, I also have a
11 copy of the Revised Sheet 22. Read the first
12 sentence.

13 A. The highlighted portion?

14 Q. Uh-huh.

15 A. Missouri Public Service will render bills
16 monthly for transportation service furnished the
17 previous monthly period which may include billings
18 from third-party transporters delivering gas to
19 Missouri Public Service on the customer's behalf.

20 Q. And then on Tariff Sheet 22, it identifies
21 that the -- again, this is something that will be much
22 easier explained by our tariff witness, Mr. Hubbs.

23 Do you see the highlighted section?

24 A. Yes.

25 Q. Where it says that the gas shall ultimately

1 be consumed by the transporter in the state of
2 Missouri?

3 A. Yes.

4 MS. MCGOWAN: Without going into great
5 detail, it will be easier for the Staff to present
6 this testimony, if the Commission's interested,
7 through Mr. Hubbs, but I would like the record to
8 reflect that the tariff provision at issue is located
9 in Tariff Sheet Nos. 20 and 21, actually Revised
10 Tariff Sheets 20 and 21 to Missouri Public Service.
11 I'm sorry. 21 and 22.

12 ALJ WICKLIFFE: All right.

13 MS. MCGOWAN: Staff has no further questions
14 of this witness.

15 ALJ WICKLIFFE: Thank you. You may step
16 down.

17 (Witness excused.)

18 ALJ WICKLIFFE: We're off the record.

19 (Discussion off the record.)

20 (Witness sworn.)

21 ALJ WICKLIFFE: We're on the record.

22 Mr. Micheel, you may proceed with your witness.

23 MR. MICHEEL: I would call Russell W.
24 Trippensee.

25 RUSSELL W. TRIPPENSEE testified as follows:

1 DIRECT EXAMINATION BY MR. MICHEEL:

2 Q. Mr. Trippensee, would you state your name
3 and business address and how you're employed for the
4 record.

5 A. My name is Russell W. Trippensee. I'm
6 employed by the Missouri Office of the Public Counsel.
7 My business address is P.O. Box 7800, Jefferson City,
8 Missouri 65102.

9 Q. And have you been -- have you caused to be
10 filed what has been marked for purposes of
11 identification Exhibit 8, your rebuttal testimony in
12 this proceeding?

13 A. Yes, I have.

14 Q. And if I asked you those questions today,
15 would your answers be substantially the same?

16 A. Yes, they would.

17 Q. Do you have any corrections you would like
18 to make to Exhibit 8?

19 A. Not to my knowledge.

20 Q. Have you also caused to be filed with this
21 Commission your surrebuttal testimony which has been
22 marked for purposes of identification as Exhibit 9?

23 A. Yes, I did.

24 Q. And if I asked you those questions contained
25 in that testimony today, would your answers be

1 substantially the same?

2 A. Yes, they would.

3 Q. Do you have any corrections you would like
4 to make?

5 A. Not to my knowledge.

6 MR. MICHEEL: At this point, I would offer
7 Exhibits 8 and 9 and tender Mr. Trippensee for
8 cross-examination.

9 ALJ WICKLIFFE: Objections to Exhibits 8 and
10 9?

11 (No response.)

12 ALJ WICKLIFFE: Hearing none, Exhibits 8 and
13 9 are received into the record.

14 (EXHIBIT NOS. 8 AND 9 WERE RECEIVED INTO
15 EVIDENCE.)

16 ALJ WICKLIFFE: Cross-examination,
17 Ms. McGowan?

18 MS. MCGOWAN: Staff has no questions for
19 this witness.

20 ALJ WICKLIFFE: Mr. Cooper?

21 MR. COOPER: Yes, your Honor.

22 CROSS-EXAMINATION BY MR. COOPER:

23 Q. Mr. Trippensee, it is your recommendation,
24 isn't it, that the Commission undertake a
25 comprehensive rulemaking regarding affiliated

1 transactions in order to protect ratepayers served by
2 a regulated monopoly utility?

3 A. It's my recommendation that that is one
4 method. There's currently a proceeding that is going
5 on, but it, as the Chairman kind of indicated, they
6 have a tendency to have a life of their own that never
7 gets a result.

8 Most often, in my experience with the
9 Missouri Commission, rules have often come about on
10 company-specific cases. But Public Counsel's not
11 opposed to a general rulemaking so long as there is
12 going to be a result in a timely fashion to protect
13 the ratepayers.

14 Q. In fact, what I read comes right out of your
15 rebuttal testimony, doesn't it?

16 A. Yes, it does.

17 Q. And you view the issues that you would like
18 to address to pertain to more than just UtiliCorp;
19 isn't that correct?

20 A. Conceptually, yes.

21 MR. COOPER: Okay. That's all I have.

22 Thank you.

23 ALJ WICKLIFFE: Chairman Zobrist?

24 QUESTIONS BY CHAIRMAN ZOBRIST:

25 Q. Would you like to elaborate on that last

1 question, Mr. Trippensee?

2 A. I would love to.

3 Q. Please do.

4 A. Rulemaking in general are conceptual
5 documents that cannot be specifically or will not work
6 for each and every company. Several examples come to
7 mind. The Tax Reform Act of 1986 created a major
8 headache for the water industry with contributions in
9 aid of construction.

10 The Commission looked at it in general rule
11 quickly, I believe, if my memory serves me correctly,
12 that was over a decade ago, went to a proceeding where
13 St. Louis County Water developed a rule that worked
14 for them. And before it was all over there were three
15 different sets of rules that would address
16 contributions in aid to construction because not only
17 the size of the utility, the organizational structure,
18 their capital structure all affected how that best
19 could be dealt with.

20 The Commission issued a rule on advertising,
21 a generic rule. 1/10 of 1 percent was what they would
22 allow for rates. Again, once they started looking at
23 individual companies, it did not work. They had to
24 tailor it to the specific company.

25 And I think when I addressed Mr. Cooper

1 about my rebuttal testimony, conceptually a rulemaking
2 will work for affiliated transactions. There needs to
3 be affiliated transactions to protect the ratepayers
4 in our view. But they're going -- any of those
5 conceptual rules are going to have specific issues to
6 the different industries.

7 UtiliCorp is very aggressive in the
8 expansion of the competitive aspects of the utility
9 industry. Other utilities are not as aggressive, will
10 have different corporate structures. UtiliCorp is not
11 acting as a holding company. I don't know if it's
12 been approved or exactly the status, but Union
13 Electric Ameron will be a holding company. Those are
14 going to require different rules.

15 So you're going to have -- you're going to
16 have to address it on case-by-case ultimately in my
17 view. You need -- I'd say that's, you know, probably
18 more than elaboration.

19 Q. Let me ask you about your marketing
20 affiliate suggestion, which I think you inserted as
21 Section M under the nondiscrimination standards.

22 I'm just wondering how that works with a
23 company like UtiliCorp. The name UtiliCorp has not
24 been around a very long time, maybe ten years or
25 something like that. People who use the monopoly

1 services of Missouri Public Service, everybody there
2 knows it as MoPub.

3 How does that work with this company? Are
4 we talking about the brand recognition of MoPub or
5 Missouri Public Service or are we talking about the
6 UtiliCorp name?

7 A. I think maybe an example from the
8 telecommunications industry in Jefferson City would be
9 a good example. We had Capital City Telephone, which
10 was then purchased by United Telephone, which has now
11 become Sprint, but they're the same folks you've been
12 dealing with for 75 years, and that's their
13 advertising campaign. Our name may change, but you're
14 dealing with the same people.

15 And I don't think the customers are -- or
16 their customers are aware enough to know that a
17 corporation may change its name, but you're still
18 dealing with the same entity that you've dealt with
19 for years.

20 And I think as an accountant and just
21 looking at how telecommunications market themselves,
22 the corporations view that as value, especially in the
23 telecommunications industry, which is, shall we say,
24 farther along the road towards competition than any
25 other types of utilities.

1 The corporations are very -- the
2 telecommunications corporations are putting a lot of
3 money into advertising their corporate name and
4 spending a lot of money to develop the logos, the
5 trans -- the movement from one, say, United to Sprint
6 United to now just Sprint. They take their time,
7 their effort, and they do their research. They put a
8 lot of value on it.

9 And to let that simply go to the marketing
10 affiliate is going to give that affiliate an advantage
11 over the other entrants, and Public Counsel does not
12 believe that competition will work unless we
13 demonopolize the industry. Otherwise, you're simply
14 going to end up with an unregulated monopoly.

15 Q. I understand that. I guess I'm trying to be
16 specific to this company. UtiliCorp is the name by
17 which the parent goes by. The marketing arm goes by
18 UES; is that correct?

19 A. That's my understanding.

20 Q. All right. In Public Counsel view, is
21 UtiliCorp the name that the Commission should be
22 concerned with or is it Missouri Public Service or
23 MoPub that we should be concerned with?

24 A. Well, I think when I mentioned earlier case
25 specific, if a company is keeping their affiliate at

1 arm's length and simply saying UES, does not mention
2 UtiliCorp, does not mention MoPub, then I would
3 suggest they are not going to come into a problem with
4 the rule.

5 Now, if they're saying UES, a division of
6 UtiliCorp who has been your provider under the name
7 MoPub for the last 75 years, we have a whole different
8 set of circumstances.

9 Q. Okay. That's what I wanted to hear.

10 CHAIRMAN ZOBRIST: Thank you.

11 ALJ WICKLIFFE: Commissioner Lumpe?

12 COMMISSIONER LUMPE: No.

13 QUESTIONS BY ALJ WICKLIFFE:

14 Q. Well, along the same lines, is UES taking
15 advantage of the corporate name, to your knowledge?

16 A. Our office has not looked into specific
17 instances of how they're advertising today. What
18 we're recommending is a set of rules.

19 Q. I understand what you're recommending. My
20 question is, are you aware of this happening at this
21 point?

22 A. I'm not aware either way at this point in
23 time.

24 Q. Are you aware of any instances where UES is
25 engaging in sharing customer service personnel with

1 MPS or with any other aspects of UtiliCorp?

2 A. We have not done investigation into that at
3 this time.

4 Q. So that's a danger you want to guard
5 against, but you don't know whether that's occurring;
6 is that correct?

7 A. It is a danger that I know has occurred in
8 several other utilities, primarily telecommunications,
9 and we have had customer complaints in those areas.
10 And we do not want to see -- telephones are one thing,
11 or an industry that has been a public service.

12 Gas is still a public service, and we don't
13 want to see some of the things that have occurred in
14 telephone also happen in the gas industry, and I don't
15 think people, you know, corporate cultures are that
16 much different from one to the other.

17 Q. Do you know how long UES has been in
18 service?

19 A. How long UES? No.

20 Q. Have you ever had customer complaints about
21 UES?

22 A. Not to my knowledge. It might be a better
23 question for Mr. Micheel. He fields most of the gas
24 complaints.

25 Q. Okay. Well, Mr. Micheel is not sworn.

1 MR. MICHEEL: I have a duty, your Honor, to
2 tell the Court the truth, the whole truth, and I do it
3 all the time.

4 ALJ WICKLIFFE: That I would not argue with.

5 MR. MICHEEL: As I see it, of course.

6 BY ALJ WICKLIFFE:

7 Q. You also mentioned single billing as a way
8 that affiliate transactions can be used to stifle
9 competition. You mean combining billings, UES and MPS
10 combining their bills on a single billing, is that
11 what you're referring to?

12 A. Yes. Single billing that they either
13 provide to the affiliate at a reduced cost or would
14 not provide to a similarly situated marketer who just
15 simply does not happen to be affiliated.

16 Q. You mean MPS providing marketing or billing
17 services to UES, is that what you mean?

18 A. Well, billing -- they would provide a
19 billing service to the customer -- I mean to UES so
20 that the customer receives a single bill.

21 Q. Okay.

22 A. But would not provide that same service to
23 another marketer. That was simply just an example.

24 ALJ WICKLIFFE: I believe that's all I have.
25 Anything else from the Bench?

1 QUESTIONS BY COMMISSIONER LUMPE:

2 Q. Listening to your testimony, the sense of it
3 is that you're concerned that the relationship between
4 the company and affiliates really be arm's length
5 competitive relationships, not friendly relationships?

6 A. Not real intimate relationships. Again, I
7 think that -- that's our office's view. I think it's
8 consistent with the view that is embodied in the
9 Telecommunications Act passed by the Missouri
10 Legislature last year.

11 Q. And what I then would gather the next step
12 is that, having learned from that experience and
13 creativity of the industry, that perhaps we should
14 learn from that and be proactive. Are you trying to
15 say that?

16 A. I would definitely say that. I think this
17 Commission is struggling with some interconnection
18 rules or maybe just recently issued an order. We're
19 12 months after the Governor signing the bill, and
20 there's not a whole lot of local competition for
21 telephone service.

22 There are problems because companies are
23 going to look for an advantage, and I don't blame them
24 for that. That's the idea. They're there to make a
25 profit. But when they do that, I think in

1 Mr. Micheel's opening statement, the charge of this
2 Commission is still to protect the public first and
3 foremost, not the competitive entities.

4 I don't care if they're competitive or if
5 they're a monopoly, I want the customer protected, and
6 that's why we propose these rules.

7 COMMISSIONER LUMPE: Thank you.

8 QUESTIONS BY ALJ WICKLIFFE:

9 Q. One last question, Mr. Trippensee. You are
10 aware that the Commission also has a duty to make sure
11 that regulated utilities receive a reasonable profit?
12 You understand that?

13 A. I do not agree with that, ma'am. They
14 are --

15 Q. You don't believe that's part of the mandate
16 of the Commission?

17 A. They are given the opportunity, I believe,
18 to earn a reasonable return. It's their
19 responsibility to try and do so. There's a major
20 difference there. It may only seem semantical, but
21 it's a major difference.

22 ALJ WICKLIFFE: Thank you. Redirect,
23 Mr. Micheel?

24 MR. MICHEEL: None, your Honor.

25 ALJ WICKLIFFE: Recross, Ms. McGowan?

1 CROSS-EXAMINATION BY MS. MCGOWAN:

2 Q. I just had one question on something I think
3 I heard you say but you might not have even said.

4 In response to the first question from
5 Chairman Zobrist, you stated, I believe, that
6 affiliate transactions are needed to protect the
7 ratepayers. If that was correct, did you mean
8 affiliate transactions or affiliate transaction
9 restrictions?

10 A. Rules to ensure that affiliate transactions
11 do not cause harm to the ratepayer.

12 Q. Just in case I heard incorrectly.

13 A. I may have misspoken. This side of the
14 microphone is a little different feeling.

15 MS. MCGOWAN: No further questions.

16 ALJ WICKLIFFE: Mr. Cooper?

17 MR. COOPER: No questions.

18 ALJ WICKLIFFE: You may step down.

19 (Witness excused.)

20 ALJ WICKLIFFE: Off the record.

21 (Discussion off the record.)

22 (Witness sworn.)

23 ALJ WICKLIFFE: We're on the record.

24 Ms. McGowan?

25 WARREN T. WOOD testified as follows:

1 DIRECT EXAMINATION BY MS. MCGOWAN:

2 Q. Please state your full name and business
3 address for the record.

4 A. Warren T. Wood, and for purposes of this
5 case P.O. Box 360, Jefferson City, Missouri 65102.

6 Q. Are you the same Warren Wood who has
7 prepared and caused to be filed as direct and
8 surrebuttal testimony the exhibits now marked, I
9 believe, 11 and 12, 11 and 12HC?

10 A. Yes.

11 Q. Do you have any changes or corrections to
12 those exhibits?

13 A. None at this time.

14 Q. And the answers contained in those exhibits
15 are true and accurate to the best of your belief and
16 knowledge?

17 A. Yes.

18 ALJ WICKLIFFE: Excuse me. I believe
19 Mr. Wood would want to make one spelling correction.
20 Actually, it appears twice, if I can find it.

21 MS. MCGOWAN: In case I misspoke, I'd like
22 to note that the exhibits in issue are direct
23 testimony, 10 and 10HC, and surrebuttal testimony, 11
24 and 11HC. I may have misstated that.

25 ALJ WICKLIFFE: The word misspelled was

1 assessed.

2 THE WITNESS: Where was that?

3 ALJ WICKLIFFE: And I absolutely cannot find
4 it. I know it's in my notes. Perhaps you are not the
5 offending party. In that case, my apologies.

6 THE WITNESS: Thank you.

7 ALJ WICKLIFFE: Go ahead, Ms. McGowan.

8 BY MS. MCGOWAN:

9 Q. Is it your intention to offer Exhibits 10,
10 10HC and 11 and 11HC as your direct and surrebuttal
11 testimony in this proceeding?

12 A. Yes.

13 MS. MCGOWAN: Then I now offer Exhibits 10,
14 10HC, 11 and 11HC for the record and tender the
15 witness for cross-examination.

16 ALJ WICKLIFFE: Objections to 10, 10HC, 11
17 and 11HC?

18 (No response.)

19 ALJ WICKLIFFE: Hearing none, these four
20 exhibits are received into evidence.

21 (EXHIBIT NOS. 10, 10HC, 11 AND 11HC WERE
22 RECEIVED INTO EVIDENCE.)

23 ALJ WICKLIFFE: Cross-examination,
24 Mr. Micheel?

25 MR. MICHEEL: None, your Honor.

1 ALJ WICKLIFFE: Mr. Cooper?

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Wood, do you have any business
4 experience which is not mentioned in your direct
5 testimony?

6 A. At the time of filing of my direct
7 testimony?

8 Q. Well, even up until today's date?

9 A. Well, up to today's date, I'm now employed
10 by Questech Corporation in Columbia as a consulting
11 engineer.

12 Q. And what are the nature of your duties
13 there?

14 A. I am in structural engineering, design of
15 steel, concrete, wood, foundations, that type of work.

16 Q. You don't have any past experience in
17 negotiating pipeline contracts, do you?

18 A. No. None of my previous engagements have
19 required me to do that.

20 Q. And consequently no experience negotiating
21 contracts on the Panhandle Pipeline System, correct?

22 A. I've reviewed numerous contracts on that
23 pipeline, but I haven't had any need to negotiate a
24 contract.

25 Q. If the Rolla customers had attached to the

1 Rolla system as UtiliCorp had projected, would you
2 still be supporting a disallowance in your testimony?

3 A. That would depend on the terms and
4 conditions of the contract serving that district. I
5 think you're aware of my direct testimony, what I say
6 there.

7 I would say that the contract capacity to
8 serve the Rolla district was reasonable at the end of
9 the first heating season. If that was necessary, the
10 amount that should have been contracted for on day one
11 is somewhat dependent on the terms and conditions of
12 those contracts.

13 Q. In regard to the construction delays that
14 are described by Mr. Ono in his testimony, you don't
15 have any reason to believe, do you, that those delays
16 were within the control of the Company and could have
17 been prevented?

18 A. You're referring to the boring delays under
19 I-44 and the associated weather delays for --

20 Q. Correct?

21 A. -- finishing construction of the line?

22 Those sort of things are normally out of the
23 control of the company doing the work.

24 MR. COOPER: No further questions at this
25 time, your Honor.

1 ALJ WICKLIFFE: Chairman?

2 CHAIRMAN ZOBRIST: No.

3 ALJ WICKLIFFE: Commissioner Lumpe?

4 COMMISSIONER LUMPE: No.

5 QUESTIONS BY ALJ WICKLIFFE:

6 Q. Staff indicated some concerns about
7 dependence on secondary delivery points. Could you be
8 more specific about what the concern is?

9 A. Certainly. When periods of extreme weather
10 come along on Williams, it's referred to as an
11 operational flow order. On PPL they may have a
12 different name for it. There are -- everybody wants
13 gas. Not everybody can get it, and the people who
14 have paid for firm transportation capacity are going
15 to get it first.

16 Primary receipt points are points where the
17 pipeline has agreed even during peak periods you're
18 going to get your gas. This is our contract
19 agreement.

20 Secondary delivery points are not as
21 reliable. They can be curtailed. During periods of
22 scheduling, in fact, on PPL I believe you will not
23 have your gas delivered if they've notified that they
24 will not be delivering to secondary delivery points.

25 So the concern would be if everybody -- or

1 if an LDC was depending on gas to a secondary delivery
2 point, during extreme weather they may not receive
3 that gas.

4 Q. Is there a situation existing where for MPS'
5 Eastern District they're relying on secondary delivery
6 points?

7 A. For the contracts specifically applying to
8 the Eastern District, not the Northern and Southern
9 Districts, I do believe primary point delivery can
10 occur to the Eastern District without any further
11 problems.

12 Q. Okay. Then your concern is more generic
13 regarding the entire system?

14 A. Possibly to other districts that PPL serves
15 that may not have primary point delivery capability.

16 Q. Okay. Are you aware of any being served by
17 MPS, any areas that are subject to this secondary
18 delivery point?

19 A. I'm not certain that we would be able to
20 divulge if those specifics terms -- if that may be an
21 in-camera HC type of data with the terms and
22 conditions of those contracts.

23 Q. Well, we can go in-camera if you have that
24 information.

25 A. I have reviewed those specific contracts

1 just in terms of primary or secondary delivery points.
2 I don't know much about those accounts beyond those
3 specific items. But I can answer those, that
4 particular item.

5 ALJ WICKLIFFE: Off the record.

6 (Discussion off the record.)

7 ALJ WICKLIFFE: Let's go in-camera.

8 (REPORTER'S NOTE: At this time, an
9 in-camera session was held, which is contained in
10 Volume No. 3, pages 203 through 210 of the
11 transcript.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25