

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____
4 TRANSCRIPT OF PROCEEDINGS
5 HEARING
6 September 14, 2000
7 Jefferson City, Missouri
8 Volume 6
9 _____
10
11 In the Matter of the Joint Application of)
12 UtiliCorp United, Inc. and the Empire)
13 District Electric Company for Authority to) Case No.
14 Merge The Empire District Electric Company) EM-2000-369
15 with and into UtiliCorp United, Inc., and,)
16 in Connection Therewith, Certain Other)
17 Related Transactions.)
18
19 _____
20 MORRIS L. WOODRUFF, Presiding,
21 REGULATORY LAW JUDGE.
22 SHEILA LUMPE, Chair
23 HAROLD CRUMPTON,
24 CONNIE MURRAY,
25 ROBERT G. SCHEMENAUER,
 M. DIANNE DRAINER, Vice-Chair
 COMMISSIONERS.

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1 JUDGE WOODRUFF: Before we went on the record
2 this morning, I was approached by a couple of the attorneys
3 in the case indicating that there's some settlement
4 negotiations going on with some of the issues involved.
5 We're going to allow a one-hour continuance to
6 allow them to continue discussing that. We will
7 re-adjourn -- or we'll adjourn at this point and reconvene
8 at 9:30. Thank you.
9 (A RECESS WAS TAKEN.)
10 JUDGE WOODRUFF: I had some discussions with
11 counsel at the break. Apparently negotiations are still
12 ongoing on the issue that was being discussed as far as
13 possible settlement. Those negotiations are going to
14 continue while we go on to some other issues. And I believe
15 we're going to go back to Mr. Myers with Savings and
16 Tracking and Benchmarking.
17 MR. SWEARENGEN: That's right, your Honor. I
18 would call Mr. Myers.
19 JUDGE WOODRUFF: All right. Thank you.
20 Mr. Myers, I believe you were sworn yesterday
21 and stepped down right away, so you are still under oath.
22 THE WITNESS: Yes.
23 MR. SWEARENGEN: Can we go off the record for
24 just a second? I just need to do some housekeeping here.
25 (Off the record.)

1 JUDGE WOODRUFF: Back on the record then.

2 MR. SWEARENGEN: I believe Mr. Myers was sworn

3 yesterday. He has two pieces of testimony. His direct

4 testimony, which has been marked as Exhibit 12 and his

5 surrebuttal testimony, which has been marked as Exhibit 13.

6 And I will give three copies of each to the reporter.

7 (EXHIBIT NOS. 12 AND 13 WERE MARKED FOR

8 IDENTIFICATION.)

9 JERRY MYERS testified as follows:

10 DIRECT EXAMINATION BY MR. SWEARENGEN:

11 Q. Mr. Myers, you have in front of you

12 Exhibit 12, your direct testimony in this proceeding, as

13 well as Exhibit 13, your surrebuttal testimony. Do you need

14 to make any changes to either of those exhibits?

15 A. No, I don't.

16 Q. So the record is clear, and as my esteemed

17 colleague Mr. Conrad has asked me what issue we're doing

18 here today and it is rather confusing -- Mr. Myers, you are

19 testifying today on the Savings Tracking slash Benchmarking

20 issue as well as the Acquisition Adjustment Issue. Is that

21 not correct?

22 A. Yes.

23 Q. Thank you.

24 MR. SWEARENGEN: I would offer into evidence

25 Exhibits 12 and 13 and tender the witness for

1 cross-examination on those issues.

2 JUDGE WOODRUFF: Is this the only time he'll
3 be testifying?

4 THE WITNESS: Yes.

5 MR. SWEARENGEN: Yes.

6 JUDGE WOODRUFF: All right. Exhibits 12 and
7 13 have been offered into evidence. Are there any
8 objections to their receipt?

9 Hearing none, they will be received into
10 evidence.

11 (EXHIBIT NOS. 12 AND 13 WERE RECEIVED INTO
12 EVIDENCE.)

13 JUDGE WOODRUFF: And for cross-examination
14 we'll begin with IBEW?

15 MR. JOLLEY: No questions.

16 JUDGE WOODRUFF: Retirees are absent from the
17 room. Natural Resources is also absent. Praxair?

18 MR. CONRAD: No questions. Thank you, your
19 Honor.

20 JUDGE WOODRUFF: Springfield is also absent.
21 Public Counsel?

22 MR. COFFMAN: No questions.

23 JUDGE WOODRUFF: Staff?

24 MR. JOYCE: We have questions on the Savings
25 Tracking.

1 JUDGE WOODRUFF: Go ahead.

2 CROSS-EXAMINATION BY MR. JOYCE:

3 Q. Good morning. My name is Dan Joyce. I'm one
4 of the attorneys for Staff. I have some questions for you
5 this morning. On the issue of Savings Tracking -- do you
6 have your schedule JDM-1 in front of you?

7 A. Yes.

8 Q. It's attached to your surrebuttal testimony.

9 A. Yes.

10 Q. Does this schedule show UtiliCorp's proposed
11 method for tracking Empire merger savings in the future?

12 A. Yes, it does.

13 Q. And is UtiliCorp asking the Commission to
14 approve this method all or in part in this proceeding?

15 A. I would say we're asking for them to approve
16 it all.

17 Q. Now, is this proposal complete? Are there any
18 details that have yet to be determined?

19 A. Once the transaction is approved and --
20 line 1, for example, the baseline is still a contentious
21 issue, I believe. And the -- once that is determined and
22 the transaction approved, we can determine which accounting
23 or which management departments need to be subject to this
24 process.

25 Q. Okay. Is it the intent that this method be

1 used in what's called Empire's post-moratorium rate case?

2 A. It would be used to determine the portion of

3 the savings that would be utilized in that proceeding.

4 Q. Do you anticipate that it would be used in any

5 future rate proceedings following the post-moratorium rate

6 case?

7 A. Don't know that I can answer that for sure.

8 It's possible.

9 Q. Okay. Would it be accurate to describe this

10 proposed tracking method as comparing Empire's total cost of

11 service after the merger to a pre-merger baseline or

12 benchmark that would be inflated annually? And, again,

13 we're referring to JDM-1.

14 A. Right. Would you repeat that, please?

15 Q. Would it be accurate to describe this tracking

16 method as is shown on the Schedule JDM-1, this method, as

17 comparing Empire's total cost of service after the merger to

18 a pre-merger baseline that would be inflated annually? Is

19 this description accurate?

20 A. The -- it is comparing Empire's total cost

21 post-merger to a baseline that will be determined in

22 connection with this proceeding. And the -- it will be

23 inflated annually, I would assume.

24 Q. And the difference between those two numbers

25 are the assumed merger savings?

1 A. That would drive your total savings.

2 Q. Now, you would find that result on line 6 of
3 this schedule; is that correct?

4 A. Yes.

5 Q. Now, once the amount on line 6 is determined,
6 then you would need to break out merger-related and
7 non-merger-related components from that --

8 A. That is --

9 Q. -- total?

10 A. That is correct.

11 Q. Okay. Now, on this schedule, what does
12 line 3, UtiliCorp incremental, represent?

13 A. That represents the costs associated with
14 UtiliCorp absorbing the operations of Empire. For example,
15 the -- if we're talking a human resources department, those
16 are the costs of the -- most likely head counts that would
17 have to be added to absorb the duties required for the
18 St. Joe -- I'm sorry, Empire human resource function.

19 Q. How was the annual escalation factor of
20 2.5 percent, which is used in the schedule, how is that
21 determined, that factor?

22 A. That is an estimate -- my estimate of the
23 inflationary impact of cost on cost in the future. It is
24 also, I believe, consistent with the escalation factor that
25 Vern Siemek used in his information.

1 Q. Okay. So, in fact, it's the same escalation
2 factor used by Mr. Siemek to escalate merger savings and
3 cost in his analysis?

4 A. Yes.

5 Q. Okay. Do you know how this escalation factor
6 was derived?

7 A. I do not.

8 Q. Will all the categories of Empire's cost of
9 service be reflected in this proposed tracking methodology?

10 A. If you look at total savings that are, I
11 believe, in Mr. Siemek's testimony, you could probably put
12 them in three -- three different categories, one being the
13 costs associated with the savings that result from the
14 dispatch of power, the savings related to the differences in
15 retirement benefits, you know, pension assumptions, the
16 FAS-106 type costs, and then the other bucket would be the
17 primarily labor-related head count reduction type savings.
18 And this methodology is designed to track that third bucket.

19 Q. Just give me a moment. Okay. You've
20 mentioned three buckets --

21 A. Uh-huh.

22 Q. -- that would characterize the tracked. In
23 that third bucket would there be any other non-labor-related
24 savings?

25 A. Potentially there would be other non-labor

1 costs, but labor costs should be the substantial portion of
2 that -- of that line item.

3 Q. Okay. Let me take you to pages 3 and 4 of
4 your surrebuttal testimony. Are you there?

5 A. Uh-huh.

6 Q. Okay. You offer on those pages a proposal as
7 to how merger-related and non-merger-related savings can be
8 distinguished, do you not?

9 A. Yes, I do.

10 Q. Can you briefly describe that approach?

11 A. Referring back to my Schedule JDM-1, that
12 line 6 that's indicated as total savings would represent a
13 both merger and non-merger-related savings. The process
14 would then have to look at any, for example, technology
15 changes or changes in regulatory requirements are probably
16 two that come to mind that -- what the impact of those might
17 have been over the five-year period. And that total savings
18 line would then have to be reduced by anything that would be
19 considered non-merger-related.

20 Q. In your surrebuttal testimony you indicate
21 that Staff has suggested that 1998 is acceptable as a
22 baseline year for determining saving detriments or merger
23 savings; is that correct?

24 A. Yes. That's what I state.

25 Q. Okay. Are you aware that, in fact, Staff has

1 suggested that the savings baseline be the test year used in
2 the pre-moratorium rate case as adjusted?

3 A. If that's the case, I stand corrected. It was
4 my understanding that '98 was -- '98 as adjusted was the
5 baseline.

6 Q. All right. Let's look at page 4 of your
7 surrebuttal, lines 1 to 3. Okay. You state that estimates
8 would be derived that assign a dollar value to certain
9 improvements in technology or changes in regulatory
10 requirements that might have occurred over the five-year
11 period.

12 Are improvements in technology or changes in
13 regulatory requirements the only possible examples of
14 non-merger savings impacts that can occur in the next five
15 years?

16 A. As I indicated earlier, those are the only two
17 that come to mind. I cannot say that it is all that might
18 be possible.

19 Q. Do you know of any other examples you'd be
20 prepared to share?

21 A. Not right off.

22 Q. How would you propose to quantify the dollar
23 effect of non-merger-related impacts that are included in
24 your line 6 of your schedule?

25 A. It would vary from the -- okay. Let's look at

1 a -- maybe a change in technology. That might result in a
2 process being more mechanized and requiring less head count
3 to accomplish that process. So the reduction in head count
4 that might be the result of that change in technology would
5 be a non-merger savings and would have to be backed off from
6 the total savings pot.

7 Q. All right. On page 4 of your surrebuttal
8 testimony around lines 3 and 4 you state that the analysis
9 of non-merger activity that's applicable to line 6 of your
10 schedule, quote, would be prepared by UtiliCorp and subject
11 to review and audit by the Staff, closed quote.

12 What do you propose would happen if UtiliCorp,
13 the Staff, and perhaps other parties could not agree on the
14 identification and the quantification of non-merger-related
15 savings impacts?

16 A. I don't think that would be unusual to have
17 the two parties disagreeing, so I -- we resolve those type
18 of issues all the time. And sometimes it has to go to the
19 Commission for their eventual decision.

20 Q. All right. Now, if UtiliCorp engages in
21 additional merger and acquisition activity in the United
22 States or elsewhere, I guess, in the next five years, could
23 that activity also impact the post-merger financial results
24 of the Empire division?

25 A. From an allocation perspective it could, yes.

1 Q. Should those impacts be included in the
2 quantifications of merger savings related to the Empire
3 transaction?
4 A. There should be an attempt to filter those
5 out.
6 Q. Now, once the non-merger impact analysis is
7 complete, your proposal is that quantification will be
8 subtracted from the total savings number found on line 6 of
9 the schedule. Then the residual amount is assumed to be
10 merger-related savings; is that correct?
11 A. Correct.
12 Q. Would you agree with me that under the
13 proposed tracking method, the emphasis would be on
14 identifying non-merger-related impacts rather than
15 identifying merger-related earnings impacts?
16 A. The non-merger component is most definitely a
17 key component of trying to come up with the final result,
18 yes, as is the baseline.
19 Q. Okay. On page 5 of your surrebuttal, you
20 state that you're tracking Empire incremental costs because,
21 among other reasons, you believe that MPS -- Missouri Public
22 Service customers -- should not be charged incremental costs
23 of absorbing Empire operations, do you not?
24 A. That's correct.
25 Q. Now, are the incremental costs of absorbing

1 the Empire operations the same costs intended to be included
2 on line 3 of your schedule, which is UtiliCorp incremental?

3 A. You're referring to the incremental cost that
4 I discuss on lines -- beginning on line 7, is that correct,
5 page 4 -- or page 5?

6 Q. Yes.

7 A. Those will be the incremental costs related to
8 absorbing the Empire operation.

9 Q. Okay. So those would be on line 3 of your
10 schedule?

11 A. That is correct.

12 Q. If Missouri Public Service will not be charged
13 for incremental costs associated with the Empire
14 transaction, does that also mean that MPS will not receive
15 the benefit of any savings in the corporate allocated costs
16 associated with the Empire transaction?

17 A. I believe that is the concept that is in the
18 regulatory plan.

19 Q. Okay. Now, do you happen to have a copy of
20 your responses to Staff DRs 230 and 231? If not, I have
21 copies.

22 A. I have them. Okay.

23 Q. Okay. Is it UtiliCorp's intent to allocate
24 incremental corporate costs associated with the Empire
25 transaction to its MPS division for financial reporting

1 purposes?

2 A. Yes, it is.

3 Q. And you previously testified in your

4 surrebuttal that it was not UtiliCorp's intent to allocate

5 Empire incremental corporate costs to MPS for rate purposes.

6 Correct?

7 A. Correct.

8 Q. Does this mean that UtiliCorp intends to seek

9 a greater recovery of total UCU corporate allocated costs in

10 MPS rates than would actually be reflected on MPS's books

11 and records?

12 A. Again, that would not be an unusual

13 occurrence. There are adjustments made by both Staff and

14 the company to the books and records of the filing company,

15 so for rate-making purposes adjustments would be made to

16 what is reported in the books and records.

17 Q. Okay. If you look at DR 231, your answer

18 there, based on what's in your response, is it UtiliCorp's

19 intent to allocate a portion of its incremental corporate

20 costs associated with its Empire transaction to non-Missouri

21 utility divisions for financial reporting purposes?

22 A. Yes, it is.

23 Q. Okay. Will this be done for rate-making

24 purposes for these non-Missouri divisions?

25 A. It's my understanding that those -- that

1 adjustments would be made to have those jurisdictions at a
2 post -- a -- I'm sorry -- pre-merger cost level.

3 Q. Okay. Now, has this intent to adjust future
4 corporate allocation amounts in these jurisdictions to
5 eliminate the impact of the Empire transaction, has this
6 been communicated to these jurisdictions?

7 A. To my knowledge, it has not, although I
8 believe there is one jurisdiction that once something is
9 settled here, we're required to do that.

10 Q. Okay.

11 A. I don't recall which jurisdiction that is.

12 Q. Okay. Let's assume that UtiliCorp in the next
13 five years undertakes merger activity with a regulated
14 United States utility with no Missouri operations. After
15 the merger is completed, would it also be UtiliCorp's policy
16 not to charge incremental costs associated with that
17 transaction to Missouri Public Service for rate purposes?

18 A. During that five-year period there are
19 probably several things that can occur. And the handling of
20 those items would, again, depend on the item, but that would
21 be my understanding.

22 Q. So, again, this would mean that Missouri
23 Public Service customers won't receive any benefit in rates
24 from a reduced corporate allocation factor associated with
25 the out-of-state transaction; is that correct?

1 A. I believe that's my understanding of the
2 regulatory plan.

3 MR. JOYCE: Okay. Thank you very much. No
4 further questions.

5 JUDGE WOODRUFF: Thank you. No questions from
6 the Bench, so there's no recross. Any redirect?

7 MR. SWEARENGEN: Just a little.

8 REDIRECT EXAMINATION BY MR. SWEARENGEN:

9 Q. With respect to that last answer you just
10 gave, is it your understanding that the regulatory plan
11 before the Commission in this case involving the
12 UtiliCorp/Empire merger discusses how allocations of costs
13 with respect to some future as yet unknown, foreign
14 acquisition will be dealt with before this Commission?

15 A. I am not sure that it is discussed, no.

16 Q. Okay. So if you're wrong, if it's not
17 included in this regulatory plan, then your prior answer
18 would not be correct; is that true?

19 A. Yes. That would be true.

20 Q. Okay. There was a question put to you about
21 future rate requests that might be made to this Commission.
22 Is it your understanding that simply by asking for
23 something, you won't necessarily get it from this
24 Commission? Is that your understanding?

25 A. I think that is consistent with past trends.

1 Q. And, in other words, if you came to this
2 Commission and asked rate relief in a future rate case for a
3 specific cost, that doesn't necessarily mean that you're
4 going to get that cost recovered through rates, does it?

5 A. That's correct.

6 Q. Okay. If you would turn to your Schedule
7 JDM-1 for a minute, please, which is attached to your
8 surrebuttal testimony.

9 A. Okay.

10 Q. Am I correct in understanding that this is
11 intended to illustrate an example of a tracking system that
12 you're proposing?

13 A. Yes, it is.

14 Q. Okay. Now, I thought I heard you say that --
15 and maybe I misunderstood you, but I thought I heard you say
16 that you were requesting that the Commission approve this
17 specific tracking system in this proceeding. And I agree
18 with you it would be wonderful if they did.

19 But I've also heard other witnesses from
20 UtiliCorp earlier this week indicate that it's not necessary
21 for the Commission in this proceeding to approve a specific
22 tracking method because UtiliCorp will bear the burden of
23 proof in the post-moratorium rate case to prove up merger
24 savings.

25 Could it be that -- if you said that, that you

1 were mistaken in your belief that UtiliCorp is asking for a
2 specific approval of a specific tracking system in this
3 case?

4 MR. CONRAD: Objection. Leading and
5 suggestive.

6 JUDGE WOODRUFF: Sustained.

7 BY MR. SWEARENGEN:

8 Q. What is your understanding with respect to
9 UtiliCorp's request concerning approval of a specific
10 tracking mechanism in this case?

11 A. It is my understanding that we have indicated
12 in, I think, several locations that the approval of a
13 specific system was not necessary. I think it was in -- may
14 have been in some of the Staff testimony also.

15 MR. SWEARENGEN: Thank you.

16 JUDGE WOODRUFF: You may step down.

17 I believe we're going to go on to Estimated
18 Merger Savings then.

19 MR. SWEARENGEN: I think that's right.

20 Mr. Siemek would take the stand then.

21 JUDGE WOODRUFF: Welcome back, Mr. Siemek, and
22 you are still under oath.

23 VERN SIEMEK testified as follows:

24 DIRECT EXAMINATION BY MR. SWEARENGEN:

25 Q. Mr. Siemek, it's my understanding that due to

1 some corrections which the Staff has made with respect to
2 some of their schedules in this proceeding, that it might be
3 necessary for you to make some corresponding changes to
4 either your testimony and/or schedules in this case. Am I
5 correct in that understanding?

6 A. That's correct.

7 Q. Could you identify for the record where those
8 changes would have to take place, please?

9 A. In my surrebuttal testimony on page 27, I need
10 to change lines 13 through 20.

11 Q. Excuse me. What lines did you say?

12 A. Thirteen through twenty, to reflect some of
13 the Staff's adjustments. On line -- actually on line 14 the
14 \$8 million figure should be changed to \$20 million.

15 On line 15 after the period of million should
16 be changed to comma, as revised, period. And then the
17 simplest way would be to delete lines 15 through 20 and
18 replace them as follows: Even if all these alleged cost
19 increases were allowed in rates, the costs exceed the
20 benefits of the \$15 million cumulative guarantee by only a
21 total of \$5 million over years 6 through 10, period.

22 Of course, we continue to disagree with Staff
23 on the adjustments that they did not accept, but we have
24 reflected the worst possible scenario to illustrate the
25 impact under the worst possible scenario.

1 Q. Does that conclude your change?
2 A. On that page.
3 Q. Do you have any other changes that are
4 necessary?
5 A. I have one other change on page 9 of my
6 surrebuttal. On line 21 the figure 718,732 should be
7 changed to 1,353,986.
8 Q. Do you have any other changes?
9 A. That concludes my changes.
10 Q. Thank you.
11 MR. SWEARENGEN: With that, your Honor, I
12 would tender the witness for cross-examination.
13 JUDGE WOODRUFF: I understand -- is this his
14 last time on the stand?
15 MR. SWEARENGEN: I'm not sure.
16 THE WITNESS: Hopefully.
17 JUDGE WOODRUFF: I didn't see his name
18 anywhere else on here.
19 MR. SWEARENGEN: I think you're probably
20 correct then, your Honor. I believe that is right.
21 JUDGE WOODRUFF: And he had Exhibits 6 and 7,
22 I believe. Did I miss anything as far as --
23 MR. SWEARENGEN: No, that's it. Exhibits 6
24 and 7.
25 JUDGE WOODRUFF: Exhibits 6 and 7 have been

1 offered into evidence. Are there any objections to their
2 receipt?

3 Hearing none, they will received into
4 evidence.

5 (EXHIBIT NOS. 6 AND 7 WERE RECEIVED INTO
6 EVIDENCE.)

7 JUDGE WOODRUFF: Okay. For purposes of
8 cross-examination then, are there any cross-examination
9 questions for Mr. Siemek?

10 MR. CONRAD: Yes.

11 MR. JOLLEY: Yes.

12 JUDGE WOODRUFF: Okay. Several people. Let's
13 start with the IBEW.

14 CROSS-EXAMINATION BY MR. JOLLEY:

15 Q. Mr. Siemek, I asked you a few questions
16 previously. In connection with the merger savings, do the
17 estimated merger savings include savings resulting from the
18 elimination of 50 bargaining unit positions at Empire?

19 A. I'm not sure of the exact count and I did not
20 segregate between bargaining and non-bargaining.

21 Q. But the estimate savings do include --

22 A. They do include the --

23 Q. -- savings from the reduction of jobs --

24 A. -- elimination of positions.

25 Q. -- is that correct?

1 A. From the elimination of positions, yes.

2 Q. And you're unable to state specifically as to
3 these 50 bargaining unit positions what the savings would
4 be?

5 A. That's correct.

6 Q. There's been testimony that there's 200 and --
7 I believe 270 total positions being eliminated. Is that
8 basically accurate?

9 A. Yes, approximately.

10 Q. Would we be able to ballpark at least the
11 estimated savings from the elimination of 50 bargaining unit
12 positions by applying a percentage of 50 to 270 to the
13 overall labor cost savings?

14 A. Well, we haven't -- no, because we haven't
15 calculated the overall payroll savings.

16 Q. So if I asked you what are the overall labor
17 savings attributed to the reduction of the elimination of
18 270 overall positions, including bargaining unit and
19 non-bargaining unit, would you be able to tell me what that
20 figure is?

21 A. No. Because we did not separate the savings
22 that way.

23 Q. Let me ask you several related questions. Do
24 the estimated merger savings include savings to be realized
25 from changes in the health insurance plans of the remaining

1 bargaining unit employees, including increases in their
2 employee contributions toward insurance premiums that would
3 be consistent with employee contributions of UCU employees?

4 A. I would have to refer that question to
5 Mr. Browning. I received the calculations on the benefits
6 savings from Mr. Browning as I indicated in my testimony.

7 Q. So you can't tell me what the estimated
8 savings are from changes in -- strike that.

9 You can't tell me what the savings are from
10 changes in Empire healthcare resulting from increases in
11 current employee contributions toward insurance premiums?

12 A. No, I cannot.

13 Q. And Mr. Browning would be the individual to
14 answer those questions?

15 A. He would be much better equipped to answer
16 those questions than I. I'm not -- I cannot guarantee you
17 that he would know the specific detail of that question
18 either.

19 Q. Do you know if, in fact, UtiliCorp has
20 calculated at all in any way, shape or form, what these
21 savings would be resulting from, A, the elimination of
22 bargaining unit positions; and, B, changes in healthcare
23 costs consisting of increased contributions toward
24 healthcare by remaining Empire employees?

25 A. I am not aware of where that segregation was

1 done.

2 MR. JOLLEY: I have no other questions.

3 JUDGE WOODRUFF: All right. I believe Staff

4 was the other party that wanted to cross-examine. I'm

5 sorry.

6 MR. CONRAD: You may want me to go first. I

7 don't have a lot.

8 CROSS-EXAMINATION BY MR. CONRAD:

9 Q. Mr. Siemek, you had changes on page 27 of your

10 rebuttal. Would you go there, please?

11 MR. SWEARENGEN: Surrebuttal.

12 BY MR. CONRAD:

13 Q. I'm sorry. Surrebuttal. Excuse me, sir.

14 A. Yes, sir.

15 Q. Bring this magic machine over.

16 You did not, I take it, have changes to the

17 testimony at lines 5 through 10?

18 A. That's correct.

19 Q. I want to talk with you just a second about

20 this worst case. If I understand the answer that begins at

21 line 5, the worst case you're hypothesizing is that none of

22 the projected -- I'm going to use the term "savings," are

23 accomplished and/or proven. Do you see that?

24 A. Yes. Although I would stay with synergies.

25 Q. Well, I understand, but I'm asking the

1 questions and you're answering them.

2 In that event, customers wouldn't pay for any
3 of the premium costs. Is that your testimony?

4 A. If we do not prove -- if we do not accomplish
5 and prove -- and/or prove the projected synergies, that is
6 correct.

7 Q. But then you go on to say that they would get
8 a benefit anyway because of a 3 million revenue requirement
9 reduction. So far so good?

10 A. Yes, sir.

11 Q. Okay. Now, if the worst case is that there
12 are no savings accomplished or proven from this whole
13 escapade --

14 MR. SWEARENGEN: I'm going to object to him
15 characterizing this transaction as an escapade.

16 JUDGE WOODRUFF: Overruled. No editorial
17 comment intended.

18 MR. CONRAD: We'll get to the stealth aspect
19 of it later.

20 BY MR. CONRAD:

21 Q. But I'd like for you to assume with me that
22 the premium costs or costs to achieve amount to \$3 million a
23 year. Am I correct in understanding your approach here that
24 the \$3 million costs to achieve in my hypothetical would be
25 obliterated by the \$3 million guarantee of a revenue

1 requirement reduction?

2 A. Your assumption was that there were

3 3 million --

4 Q. No savings, 3 million costs to achieve.

5 A. All right. And if there are -- if there are

6 no savings, then the costs to achieve would not be

7 included -- would not be -- would not be able to be offset

8 by the synergies.

9 Q. Right.

10 A. Right.

11 Q. Because there wouldn't have been any?

12 A. That's right.

13 Q. But we still have \$3 million costs to achieve.

14 And that then is offset, if I take it -- if I understand

15 your testimony here, by this \$3 million revenue requirement?

16 A. No. I don't -- I'm not certain I've -- I

17 don't believe that's the correct understand-- interpretation

18 of my testimony.

19 Q. Well, I thought I saw the term "guaranteed"

20 here. So it's not a guarantee?

21 A. The guarantee is that if we do not prove up

22 the synergies and the costs are -- the costs to achieve are

23 \$3 million, not only do we not recover the \$3 million of the

24 costs to achieve, but we also are committing to a \$3 million

25 reduction in the cost of service.

1 Q. Okay. That then is helping what I was fuzzy
2 on then, Mr. Siemek, because you're saying in that event
3 customers would not pay for any of the premium costs or
4 costs to achieve?

5 A. That's correct.

6 Q. So even if -- and to change my hypothetical
7 just a little bit, if the costs to achieve were
8 \$6 million --

9 A. Right.

10 Q. -- the company would not come in and say,
11 Well, our costs have gone up \$6 million and we committed to
12 give you this \$3 million revenue reduction or revenue
13 requirement reduction, therefore, your rates need to go up
14 \$3 million? You're not --

15 A. Not.

16 Q. That's not what your intention was?

17 A. Not -- if there were zero synergies proven,
18 then your understanding is correct.

19 Q. Okay. What now in that situation that I've
20 just scoped out for you, if there were \$1 of synergy proven?

21 A. If there was \$1 of synergy proven, then we
22 would recover \$1 of the costs to achieve. We would still
23 have the \$3 million guaranteed revenue requirement
24 reduction.

25 Q. Now, it's also true then that the revenue

1 requirement reduction is not a rate reduction?

2 A. That is also correct.

3 Q. So if other costs such as filling up unfilled
4 positions right now for Empire went up, or if the costs were
5 allocated to the Empire division from other UtiliCorp
6 operations in such a way that the overall costs went up,
7 there would still be the potential for a rate increase,
8 wouldn't there?

9 A. If other costs go up, and I would use gas
10 prices as a good example, natural gas prices, there is a
11 possibility that rates could go up.

12 Q. Even --

13 A. Even with the \$3 million reduction. If gas --
14 if fuel costs increase by \$5 million, if that's the only
15 thing that changes, if fuel increases by \$5 million for the
16 generation to serve Empire customers and assume no synergies
17 were proven, the \$5 million less the guaranteed, the
18 3 million, would result in a -- could result in a \$2 million
19 rate increase.

20 Q. So point being that it's a revenue requirement
21 offset and a revenue requirement guarantee, not a rate
22 reduction guarantee?

23 A. That's correct.

24 MR. CONRAD: Okay. I guess that's it. Thank
25 you.

1 JUDGE WOODRUFF: Did Public Counsel have any
2 questions?
3 MR. COFFMAN: No questions, your Honor.
4 JUDGE WOODRUFF: And Staff?
5 MR. JOYCE: Yes. Thank you.
6 CROSS-EXAMINATION BY MR. JOYCE:
7 Q. Morning, Mr. Siemek. Good to see you again.
8 A. Same here, Mr. Young [sic].
9 Q. And we may tread some territory we tread
10 before, but it's a different case.
11 A. All right.
12 Q. In your direct testimony you have the Schedule
13 VJS-1. Could you say again for the record what is the
14 10-year total savings and dispatching and generation savings
15 area?
16 A. Well, it would be -- I'd have to calculate it
17 quickly, but --
18 Q. At the end of the column --
19 A. Well, you have to take the average for the
20 first five years, the average for the second five years and
21 multiply that by five to get the 10 years. So it's
22 approximately \$200 million --
23 Q. Okay.
24 A. -- I believe.
25 Q. Now, are there any other generation-related

1 savings amounts included in the other line items in category
2 one, operating costs, on that schedule?

3 A. Are there any other generation-related
4 savings?

5 Q. Right. Yes.

6 A. Well, it depends on how you -- how you would
7 functionalize general and administrative savings. Do you
8 mean direct operating costs of generation?

9 Q. Yes.

10 A. Direct operating costs. Then I would say that
11 there are some additional benefits relating to generation as
12 part of line 5, the conversion to a UtiliCorp benefits and
13 payroll taxes, because there are some position eliminations
14 included in line 1.

15 Q. Now, so then is it still the joint applicant's
16 position that the total 10-year merger savings is expected
17 to be approximately 383,500,000?

18 A. Well, again, I would have to check that, but
19 the same procedure would have to be done for line 6, I
20 presume is what you're referring to. And that's 76 --
21 \$77 million times 5 is approximately \$385 million, yes.

22 Q. Okay. Have you or anyone at UtiliCorp
23 performed any estimates of merger savings and costs beyond
24 year 10?

25 A. No. Not to my knowledge.

1 Q. Now I'm going to be questioning you on your
2 surrebuttal. If a part of your estimated merger savings is
3 applicable to a category of costs that's not generally given
4 rate recovery by the Commission, would you agree that that
5 part of merger savings is not a savings from a customer
6 perspective?

7 A. Well, could you give me an example?

8 Q. Let's say charitable contributions.

9 A. Okay. If -- and your question was if those
10 costs are not allowed by the Commission, then those would
11 not be a synergy?

12 Q. Right.

13 A. I believe that to be correct, yes.

14 Q. Did the Empire transition teams have, as a
15 part of their scope, a consideration of the impact of a
16 three-way merger in developing savings estimates in their
17 assigned areas, each of the transition teams?

18 A. Well, I would say the generation transition
19 team calculated its synergies on both the three-way and a
20 two-way merger. The other teams were asked to evaluate what
21 additional staffing requirements -- well, among other
22 things, what additional staffing requirements would be
23 necessary at UtiliCorp for the addition of the two smaller
24 companies.

25 I don't believe that it was necessary to -- in

1 most cases to determine what the additional impact was of a
2 three-way, because we were adding two smaller companies on
3 to one larger company. And each -- the savings generally
4 would be the same for -- under a three-way as under a
5 two-way merger.

6 Q. Okay. But other than the generation savings,
7 the teams weren't asked to consider the existence of a
8 three-way merger then; is that correct?

9 A. Well, most of the UtiliCorp people were on
10 both transition teams, so they were well aware of both --
11 both ac-- or both merger activities. And I -- I actually
12 can't tell you that they were specifically instructed not to
13 look at three ways, but they were instructed, I believe, to
14 look at what additional work force and work functions needed
15 to be added to add each company one at a time.

16 Q. Okay. So it would be correct to say although
17 they weren't asked to consider it, because they were working
18 on both -- some of the personnel were working on both teams
19 from both mergers that they were cognizant --

20 A. Yes. Definitely cognizant.

21 Q. -- of the three-way impact?

22 Okay. Did you or anyone in UtiliCorp make an
23 examination of potential merger benefits associated with a
24 future sale of Empire generation assets?

25 A. Not to my knowledge.

1 Q. Page 15 of your surrebuttal you mention a
2 UtiliCorp case that concerned merger-related synergies. Can
3 you tell us what specific case you're referring to?

4 A. I was referring to the West Plains Energy
5 Electric case in Kansas that Ms. Fischer referred to in her
6 testimony.

7 Q. Now, for Empire's post-moratorium rate case,
8 would use of year 4 following the merger as the test year
9 for that proceeding be reasonable, in your opinion?

10 A. Well, I believe our regulatory plan
11 contemplates -- proposes using a forward average looking
12 adjustments to that test period. So I'm not sure isolating
13 on year 4 by itself without some additional adjustments is
14 what we contemplate. I'm not sure that all the synergies
15 will actually be in place at that point. And it would be
16 more beneficial to the customers to use a forward average
17 looking adjustments.

18 Q. And assuming that year 4 is the test year, do
19 you think it would reflect at least 3 million in net merger
20 savings?

21 A. Can I have a moment?

22 Q. Sure.

23 A. I don't believe year 4 reflects the full
24 \$3 million yet --

25 Q. Okay. If you look at your --

1 A. -- without the forward average adjustments.

2 Q. So under the regulatory plan, UtiliCorp would

3 impute additional merger savings into the test year to meet

4 that promised 3 million net merger benefit level?

5 A. If -- if -- yes. That's my understanding.

6 Q. Okay. Let's go to Surrebuttal Schedule VJS-5.

7 Just tell us when you're there.

8 A. I'm there.

9 Q. And what does this line 7 Carrying Costs/Costs

10 to Achieve relate to?

11 A. That reflects the fact that we have not

12 requested carrying costs on the costs to achieve, which is a

13 reduction of -- a reduction of the recoveries that we would

14 expect.

15 Q. And do you consider the merger premium and

16 costs to achieve to be the same?

17 A. No.

18 Q. And how are those different?

19 A. Well, generally the -- let's see. The premium

20 itself does not include transition, what some people call

21 transition and transaction costs. So -- and in addition to

22 which -- you know, so it's different from the premium in

23 that case because the premium doesn't include those.

24 I believe the -- on Schedule VJS-1 I've also

25 categorized as a cost to achieve some of the costs of some

1 of the additional facilities that are needed to be built for
2 the transmission interconnect.

3 Q. Okay.

4 A. So that's -- that would be a distinction
5 between premium and costs to achieve. And actually,
6 typically when I -- when I describe costs to achieve, I am
7 not including premium in that --

8 Q. Okay.

9 A. -- generally.

10 MR. JOYCE: Thank you. You've answered that.
11 I'm going to step aside and let my colleague, Mr. Frey, take
12 over. Thank you very much.

13 THE WITNESS: Is that legal?

14 JUDGE WOODRUFF: I assume we're talking about
15 two different issues. Is that the reason for changing
16 attorneys?

17 MR. JOYCE: No. He just had some
18 additional --

19 MR. FREY: I just have a few additional
20 questions.

21 JUDGE WOODRUFF: Okay. Proceed.

22 MR. FREY: Thank you.

23 MR. SWEARENGEN: My client is looking at me to
24 make an objection, but I'm not going to.

25 THE WITNESS: I was wondering if I could tag

1 off also.

2 MR. SWEARENGEN: Browning in for Siemek.

3 CROSS-EXAMINATION BY MR. FREY:

4 Q. We're hitting you with a battery today,
5 Mr. Siemek. I apologize.

6 I did want to suggest in answer to
7 Mr. Swearengen's invitation for you to clean-up -- shouldn't
8 say clean-up, but make corrections to your testimony to
9 reflect Mr. Traxler's changes to his schedules and
10 testimony, I would like to suggest that perhaps one more
11 correction is in order and like to see if you'd consider
12 that and confirm that?

13 A. All right.

14 Q. Do you have Mr. Traxler's corrected pages
15 before you that were filed on September 11th?

16 A. I believe so.

17 Q. Okay. Could you turn to page 42, please, sir?

18 A. All right.

19 Q. And kind of line it up with page 4 of your
20 surrebuttal. And I would suggest -- are you there?

21 A. Yes.

22 Q. Okay. Thank you. I would suggest that
23 Staff's number on line 26 on Mr. Traxler's revised sheets --
24 you'll see the figure of 62,971 should replace the
25 46.4 million that you referred to on line 12, page 4 of your

1 surrebuttal.

2 A. That appears appropriate, yes. I believe

3 that's correct.

4 Q. So you will offer that change and testify that

5 that is to be changed at this time then, sir?

6 A. Yes.

7 Q. So let the record reflect then that on line 12

8 of Mr. Siemek's surrebuttal the No. 46.4 million should

9 be -- is now 62.97 million. I guess we could say

10 63 million, couldn't we, Mr. Siemek?

11 A. That's probably the convention that I would

12 have used, yes.

13 Q. 63.0?

14 A. Yes.

15 Q. Let's change it to 63.0 then.

16 A. I might point out that that does not change

17 the line of the remaining testimony in that area, which was

18 focused more on Staff's characterization of our information,

19 the 23.6 million.

20 Q. Okay. Thank you, sir. We're talking about

21 merger savings here, Mr. Siemek. I would like to get

22 something clarified for the record, if I could. Earlier in

23 the week, actually yesterday, I asked you a question about

24 savings with respect to the numbers appearing on your

25 Schedule VJS-1 attached to your direct testimony. Do you

1 have that before you?

2 A. Yes.

3 Q. I asked you with regard specifically in
4 section 1 to lines 2, 3 and 4 whether there was a labor
5 employee benefits -- excuse me -- what percentage was labor.
6 And, as I recall, you may have indicated at least that some
7 of the indicated savings there included employee benefits.
8 Was that your testimony at that time, do you recall?

9 A. I don't recall, but I don't believe that would
10 be true that -- the benefits I believe are all accumulated
11 on line 5.

12 Q. Okay. So that's your testimony now in any
13 case; is that correct?

14 A. That's correct, that it does not include
15 benefit savings on lines 2, 3, and 4.

16 Q. Okay. Thank you. And in light of that, then
17 wouldn't the correct answer to my earlier question as to
18 whether the savings figures shown on lines 2, 3 and 4 of
19 your Schedule 1 -- wouldn't the correct answer be that
20 basically they are all labor savings?

21 A. Oh, no. That is not the correct answer.
22 Because the general and administrative savings in particular
23 include some non-payroll costs. So -- and I did not
24 quantify the split between the two. It's --

25 Q. Can you give us an idea approximately how much

1 of that is labor and how much is these general
2 administrative savings?

3 A. No. I don't think I can do that without --
4 without a considerable recalculation.

5 Q. Do your work papers provide that information?

6 A. I believe it can generally be obtained, but
7 there are a number of pieces that would have to be added
8 together. And I'm not certain -- I'm not certain that it
9 could be done from all of the work papers because some of
10 the -- some of the savings are calculated in total and not
11 split between payroll and non-payroll.

12 Q. In your opinion, would it be a material
13 amount? For example, if I were to say 95 percent of it is
14 labor, would you be willing to agree with that?

15 A. No, I would not.

16 Q. 90 percent?

17 A. No, I don't believe so.

18 MR. FREY: May I approach the witness, your
19 Honor?

20 JUDGE WOODRUFF: You may.

21 BY MR. FREY:

22 Q. In response to -- well, can you identify that
23 document that I've just handed you, sir?

24 A. It looks like the response to Data Request
25 No. 1 that was, I believe, filed with the filing itself.

1 Q. And can you give us the essential gist of that
2 document?

3 A. Basically it is the supporting work papers
4 behind the calculations of the synergies and the -- from the
5 various -- or from the various areas.

6 Q. And did you participate in response to that
7 DR?

8 A. Yes, I did.

9 Q. And does that, in fact, support your Schedule
10 VJS-1?

11 A. Yes, it does.

12 Q. Can you either find in there information that
13 can enable you to answer this question or can you provide
14 information on how we can locate that information; that is,
15 what percentage of the savings indicated in lines 2, 3 and 4
16 are labor related?

17 A. Well, generally I don't believe that the level
18 of detail included in DR 1 is adequate to break down payroll
19 and non-payroll. And this is what I had in mind earlier
20 when I mentioned that the transition team's preliminary
21 reports themselves in many cases -- or at least in several
22 cases does not distinguish between payroll and non-payroll.

23 Q. Can you tell us why that information isn't in
24 there as I believe the document -- the DR asks for all
25 documentation?

1 A. Because there is no documentation on that.
2 The synergies -- the teams were asked to develop the
3 synergies, not asked to develop the synergies between --
4 separate it between payroll and non-payroll and other
5 categories.
6 MR. FREY: Can I have a moment, your Honor?
7 JUDGE WOODRUFF: Yes, you may.
8 BY MR. FREY:
9 Q. Okay. Then at this point, you're unable to
10 tell us whether the non-labor component of those savings is
11 material or non-material; is that correct?
12 A. I don't have the information to say one way or
13 the other.
14 Q. Okay. Thank you.
15 MR. FREY: Now, I need to mark an exhibit,
16 your Honor. I believe it's 722.
17 JUDGE WOODRUFF: It is 722.
18 (EXHIBIT NO. 722 WAS MARKED FOR
19 IDENTIFICATION.)
20 BY MR. FREY:
21 Q. Can you describe the document I've just handed
22 you, Mr. Siemek?
23 A. It appears to be Data Request 138 -- is it 138
24 or 198?
25 Q. I believe it's 198.

1 A. 198 in this case.

2 Q. And did you respond to this particular data
3 request, sir?

4 A. Yes, I did.

5 MR. FREY: Your Honor, I would move for the
6 admission of this document into evidence at this time.

7 JUDGE WOODRUFF: All right. Exhibit 722 has
8 been offered into evidence. Are there any objections to its
9 receipt?

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

12 (EXHIBIT NO. 722 WAS RECEIVED INTO EVIDENCE.)

13 MR. FREY: I have no further questions, your
14 Honor. Thank you.

15 JUDGE WOODRUFF: All right. Thank you. No
16 questions from the Bench, so no recross. Is there any
17 redirect?

18 MR. SWEARENGEN: I have no redirect.

19 JUDGE WOODRUFF: All right. You may step down
20 then, Mr. Siemek.

21 THE WITNESS: Thank you.

22 JUDGE WOODRUFF: I believe we're going to pass
23 on Mr. Browning; is that correct?

24 MR. SWEARENGEN: There is no Mr. Browning.

25 JUDGE WOODRUFF: Okay. We'll move on to Staff

1 on the Estimated Merger Savings. I believe Ms. Fischer is
2 first.

3 Welcome back, Ms. Fischer. I believe you were
4 sworn yesterday so you're still under oath. I believe this
5 is the last time we'll see Ms. Fischer; is that correct?

6 MR. JOYCE: Yes, it is, your Honor. I'll
7 tender her for cross and ask to offer into evidence
8 Exhibits 703 and 703-HC.

9 JUDGE WOODRUFF: Okay. 703 and 703-HC have
10 been offered into evidence. Are there any objections to
11 their receipt?

12 Hearing none, they will be received into
13 evidence.

14 (EXHIBIT NOS. 703 AND 703-HC WERE RECEIVED
15 INTO EVIDENCE.)

16 JUDGE WOODRUFF: Does anyone have any
17 cross-examination for Ms. Fischer?

18 Hearing none, there are no questions from the
19 Bench, so no recross or redirect, and you may step down.
20 Thank you.

21 Next witness is William Harris.

22 MR. JOYCE: William Harris.

23 (Witness sworn.)

24 JUDGE WOODRUFF: You may sit down.

25 MR. JOYCE: Your Honor, I have copies of

1 Exhibit 704 and 704-HC.
2 (EXHIBIT NOS. 704 AND 704-HC WERE MARKED FOR
3 IDENTIFICATION.)
4 JUDGE WOODRUFF: You may inquire.
5 V. WILLIAM HARRIS testified as follows:
6 DIRECT EXAMINATION BY MR. JOYCE:
7 Q. Mr. Harris, will you state your full name,
8 please.
9 A. Yes. Virgil William Harris.
10 Q. And have you caused to be filed in this case
11 your rebuttal testimony marked as Exhibit 704 and 704-HC?
12 A. Yes.
13 Q. Do you have any additions or corrections to
14 that testimony?
15 A. One very minor correction appearing on page 3
16 of both NP and HC copies, line 8. There should be a "d"
17 added to the word "file" so that it reads, Testimony filed
18 earlier. And that would be the only thing.
19 Q. Thank you.
20 MR. JOYCE: Mr. Harris is not scheduled to
21 appear any further, and I move that his exhibits be received
22 into evidence and offer him for cross-examination.
23 JUDGE WOODRUFF: Thank you. Exhibits 704 and
24 704-HC have been offered into evidence. Are there any
25 objections to their receipt?

1 Hearing none, they will be received into
2 evidence.
3 (EXHIBIT NOS. 704 AND 704-HC WERE RECEIVED
4 INTO EVIDENCE.)
5 JUDGE WOODRUFF: Does anyone have any
6 cross-examination questions for Mr. Harris?
7 Hearing none, then you may step down.
8 MR. SWEARENGEN: Your Honor, before we go to
9 the next witness, it occurred to me that Mr. Siemek is no
10 longer scheduled to testify and I would -- if his exhibits
11 have not yet been received, I would re-offer them. I
12 believe they were Exhibits 6 and 7 and ask that he be
13 excused.
14 JUDGE WOODRUFF: They were received at the
15 beginning of his testimony, and he may be excused.
16 MR. SWEARENGEN: Thank you.
17 JUDGE WOODRUFF: Okay. Mr. Traxler then.
18 And, Mr. Traxler, you've previously been sworn so you're
19 still under oath.
20 THE WITNESS: Yes.
21 JUDGE WOODRUFF: Mr. Dottheim, you may
22 inquire.
23 MR. DOTTHEIM: Yes. Thank you. At this
24 time -- I visited earlier with the companies -- in
25 particular, counsel for the companies and late yesterday

1 Mr. Traxler was asked a question, I believe, by Mr. Deutsch
2 relating to schedules of Mr. Browning at least which
3 Mr. Traxler referred to one of those schedules. And
4 Mr. Traxler subsequently determined that he had not given
5 a -- quite a complete answer, and he'd like to clarify that
6 matter for purposes of the record.

7 JUDGE WOODRUFF: All right.

8 THE WITNESS: Yes. The question asked by
9 Mr. Deutsch was whether or not we had a -- could calculate
10 the -- the amount that it would take to grandfather retiree
11 benefits.

12 In response to the question I referred to
13 Mr. Browning's Schedule RBB-6. That schedule contains the
14 expected FAS-106 post-retirement benefit obligation for
15 non-bargaining employees and retirees.

16 What I failed to provide in response to that
17 question to provide a complete answer is that Mr. Browning
18 also has a Schedule RBB-7 which includes the bargaining
19 post-retirement benefit liability for both employees and
20 retirees.

21 So I'd just like to provide a complete answer
22 at this point in time, which includes consideration of both
23 those schedules. With regard to RBB-6, which I referred to
24 yesterday, the unfunded liability reflected on the schedule
25 on line 3 of 10,946,112 represents the unfunded liability

1 for both existing retirees, bargaining, and existing
2 employees, non-bargaining.

3 The amount that it would take to fund the
4 retiree portion -- existing retiree portion of that amount
5 is something less than 10,946,112. We don't know at this
6 point what that amount would be. That would require the
7 actuary to break those two amounts out, but it's something
8 less than the full amount of 10,946,112.

9 And I'd like to refer to RBB-7, which is what
10 I failed to mention in my response yesterday. The unfunded
11 liability for the bargaining FAS-106 post-retirement benefit
12 obligations is reflected on line 3 to be 12,116,854, which
13 again represents the liability both for existing bargaining
14 employees and existing non-bargaining retirees.

15 The amount that it would require to fund the
16 entire liability at this time would be the full amount, the
17 12,116,854. The amount required to fund the existing
18 retirees' portion of that liability again is something less
19 than 12,116,854; however, it would take the actuary to
20 separate those amounts and provide that information. And
21 that's a complete and full answer to his question.

22 MR. DOTTHEIM: With that, I would tender
23 Mr. Traxler for cross-examination, but also at the same time
24 I believe this is the last time that Mr. Traxler is
25 scheduled to take the stand and that was one of the reasons

1 why we wanted to address that open item.

2 So I would ask that his Exhibits 716-HC,
3 716-NP and 719, I believe, HC and 719-NP, which are his
4 replacement pages, that those exhibits be received into
5 evidence.

6 JUDGE WOODRUFF: Okay. Before we go ahead
7 with that, there was also a motion filed to strike certain
8 testimony or in the alternative to permit substitution of
9 Staff replacement pages. Is that also --

10 MR. DOTTHEIM: Judge, that relates to the
11 pre-moratorium case issue, which is upcoming. And that
12 involves the replacement pages of David Elliott.

13 JUDGE WOODRUFF: Oh, there's replacement pages
14 for Mr. Traxler also attached to that. It's attached in
15 mine. Maybe I just attached it incorrectly.

16 MR. DOTTHEIM: I'm sorry. That should not
17 have been attached. That pleading and Mr. Elliott's
18 replacement pages were filed on Friday of last week,
19 September 8th.

20 JUDGE WOODRUFF: They may have just come
21 attached and I was thinking they were connected, although I
22 didn't understand why they were connected. So the
23 replacement pages for Mr. Traxler that were filed would be
24 the 719, I believe.

25 MR. DOTTHEIM: Well, excuse me. There was a

1 motion -- there was a motion filed at the same time for
2 leave to file those replacement pages, but there was no --
3 in the motion there was no request to strike any testimony.
4 But there was a motion that did accompany the replacement
5 pages when those were filed on Monday of this week.

6 JUDGE WOODRUFF: Okay. I will go ahead and
7 grant the motion to file replacement pages for Mr. Traxler
8 if I hadn't already. So that is what's marked as 719-HC?

9 MR. DOTTHEIM: Yes, Judge.

10 JUDGE WOODRUFF: Okay. Seven -- I'm sorry.
11 716 and 716-HC and 719-HC have been offered into evidence.
12 Are there any objections to their receipt?

13 Hearing none, they will be received into
14 evidence.

15 (EXHIBIT NOS. 716, 716-HC AND 719-HC WERE
16 RECEIVED INTO EVIDENCE.)

17 JUDGE WOODRUFF: Okay. Mr. Traxler has been
18 offered for cross-examination. Are there any questions?

19 MR. COOPER: Your Honor, I have one question
20 relating to the change that's been made on the stand, if I
21 could ask that.

22 JUDGE WOODRUFF: Were there any other parties
23 that wanted to cross-examine? Okay.

24 MR. COURTNEY: May I approach the Bench?
25 Counsel's out of the room right now for me. I'm going to

1 have to find him and see if he has any questions.

2 JUDGE WOODRUFF: You can go quickly and find
3 him then.

4 All right, Mr. Cooper.

5 CROSS-EXAMINATION BY MR. COOPER:

6 Q. Mr. Traxler, earlier you made some corrections
7 relating to the cost of grandfathering existing retirees.
8 Yesterday I believe you also offered an estimate of a per
9 share cost to grandfather existing retirees.

10 In light of the changes you made this morning,
11 would it be correct to state that that estimate you gave
12 yesterday would change and that you would be unable to
13 provide, I guess, a replacement estimate without actuary
14 assistance?

15 A. The estimate provided yesterday of 63 cents a
16 share would have -- is the amount that would cover the
17 entire liability, both employee and retiree. So it would
18 require for that -- for the non-bargaining piece of the
19 liability, it would be something less than 63 cents a share
20 of the retiree piece.

21 Q. But it did not include the figures from RBB-7?

22 A. The total -- if we add both together -- I
23 re-figured that in anticipation that question would probably
24 come up. The total to fund the entire liability for both
25 retirees and employees based on both schedules is \$1.33. So

1 the amount for the retirees in total would be something less
2 than that amount. We don't know what that is.

3 MR. COOPER: That's all I had.

4 JUDGE WOODRUFF: Did IBEW have any questions
5 for this witness?

6 MR. JOLLEY: No, your Honor.

7 JUDGE WOODRUFF: I don't believe there's any
8 cross-examination. There's no questions from the Bench, so
9 you may step down.

10 I believe the next witness is Mr. Lin.

11 MR. DOTTHEIM: The Staff would call to the
12 stand its next witness, Mr. Tom Lin.

13 (Witness sworn.)

14 JUDGE WOODRUFF: Thank you. You may be
15 seated.

16 TOM LIN testified as follows:

17 DIRECT EXAMINATION BY MR. DOTTHEIM:

18 Q. Mr. Lin, you have caused to be filed rebuttal
19 testimony in this proceeding that I believe has been
20 pre-marked as Exhibit 709?

21 A. Yes.

22 Q. At this time do you have any corrections or
23 changes to make to Exhibit 709?

24 A. No, I don't.

25 MR. DOTTHEIM: I tender -- well, I offer

1 Exhibit 709 and tender Mr. Lin for cross-examination.

2 JUDGE WOODRUFF: Thank you. 709 has been

3 offered into evidence. Are there any objections to its

4 receipt?

5 Hearing none, it will be received into

6 evidence.

7 (EXHIBIT NO. 709 WAS RECEIVED INTO EVIDENCE.)

8 JUDGE WOODRUFF: Does anyone have any

9 cross-examination questions for Mr. Lin?

10 All right. Hearing none, there's no questions

11 from the Bench, and you may step down.

12 The last Staff witness I believe is

13 Mr. Proctor.

14 MR. DOTTHEIM: Judge, pardon me, I apologize.

15 I forgot to ask to be marked as an exhibit three copies of

16 Mr. Lin's testimony.

17 JUDGE WOODRUFF: Go ahead and proceed.

18 (EXHIBIT NO. 709 WAS MARKED FOR

19 IDENTIFICATION.)

20 JUDGE WOODRUFF: And it's my understanding

21 that Mr. Proctor is not here this week so we are passing on

22 him?

23 MR. DOTTHEIM: Yes.

24 JUDGE WOODRUFF: I believe that completes

25 Staff on Estimated Merger Savings, which brings us to

1 Mr. Robertson of the Public Counsel.

2 MR. COFFMAN: That's correct.

3 JUDGE WOODRUFF: Does anyone have any -- you

4 testified previously?

5 THE WITNESS: Yes, I have.

6 JUDGE WOODRUFF: Does anyone have any

7 cross-examination questions for Mr. Robertson?

8 All right. You can step down.

9 The next witness would be Ryan Kind.

10 MR. COFFMAN: That's correct. We call

11 Mr. Kind to the stand.

12 JUDGE WOODRUFF: And, Mr. Kind, have I

13 previously sworn you?

14 THE WITNESS: No. I have not been.

15 (Witness sworn.)

16 JUDGE WOODRUFF: Thank you. You may be

17 seated.

18 Did you want to offer his testimony at this

19 time?

20 MR. COFFMAN: This isn't the last time that

21 he'll be up there, but we could do that at this time.

22 JUDGE WOODRUFF: Let me go ahead and ask first

23 if anyone has any cross-examination questions of Mr. Kind?

24 Hearing none, you may step down.

25 MR. COFFMAN: We'll do that later then.

1 JUDGE WOODRUFF: I believe Mr. Fuchs also was
2 going to testify on this matter.

3 MR. COOPER: We probably will be passing on
4 him similar to Mr. Browning.

5 JUDGE WOODRUFF: Okay. We'll go ahead and
6 pass on him.

7 This is a good time to take a break. Let's
8 come back at 11:15.

9 (A RECESS WAS TAKEN.)

10 JUDGE WOODRUFF: Mr. Swearengen, what's the
11 situation?

12 MR. SWEARENGEN: Let's see. Are we on the
13 record?

14 JUDGE WOODRUFF: We're on the record.

15 MR. SWEARENGEN: That changes the thought that
16 was going through my mind. We are still working on trying
17 to settle the issue involving the Empire District Electric
18 Company Retirees. And I think we are making some progress
19 on that.

20 However, it's going to necessitate my absence
21 from the hearing room for a good portion of the remainder of
22 the day. I understand the next issue is the Pre-moratorium
23 Rate Case issue, I believe. The Staff has filed a motion to
24 strike some, if not all of the testimony relating to that.

25 We can go ahead and argue that now and then

1 Mr. Cooper can sit in for me with respect to the remaining
2 issues there.

3 JUDGE WOODRUFF: Okay. Mr. Jolley, I know
4 that you have some issues coming up this afternoon also.
5 What's IBEW's position on these delays? Is this creating
6 problems for you?

7 MR. JOLLEY: Obviously we will be here
8 whenever we have to be here to address those issues. If we
9 could get Mr. Browning and Mr. Courtney today, fine. If we
10 can't get both of them today, then it's going to be -- it's
11 not going to matter much whether we get to one one day and
12 one tomorrow. Whenever we can fit them in. The earlier the
13 better.

14 JUDGE WOODRUFF: But if need be, you can do it
15 tomorrow?

16 MR. JOLLEY: If we have to. We'd prefer
17 today, but we understand what's going on.

18 MR. SWEARENGEN: It still may be possible to
19 get to Mr. Browning later this afternoon. And I talked to
20 Mr. Jolley about that earlier and I appreciate his
21 cooperation, and we'll try to do that if we can.

22 I think if we can resolve this other matter so
23 that Mr. Browning can then be freed up to come in and be
24 grilled for a couple of hours, that would be fine. But we
25 will keep everybody posted on that. Does anyone else have

1 any questions for him on that issue, Labor Protective
2 Provision issue?

3 MR. CONRAD: Who? Browning?

4 MR. DOTTHEIM: I don't believe we do.

5 MR. COFFMAN: I don't think so.

6 MR. SWEARENGEN: And you thought maybe an hour
7 would do it?

8 MR. JOLLEY: I indicated that I would have an
9 hour, but I've known to be short or long on estimates of
10 time.

11 MR. SWEARENGEN: That's fine. I was just
12 trying to --

13 MR. JOLLEY: I think -- I would imagine about
14 an hour.

15 JUDGE WOODRUFF: Okay.

16 MR. SWEARENGEN: Thank you.

17 JUDGE WOODRUFF: Let's go ahead and deal with
18 the Pre-moratorium Rate Case. And there is a motion pending
19 on that. Mr. Dottheim, do you want to bring that up?

20 MR. DOTTHEIM: Yes. I'd at this time like
21 to -- I'd like to raise the matter of the Staff motion that
22 was filed on Friday of last week, the Motion to Strike
23 certain Empire District Electric testimony, testimony of
24 Mr. Fancher, certain pages and then in certain instances
25 complete testimony. He's filed direct, supplement direct

1 and surrebuttal.

2 And also the Motion to Strike covers the
3 surrebuttal testimony of Mr. Brill. Excuse me. I may have
4 referred to Mr. Fancher as having rebuttal testimony. If I
5 did, I should have referred to his having surrebuttal
6 testimony also filed.

7 The subject matter covered are rate case
8 matters. The Staff believes that they're inappropriately
9 raised in the context of a merger case. There's a rate case
10 of which -- from what we're told and have been told a number
11 of times in the hearings this week, there should be a rate
12 case filed by Empire District Electric approximately
13 November 1.

14 There's even, I think, a question of while --
15 if those issues are heard and they're pending before the
16 Commission and Empire files its rate case on November 1, is
17 Empire to address those issues also in the context of a rate
18 case? Might Empire even receive a ruling from the
19 Commission on at least some of the aspects of those matters
20 such as test year, true-up, what have you even before they
21 might receive a determination from the Commission in the
22 context of the merger case?

23 Also, too, the Staff raised the matter of the
24 supplemental direct testimony not having been submitted in
25 compliance with the Commission's own rules.

1 So that is in short the Staff's motion, which
2 is pending before the Commission. And in the alternative,
3 we have filed the replacement pages of David Elliott on the
4 issue of in-service criteria, which we also believe should
5 be a matter in the rate case that is due to be filed
6 approximately November 1.

7 JUDGE WOODRUFF: Okay. Mr. Swearengen, do you
8 have a response?

9 MR. SWEARENGEN: Yeah, let me respond just
10 briefly if I may, your Honor. First of all, with respect to
11 the supplemental piece of testimony that Mr. Fancher filed,
12 it's true I did not file a motion asking Commission leave to
13 do that, but there was no secret we were going to do that.

14 Back when Mr. Fancher filed his direct
15 testimony, he did indicate that he would be filing
16 supplemental direct testimony shortly thereafter on the
17 issue of the in-service criteria for the new state line
18 plant after consultation with the Staff.

19 The hope was at that point in time that we
20 would be able to sit down with the Staff, work out some kind
21 of an agreement as to appropriate in-service criteria and
22 then submit it at that time or perhaps narrow the issues.

23 We were not able to have those discussions.
24 Whether we would have and whether they would have led to a
25 resolution at this point I doubt. But I think that really

1 isn't a violation of any rule. We'd given everybody notice
2 as to what we were going to do on that.

3 There's been testimony in this proceeding
4 already, I think from Mr. Empson, about the rationale here.
5 We're talking about a rate case that's going to be filed
6 before the merger closes and then concluded after the merger
7 closes.

8 And what UtiliCorp is seeking is some
9 assurance ahead of time that in that pre-moratorium rate
10 case there will not be an effort to, as Mr. Empson described
11 it, claw back merger savings or merger benefits.

12 What we're trying to do in the Empire case is
13 to have a decision made as though Empire is a stand-alone
14 company. And if you look at the elements of the issues that
15 we want decided such as capital structure and so forth, you
16 will see that really that is the purpose.

17 We're looking for some assurance ahead of time
18 prior to closing of the merger that, in fact, in that rate
19 case Empire will be treated as a stand-alone company.

20 Mr. Dottheim has been very cooperative in
21 suggesting other possible ways to resolve this, and I really
22 do appreciate that. He does, I think, quite correctly say
23 that when we file a rate case, we will raise these issues
24 and they may be perhaps resolved there before they're
25 resolved here. And if that does, in fact, happen, then

1 obviously the Commission would not have to rule on it here.

2 But we can't, quite frankly, take that chance.

3 I think the issues are queued up for decision here. We have

4 absolutely no objection to the Staff filing this additional

5 testimony that they wish to file. We've got all the parties

6 here, we've got a docket, we have a proceeding. And so I

7 would urge the Commission -- this is a very, very, very

8 critical part of the regulatory plan -- that we get these

9 matters resolved ahead of time prior to closing.

10 So I would urge the Commission not to strike

11 this material, but to accept Mr. Dottheim's second proposal,

12 and that is let his witnesses go ahead and file the

13 additional testimony and we can just thrash out the

14 substance here. Thank you.

15 JUDGE WOODRUFF: I'll let the other parties

16 ask questions -- or make comments in a moment. I do have a

17 question though.

18 MR. SWEARENGEN: Yes, sir.

19 JUDGE WOODRUFF: What happens if the

20 Commission goes ahead and allows this testimony in today but

21 then when it makes its decisions decides we can't decide

22 these issues?

23 MR. SWEARENGEN: When it makes its decision at

24 the merger case? I can't tell you what the effect of that

25 would be. As Mr. Dottheim has pointed out, maybe we will

1 have them resolved by that time in the rate case itself in
2 which case if they are resolved to our satisfaction, then
3 there won't be a problem.

4 So we really will have perhaps two
5 opportunities here. But I can't agree at this point in time
6 not to continue to insist that these matters be continued to
7 be made a part of this docket.

8 JUDGE WOODRUFF: Mr. Dottheim, do you want to
9 be heard on that?

10 MR. DOTTHEIM: Yes. In fact, I'd actually not
11 even mentioned one of the possibilities that the Staff had
12 raised in its pleading, and that was a separate docket for
13 the in-service criteria on a more expedited schedule than
14 the rate case would be.

15 Regardless of Mr. Swearingen's suggestions,
16 the Staff has actually only filed the additional testimony,
17 if you want to call it that, replacement pages of
18 Mr. Elliott and has filed in response to the company's rate
19 case a testimony very -- very limited testimony in response.

20 I would expect in the context of the rate
21 case, that there would be more testimony filed volume-wise
22 than what has been filed in the merger case in order to
23 fully litigate those issues.

24 And I think it still comes back to the issue
25 of while the parties may be waiting for -- if the Commission

1 does hear those issues now while the rate case is
2 proceeding, should we also be litigating those issues in
3 that case also?

4 And the Staff didn't raise the legal issues.
5 We thought ultimately we may have to do that in the context
6 of a brief, but I think there is also some question that
7 might be raised by one or more parties is can the Commission
8 preclude the raising of these issues in the context of the
9 rate case that's going to be filed on November 1?

10 JUDGE WOODRUFF: Any other parties want to be
11 heard? Mr. Conrad first.

12 MR. CONRAD: Well, I'll be quick, but I'm sure
13 it doesn't surprise the Bench given our overall position.
14 As I've characterized it, the stealth rate case doesn't
15 belong here. We are in support of the Staff's motion on
16 this. I won't attempt to re-argue that.

17 I will just say that I think for my part there
18 are some fairly significant legal issues. And I do not
19 believe, as a matter of law, that the Commission can
20 preclude parties from raising issues in a rate case that is
21 filed by the company in the future. And I think that's --
22 and you can go ahead and hear it, you can go ahead and try
23 to issue a decision on it, but I think it's
24 meaningless.

25 JUDGE WOODRUFF: Mr. Coffman?

1 MR. COFFMAN: Yes. I just wanted to again
2 remind the Bench that we do believe for various legal
3 reasons that any determination by this Commission of
4 rate-making components in a merger case would be beyond the
5 Commission's statutory authority, but that aside, we would
6 support Staff's motion and believe that for regulatory
7 reasons that it is also probably ill advised at this time.

8 JUDGE WOODRUFF: Mr. Swearengen?

9 MR. SWEARENGEN: Yeah. If everyone else wants
10 to go around a couple more times, that's fine. Just two
11 things. One with respect to the legal question, and I cited
12 the Rolla certificate case where the Commission has, in
13 fact, made a rate-type decision in a non-rate case. And I
14 don't think there's anything to prohibit them from doing
15 that, one.

16 Two, I'm not sure that I disagree with
17 Mr. Conrad when he says that he doesn't think he would be
18 precluded perhaps from raising that issue again in the rate
19 case. And I'm not taking a position on that one way or the
20 other right now. I recognize that he may be right. He may
21 not be, but he may be right.

22 The other thing I need to emphasize that I
23 didn't is that this transaction, the termination date is
24 December 31 of this year. There has been some testimony
25 that under certain circumstances it might be extended

1 perhaps as long as a month or perhaps 45 days.

2 That is the real reason that we have these
3 issues here in this case, because if the transaction's going
4 to close, I think it's going to close by the end of this
5 year. And we need some indication by that time about how
6 these matters are going to be treated in a rate case.

7 Now, there is a possibility, as Mr. Dottheim
8 points out, that when we file that rate case, we will get
9 these matters resolved in that rate case by the end of the
10 year. But there's also the possibility that that might not
11 happen, that that could get delayed beyond the end of the
12 year. And that is a reason that we just don't feel like we
13 can take that risk. But I do appreciate his suggestion
14 about these other ways to deal with it. Thank you.

15 JUDGE WOODRUFF: Anyone else want to be heard
16 on that?

17 All right. I'm going to deny the Motion to
18 Strike. We're going to go ahead and hear the evidence
19 today. That's, of course, not making any ruling on how
20 we're going to rule on that evidence.

21 MR. SWEARENGEN: I understand.

22 JUDGE WOODRUFF: The Commission may decide
23 that it's not appropriate, and at that time we'll issue that
24 and a decision will be made as a part of the decision in the
25 rest of the case. But for the moment the Motion to Strike

1 will be denied. The Staff will be permitted to substitute
2 the replacement pages as they wish in Mr. Elliott's
3 testimony.

4 I believe there's the one third issue about
5 the supplemental direct that was filed earlier. A Motion to
6 Strike that will also be denied because that was provided in
7 sufficient time for everyone to respond to it, although a
8 motion requesting permission to file that should have been
9 filed at the time.

10 MR. SWEARENGEN: Thank you, Judge. I
11 appreciate that. And, once again, if I could just suggest
12 maybe -- could we go off the record at this point?

13 JUDGE WOODRUFF: I don't know if there's any
14 reason to be off the record, but --

15 MR. SWEARENGEN: My suggestion was going to be
16 that we take a lunch break at this time and then come back
17 and we can try the issue after lunch if that's possible.

18 JUDGE WOODRUFF: Okay. Let's go off the
19 record.

20 (A RECESS WAS TAKEN.)

21 JUDGE WOODRUFF: I believe we're going to
22 start today -- or this afternoon with the Pre-moratorium
23 Rate Case issue.

24 MR. COOPER: That's correct, your Honor. And
25 the companies would call Mr. Bob Fancher.

1 JUDGE WOODRUFF: Mr. Fancher, I believe you've
2 been previously sworn.

3 THE WITNESS: Yes, I have.

4 JUDGE WOODRUFF: You're still under oath.

5 MR. COOPER: Your Honor, I believe this is the
6 last time Mr. Fancher will be on the stand and I will
7 re-offer Exhibits 8, 9, 10 and 10-HC as a result and tender
8 Mr. Fancher for cross-examination on the Pre-moratorium Rate
9 Case issue.

10 JUDGE WOODRUFF: Exhibits 8, 9, 10 and 10-HC
11 have been offered into evidence. Are there objections to
12 their receipt?

13 MR. CONRAD: Yes, your Honor. Just largely
14 for the purposes of protecting the record. I understand
15 that some of the rulings made earlier may have effected
16 this, but at least our position is that the issues I believe
17 raised in Mr. Fancher's -- initially raised in Mr. Fancher's
18 direct, which would be 8, and 10 to the extent it is
19 responsive to other testimony on the same issue, don't
20 belong in this proceeding and are irrelevant to the issues
21 before the Commission and the merger.

22 In anticipation of what your ruling would
23 likely be, I still need to make that objection formally.
24 And I would ask that that be considered to be a continuing
25 objection.

1 JUDGE WOODRUFF: Very well. It will be
2 continued -- considered as a continuing objection and it
3 will be overruled as you anticipated.

4 The Exhibits 8, 9, 10 and 10-HC will be
5 admitted into evidence.

6 (EXHIBIT NOS. 8, 9, 10 AND 10-HC WERE RECEIVED
7 INTO EVIDENCE.)

8 JUDGE WOODRUFF: You may proceed.

9 MR. COOPER: Again, your Honor, we tender
10 Mr. Fancher for cross-examination on the Pre-moratorium Rate
11 Case issue.

12 JUDGE WOODRUFF: Does anyone have any
13 cross-examination questions for Mr. Fancher?

14 MR. CONRAD: I do.

15 JUDGE WOODRUFF: We'll begin with Praxair.
16 BOB FANCHER testified as follows:
17 CROSS-EXAMINATION BY MR. CONRAD:

18 Q. Good morning, Mr. Fancher. Would you please
19 turn to, I believe it is your surrebuttal, which is
20 Exhibit 10, page 4?

21 A. I have that.

22 Q. And then you might also flip over to page 5
23 where you're talking about your response to Mr. Meade's
24 testimony. Do you have that before you?

25 A. I have that before me.

1 Q. I take it that you don't agree with the
2 stealth characterization?

3 A. I do not.

4 Q. Do you have tariffs on file that have been
5 proposed to the Commission in this proceeding to increase
6 rates?

7 A. We do not.

8 Q. Do you have a complaint on file before this
9 Commission contending that your rates presently are
10 inadequate?

11 A. We do not.

12 Q. Have you provided notice to the customers in
13 your service territory of the implications of any of the
14 decisions that you're asking the Commission to make in this
15 proceeding with respect to the so-called pre-moratorium rate
16 case?

17 A. I can't really answer that. I don't know what
18 all was in the press release about the merger case.

19 Q. Has your company included any bill stuffers
20 advising the customers, the ratepayers in your service
21 territory, that their rates might increase as a result of
22 certain decisions made that you're requesting this
23 Commission to make in the pre-moratorium rate case aspects
24 of this filing?

25 A. No. That would be made in that case.

1 Q. And specifically looking now, Mr. Fancher, to
2 your direct testimony, I believe No. 8 -- Exhibit 8 and
3 toward the bottom of page 3, I take it that your answer
4 would be the same, that there's been no formal mailing to
5 the customers in your service territory about the proposed
6 costs of the SLCC, as it's abbreviated there, plant; is that
7 correct?

8 A. That is correct.

9 Q. Have you provided them any notification of the
10 accumulated depreciation rate that you want to use?

11 A. No, we have not.

12 Q. Would the same -- to save a little bit of
13 time, would the same answer be applicable if I asked it with
14 respect to the final item on page 3 and all the rest through
15 the list on page 4 at the top?

16 A. Yes. There has been no notification.

17 Q. Now, let's flip back to page 3 of your direct.
18 And I'm looking at an answer on page 4 -- excuse me --
19 line 4.

20 A. I have that.

21 Q. I wanted to ask you about the word that's used
22 there "uncertainty." What is there that's uncertain that
23 you are referring to there, Mr. Fancher?

24 A. The uncertainty as to how these -- this case
25 would be treated by the Commission. I think it's been

1 stated by other parties prior to this that a part of the
2 reason for asking for these things is so that UtiliCorp at
3 merger close will have some idea of the return on
4 investment.

5 Q. So the uncertainty, I take it, that you want
6 to eliminate are the several aspects that would be involved
7 in a rate case filing; is that correct?

8 A. Not the dollar amounts, but how it might be
9 treated.

10 Q. Okay. Well, let's see if we can eliminate
11 some uncertainty then. At the bottom of page 3, that same
12 page, line 21, what is the value of the SLCC plant that you
13 want to include in rate base at this time?

14 A. We are not including any of that in rate base
15 at this time. That would be in the pre-moratorium rate
16 base.

17 Q. But you want the Commission to make a
18 determination about that in this case, do you not?

19 A. We want the Commission to determine that that
20 will be included in the pre-moratorium rate case when that
21 is concluded.

22 Q. At what value, sir?

23 A. At whatever the value is at that time.

24 Q. Do you know that value today, sir?

25 A. I do not.

1 Q. Your answer refers to less accumulated
2 depreciation. Do you know, sir, what the accumulated
3 depreciation on that plant will be at that time?
4 A. No. That will be determined at the
5 pre-moratorium rate case.
6 Q. Do you know what the O and M expenses
7 associated with that plant will be?
8 A. No. That will also be in the pre-moratorium
9 rate case.
10 Q. I'm talking about today now. This is when
11 you're asking. You're asking the Commission today in this
12 proceeding to make these determinations.
13 A. All we're asking the Commission to determine
14 is that it will be included, whatever the amount is, not to
15 determine the amount.
16 Q. Have you read the Hope and Bluefield cases
17 recently, Mr. Fancher?
18 A. Not recently.
19 Q. So if I were to ask you the same series of
20 questions with respect to the line items at the top of
21 page 4, again, just to save ourselves a little bit of time,
22 your answer's going to be you don't know what those amounts
23 are?
24 A. That is correct.
25 Q. So I take it, sir, that if you do not know

1 what those amounts would be, that an Empire District
2 ratepayer would have no way in the context of this case to
3 know what those amounts would be either. Would you agree?
4 A. It's not contemplated that they would know in
5 this case what those amounts are.
6 Q. Is that a yes or no?
7 A. That's a, yes, they would not know.
8 Q. Is there any way that an Empire District
9 ratepayer could find out those amounts in the context of
10 this case, Mr. Fancher?
11 A. No, they could not.
12 MR. CONRAD: That's all. Thank you.
13 JUDGE WOODRUFF: Thank you, Mr. Conrad.
14 Public Counsel?
15 CROSS-EXAMINATION BY MR. COFFMAN:
16 Q. Yes. I'd like to ask just a couple of
17 questions. First of all, to clarify what I think I heard on
18 the -- I think it was the first day of this hearing
19 regarding the contribution that Empire had made to the
20 retirees health insurance premiums. Did you not,
21 Mr. Fancher, describe those as more or less of a hope and
22 not a guarantee of any sort?
23 MR. COOPER: Objection, your Honor. I think
24 this is beyond the issue that's before us at this time.
25 JUDGE WOODRUFF: Do you want to explain your

1 question?

2 MR. COFFMAN: This relates to the items that
3 would be -- that the applicants are asking be determined in
4 the post-moratorium rate case.

5 JUDGE WOODRUFF: In what way?

6 MR. COFFMAN: With regard to the synergies and
7 components of the rate-making components that they would
8 like to see determined in that case.

9 JUDGE WOODRUFF: I'll go ahead and allow the
10 question.

11 BY MR. COFFMAN:

12 Q. Okay. Well, just to cut to the chase, I
13 guess, is it not true that if Empire on a stand-alone basis
14 had decided to cut costs on its own, they could have
15 discontinued the contribution that they had been making to
16 those insurance premiums at any time?

17 A. Yes, they could. We probably wouldn't, but,
18 yes, we could.

19 Q. Okay. And those amounts are part of the
20 synergies that you're claiming as part of your regulatory
21 plan proposed in this case?

22 A. Well, I've not worked on the synergies. I
23 think Mr. Siemek has done all of that. I think that is part
24 of it, yes, but I didn't work on those numbers.

25 Q. And this is part of synergies that you would

1 like this Commission to, I guess, disregard in this
2 post-moratorium rate case; is that correct?

3 A. To disregard?

4 Q. Yes.

5 A. Well, I don't think that came up as one of the
6 items in the rate case. What we had asked for in the rate
7 case was a different problem as far as employees. We have a
8 number of people who have left employment of the company
9 because of the merger. So those positions, absent the
10 merger, would have been filled.

11 And what we've asked in the pre-moratorium
12 rate case is to look at the company as if those positions
13 were filled. That establishes a base to look at synergies
14 that come because of the merger.

15 Q. And that's one component that you would like
16 the Commission to pre-approve or commit to in this case?

17 A. To say that that would be done, yes.

18 MR. COFFMAN: That's all that I have. Thank
19 you.

20 JUDGE WOODRUFF: Staff?

21 MR. DOTTHEIM: Yes. Thank you.

22 CROSS-EXAMINATION BY MR. DOTTHEIM:

23 Q. Good afternoon, Mr. Fancher.

24 A. Mr. Dottheim.

25 Q. Mr. Fancher, what exactly are the actions that

1 the joint applicants are requesting the Commission to take
2 in regard to this issue -- the Pre-moratorium Rate Case
3 issue?

4 A. I think there's a number of items that are
5 listed in my testimony that we've asked the Commission to
6 say will be items that are included in the pre-moratorium
7 rate case. There's no intent to establish the number in any
8 of those at this time, but to say that here's how we will
9 conduct these items in that case.

10 Q. You're asking that the Commission make
11 decisions in this, the merger case, regarding rate case
12 issues that would then be applied in the pre-moratorium rate
13 case?

14 A. We're not asking necessarily the decision of
15 issues. We're asking that some guidelines be established
16 for that case.

17 Q. How do you define guidelines?

18 A. Basically what I've put in my testimony, I
19 guess.

20 Q. Could the Commission reverse itself in the
21 pre-moratorium rate case after having given you a guideline?

22 A. I assume it could, yes.

23 Q. Having given you a guideline, is the
24 Commission precluded from even considering further that
25 guideline in the pre-moratorium rate case?

1 A. That's probably a legal question that I would
2 say, in my opinion, probably not.

3 Q. If the Commission grants, in the merger
4 proceeding, that is this proceeding, the decisions that
5 Empire/UtiliCorp seek as set out in your testimony, can
6 those issues be raised in the pre-moratorium rate case?

7 A. Yes. I believe they can.

8 Q. You may have already identified this and other
9 Empire/UtiliCorp witnesses may have identified the assumed
10 filing date for the pre-moratorium rate case, but could you
11 please indicate to the best of your knowledge at this point
12 what you expect to be the filing date of the pre-moratorium
13 rate case?

14 A. We're shooting for November the 1st of the
15 year 2000.

16 Q. Mr. Fancher, by the Commission deciding the
17 in-service criteria and the other rate case issues that are
18 set out in your testimony in the context of the merger case,
19 if those issues can be raised again in the pre-moratorium
20 rate case, how does that reduce the uncertainty surrounding
21 the pre-moratorium rate case?

22 A. I think it shows an inclination to treat those
23 things the way we've requested.

24 Q. Are you asking that parties, entities rely on
25 the inclination that the Commission gives in deciding those

1 items in the merger case?

2 A. I would hope that the Staff would at least pay
3 attention to what the Commission said.

4 Q. Do you think that any other party or any other
5 entity that might seek to participate in the pre-moratorium
6 rate case should think about the Commission's decision in
7 the merger case and follow it or adhere to it for purposes
8 of the pre-moratorium rate case?

9 A. I -- I would expect that they would at least
10 think about it. I don't know that they would follow it.

11 Q. Mr. Fancher, can you identify a date by which
12 Empire/UtiliCorp are looking for a decision from the
13 Commission regarding the items that you raise in your
14 testimony that Empire/UtiliCorp are seeking decisions on?

15 A. Of course, the merger agreement specifies
16 December the 31st, the year 2000.

17 Q. Is Empire/UtiliCorp looking for decisions from
18 the Commission prior to the filing of the pre-moratorium
19 rate case on approximately November 1, 2000?

20 A. I don't believe so.

21 Q. Will Empire/UtiliCorp raise the issues that
22 you have set out in your testimony for purposes of decision
23 by the Commission in this proceeding? Will Empire/UtiliCorp
24 raise those issues in the November 1 pre-moratorium rate
25 case filing?

1 A. Yes. That will be a part of the calculation
2 of the expected revenue requirement.

3 Q. In addition to part of the calculation of the
4 expected revenue requirement, will there be testimony
5 setting out and argument rationale for the Commission to
6 adopt or re-adopt those positions?

7 A. Yes. I believe that's a requirement of the
8 filing, is that testimony be filed at that time.

9 Q. You've mentioned, I believe, December 31, 2000
10 as a date by which a decision or guidelines from the
11 Commission are desired by Empire/UtiliCorp. What is the
12 significance of the December 31, 2000 date?

13 A. Well, the merger agreement, unless extended,
14 expires at that time.

15 Q. And the merger agreement can be extended by
16 Empire and UtiliCorp?

17 A. That's correct.

18 Q. Do you know whether Empire or UtiliCorp can
19 declare a material adverse effect by the Commission
20 respecting in-service criteria or the other rate case issues
21 pursuant to the agreement and plan of merger between
22 UtiliCorp and Empire?

23 A. I don't believe the provision that you're
24 referring to is down to that specific a level. It refers to
25 the decision of the Commission on recovery of the

1 acquisition premium, I believe.

2 Q. If there is no decision from the Commission
3 prior to December 31, 2000 on the issues that are set out in
4 your testimony, do you know or have an expectation as to
5 what action Empire District Electric will take by the
6 conclusion of December 31, 2,000?

7 A. I think it would depend on the entire
8 decision, not just that one item.

9 Q. Given a planned November 1, 2000 filing date
10 for the pre-moratorium rate case, is it possible that the
11 Commission could issue an order or orders regarding test
12 year update true-up issues and other possible issues that
13 are set out in your testimony at an earlier date in the
14 pre-moratorium rate case than they do in the merger
15 proceeding?

16 A. Is it possible? Yes. Is it likely? There's
17 not a lot of time between November the 1st and sometime in
18 December to actually have hearings and discuss those issues.

19 Q. What is Empire/UtiliCorp recommending
20 regarding rate treatment of merger-related savings and costs
21 in the pre-moratorium rate case?

22 A. Okay. Say that again, please.

23 Q. What is Empire/UtiliCorp recommending
24 regarding rate treatment of merger-related savings and costs
25 in the pre-moratorium rate case?

1 A. In the pre-moratorium rate case you would
2 treat Empire as the stand-alone company and adjust for those
3 empty positions that I talked about so that the look that
4 you would have of Empire would be as if it was prior to the
5 merger or any merger agreement.

6 Q. Is Empire/UtiliCorp requesting that the
7 Commission make findings as to how specific merger savings
8 and costs are to be treated in the pre-moratorium rate case,
9 or is Empire/UtiliCorp just seeking a determination from the
10 Commission that merger savings and costs in general are not
11 to be reflected in the pre-moratorium rate case?

12 A. They would not be reflected in the
13 pre-moratorium rate case.

14 Q. And by that answer are you indicating that
15 Empire/UtiliCorp are not requesting that the Commission make
16 findings as to how specific merger savings and costs would
17 be treated in the pre-moratorium rate case?

18 A. That's correct.

19 Q. How many employee vacancies does Empire
20 currently have?

21 A. I can't speak as of today. Sometime back we
22 had 60.

23 Q. Okay.

24 A. That's the last number I remember.

25 Q. In past Empire rate proceedings has Empire

1 received rate recovery of salary expenses associated with
2 employee positions that were vacant at the time of the rate
3 case?

4 A. In a sense. It kind of depends. There's
5 always some vacancies and we've had cases in which some
6 vacancies were left vacant.

7 Q. And UtiliCorp received recovery for expenses
8 that were asserted to be associated with those vacancies?

9 A. Yes and no, I guess. What we typically do is
10 look at the end of the test year and normalize to the level
11 at that point. That's typically what we do.

12 Q. Mr. Fancher, evidently when I asked you the
13 question, I referred to UtiliCorp. I meant to refer to
14 Empire. Was your answer in regards to Empire or was your
15 answer in regards to UtiliCorp?

16 A. I edited your question and answered in
17 accordance with Empire.

18 Q. Thank you, sir. Will Empire's current
19 estimate of non-merger-related vacancies be static from now
20 until the completion of the pre-moratorium rate case, or
21 would you expect that number to change over time?

22 A. As far as the number of vacancies, I would
23 expect that will probably continue to increase.

24 Q. Will you consider all future vacancies to be
25 merger related?

1 A. No. Typically in a company the size of ours
2 we know for every individual why they leave.

3 Q. So are you indicating that Empire would make
4 an evaluation regarding each vacancy whether it is merger
5 related or not merger related?

6 A. Yes. In fact, in response to a data request
7 sometime during this case we supplied a list to the Staff, I
8 believe, for the 60 vacancies as to why each of those
9 individuals left.

10 Q. Has Empire received the benefit of any other
11 type of what it asserts to be early merger savings to this
12 point besides merger-related employee vacancies?

13 A. I don't think of any significant things.
14 That's the one that stands out because of the problems that
15 it has caused.

16 Q. Do you expect to receive the benefit of any
17 other type of early merger savings by the time the merger is
18 projected to close?

19 A. I don't believe so.

20 Q. Besides employee vacancies, how does Empire
21 propose to identify merger savings in the upcoming
22 pre-moratorium rate case so that it can propose adjustments
23 to remove the merger savings from its revenue requirement
24 calculation?

25 A. That's the only one at this time that we could

1 identify.

2 Q. Mr. Fancher, I'd like to direct you to your
3 supplemental direct testimony. I'd like to ask you some
4 questions regarding in-service criteria. You make reference
5 on page 2, lines 5 through 8, that in the past in-service
6 criteria for particular power generation projects had been
7 proposed or established by mutual agreement ahead of time to
8 assist the Commission in this process, do you not?

9 A. Yes, I do.

10 Q. Do you know whether the Union Electric
11 Company/Callaway rate case, the in-service criteria was
12 litigated rather than agreed to in advance?

13 A. I do not know.

14 Q. Do you know whether in-service criteria was
15 litigated in any other Commission case?

16 A. I could not tell you that.

17 Q. I'd like to refer you again to your
18 supplemental direct, page 2, line 22 to page 3, line 2. And
19 in particular I'd like to direct you to line 22. Could you
20 tell me what you mean by the words "substantially
21 satisfied"?

22 A. Basically if you look at the criteria to
23 determine if a plant is in service, it revolves around is
24 that plant operating somewhere near the operating parameters
25 that were established, providing service to the load of the

1 company. And if you look at all those criteria that are
2 there, it doesn't say that every letter of the law might be
3 met, but is it doing that and providing service.

4 Q. I think you used the phrase "somewhere near
5 the operating parameters"?

6 A. Absolutely.

7 Q. How do you define what is "somewhere near the
8 operating parameters"?

9 A. Well, I would expect if it's a 500 megawatt
10 plant, that it would be somewhere near 500 megawatts. That
11 it wouldn't be 400 or 300.

12 Q. What is your definition for somewhere near
13 500 megawatts?

14 A. That's -- I don't have a definition other than
15 that. I don't have a plus or minus.

16 Q. Might the definition of somewhere near the
17 operating parameters -- excuse me -- somewhere near
18 500 megawatts be subjective?

19 A. Absolutely.

20 Q. I'd like to direct you to page 3 of your
21 supplemental direct, lines 3 and 4. What is the purpose of
22 requiring the Staff to timely conduct a physical inspection
23 of the plant?

24 A. See that it's there and it's what it purports
25 to be.

1 Q. I'd like to next direct you to item 2 on that
2 page, The company's plant manager or responsible officer
3 shall attest that pre-operational testing has been completed
4 in accordance with current procedures.

5 Could you please identify what are the current
6 procedures?

7 A. Those I don't have. I believe what has been
8 used in the past has been something related to the Southwest
9 Power Pool procedures.

10 Q. If we move to the next item, item 3, where you
11 state, Liability for final payment of equipment and
12 construction contracts is recorded on Empire's books in the
13 form of contractual amounts paid or retained pending final
14 resolution of outstanding issues.

15 When is liability for final payment of
16 equipment and construction contracts recorded on Empire's
17 books?

18 A. It's recorded at the time the project is done,
19 when work is done, although the payment may not have been
20 made.

21 Q. How is it determined when the project is done?

22 A. If construction is complete.

23 Q. And could you be more specific as to how it
24 might be determined when construction is complete?

25 A. Well, each of the people that are working on

1 the job have a contract that specifies what they will do.
2 When they have completed their work, for them construction
3 is complete.

4 Q. In order for construction to be complete, if
5 there are any guarantees in that contract, must the
6 guarantees be met?

7 A. That is correct.

8 Q. And we can move to the next item, 4, The
9 generating unit shall demonstrate its ability to start and
10 operate.

11 How does the generating unit demonstrate its
12 ability to operate?

13 A. It runs.

14 Q. Must it run within certain parameters in order
15 to demonstrate its ability to operate?

16 A. Yes. And I think that's in some of the
17 following items.

18 Q. Let's go to item 5, The generating unit shall
19 demonstrate its ability to smoothly and successfully shut
20 down when prompted by the unit operator initiating such
21 command.

22 How does a generating unit demonstrate its
23 ability to smoothly shut down?

24 A. Well, it doesn't go through any glitches, I
25 guess, as it's coming down.

1 Q. Let's go to the next item, item 6, The
2 generating unit shall operate within 5 percent of Empire's
3 intended rated capability during the settling period.
4 What is Empire's intended rated capability?
5 A. Five hundred megawatts.
6 Q. And that's its specific --
7 A. That's total plant. That is not Empire's
8 portion of the plant.
9 Q. And you're referring to the state line
10 combined cycle unit?
11 A. That's correct.
12 Q. Could you identify what is the settling
13 period?
14 A. If you look at item No. 8, the settling period
15 shall last for a period of two hours. That's when it's
16 coming up to a certain level and it settles into that level.
17 Q. Let's go to item 7, Only minor changes in unit
18 controls shall be made during the settling period.
19 What would constitute minor changes in unit
20 controls?
21 A. That I don't -- I can't answer. I don't know
22 what all might be involved there, what might be adjusted. I
23 think basically the intent is that you don't go out and
24 change the parameters radically to get it settled in at
25 this.

1 Q. Let's go to item 9, The generating unit shall
2 operate at a normal steady condition for a period of two
3 hours at the demonstrated pool-rated capacity.

4 What is the normal steady condition?

5 A. Operating at the level that you set it at.

6 Q. And what level might that be? Could you be
7 more descriptive by what you mean by that term?

8 A. Well, if you were testing it for the total
9 unit, Western Resources' portion and Empire's portion, you
10 would be trying for 500 megawatts. If you were testing only
11 Empire's portion, you would be testing it at 300 megawatts.

12 Q. Should the unit be tested at the 300 megawatt
13 level or at the 500 megawatt level?

14 A. It should be tested at the 500 for pool
15 ratings, because that would be Western's portion and ours in
16 the same pool. And that would be the ideal condition.
17 You'd have to have the concurrence of your partner to do
18 that.

19 Q. And what do you mean by the term "a normal
20 steady condition"?

21 A. Well, if you're trying to generate 500
22 megawatts, then you want it to be at or near 500 megawatts.

23 Q. And is the pool-rated capacity for the state
24 line combined cycling unit 500 megawatts?

25 A. We don't know that until the test occurs.

1 Q. Are there certain parameters within which that
2 determination would be made as to what the capacity is?
3 A. Yes. For pool-rating capacity you'd go back
4 to the Southwest Power Pool criteria.
5 Q. Might be something less than 500 megawatts?
6 A. Yes. As well as it might be something more.
7 Q. Is any number acceptable for the pool-rated
8 capacity?
9 A. Well, as far as the pool's concerned, it would
10 be. As far as performance under contracts, it might not be.
11 Q. Must Empire's units every year meet criteria
12 ratings set by the Southwest Power Pool?
13 A. I'd defer that question to Mr. Brill.
14 Q. How long have these criteria -- Southwest
15 Power Pool criteria been applicable to Empire?
16 A. I do not know the answer to that question.
17 Q. Was Empire at one time a member of the MOKAN
18 Power Pool?
19 A. That is correct.
20 Q. Were Empire's generating units required to be
21 certain criteria set by the MOKAN Power Pool?
22 A. Yes, they were.
23 Q. And what would occur if Empire's generating
24 units could not meet those criteria?
25 A. Well, it would depend on the total ability to

1 meet your capacity in the pool total, not by individual
2 unit, but could you meet what your projected capacity
3 requirement was. And you could be penalized if you did not
4 do that.

5 Q. Does Empire's membership in the Southwest
6 Power Pool have similar requirements to the requirements
7 that Empire was required to meet for its generating units
8 when it was in the MOKAN Power Pool?

9 A. I -- again, Mr. Brill would be able to answer
10 that. My understanding is there's no penalty.

11 Q. I'd like to refer you to your direct
12 testimony, which is Exhibit 8. And, in particular, I'd like
13 to direct you to page 4, lines 8 and 9 -- excuse me -- I
14 meant to direct you to lines 18 and 19 on page 4.

15 A. Yes. I have that.

16 Q. You make reference there to a recent November
17 1999 financing that consisted of \$100 million in unsecured
18 notes?

19 A. That is correct.

20 Q. Do you know whether Empire filed an
21 application with the Missouri Commission for authorization
22 to enter into that financing?

23 A. We had filed a shelf registration prior to
24 that. And we did, I believe, go through whatever filing was
25 necessary on the issue of the notes. I'm not sure what was

1 necessary, but whatever it was, we complied with that.

2 MR. DOTTHEIM: Could I have a moment, please?

3 JUDGE WOODRUFF: You may.

4 MR. DOTTHEIM: Thank you, Mr. Fancher.

5 JUDGE WOODRUFF: All right. We'll come up to

6 questions from the Bench. Chair Lumpe, do you have any

7 questions for Mr. Fancher?

8 CHAIR LUMPE: I don't think so.

9 JUDGE WOODRUFF: No recross. Any redirect?

10 MR. COOPER: Yes, your Honor.

11 REDIRECT EXAMINATION BY MR. COOPER:

12 Q. Mr. Fancher, you were asked by Mr. Dottheim as

13 to how the requested decision in this case would provide

14 certainty if these issues could be raised again in a future

15 rate case. Do you remember that?

16 A. Yes.

17 Q. Do you know, as a legal matter, whether these

18 issues can or can't be re-litigated in a future rate case if

19 the Commission reaches a decision on them today?

20 A. That's a legal matter. I do not know.

21 Q. Mr. Dottheim also asked you some questions

22 regarding vacancies that have resulted from the merger. Do

23 you recall those?

24 A. Yes, I do.

25 Q. Are those vacancies, I guess -- well, let me

1 back up.

2 I assume you consider those vacancies to be a
3 higher than normal level of vacancy. Correct?

4 A. Absolutely.

5 Q. And you believe that they are primarily based
6 upon what?

7 A. Most of those are based on the fact that we
8 signed a merger agreement. And a lot of those are in
9 positions that are expected to be eliminated.

10 Q. This high level of vacancies resulting from
11 merger-type issues, is that one of the types of situations
12 that makes the termination date in the merger agreement of
13 importance to Empire?

14 A. Oh, absolutely. The level of people leaving
15 will continue to increase probably as we get nearer the date
16 that the merger's expected to close.

17 Q. Mr. Conrad in his cross-examination asked you
18 whether the company had sent any bill stuffers notifying
19 customers that rates may increase, I believe, as a result of
20 this case. Do you recall that?

21 A. Yes. I recall those questions.

22 Q. Do you believe that rates can change, either
23 increase or decrease, as a result of this case?

24 A. They cannot.

25 Q. Mr. Conrad also asked you a series of

1 questions regarding the items listed on the bottom of page 3
2 and at the top of page 4 of your direct testimony. And I
3 believe that his questions for you related to whether you
4 know -- or knew the precise dollar amounts associated with
5 those items. Do you remember that?

6 A. I remember the questions.

7 Q. Mr. Fancher, have you been involved in several
8 rate cases during your career at Empire?

9 A. Yes, I have.

10 Q. Would you refer to those items that are listed
11 on the bottom of page 3 and at the top of page 4 as true-up
12 type items?

13 A. Yes.

14 Q. In a rate case environment, at the time you
15 would file a motion for true-up and list those types of
16 items in the rate case, would you know the amounts of those
17 items even in a rate case setting?

18 A. We would file based on estimates of those
19 numbers and then true-up, as you say, to the actual number
20 when that number is known.

21 Q. And that's really the purpose of a true-up,
22 isn't it? You true-up because at the time of filing you
23 don't know the actual numbers?

24 A. That's correct.

25 MR. COOPER: That's all the questions I have,

1 your Honor.

2 JUDGE WOODRUFF: Thank you. You may step

3 down, Mr. Fancher.

4 Call your next witness.

5 MR. COOPER: Your Honor, we would call Virgil

6 Brill.

7 (Witness sworn.)

8 JUDGE WOODRUFF: Thank you. You may inquire

9 when you're ready.

10 VIRGIL BRILL testified as follows:

11 DIRECT EXAMINATION BY MR. COOPER:

12 Q. Mr. Brill, will you please state your full

13 name.

14 A. Virgil B. Brill.

15 MR. COOPER: Your Honor, at this time I'm

16 going to hand to the court reporter Mr. Brill's surrebuttal

17 testimony and the highly confidential pages from his

18 surrebuttal testimony. I believe they've been marked as

19 Exhibits 22 and 22-HC

20 JUDGE WOODRUFF: Very well.

21 (EXHIBIT NOS. 22 AND 22-HC WERE MARKED FOR

22 IDENTIFICATION.)

23 JUDGE WOODRUFF: You may inquire.

24 MR. COOPER: Your Honor, I'm going to approach

25 this, I guess, in a slightly different manner from what

1 we've become accustomed to because of the timing of the
2 issue -- or the timing of the filing of some of the
3 testimony that pertains to the issue that Mr. Brill's on the
4 stand for.

5 That resulted from the fact that Mr. Brill
6 filed his surrebuttal testimony in response to Mr. David
7 Elliott's rebuttal testimony as filed by the Staff. After
8 the filing of Mr. Brill's surrebuttal testimony,
9 Mr. Elliott, as we discussed shortly before lunch, later
10 submitted replacement pages for that rebuttal testimony.
11 Thus, we're going to need to do a little more than normal to
12 correct Mr. Brill's surrebuttal at this time.

13 JUDGE WOODRUFF: You may proceed.

14 BY MR. COOPER:

15 Q. Mr. Brill, are there any changes that would
16 need to be made to the --

17 MR. DOTTHEIM: Excuse me. If I may interrupt
18 for a moment. I don't know how extensive this is going to
19 be, but my witness, Mr. Elliott, has left the room for a
20 moment. I'd prefer to have him here, but I understand, of
21 course, that we have a schedule to meet.

22 JUDGE WOODRUFF: You may want to send somebody
23 to get him.

24 MR. DOTTHEIM: All right. I think if you give
25 me a moment, I will try to find him very quickly.

1 JUDGE WOODRUFF: Okay. We'll go off the
2 record.
3 (A RECESS WAS TAKEN.)
4 MR. DEUTSCH: Your Honor --
5 JUDGE WOODRUFF: Yes.
6 MR. DEUTSCH: I wanted to advise the
7 Commission that Mr. Swearngen and the companies on the one
8 hand and I and the Retirees have been in discussion this
9 morning and we have reached an agreement in principle to
10 compromise and settle our claims and intervention in the
11 case.
12 We would request that we -- we will not be
13 putting on evidence pursuant to the schedule that has been
14 proposed in the case, and we would like to have a week to
15 prepare a Stipulation and Agreement for filing with the
16 Commission to be made part of the record in the case at
17 which time we would submit it as a non-unanimous or
18 unanimous, hopefully, stipulation for approval by the
19 Commission.
20 JUDGE WOODRUFF: The proposed stipulation to
21 be presented to all the parties for their --
22 MR. DEUTSCH: Yes, it will.
23 JUDGE WOODRUFF: -- consent?
24 Any other party want to be heard regarding
25 this?

1 MR. DOTTHEIM: Yes. On behalf of the Staff,
2 certainly the Staff requires some time to review that
3 document. And not knowing any particulars, just surmise,
4 have reason to believe that it impacts certain documents,
5 schedules, what have you that have been filed in this
6 proceeding.

7 So we may be asking through discovery for
8 additional documentation to see how this agreement impacts
9 the numbers in the proposed merger as they presently are.

10 MR. SWEARENGEN: That's perfectly reasonable,
11 and we will be able to supply that information. Mr. Deutsch
12 mentioned filing this in a week. That might be a little
13 ambitious due to the fact that the other parties are
14 certainly entitled to inquire and look. We'll do the best
15 we can. Two weeks might be more reasonable and the --

16 JUDGE WOODRUFF: Do you want me to set a date
17 for this?

18 MR. SWEARENGEN: I don't think you need to. I
19 would appreciate it if you would reserve a number though for
20 a late-filed exhibit.

21 JUDGE WOODRUFF: Do you want to make it a
22 UtiliCorp/Empire exhibit?

23 MR. SWEARENGEN: Sure. That would be fine.

24 MR. JOLLEY: Judge Woodruff?

25 JUDGE WOODRUFF: Yes.

1 MR. JOLLEY: Might I be heard?

2 JUDGE WOODRUFF: Yes, you may.

3 MR. JOLLEY: I do not know the terms of the
4 proposed settlement or stipulation nor any of its potential
5 impact upon the bargaining unit employees represented by the
6 IBEW.

7 COMMISSIONER DRAINER: You need to be at a
8 mic, please.

9 MR. JOLLEY: Yes. On behalf of IBEW, we'd
10 just like to note that we do not know the terms nor have we
11 expected to know the terms of the stipulation and obviously
12 have had no opportunity to review its impact, if any, upon
13 the bargaining unit members represented by IBEW. And we too
14 would like to not only have a copy of the stipulation when
15 it's available, but an opportunity to respond.

16 JUDGE WOODRUFF: Okay. Mr. Dottheim?

17 MR. DOTTHEIM: I think some note should also
18 be made of the fact that the Commission at any number of
19 times this week has been told, I believe by the companies,
20 that they need a decision or some indication from the
21 Commission by December 31 of this year.

22 And, of course, this matter, if anything,
23 likely may complicate that. I don't expect the companies to
24 agree with my characterization as maybe complicating the
25 timing, but I do want to make note of that, because I expect

1 we are going to hear for the remainder of this week and for
2 some time into the future about the impending date,
3 December 31, 2000 and that date's great significance.

4 MR. SWEARENGEN: Well, it does have
5 significance and this is not going to complicate things.
6 It's going to speed them up because it's going to remove
7 from the Commission the problem of wrastling and deciding
8 this issue. So we think it's really going to speed things
9 up.

10 MR. DOTTHEIM: The Staff would say, of course,
11 that is yet to be seen.

12 JUDGE WOODRUFF: Since no one has yet seen the
13 agreement, of course, we'll learn more as it is presented to
14 us.

15 Mr. Conrad?

16 MR. CONRAD: Well, since no one else wants to
17 say it, I'll say it. That settlements are favored in the
18 law and I'm certainly pleased to know that the parties that
19 are directly involved with this have been able to come to a
20 resolution of their issue in principle. This is not an
21 issue that was raised by my clients and we're gratified that
22 it looks like it may be disappearing.

23 The only concern, I think, is that shared by
24 the others is the -- if you will, the ripple effect on other
25 aspects of the case. And if it's pushed off for two

1 weeks -- I don't -- you know, not knowing what the
2 parameters of the deal are and accepting counsel's
3 indications that it might not have that kind of implication,
4 then it may not be a problem. But we've all seen numerous
5 times that the implications of a deal sometimes have ripple
6 effects that go beyond the immediate players to them.

7 But that having been said, I'm still gratified
8 that the parties have seen fit to work this out on a deal
9 that's mutually satisfactory to them. I think that does
10 deserve to be noted.

11 JUDGE WOODRUFF: Thank you.

12 Mr. Coffman, would you like to say something?

13 MR. COFFMAN: Yeah. I'd like to echo the
14 comments of Mr. Dottheim and Mr. Conrad. And we're very
15 pleased if these two parties have resolved the issues
16 involving the Retirees' benefits.

17 We have, of course, taken no position on that
18 issue, but also share the concern that this may
19 substantively effect the way the other issues in this case
20 may be handled, and would, of course, expect that we would
21 have our due process to deal with any settlement of this
22 particular issue, but would also preserve the right to
23 request whatever due process we feel we might need with
24 regard to other issues as this issue effects those other
25 issues.

1 JUDGE WOODRUFF: My understanding of what's
2 going to happen is that UtiliCorp and the Retirees will be
3 preparing this as a Stipulation and Agreement --
4 MR. SWEARENGEN: That's correct.
5 JUDGE WOODRUFF: -- which will be presented to
6 all the other parties for their assent. And if they do not
7 give their assent, then it could potentially come back to
8 the Commission for further hearing; is that --
9 MR. SWEARENGEN: That's correct.
10 MR. DEUTSCH: Yes.
11 MR. CONRAD: May I inquire of both the
12 principals here? Do you anticipate -- either of you
13 anticipate that any of the materials that would be submitted
14 in the stipulation would be highly confidential?
15 MR. SWEARENGEN: That's possible. That's
16 possible, but I don't know right now. Haven't really
17 thought through that far. Hopefully not.
18 JUDGE WOODRUFF: Okay. Any other matters
19 concerning this stipulation -- or this settlement in
20 principle?
21 MR. SWEARENGEN: Thank you.
22 MR. DEUTSCH: Thank you.
23 JUDGE WOODRUFF: Thank you. One more thing.
24 The late-filed Exhibit No. 30 is the next number for
25 UtiliCorp.

1 Okay. Back to Mr. Brill. Mr. Dottheim, your
2 expert is there beside you now, I believe.

3 MR. DOTTHEIM: Yes. Thank you very much.

4 BY MR. COOPER:

5 Q. Mr. Brill, do you have before you the
6 replacement pages of David Elliott?

7 A. Yes, I do.

8 Q. As a result of the filing of those pages,
9 would your surrebuttal testimony change in any fashion?

10 A. Yes.

11 Q. Okay. Generally, would that fashion be that
12 your surrebuttal response is to the original pages as
13 opposed to the replacement pages?

14 A. Yes.

15 Q. Could you turn to, in Mr. Elliott's
16 replacement pages, what's been marked as Schedule 2-1?

17 A. Yes.

18 Q. Now, that schedule has been marked highly
19 confidential, but I believe it's only highly confidential
20 because of a single numerical entry; is that correct?

21 A. That's my understanding.

22 Q. Okay. As I ask you questions about that
23 exhibit, I would appreciate it if you'd stay away from the
24 one highly confidential entry and we'll keep the Commission
25 from having to go in-camera. Is that acceptable?

1 A. Yes.

2 Q. Okay. Schedule 2-1 -- tell me what that is.

3 A. It's the Staff's in-service test criteria for

4 the state line combined cycle unit proposed.

5 Q. And are the criteria that are listed on that

6 page different from those criteria that were listed in

7 Mr. Elliott's original rebuttal testimony?

8 A. Yes, they are.

9 Q. Could you go down item by item and provide us

10 with your reaction to each of those criteria in a brief

11 fashion?

12 A. I think generally these in some ways are more

13 appropriate than the ones that were originally in his

14 testimony. These address a combined cycle unit where the

15 others, I think, spoke more to simple cycle units in some

16 cases.

17 There have been some changes made here. We

18 did have a meeting with Staff where we went through a

19 discussion of these items and we submitted a proposal. And

20 I think these -- some of these follow generally our

21 conclusions, but there are some differences.

22 Q. As I said, could you go down -- just start

23 with item No. 1 and point to us the ones that you believe

24 have been approved and which ones you would object to?

25 A. Yes. Item 1 speaks to -- there has been a

1 change there. Before it said, All major -- or all
2 construction work would be completed. We have a change
3 there where it now states Major construction work. And I
4 think that's agreeable. That's appropriate, such that the
5 combined cycle may be operating successfully, complete the
6 following criteria. So I have no objection to item 1.

7 Q. How about item 2?

8 A. Item 2 is a new item. And it goes into items
9 of performance, which I think are inappropriate to measure
10 the in-service criteria. The -- we're building a 500 --
11 nominal 500 megawatt combined cycle unit at a proposed
12 nominal heat rate. That's our objective.

13 It makes use of two simple cycle units which
14 are put in combination with steam recovery generators to
15 produce steam, which turns the steam generator and you have
16 one large unit.

17 In this criteria they have suggested that the
18 new combustion turbine would demonstrate its capacity heat
19 rate, which I have no problem with. We will do that as a
20 matter of course. But then it speaks to mass flow rates
21 from the turbine, which we will not do as a matter of course
22 due to the steam flow rates, and the hertzigs, which we will
23 not do as a matter of course.

24 It speaks to the existing combined cy-- simple
25 cycle unit which is already rate based which we've improved

1 through an upgrade of its compressor.

2 There are problems in this because when you
3 get outside design criteria, the units are specified as to a
4 design criteria or ambient temperature or humidity or other
5 conditions. And with a simple cycle unit you can -- you
6 have a curve that you can adjust and when you actually make
7 the test, you can tell how you're performing with the
8 design.

9 There are no curves for the heat recovery
10 steam generator, for example, so the design parameter for it
11 will be at some condition, but when we measure, it may be a
12 different condition. And we have no curves to make any
13 adjustment to verify steam flows for operating conditions.

14 Generally, I think we're getting into too much
15 minutia here that's not essential to telling whether the
16 unit is performing properly. If the unit overall can
17 produce the 500 megawatts at nominal heat rate, if the new
18 gas turbine can perform at its capacity and heat rate, I
19 think we've demonstrated that the unit is meeting its
20 performance standards.

21 Q. If you'd go on to item No. 3.

22 A. Item 3 says that the unit will demonstrate its
23 ability to start up from turning gear on natural gas fuel
24 when prompted by the operator. I have no issue with that.
25 I think that's appropriate.

1 Item 4 is its ability to shut down from load.
2 I have no issue with that one either.

3 Item 5, Will demonstrate its ability to
4 operate at minimum load for one hour. I have no problem
5 with that other than that we've not defined minimum load for
6 the unit. And this is a complex unit with two CTs fueling
7 the hertzigs and the steam generators. So I think we would
8 need to define a better definition there.

9 Item 6, the combined cycle unit will
10 demonstrate its ability to operate at or above 95 percent of
11 nominal load. That's a pool requirement that we suggested.
12 I have no problem with that.

13 It says, At corresponding nominal heat rate,
14 and there may be a question there because typically the heat
15 rate is determined by the loading on the unit and at
16 95 percent of nominal load, I don't know that we'll have
17 nominal heat rate by definition, so there may be a question
18 with that. I would have a question.

19 Item 7 I have a real question about because --
20 without speaking to the highly confidential part of that, it
21 requires that a certain amount of energy be produced during
22 a period of five days. And that amount of energy comes from
23 a number that is a projected average capacity factor on the
24 unit for a year.

25 And I don't know what that has to do with

1 in-service criteria on a demonstration of that for one week.
2 I think a better test would be that the unit will be
3 available for the week, operate as it's called on
4 satisfactorily and provide the load that is required of it,
5 whatever that may be.

6 The other issue I would have there is that by
7 definition in the notes it's defined -- the nominal or the
8 nominal capacity of the unit as being 500 megawatts at
9 least. And we're only rate basing or asking for our
10 ownership quantity, which is 300 megawatts.

11 And during that week of testing I can't be
12 sure that we would operate at 500 megawatts if the partner
13 didn't want their capacity. So to generate the amount of
14 energy that's based on 500 megawatts would be very difficult
15 anyway.

16 Item 8, transmission facilities I -- there's
17 no issue with that. I think that's appropriate.

18 Item 9, this unit will be operated only if it
19 meets emission requirements and meets the conditions of our
20 permits. There is some flexibility in that, and you work
21 with the permit to come to the proper standards on
22 emissions.

23 The unit will meet its requirements and
24 operate under all permits, but as of day one I don't know
25 that I would be able to say that all contract emission

1 requirements and guarantees and environmental regulations
2 are necessarily in place. We may be working with that and
3 tuning the engines and the SCR in order to meet the
4 requirements.

5 I have -- have no question in my mind that we
6 will meet them or no question that we will only operate
7 under the permits and the laws, but I don't know that I
8 could say that that will be on day one.

9 Q. Is that the final item on the list, Mr. Brill?

10 A. Yes.

11 MR. COOPER: Thank you, your Honor. We would
12 tender Mr. Brill for cross-examination on the Pre-Moratorium
13 Rate Case issue.

14 JUDGE WOODRUFF: Are you also offering 22 and
15 22-HC?

16 MR. COOPER: I am.

17 JUDGE WOODRUFF: I believe this is the only
18 time he's testifying; is that right?

19 MR. COOPER: That's correct.

20 JUDGE WOODRUFF: Exhibits 22 and 22-HC have
21 been offered into evidence. Are there any objections to
22 their receipt?

23 MR. CONRAD: Same objection as before,
24 continuing.

25 JUDGE WOODRUFF: Okay. And, Staff, did you

1 have an objection?

2 MR. DOTTHEIM: No.

3 JUDGE WOODRUFF: The objection of Praxair/ICI

4 is noted for the record. It will be overruled and the items

5 will be received.

6 (EXHIBIT NOS. 22 AND 22-HC WERE RECEIVED INTO

7 EVIDENCE.)

8 JUDGE WOODRUFF: Okay. For cross-examination,

9 does anyone have any cross-examination questions for

10 Mr. Brill?

11 MR. CONRAD: I do.

12 JUDGE WOODRUFF: All right. Beginning with

13 Praxair.

14 CROSS-EXAMINATION BY MR. CONRAD:

15 Q. Mr. Brill, the discourse that you just engaged

16 in was a correction to your surrebuttal testimony?

17 A. It was a response to the corrected testimony

18 of Mr. Elliott.

19 Q. Oh, so it was not a correction, it was in the

20 nature of supplemental surrebuttal?

21 A. It was a correction in the sense of trying to

22 respond since I've not had time to do any additional

23 testimony.

24 Q. Well, does that make you any different than

25 any of the other parties?

1 MR. COOPER: Objection, your Honor. I think
2 this is a question for the Commission itself rather than
3 Mr. Brill.
4 BY MR. CONRAD:
5 Q. Well, I'd like to get where the first
6 correction was. I missed the first correction, Mr. Brill.
7 Would you show me on -- start with page 1 of your
8 surrebuttal testimony.
9 A. We can go through that --
10 JUDGE WOODRUFF: Mr. Conrad, there was an
11 objection made. I'm not sure exactly what the -- what is
12 the objection again?
13 MR. COOPER: I think my objection, your Honor,
14 is that the questions Mr. Conrad is raising are more
15 appropriate for yourself and the Commission as opposed to
16 Mr. Brill.
17 Mr. Conrad wants to ask Mr. Brill questions as
18 to whether his testimony, I guess, was properly provided to
19 the Commission. I don't know that Mr. Brill is the
20 appropriate decision maker on that. I think you are and the
21 Commission is.
22 JUDGE WOODRUFF: Well, Mr. Conrad, of course,
23 you had an opportunity to make an objection while the
24 testimony was coming in. You can make an objection at this
25 point if you want --

1 MR. CONRAD: Well, it wasn't offered, your
2 Honor -- it was put forward in terms of a correction. And,
3 if you recall, counsel stated at the time that it was going
4 to be somewhat out of sequence.

5 I think we've now found out what the sequence
6 was, that it wasn't a correction at all, that it, in fact,
7 was in the nature of supplemental surrebuttal, which I don't
8 think has been permitted by the rules and there's been no
9 motion to permit this witness to do that.

10 What I asked the witness what his correction
11 was, he responded, as the record will make clear, that it
12 was not a correction, it was an addition -- it was in the
13 nature of a response to testimony from another party. He
14 then subsequently conformed that and said, Well, it was a
15 correction, but he hadn't had a chance to put it into the
16 record.

17 So having all of that before you, I think
18 probably the appropriate thing to do would be to go back in
19 the record and basically strike that material, and I would
20 so move.

21 JUDGE WOODRUFF: You made a motion -- all
22 right. Let me keep everything straight here. Your
23 objection is overruled. His questions were proper to make
24 the point he's wanting to make.

25 Your Motion to Strike, again, it's because

1 you're alleging it was an improper supplementation of his
2 surrebuttal testimony; is that correct?

3 MR. CONRAD: That's correct.

4 JUDGE WOODRUFF: I'm going to go ahead and
5 overrule Mr. Conrad's motion. The testimony will remain in
6 the record.

7 Mr. Conrad, did you have any other questions?

8 MR. CONRAD: Yes, I do.

9 JUDGE WOODRUFF: Go ahead.

10 BY MR. CONRAD:

11 Q. On your original surrebuttal testimony,
12 Mr. Brill, that which was marked as 22, look with me for
13 just a moment on page 2 and line 15. And I want you to
14 focus on the word "uncertainty." Did you hear a discussion
15 I think actually both in response to questions from me and
16 from Mr. Dottheim for the Staff of Mr. Fancher with respect
17 to uncertainty a few moments ago?

18 A. I heard that mentioned, yes.

19 Q. Do you have any difference from him insofar as
20 what uncertainty means to you?

21 A. I don't actually recall his answer.

22 Q. Okay. Well, let's take it that way then. As
23 you use the term then on line 15 of page 2 of Exhibit 22,
24 what does uncertainty mean?

25 A. As I understand it, both UtiliCorp and Empire

1 would like to have as many uncertainties removed from the
2 pre-moratorium rate case as possible. One of those being
3 in-service criteria. If -- hoping to have an agreement on
4 in-service criteria for the new unit would remove the
5 uncertainty as to what that might be.

6 Q. It would remove the uncertainty as to the new
7 unit -- whether the new unit runs, whether the new unit
8 meets the criteria or what the criteria are?

9 A. What the criteria are.

10 Q. That's the only uncertainty that you're
11 referring to?

12 A. That's the only one that I'm involved with at
13 this time.

14 Q. Okay. Now, look at page 3, line 9. I take it
15 you're saying that the unit will be -- it will be a going
16 Jenny on and after June 1, 2001?

17 A. That's our schedule. And it's qualified there
18 by saying that if the unit has met -- if it's on schedule,
19 if it's met the pool criteria, it will be at that time.

20 Q. Now, your company president has indicated, and
21 I believe Mr. Fancher did also, that you're anticipating
22 making this pre-moratorium rate case filing November 1?

23 A. That's my understanding, but I'm not directly
24 involved with that.

25 Q. Now, the way, as I recall, that that works --

1 and I understand you're not a lawyer, so I'm not asking you
2 for a legal opinion.

3 A. Thank you.

4 Q. But you've been employed by Empire since,
5 what, 19 -- what is it, '6--

6 A. '62.

7 Q. '62. So you've been through a couple of rate
8 cases?

9 A. Several.

10 Q. Probably more than you'd like to remember?

11 A. Yes.

12 Q. Do you recall those rate cases taking
13 approximately 10 months?

14 A. I believe the law date is 11. And they take
15 anywhere from 8 to 11 months depending on whether they can
16 be settled or not.

17 Q. Yeah. I think -- without quibbling, I think
18 the Commission can suspend actually for six months plus a
19 certain number of days and that ends up being essentially
20 10 months and then you have to file in 30 days; is that
21 right?

22 A. That -- that's probably appropriate.

23 Q. That's how we get to the 11 months?

24 A. Yeah.

25 Q. So if you file on November 1, the operation of

1 law date, without doing all the math, would probably be
2 pretty close to October 1. And you're suggesting that this
3 guys's going to be up and running on June 1?

4 A. That's our expectation.

5 Q. So you got four months in there. What are you
6 doing about that?

7 A. We're running the unit.

8 Q. Not going to be seeking an AAO?

9 A. No.

10 Q. Not going to be seeking some -- I mean, I
11 guess what I was kind of curious about is that's the kind of
12 schedule I would have expected if you thought you might
13 settle the pre-moratorium rate case.

14 A. I can't speak to that.

15 Q. Okay. So you're disclaiming those things? I
16 mean, you're just taking it as it goes?

17 A. As to whether -- my understanding is it will
18 be a normal rate case procedure with -- and flow through as
19 it normally does.

20 MR. CONRAD: Okay. Thank you. That's all.

21 JUDGE WOODRUFF: All right. Any other
22 cross-examination?

23 Public Counsel?

24 MR. COFFMAN: No questions.

25 JUDGE WOODRUFF: Staff?

1 MR. DOTTHEIM: Yes. Staff has questions. I'd
2 like to ask if we could take a short recess because of
3 Mr. Brill's comments. And I had placed in the Staff's
4 pleading that was filed last Friday -- I suggested that the
5 companies be afforded an opportunity to respond to the
6 replacement pages of Mr. Elliott --

7 JUDGE WOODRUFF: Well, fortunately, we are at
8 about the time to take a break, so let's come back at let's
9 say 2:40.

10 (A RECESS WAS TAKEN.)

11 JUDGE WOODRUFF: And I believe we were on
12 cross-examination from Staff; is that correct?

13 MR. DOTTHEIM: That's correct.

14 JUDGE WOODRUFF: All right. You may proceed.

15 CROSS-EXAMINATION BY MR. DOTTHEIM:

16 Q. Good afternoon, Mr. Brill.

17 A. Good afternoon.

18 Q. Mr. Brill, I was hoping maybe you could
19 clarify something --

20 A. I'll try.

21 Q. -- for me. In your testimony I believe, in
22 the narrative part, the questions and answers, I think you
23 indicate that you're supporting the criteria proposed by
24 Mr. Fancher in his supplemental direct?

25 A. I would support that, yes.

1 Q. At the same time you have attached to your
2 surrebuttal testimony, Exhibit 22 -- you have a document
3 which I don't think you refer to in the question and answer
4 portion of your testimony. And I'm referring to Schedule
5 VEB-1. It's two pages. And it's titled Empire Proposed
6 Staff In-Service Test Criteria State Line Combined Cycle
7 Unit.

8 And that document, which is attached to your
9 testimony -- what is the purpose of that document?

10 A. After we met with Staff, we worked toward an
11 agreement. And that was a document that we proposed that we
12 could -- that would satisfy us and we thought would satisfy
13 the Staff at the time based on our conversations.

14 We did submit that back to Staff. It's
15 attached here because it is something we could accept in
16 addition to the pool requirements, but the reply that came
17 back from Staff was somewhat more exhaustive.

18 Q. The reply that came back from Staff was the
19 attachment to Mr. Elliott's replacement pages, was it not?

20 A. What I saw was an e-mail that was sent to Bill
21 Howell, a copy of that. And that's what I was basing that
22 document on.

23 Q. Did you --

24 A. I don't believe it was exactly what's in this
25 at this time.

1 Q. And the document I'm referring to, which I
2 assume you have a copy of, it's not been given an exhibit
3 number, but it's the replacement pages. Do you have it with
4 you?

5 A. The testimony of --

6 Q. Of Mr. Elliott?

7 A. Yes, I do.

8 Q. And do you have the replacement pages?

9 A. Yes. If this -- I believe I do, yes.

10 Q. Yes. If I could refer you to that, if I could
11 refer you to the attachment, Schedule 2 -- in fact, the
12 document that you just went through --

13 A. Yes.

14 Q. -- with Mr. Cooper.

15 A. Yes.

16 Q. Do you have any recollection of seeing that
17 document or substantially the same document with maybe the
18 individual items with different numbers on them?

19 A. I don't recall actually seeing that particular
20 document. I had some notes that came through Mr. Howell
21 with some comments on them. I think there are -- I notice
22 there's a lot of similarity, but they're different numbers
23 as far as paragraphs, things have been moved around, a few
24 different words here, there maybe. I'm not sure.

25 Q. Let me ask you then. You've just gone through

1 a short while ago Schedule 2 attached to the replacement
2 pages that Mr. Elliott had caused to be filed last Friday.
3 And you indicated as you went through the nine items, those
4 items which Empire -- if I understood correctly, that Empire
5 could accept?

6 A. Uh-huh.

7 Q. And those items which Empire did not find
8 acceptable?

9 A. Yes.

10 Q. And so I'm trying to determine exactly where
11 Empire is on this issue. And I've got, again, the three
12 documents: Mr. Fancher's supplemental direct; your rebuttal
13 testimony with the attachment Empire Proposed Staff
14 In-Service Test Criteria Schedule VEB-1; and you just went
15 through the Schedule 2 to Mr. Elliott's replacement pages.

16 Am I correct in what I thought I heard, that I
17 thought I heard you indicating that items on Mr. Elliott's
18 Schedule 2, Staff In-Service Test Criteria, Empire found
19 acceptable item 1? If you could indicate yes or no.

20 A. Yes.

21 Q. A part of item 2; that is, the criteria as it
22 relates to the Westinghouse combustion turbine?

23 A. Except for the exhaust gas measured
24 performance.

25 Q. Okay. Item 3, I thought you indicated was

1 acceptable?

2 A. Well -- okay. I'm -- I'm sorry. We did say
3 just the Westinghouse turbine in item 2.

4 Q. Yes. And I specifically didn't mention -- and
5 I could say I thought, if I understood you correctly, you
6 objected to -- Empire objects to the criteria as it relates
7 and is set out regarding the heat recovery steam generators?

8 A. Yes.

9 Q. And Empire objects to the criteria that is set
10 out respecting the Westinghouse steam turbine?

11 A. The existing one, yes.

12 Q. Okay. And does that address all the items in
13 2?

14 A. I believe it does. Generally, the objection
15 is to those types of measurements that are not normally done
16 or performed and relate to the hertz and the steam
17 turbines as far as mass flow rates or the existing turbine
18 at all.

19 Q. When you say they're not done, are they not
20 done for combined cycle units or have --

21 A. It --

22 Q. -- but -- excuse me. Go ahead.

23 A. I'm sorry. I'm interrupting you, and I don't
24 mean to.

25 Q. Or that they may be done for a base load unit

1 as opposed to a combined cycle unit?

2 A. I'm not sure. In the case that we're talking
3 about here, we will not measure those as a matter of
4 practice because it's expensive, because it doesn't really
5 serve a purpose until you -- unless there is an issue or a
6 problem. If the unit is put together with specifications
7 and it does what's it expected to do, then we assume those
8 mass flow rates and steam flow rates to be appropriate.

9 Q. There are individual contracts respecting the
10 heat recovery steam generators, and the --

11 A. Yes.

12 Q. -- new Westinghouse steam turbine?

13 A. Yes.

14 Q. Do both or either of those contracts have
15 performance guarantees?

16 A. They have performance guarantees. We think of
17 them as specifications. Generally, if it -- if we have an
18 issue or a problem, there are remedies in the contract with
19 liquidated damages, but as a matter of measuring those to
20 see if they meet that performance standard, we're not
21 planning to measure exhausting flows -- I mean, exhaust mass
22 flows of turbines or steam flow rates in the hertzig.

23 We'll look at the overall performance of the
24 plant, the efficiency of the plant. There are a lot of
25 components besides those that go together to make this plant

1 work. And getting into these as particular items doesn't
2 seem to really benefit that much, in our view.

3 Q. If we could go to item 3, did I understand
4 correctly that Empire does not object to criterion 3?

5 A. That's correct.

6 Q. Did I understand correctly that Empire does
7 not object to criterion 4?

8 A. That's correct.

9 Q. Did I understand correctly that Empire does
10 not object to criterion 5?

11 A. No. As I mentioned earlier, I think we need
12 to probably agree to what minimum load is in its nebulous
13 term.

14 Q. How would you define minimum load?

15 A. I'm not the proper one to do that. I think
16 that's an operational matter for -- and would have to be
17 determined between probably Mr. Elliott and our operators as
18 to what is a minimum load on the unit.

19 Q. And, excuse me. You most definitely did
20 identify minimum load as a problem that Empire has for lack
21 of definition for minimum load as it appears in item 5.

22 Item No. 6, do I understand correctly that you
23 indicated that Empire has no objection to item 6?

24 A. I have an objection to the notation of
25 corresponding nominal heat rate. The nominal heat rate you

1 would expect to obtain at nominal load, which has been
2 defined, I believe, as full load. This says 95 percent.
3 There would be a curve adjustment I'm assuming on that. So
4 I would have an issue with the term "nominal."

5 Q. If what was meant by nominal heat rate was the
6 heat rate at the 95 percent level of the heat rate curve --

7 A. You could --

8 Q. -- you'd have an objection to that?

9 A. If -- if there is such a curve. I just have
10 an issue with saying that at 95 percent it would create a
11 nominal heat rate expected at full load.

12 Q. For item 7 you objected on behalf of Empire,
13 if I understood correctly. I'm not certain though that I
14 understand the objection in detail. Let me ask you if the
15 objection is to the 120-hour period, or is it to the
16 capacity factor that's highly confidential that I don't know
17 that I at this point need to mention, or is it that Empire
18 objects to both the 120-hour period and the capacity factor
19 that Mr. Elliott has specified?

20 A. I have two issues there. One is the capacity
21 factor at all. Why -- why having a certain amount of energy
22 generated during a period would necessarily mean the unit
23 was in service, I don't know.

24 To me the unit being available when it's
25 called on during a period of time and used as needed would

1 make some sense maybe to demonstrate that it can operate as
2 it's designed to operate, but to force a certain amount of
3 energy out of the unit just to say that it's in service and
4 will produce it when that may or may not be needed gives me
5 pause.

6 The other concern I have is that this
7 particular load factor is based on 500 megawatt, the full
8 unit size. We own 300 megawatts. And 300 megawatts is what
9 we can control. So to hold us to demonstrate for the full
10 unit rather than our ownership I think puts a hardship and
11 an issue with us and the co-owner who may or may not choose
12 to operate during that period of time.

13 Q. Is the capacity factor, which again I won't
14 name -- from your perspective, Empire's perspective, might
15 not it make sense to specify a capacity factor that that the
16 unit would be expected to run at if it met all contract
17 guarantees?

18 A. The number that's in here is a number that's
19 been pulled out of a study for years run of the unit.
20 During that year this unit will run much higher on certain
21 periods and it will run much lower on certain periods and it
22 will average this number.

23 If, during the week that we're testing, the
24 unit is required full load or near full load, it will run
25 higher than that. If it's during an off week where it's not

1 economical to run or whatever -- low load period, it will
2 run less than this typically.

3 Q. Well, let me ask you some more questions about
4 the capacity factor and without naming it. But if I get
5 into an area which comes too close to the highly
6 confidential nature of it, please advise me.

7 In Mr. Elliott's original testimony, his
8 initial rebuttal testimony, there was a capacity factor
9 which he has replaced with a higher capacity factor. It's
10 my understanding, and correct me if I'm wrong, that the
11 earlier capacity factor is a capacity factor that would be
12 expected for the unit to operate on a yearly basis. And I
13 thought in part that was your objection to that capacity
14 factor.

15 A. No. This capacity factor has been adjusted so
16 that it's the same capacity factor for a shorter period of
17 time. It's just doing the same thing in five days rather
18 than seven days. It's just a number.

19 Q. You've mentioned that the state line combined
20 cycle unit is jointly owned. The other utility which
21 jointly owns the state line combined cycle unit is Western
22 Resources, is it not?

23 A. It is.

24 Q. And I believe they own 40 percent --

25 A. Yes.

1 Q. -- a share?

2 How is the contract structured as far as the
3 power that is generated? Does Empire receive the first
4 300 megawatts or does Empire receive 60 percent of whatever
5 that unit generates?

6 A. We receive 60 percent up to -- if they are not
7 calling for the unit at all, we can operate up to
8 300 megawatts. Let me -- let me say one more thing.
9 Typically they will call for and schedule their power and
10 furnish their fuel for their power. And we will
11 independently schedule our power and furnish fuel for our
12 power. So it may not be a 60/40 percent at any given point
13 as far as what's being generated.

14 Q. You mentioned a meeting with the Staff --

15 A. Yes.

16 Q. -- that you and possibly other individuals
17 from Empire had at an earlier date. Do you recall whether
18 at that meeting there was any discussion regarding -- from
19 the Staff, that is, any discussion regarding attempting to
20 address the concern that Western Resources might not call
21 for sufficient power out of the state line combined cycle
22 unit in order to actually test the unit at a 500 megawatt
23 level?

24 A. I think the concern was more directed toward
25 this generation of energy through a period. Both owners are

1 concerned and interested in what the unit will operate at a
2 full load. And that's why my feeling is that a more
3 critical test is will the unit generate 500 megawatts at its
4 nominal heat rate, because we're both interested in that.

5 As far as whether they would want to run it
6 during this particular week to justify 500 megawatts at this
7 particular capacity factor, I can't say. That's a different
8 matter.

9 Q. Do you recall in the meeting with the Staff
10 there being any discussion about the Staff seeking to
11 address any concern that Empire might have regarding
12 recovery of costs in running the unit so as to meet the
13 tests specified by the Staff --

14 A. There was --

15 Q. -- if Western Resource does not place a call
16 on the unit which would otherwise result in Empire
17 generating 500 megawatts?

18 A. There was discussion. Again, we're owners
19 only of 300 megawatts, and I think we would have to work
20 jointly with Western in any event to generate the
21 500 megawatts.

22 MR. DOTTHEIM: If I could have a moment,
23 please.

24 JUDGE WOODRUFF: Sure.

25 BY MR. DOTTHEIM:

1 Q. Mr. Brill, there's been discussion of a
2 November 1, 2000 filing of a pre-moratorium rate case. Will
3 you be filing in-service criteria testimony in that
4 proceeding?

5 A. That's not been discussed with me, so I really
6 can't tell you who would or when it would be.

7 Q. Do you know whether there are plans for at
8 least someone to file in-service criteria in that
9 proceeding?

10 A. I don't know of any plans to do that, no.

11 Q. Is Empire then relying on a Commission
12 determination on in-service criteria in this proceeding as
13 indicated by I think your relating that you are not aware of
14 anyone who is going to be filing in-service criteria in that
15 pre-moratorium rate case?

16 A. No, I'm not saying that.

17 Q. What are you saying?

18 A. I'm saying I just don't know.

19 Q. Let me return back again to the matter of the
20 three documents, Mr. Fancher's supplemental direct, your
21 rebuttal -- excuse me -- your surrebuttal to which was
22 attached the document Empire Proposed Staff In-service Test
23 Criteria, and the Schedule 2, which is attached to
24 Mr. Elliott's replacement pages.

25 Can you indicate or if you can't, will you

1 please indicate that you are not able to identify what at
2 this point is the position of Empire District Electric
3 regarding in-service criteria? Is that only Mr. Fancher's
4 supplemental direct testimony is the in-service criteria
5 testimony and the in-service criteria that is being proposed
6 by Empire, or is the document that is attached to your
7 surrebuttal testimony Schedule VEB-1, is that Empire's
8 proposed in-service criteria, or are you indicating that
9 those criterion which you've gone through earlier and then
10 again at least in part with me regarding Schedule 2 attached
11 to Mr. Elliott's replacement page, that that indicates
12 in-service criteria that Empire District Electric would find
13 agreeable for setting the in-service criteria in the merger
14 case?

15 A. I believe our position to still be as
16 Mr. Fancher has testified. If you look at the comments
17 today and compare the results of that with the attachment to
18 my testimony, I think you'll find that there are areas of
19 agreement that could be reached which would satisfy the
20 Staff and satisfy the company. The issues and problems that
21 we have if those could be resolved, would bring us back to
22 that attachment to my testimony.

23 Q. Returning again to Mr. Fancher's supplemental
24 direct, how long has that criteria been in existence?

25 A. As long as I can recall. It's been around for

1 a long time.

2 Q. It --

3 A. I can't give you a specific time frame.

4 Q. That's not the criteria that was utilized for
5 state line 1 and state line 2, was it?

6 A. Those are gas tur-- single cycle gas turbines
7 and they have a different criteria as far as the pools are
8 concerned.

9 Q. And the criteria that's attached to -- or a
10 part of Mr. Fancher's testimony, is that specifically for
11 combined cycle units?

12 A. I've not looked. I'm not sure what you're
13 referring to there.

14 Q. The criteria that's set out in Mr. Fancher's
15 supplemental correct testimony.

16 A. For the combined cycle?

17 Q. Yes.

18 A. No. That's more than what's required for a
19 single cycle.

20 Q. But that is the criteria, though, for the
21 state line combined cycle unit?

22 A. Yes.

23 Q. Okay. Is that specific criteria for a
24 combined cycle unit as opposed to a combustion turbine as
25 opposed to a baseline unit?

1 A. Yes. There's -- there is similarity in
2 that -- between that and a base load unit and the -- the
3 duration of the proving in the unit.

4 Q. Is the criteria that is set out on Schedule 2
5 to Mr. Elliott's replacement pages from Empire District's
6 Electric perspective appropriate criteria for a base load
7 unit?

8 A. And which are we referring to there?

9 Q. I'm referring to the Schedule 2 to the
10 replacement pages of Mr. Elliott's testimony, the
11 replacement pages that were filed a week ago last Friday.

12 A. I do not think item 2 would be in a -- in that
13 type of demonstration. Generally, I would say -- if I
14 understood your question appropriately, I would say none.

15 Q. And what items would not be appropriate?
16 You've identified 2. Are there other items? And what in 2
17 would not be appropriate?

18 A. Well, as I understood your question, you were
19 asking would the criteria be the -- would these be -- meet
20 SPP -- or be required SPP criteria. Is that what --

21 Q. No. I'm sorry.

22 A. Maybe I misunderstood.

23 Q. I was asking whether the criteria that's set
24 out in Mr. Elliott's Schedule 2 attached to his replacement
25 pages, the schedule which has both black and red --

1 A. Yes.

2 Q. -- lettering type style, would that criteria,
3 from Empire's perspective, be appropriate for a base load
4 unit. I was not referring to --

5 A. Oh.

6 Q. -- I was not referring to the SPP criteria.

7 A. I don't know that I can answer that question
8 because I've not billed a base load unit or proven one in.
9 Generally there are elements of this which are more attuned
10 to the -- or relate to the simple cycle unit.

11 In a steam cycle class, you're generating by
12 burning fuel and generating heat into water. And here
13 you're actually running an engine that's generating
14 electricity and the exhaust heat of that is creating steam
15 that generates a steam turbine situation. So I don't know
16 that you could say that that would be the case.

17 Q. Is the combined cycle unit -- if the
18 comparison can be made, is it closer to a base load unit
19 than it is to a combined cycle unit -- excuse me. I'm
20 sorry.

21 I was referring to the combined cycle unit,
22 whether it's -- whether it could be said that it was closer
23 to a base load unit than a combustion unit?

24 A. It's termed as intermediate power. It's
25 between the two. It will certainly run at a higher load

1 factor than a simple cycle unit, but generally with --
2 depending on cost of fuels, it will not run with the load
3 factor of a steam unit.

4 Q. If I could direct you to page 4 of your
5 surrebuttal testimony. And I direct you to lines 10 to 14.

6 A. Yes.

7 Q. Is your objection to -- and, again, to the
8 criteria that's set out in Schedule 2, which are the
9 replacement pages to Mr. Elliott's rebuttal testimony, is
10 your objection in part to that criteria on the basis that
11 you've set out there, that it is -- there is continuous
12 construction work at projects throughout the life of the
13 plan, and as a consequence, do you view the Staff's criteria
14 as indicating that there never could be an end of
15 construction because there's always construction occurring?

16 A. Well, at this point there's no issue there as
17 this criteria has been changed to say major construction
18 work. We had an issue in saying all construction work would
19 be completed at the site, because there are continuing
20 projects that have nothing to do with the in-service
21 criteria at all.

22 Q. Well, pardon me, Mr. Brill. Excuse me if I
23 continue to ask you questions that you think have been
24 resolved in the company's response to the criteria the Staff
25 has proposed, because I'm still not certain --

1 A. Okay.

2 Q. -- what criteria Empire District Electric is
3 indicating is acceptable. And, again, the three documents
4 that I look at are Mr. Fancher's supplemental direct, your
5 rebuttal testimony, and what you indicated this afternoon
6 earlier in this proceeding regarding the criteria that are
7 set out in Schedule 2, which is attached to the replacement
8 pages of Mr. Elliott's rebuttal testimony.

9 A. The answers that you see in this document, in
10 my surrebuttal, are addressed to his original criteria. In
11 that criteria he stated all construction work would be
12 completed. I had a problem with that because all
13 construction work will not be complete. There are
14 continuing projects that will be ongoing. So I'll answer it
15 that way if that helps.

16 Q. Well, let me ask you this. If the Staff's
17 position is as set out in Schedule 2 attached to the
18 replacement pages which are attached to Mr. Elliott's
19 rebuttal testimony, is Empire's position on in-service
20 criteria what you indicated earlier this afternoon regarding
21 that page or pages?

22 A. You're confusing me.

23 Q. Okay. I apologize. I'm not sure how to be
24 more clear at this point.

25 A. Let me offer this.

1 Q. Please.

2 A. This testimony was written with Mr. Elliott's

3 original testimony. Since then he has changed -- after our

4 meeting, he has recognized our concern there and he's

5 changed the word "all" to "major." And I've testified that

6 at this point I have no issue with that. I think that's

7 appropriate. I would have an issue if it was still all

8 construction work.

9 Q. So are you indicating -- excuse me -- that

10 Empire has no objection to criterion 1 that is set out in

11 Schedule 2 which is attached to the replacement pages of

12 Mr. Elliott's rebuttal testimony?

13 A. I believe I testified to that.

14 Q. All right.

15 MR. DOTTHEIM: If I could have a moment,

16 please.

17 JUDGE WOODRUFF: Yes.

18 BY MR. DOTTHEIM:

19 Q. Mr. Brill, let me ask you to go back to your

20 rebuttal testimony again. And I'd like to direct you to

21 your Schedule VEB-1, page 2 of 2. You may --

22 A. I don't -- excuse me. I don't believe I have

23 that.

24 Q. Okay. I'm referring to your testimony that --

25 you don't have a copy of the schedules?

1 A. I don't have the schedules with me.

2 Q. Okay. I'd like to direct you to item 4 where
3 there's the term "ISO conditions." Can you identify what
4 the ISO conditions are or what ISO stands for?

5 A. Those are defined there as being 59 degrees
6 and 60 percent.

7 Q. And ISO, is that an abbreviation for any
8 words?

9 A. That's -- I'm having trouble with my
10 definitions right now. That's a standard term for a design
11 criteria or design temperature point, ambient condition.

12 Q. Item No. 5 where you make reference to
13 Empire's ownership portion of a combined cycle unit, does
14 that address the situation you've previously described of
15 Western Resources --

16 A. Yes.

17 Q. -- owning 40 percent of the unit?

18 A. Yes.

19 Q. And possibly not making call on the unit for
20 the full 40 percent?

21 A. Yes. The thought there was that that fact
22 should be recognized on any of the tests that we're required
23 to perform if it -- if it is appropriate for a particular
24 test.

25 Q. Mr. Brill, what's the cost of the state line

1 combined cycle unit at this point or projected as for when
2 completed what the total cost will be?

3 A. I don't have the exact number. Generally it's
4 in -- let me think a minute. May I ask my attorney a
5 question of confidentiality?

6 MR. SWEARENGEN: Can we take a break?

7 JUDGE WOODRUFF: I don't think we need to take
8 a break. If you want to go ahead and ask him a question --
9 you may approach your witness.

10 MR. COOPER: Thank you, your Honor.

11 MR. DOTTHEIM: And if that's a highly
12 confidential --

13 THE WITNESS: That's what I want to find out.

14 BY MR. DOTTHEIM:

15 Q. I might be able to help on this. If I could
16 direct you to Mr. Fancher's direct testimony on page 2,
17 Mr. Fancher states, This investment along with the
18 associated transmission lines and combustion turbine will
19 total over \$100 million. In particular, even though that
20 number is in Mr. Fancher's testimony, I wasn't clear as to
21 whether that is just Empire's share of --

22 A. Yes.

23 Q. -- the state line combined cycle unit or
24 whether that was a total cost for the unit?

25 A. I can answer that question. Yes, it's

1 Empire's share.

2 MR. DOTTHEIM: Thank you, Mr. Brill.

3 JUDGE WOODRUFF: Thank you. Questions from

4 the Bench? Commissioner Schemenauer, do you have any

5 questions?

6 COMMISSIONER SCHEMENAUER: I have one.

7 QUESTIONS BY COMMISSIONER SCHEMENAUER:

8 Q. Good afternoon, Mr. Brill. And this is just

9 to clear up a question in my mind. You're indicating that

10 Empire's a 60 percent owner of the 500 megawatt production

11 capacity of the state line plant and Western Resources is at

12 40 percent; is that right?

13 A. That's correct.

14 Q. And you only want to be tested on your

15 60 percent?

16 A. No, sir. When we're talking about capacity --

17 Q. I understand.

18 A. -- of the unit and the total plant itself, it

19 will be appropriate for the plant to be operated for the

20 benefit of both owners to find out and to assure that the

21 plant will operate at its designed conditions.

22 My concern was with the requirement that might

23 cause us as a company to generate a certain amount of

24 kilowatt hours in a given period of time based on

25 500 megawatts, which we don't own. As a company, we can

1 generate up to 300 megawatts of power and any -- if there is
2 an energy requirement, which I really don't see the point
3 of, but if there is, then my feeling is it should be based
4 on 300 megawatts rather than 500 megawatts.

5 Q. So you don't think you will ever draw 300
6 megawatts and Western Resources will never draw 200 so that
7 your total load capacity will be 300 megawatts or less?

8 A. No. No. That's not what I'm saying, sir.

9 Q. But you don't want to be tested at 500
10 megawatt load?

11 A. If Western, as a partner, has no use for -- or
12 need or requirement to generate any of their load, we would
13 be limited to 300 megawatts.

14 Q. How would you ever know the turbine would
15 operate at 500 megawatts if you never put the load on it?

16 A. We will, sir. We will run that test. It will
17 be a duration test similar to the criteria and the pool
18 requirement will be that we will run the full unit for the
19 benefit of both owners to justify and determine what that
20 capability is.

21 Q. So you will test it at full load capacity, you
22 just don't want to do it for this pre-moratorium rate case?

23 A. We will do it in either case. The unit will
24 become available about June of 2001. The -- the issue that
25 I had was with one of the criteria -- criteria 7 --

1 Q. Yes.

2 A. -- which required that the unit generate
3 megawatt hours during the five-day period. And the megawatt
4 hours that were prescribed were based on a 500 megawatt
5 plant. And that's a little different than proving the unit
6 in for capacity and efficiency and operation. That's
7 generating energy that has to be used somewhere.

8 Western will dispatch and -- not dispatch, but
9 they will schedule the unit as they desire to use it and
10 they may or may not choose to use it during that week that
11 we're trying to generate that energy. And if it's based on
12 100 -- on 500 megawatts and we can only generate up to 300
13 to try to produce that energy, it may be an issue for us or
14 a problem.

15 Q. Okay. I understand your point of view and it
16 isn't that it would never be tested at 500 megawatts, it's
17 just that at this time you don't think you can coordinate
18 with Western Resources to throw that kind of load on it and
19 have it used?

20 A. It may be uneconomical at that point in time
21 to run the unit.

22 Q. I understand.

23 COMMISSIONER SCHEMENAUER: Thank you. That's
24 all I have.

25 JUDGE WOODRUFF: Thank you. I have no other

1 questions. Any recross based on those questions?
2 Hearing none, any redirect?
3 MR. COOPER: No, your Honor.
4 JUDGE WOODRUFF: All right. Mr. Brill, you
5 may step down.
6 Is Mr. Browning available now if we want to go
7 back to Labor Protective Provision issue?
8 MR. SWEARENGEN: Yes, he is.
9 JUDGE WOODRUFF: Let's go ahead and do that
10 and we can maybe get that finished today.
11 (Witness sworn.)
12 JUDGE WOODRUFF: Be seated. You may proceed
13 when you're ready.
14 ROBERT B. BROWNING testified as follows:
15 DIRECT EXAMINATION BY MR. COOPER:
16 Q. Please state your full name for me.
17 A. Robert B. Browning.
18 MR. COOPER: Your Honor, at this time we would
19 like to have marked the direct testimony of Robert B.
20 Browning, the surrebuttal testimony of Robert B. Browning,
21 and the supplemental surrebuttal testimony of Robert B.
22 Browning which have been assigned numbers 18, 19 and I
23 believe I'm up to 31 for the last piece of testimony.
24 JUDGE WOODRUFF: I have it as 19 and 20 for
25 the direct and surrebuttal. And be 31 for supplement

1 surrebuttal.

2 MR. COOPER: I stand corrected on the direct
3 and surrebuttal numbers.

4 MR. CONRAD: Forgive me, what did we settle on
5 19, 20 and --

6 MR. COOPER: 19, 20 and 31.

7 MR. CONRAD: Thank you.

8 JUDGE WOODRUFF: And I believe he will be
9 testifying on subsequent issues as well; is that correct?

10 MR. COOPER: Not necessarily.

11 JUDGE WOODRUFF: We skipped over him on one
12 this morning --

13 MR. DOTTHEIM: The Staff has --

14 JUDGE WOODRUFF: -- on Estimated Merger
15 Savings.

16 MR. DOTTHEIM: The Staff has a question or two
17 regarding Estimated Merger Savings.

18 JUDGE WOODRUFF: We'll come back to Estimated
19 Merger Savings.

20 I'm assuming you're offering 19 and 20 and 31
21 preliminarily?

22 MR. COOPER: Yes, your Honor. And tendering
23 Mr. Browning for cross-examination on the Labor Protective
24 Provision Condition.

25 JUDGE WOODRUFF: Okay.

1 (EXHIBIT NOS. 19, 20 AND 31 WERE MARKED FOR
2 IDENTIFICATION.)

3 MR. SWEARENGEN: Judge, it I could interrupt
4 you just for a second. If things work out as we hope they
5 will, it won't be necessary for Mr. Browning to come back.
6 So if we could -- and Mr. Dottheim does have some questions
7 on Estimated Merger Savings, and I did indicate to him
8 that -- Mr. Dottheim that when Mr. Browning did get on the
9 witness stand, he could ask those questions.

10 JUDGE WOODRUFF: Well, IBEW comes up first so
11 we'll see how that goes. For cross-examination, IBEW?

12 MR. JOLLEY: Thank you, your Honor.

13 CROSS-EXAMINATION BY MR. JOLLEY:

14 Q. Mr. Browning, I believe you are vice president
15 human resources for UtiliCorp?

16 A. Yes, sir.

17 Q. Would you briefly describe your duties as
18 human resources vice president and the function of the human
19 resources department in connection with UtiliCorp employees
20 and employment-related matters?

21 A. We hire -- we handle the hiring, development,
22 compensation, benefits, labor relations matters for all
23 employees throughout the domestic U.S.

24 Q. And that's union and non-union employees
25 alike, I assume?

1 A. Yes, sir.

2 Q. When you say development, what are you
3 referring to?

4 A. Training and development outside of certain
5 technical training. It's more leadership skills and
6 interpersonal skills, that side of it we would be more
7 focused on.

8 Q. Does the human resources department, which is
9 under your ultimate direction and oversight, involve itself
10 with assessment and determination of either labor costs or
11 labor savings resulting from employment-related actions of
12 the company?

13 A. Not typically. If we're going to do that,
14 it's typically more focused within our own department. If
15 you're referring to, for example, the merger activities that
16 we're going through here.

17 Q. Yeah. And labor savings associated with the
18 merger, is that a function of your department?

19 A. No, sir. That was rolled up through the
20 project lead, Vicki Heider.

21 Q. Does the human resources department, which is
22 under your ultimate direction and supervision, involve
23 itself with studies, programs to assure the safety of
24 employees in the workplace?

25 A. The safety department does. However, the

1 safety department at UtiliCorp reports into the distribution
2 department and not into human resources.

3 Q. And who is it that heads up the safety
4 department?

5 A. A fellow by the name of Mike Brooks heads the
6 safety department.

7 Q. I don't recall his name. Did he testify here?

8 A. No, sir.

9 Q. I will tell you that your name has been
10 brought about earlier in previous testimony that you would
11 be kind of the answer man on some of these questions. Let
12 me ask you a few more questions then and maybe you don't
13 know this answer.

14 Do you know whether the estimated merger
15 savings that have been attributed to the merger -- that have
16 been attributed to the reduction of 50 jobs -- strike that.

17 Do you know whether the reduction of
18 50 bargaining unit positions -- by bargaining unit positions
19 I mean the 50 that are projected for elimination who are
20 represented under the contract with IBEW 1474 -- is that a
21 part of the merger savings?

22 A. Yes, sir, I believe it is.

23 Q. Do you know what those savings are?

24 A. In terms of the dollar amount?

25 Q. Yes.

1 A. No, sir, I don't.

2 Q. Have you ever seen any reports or figures that
3 would show what those savings are?

4 A. If I do, I don't recall. I believe they would
5 have been rolled up into Vern Siemek's schedules. He was
6 responsible for summarizing that data.

7 Q. Well, surprisingly Mr. Siemek said I could ask
8 you that question.

9 Are you aware of the merger savings that have
10 been attributed to the reduction of 270, which combines both
11 bargaining unit and non-bargaining unit positions?

12 A. Am I aware if that's part of the --

13 Q. No. I'm asking you, are you aware of the
14 total savings attributed to position elimination, including
15 both bargaining unit and non-bargaining unit positions?

16 A. The piece that I was responsible for was the
17 total savings related to benefits that would be associated
18 with those people. The direct labor charges were part and
19 parcel of each one of those transition teams.

20 Q. Okay. Let me ask you about benefits then.
21 Has there been a value attached to the savings resulting
22 from healthcare changes that would affect all Empire
23 employees, bargaining unit and non-bargaining unit alike?

24 A. Yes, sir.

25 Q. And what is the savings attributed to changes

1 in healthcare of Empire employees?

2 A. There's several different components to that.
3 One component is the savings related to active employees,
4 and then there's a component related to pension, and a third
5 one related to retiring medical.

6 Q. All right. Let's focus first on the
7 healthcare benefits of active employees. Medical insurance.
8 Right?

9 A. Yes.

10 Q. Okay. What are the savings resulting from the
11 planned changes in the medical care health insurance
12 benefits of Empire's active employees?

13 A. If we include in that medical, dental, vision,
14 and various life insurance coverages, what we had projected
15 was at the end of the first full year after close
16 approximately \$2.8 million, into the second year
17 approximately 2.3 million, and into the third year
18 approximately 2.2 million.

19 Q. And these savings result from projected cuts
20 for all employees, bargaining unit and non-bargaining unit
21 alike; is that correct?

22 A. Yes.

23 Q. And when would these take effect?

24 A. They take effect -- the savings begin to take
25 effect in terms of benefit changes 18 months after the close

1 of the transaction. However, to the extent that employee
2 head counts are reduced prior to that 18 months, they could
3 take effect almost immediately.

4 Q. Can you briefly describe the source of the
5 savings resulting from the changes in medical insurance
6 benefits of active employees? What are those changes?

7 A. Prior to the -- prior to the close of the
8 18-month window, the only changes would be as a result of
9 head count reductions. After that 18-month window, it might
10 be as a result of any planned changes that UtiliCorp has
11 that would drive more efficiencies in cost because we're a
12 much larger employer.

13 Q. Well, in calculating the 2.8 and 2.3 million,
14 didn't you factor in certain specific changes in healthcare?

15 A. Only in terms of head count.

16 Q. Only in terms of head count. So have you
17 projected the savings -- strike that.

18 UCU employees pay a substantially greater
19 personal individual contribution to healthcare benefits than
20 do Empire employees; is that correct?

21 A. They do pay a greater percentage of the total
22 cost, yes, sir.

23 Q. And are you aware that the Empire at least
24 bargaining unit employees, and I believe this is typical of
25 all Empire employees, pay like \$22 a month individually and

1 \$44 for family coverage? Are you aware of that?

2 A. I'm not familiar with the exact figures.

3 Q. Have you ever viewed the collective bargaining

4 agreement between Empire and Local 1474?

5 A. Yes.

6 Q. If the contract stated that's what it is,

7 would you agree that that is what it is?

8 A. Yes, sir. If that's what it states.

9 MR. JOLLEY: May I approach the witness?

10 JUDGE WOODRUFF: You may.

11 BY MR. JOLLEY:

12 Q. I am going to hand you, Mr. Browning, a

13 document that I don't intend to mark into evidence, but I

14 can if I need to. And I'm going to ask if you can first of

15 all just identify that document?

16 A. It's the labor agreement between Empire and

17 the Local Union 1474.

18 Q. And you've seen this document before?

19 A. Yes.

20 Q. And you don't doubt that this, in fact, is a

21 copy of the agreement currently in effect?

22 A. No, I don't.

23 Q. Would you refer to page 39, and I refer you to

24 the first full paragraph? After you review that, can you

25 tell us what individual employee contributions are at Empire

1 for individual and family coverage?

2 A. \$22 for individuals and 44 for family.

3 Q. And for what period of time is that?

4 A. Beginning January 1, 2000.

5 Q. All right. And the next paragraph, I think,

6 takes up a subsequent year?

7 A. Yes, sir.

8 Q. And what do those rates go to?

9 A. \$24 individual, 48 for the family.

10 Q. And then there's another paragraph, I believe?

11 A. Yes.

12 Q. And what is that?

13 A. For -- beginning January 1, 2002 for an

14 individual it's 26 and for family it's 52.

15 Q. Okay. Thank you.

16 A. Uh-huh.

17 Q. What is the employee contribution for medical

18 benefits at UCU?

19 A. I'm -- I can't remember the exact figures,

20 sir.

21 Q. Do you know what you pay?

22 A. On a monthly basis I know what my rolled up

23 benefit is for medical, dental, vision and so on.

24 Q. Let me ask you this. Don't all employees have

25 the same health plan at UCU?

1 A. They have the same health plan options.

2 Q. Okay. So they can contribute different
3 amounts based upon the options they choose?

4 A. That's correct.

5 Q. So do you have any estimate as to the amount
6 that an individual would pay for basic health coverage for
7 himself or his family at UCU comparable to the coverage that
8 you understand is in effect at Empire?

9 A. You know, it would be a guess. I really --
10 it's more -- I would stipulate that what our employees pay
11 for the same coverage is a greater share.

12 Q. It's in the hundreds of dollars per month, is
13 it not?

14 A. I'm not sure.

15 Q. There's been testimony here in this
16 proceeding, Mr. Browning, as to the investment in the
17 company and the economic risk in this merger on the part of
18 shareholders. Would you agree, as a vice president of human
19 resources, that employees of Empire have also made
20 significant contributions to the success of Empire and
21 therefore to the viability of a merged entity?

22 A. Yes. I would agree with that.

23 Q. And would you acknowledge that the elimination
24 of an employee's position or employment has a serious
25 economic adverse impact?

1 A. To?

2 Q. To the employee whose job is eliminated.

3 A. It would certainly have an economic impact,
4 yes, sir.

5 Q. Adverse impact, would it not?

6 A. Yes.

7 Q. Okay. And, to your knowledge, are there any
8 provisions in this merger plan or otherwise that would
9 protect employees whose positions are eliminated at Empire
10 or allow them to recoup their losses in the way the
11 shareholders are being protected?

12 A. There are different provisions for the union
13 employees than non-union, but everybody is covered by a
14 provision should their job be eliminated.

15 Q. Let's take bargaining unit employees who lose
16 their jobs. What protection are they getting?

17 A. There's a severance agreement negotiated in
18 the labor agreement that would cover them.

19 Q. And that severance agreement, in fact, allows
20 them one week of severance pay for each year of service; is
21 that correct?

22 A. I believe that's correct, yes, sir.

23 Q. So an employee with six or eight years of
24 service whose job is eliminated is going to get six or eight
25 weeks of pay?

1 A. That's what the union negotiated for them,
2 yes, sir.

3 Q. Did you keep abreast of the negotiations
4 between IBEW Local 1474 and Empire in the last round of
5 negotiations that led up to this agreement?

6 A. In a cursory fashion I did, yes, sir.

7 Q. All right. And are you aware of the fact that
8 when Local 1474 sought greater severance benefits and an
9 extension of time during which those severance benefits
10 would be applicable, that Empire rejected --

11 A. Not specifically, no, sir.

12 Q. You had no discussions about that?

13 A. We purposely kept an arm's length distance
14 between those negotiations and us.

15 Q. Well, then it would surprise you, I suppose,
16 to hear or to learn if this were true, that Empire's
17 position at the negotiating table was that UCU said no?

18 A. That would surprise me, yes, sir.

19 Q. I think you testified that all UCU employees
20 are covered by the same health plan; namely, they have the
21 availability of the same menu or cafeteria of benefits?

22 A. Yes, sir.

23 Q. Okay. Prior to UCU assuming the active
24 control and operation of Missouri Public Service -- and by
25 the way, when was that, do you recall?

1 A. Missouri Public Service was actually the
2 entity that ultimately formed UtiliCorp.

3 Q. Right.

4 A. I know UtiliCorp was formed in 1983, but
5 Missouri Public Service has been around for decades.

6 Q. Was there a period of time when UCU employees
7 paid for their healthcare benefits more in the line of
8 Empire District employees today; namely, a far lesser share
9 of the overall premium costs?

10 A. I cannot be sure of that.

11 Q. You don't know that?

12 A. I don't know.

13 Q. Okay. When is it that you believe -- strike
14 that.

15 Is it fair to say that UCU contends to adopt
16 for Empire employees or to put into effect for Empire
17 employees the same overall healthcare package that exists
18 now for UCU employees?

19 A. That would be our desire, but obviously that's
20 a negotiable item with the union.

21 Q. Is there any group of employees of UCU that
22 has successfully resisted that across UCU's operation?

23 A. To date?

24 Q. To date?

25 A. Not to my knowledge.

1 Q. In fact, in negotiations with Local 814 IBEW,
2 that's the representative of 1474's counterpart employee, so
3 to speak, at Missouri Pub, in fact, they sought benefits
4 more closely aligned or more similar to the benefits and
5 cost structure that's in place at Empire; is that right?

6 A. I'm not sure of that, sir. They were on a
7 different plan until recently when they adopted our
8 cafeteria style plan.

9 Q. Was that their proposal to adopt your plan, or
10 was that your proposal that they adopt your plan?

11 A. It was our proposal.

12 Q. And they objected to it, did they not?

13 A. Initially.

14 Q. They resisted those negotiations?

15 A. Along with several other items of negotiation.

16 Q. And their option was to either accept it or
17 strike, I assume. Would that be a fair statement the way
18 the collective bargaining system goes?

19 A. I suppose that could be an ultimate end.
20 although we've not had a strike in decades.

21 Q. Sure. How long have you been in human
22 resources at UtiliCorp?

23 A. In my current capacity, 26 months.

24 Q. Okay. And were you in the human resources
25 department prior to 26 months ago?

1 A. From 1993 to early 1996.

2 Q. Okay. And when did your employment with

3 UtiliCorp begin?

4 A. 1993.

5 Q. All right. Do you have any knowledge as to

6 UCU's practice and history as far as the use of three-man

7 versus two-man linemen crews?

8 A. Only what I've heard of late. And that is

9 that we've always -- or not always, but we have as far as

10 back as I know used two-man crews.

11 Q. That could be back to 1993?

12 A. Yes, sir.

13 Q. Okay. And have you heard or been advised that

14 there was a prior time when Missouri Public Service utilized

15 three-man linemen crews?

16 A. I've not personally heard that.

17 Q. You've never heard that said?

18 A. No, sir.

19 Q. Are you involved in negotiations with 814?

20 A. No, sir. I should say that I know that it was

21 negotiated into the contract. I'm not sure of when. I know

22 Vicki Heider was our manager of labor relations at Mo Pub

23 and would have been the person responsible for negotiating

24 that. When it was, I'm not sure.

25 Q. UCU actively runs the Mo Pub operation, does

1 it not --

2 A. Yes, sir.

3 Q. -- Missouri Public Service area?

4 Was there a time prior to that that even

5 though -- well, strike that.

6 Was there a time prior to that that Mo Pub as

7 a separate division or entity ran its own operation?

8 A. And operated more autonomously, yes, sir.

9 Q. Yes. And when the control of that operation

10 shifted from Mo Pub folks to UtiliCorp folks, that wasn't

11 the subject of a merger proceeding before the Commission,

12 was it?

13 A. No, sir.

14 Q. Okay. And you understand from reading

15 testimony and what's been filed by the union so far that it

16 is the union's position, I understand you disagree with it,

17 that there is an adverse safety impact on two-man crews in a

18 reduction of three-man crews to two-man crews in this case,

19 do you not?

20 A. I've heard that's the union's position.

21 Q. Assuming that to be the case -- and I know you

22 disagree with it, but assuming that to be the case, assuming

23 that that is a detriment to the public interest, that it is

24 less safe than what it should be, the only opportunity for

25 that public interest to be addressed or protected is in this

1 proceeding by the Commission, is it not?

2 A. I don't agree with that.

3 Q. What are you referring to? Negotiations?

4 A. I think there are other venues with which to

5 deal with that.

6 Q. Like?

7 A. OSHA, like in the collective bargaining --

8 Q. To your knowledge, does OSHA have any

9 regulations or taken on any authority or entered the field

10 of crew compliment and numbers of employees?

11 A. I believe, sir, that if a complaint was filed

12 with OSHA that UtiliCorp was promoting unsafe work

13 practices, they would investigate it.

14 Q. But, to your knowledge, are there any OSHA

15 regulations or has OSHA ever occupied the field in

16 connection with safety as to manpower and crew compliment

17 size?

18 A. Not to my knowledge.

19 Q. All right. And the matter could come up in

20 negotiations, could it not?

21 A. Yes, sir, it could.

22 Q. The negotiations are likely to commence

23 somewhere around November 2002?

24 A. Yes, sir.

25 Q. That's when this contract expires. And

1 assuming that you're going to -- assuming that the planned
2 eliminations of bargaining unit positions take place, when
3 is it likely to take place?

4 A. Within the first -- well, certainly within the
5 first year following the close of the merger.

6 Q. And would that be, in your estimation, before
7 or subsequent to November of 2002?

8 A. Be before.

9 Q. So that if the union would have the legal
10 right to negotiate, the fact is the cow is already out of
11 the barn by that time, is it not?

12 A. If --

13 Q. Employees would already have lost their jobs?

14 A. Yes, sir.

15 Q. Okay. And to the extent that the union would
16 have the legal right to negotiate over setting aside a prior
17 elimination of bargaining unit positions -- negotiations are
18 between two parties, are they not, in your experience?

19 A. Yes, sir.

20 Q. And one party is the employer and that party
21 represents the shareholders. Correct?

22 A. Amongst others, yes, sir.

23 Q. And the union represents employees?

24 A. Yes, sir.

25 Q. There's nobody there representing the public

1 interest; isn't that correct? I mean, truly?

2 A. Not per se, that is correct.

3 Q. You could negotiate a one-man crew that the
4 whole world would understand is not in the public interest,
5 but there's nobody there representing the public interest to
6 say, Oh, no, you can't do that; is that correct?

7 A. Yes, sir.

8 Q. Okay. UCU has submitted data in response to
9 union requests acknowledging that it will keep benefits in
10 effect -- namely, benefits through the contract in effect
11 until the expiration of the contract. What is UCU going to
12 do by way of non-union personnel -- non-bargaining unit
13 personnel by way of changing the benefit structure?

14 A. We've also agreed to leave non-union employees
15 in their current -- current cost levels and -- for an
16 18-month period. We would freeze their benefits for
17 18 months.

18 Q. And is that a result of UCU's historic
19 philosophy of maintaining the same benefit structure for all
20 employees whether union or non-union?

21 A. That particular agreement was as a result of
22 negotiations with myself and Myron McKinney for the merger
23 agreement.

24 Q. I didn't ask how it came about. My question
25 was, didn't that come about -- didn't you agree to that, in

1 fact, because UCU's philosophy is to maintain a benefit
2 structure which is universally applicable to union and
3 non-union employees?

4 A. That's our goal, yes, sir.

5 Q. And that's what you just did by way of
6 non-union employees and employees consistent with that goal?

7 A. Yes.

8 Q. Okay. It's clear that the current projection
9 is to eliminate 50 bargaining unit positions --

10 A. Yes, sir.

11 Q. -- correct?

12 And it's been acknowledged here, I believe, in
13 this hearing that Empire District has been providing safe
14 and reliable service to its service area with its current
15 compliment of bargaining unit personnel. Would you concur
16 with that? Do you have any reason to doubt that?

17 A. I have no reason to doubt it.

18 Q. All right. And if that were the case, do you
19 believe it would be a detriment to the public interest if
20 the service that were provided by UtiliCorp to this service
21 area after reducing 50 bargaining unit personnel was not as
22 reliable and not as safe?

23 A. If that were to happen, that would be the
24 obvious conclusion.

25 Q. Okay. And there was some testimony earlier,

1 and I don't think you were here, that since that is the
2 case, that there would be a requirement of some due
3 diligence on UtiliCorp's part to ensure that after cutting
4 50 bargaining unit positions it could, in fact, deliver safe
5 and reliable service at the same level -- at least at the
6 same level as Empire is delivering?

7 A. The very first of your question you said,
8 Since that is the case. I'm not sure I'm --

9 Q. Assuming it to be the case that it would be
10 detrimental to the public interest for UtiliCorp to come in
11 and cut 60 bargaining unit jobs, and as a result, service to
12 the area was less reliable and less safe than it was with
13 the 60 that was thrown out by Empire. And I think you
14 concurred with that?

15 A. We did substantial studies prior to arriving
16 at those numbers. And I can say that if we found injury
17 frequencies to be going up or service reliability to drop,
18 we would certainly get in and find out what was happening
19 and what was wrong.

20 Q. But this is after the -- these are studies to
21 be conducted after the 60 -- after the 50 have been
22 eliminated, that if service is dropped or safety is at
23 issue, you track that? Is that what you're saying?

24 A. Yes, sir.

25 Q. Well, if safety were at issue and service

1 dropped and that was detrimental to the public interest in
2 the meantime, what action would you take?

3 A. First of all, we don't believe that safety and
4 reliability are going to be negatively affected.

5 Q. In my assumption.

6 A. In your assumption we would obviously
7 investigate it and find out what was causing any kind of
8 increase in injury frequencies or what was causing the
9 reduction in reliability or service.

10 Q. And if, in fact, Empire's work practice is to
11 ensure safety by having three-man crews who work on
12 three-phase lines involving 7,200 hot line volts each and
13 that as a result of having a two-man crew perform that work,
14 that a man was killed, what corrective action would you
15 take?

16 A. We're going into conjecture.

17 Q. I understand that.

18 A. That --

19 Q. How do your tracking systems rectify that?

20 A. I can't say. That's -- that area of
21 responsibility and investigation would be part of the
22 distribution department, which is where safety resides.

23 Q. So basically the human resources department of
24 UtiliCorp has nothing to do with enforcing and applying
25 safety standards, determining and applying safety standards?

1 A. The safety standards are set by our safety
2 department.

3 Q. And that's out of the realm completely of
4 human resources?

5 A. We would get involved if an employee was found
6 to be violating those safety standards or procedures.

7 Q. On page 1 of your surrebuttal testimony -- do
8 you have that?

9 A. Yes, sir.

10 Q. On line 16 -- beginning on line 16 you say,
11 These reductions would not be possible now or in the future
12 if Empire were to remain as a separate entity. In addition,
13 UtiliCorp currently has no plans for significant labor
14 reductions either as a result of this merger or if UtiliCorp
15 should remain on a stand-alone basis.

16 What do you mean when you say that these
17 reductions would not be possible now or in the future if
18 Empire were to remain a separate entity?

19 A. I was responding to Ms. Fischer who was
20 indicating that it was likely that Empire would be able to
21 achieve the kind of labor reductions that we have in our
22 synergies on their own if they never merged with UtiliCorp.
23 And I don't believe that that's possible.

24 Q. Do you believe that elimination of positions
25 is good as a human resources philosophy?

1 A. Human resources department is part of the
2 business. And our job is to try to run the business as
3 efficiently as possible and as profitably as possible. And
4 in that regard, I believe it's a good thing to operate as
5 efficiently as we can.

6 Q. So actually the more you can get rid of, the
7 better off you are?

8 A. As long as we are able to provide the right
9 level of service and the quality of service.

10 Q. I think that's the issue. Thank you.

11 The next sentence that I quoted, In addition,
12 UtiliCorp currently has no plans for significant labor
13 reductions either as a result of this merger or if UtiliCorp
14 should remain on a stand-alone basis.

15 Is that to say that there is no UCU employee
16 losing a job as a result of the merger?

17 A. When I said significant labor reductions, I'm
18 meaning like of the nature and size that Empire would be
19 experiencing.

20 Q. Are there any UCU employees losing their jobs
21 as a result of the merger that you know of?

22 A. Not directly that I'm aware of.

23 Q. And there has been testimony about duplicative
24 functions or duplicative activities as between employees of
25 Empire and employees of UtiliCorp. And to the extent

1 possible, the merger plan contemplates eliminating that
2 duplication and having, in effect, one person do the job
3 that currently is being done by two. You have overlapping
4 functions in two companies. Correct?

5 A. There are instances of that.

6 Q. And in all those instances, in fact, the
7 determination has been made to retain the UtiliCorp employee
8 and to send the Empire employee packing. Is that basically
9 correct?

10 A. Where those instances occur. The economies of
11 scale are in the larger organization in the Kansas City
12 area. And, therefore, we're able to reduce the head count
13 by reducing the employ-- the Empire job and absorbing that
14 work into the Kansas City area.

15 Q. And in all cases it's resolved in favor of the
16 retention of the current UCU employee?

17 A. I believe so.

18 Q. And has this been done irrespective of an
19 analysis of comparative skill, length of service,
20 qualifications, what each brings to the table?

21 A. The decisions that are made with regard to
22 where the work resides is based upon where it's -- where it
23 makes the most sense from an efficiency and quality
24 standpoint.

25 Q. If you'll refer to pages 5 to 10 of your

1 surrebuttal testimony -- do you have that?

2 A. Yes, sir.

3 Q. While noting that you're not a lawyer, you

4 made several legal assertions concerning the labor

5 protective provisions sought by the local union in this

6 case?

7 A. Yes.

8 Q. And those assertions are between pages 5 and

9 10. And those include an allegation that the failure of

10 prior pro-- the prior failure of proposed legislation that

11 would have made LPPs mandatory and an assertion that LLPs

12 would improperly interfere with the collective bargaining

13 process and that they're preempted by federal law; is that

14 right? Have I somewhat accurately summarized --

15 A. Somewhat, yes, sir.

16 Q. -- the assertions?

17 I don't know if you were here when I made my

18 opening statement, but at that time I advised the Commission

19 that I believed these were legal issues and that I would not

20 do a fact-based cross-examination of those issues but rather

21 would address them in a brief, so I'm not going to

22 cross-examine you on them now.

23 A. I appreciate that.

24 Q. In your surrebuttal testimony -- I'm sorry.

25 Strike that.

1 In the supplemental surrebuttal testimony --
2 if you want to pull a copy of that -- you state at page 1,
3 line 12 -- no. I'm sorry. I pulled out your surrebuttal
4 testimony.

5 Getting back to your supplemental surrebuttal
6 testimony, you state at page 1, line 12 through page 2,
7 line 7 -- there's a question, Question -- Mr. Courtney on
8 page 16 of his testimony indicates that he has not received
9 any assurances from UtiliCorp that the terms of the
10 collective bargaining agreement that are currently in effect
11 will remain in effect following the expiration of the
12 contract; is this true?

13 And you answered, UtiliCorp has consistently
14 stated that it would recognize the IBEW as their
15 representative of the bargaining unit at Empire District
16 Electric.

17 In addition, in several meetings with
18 bargaining unit employees during the week of April 24 2000,
19 I told employees that UtiliCorp recognizes they are covered
20 by a collective bargaining agreement and that any changes to
21 their working conditions, benefits or wages that have
22 traditionally been negotiated in the past would be
23 negotiated when the contract expires.

24 At no time did I lead anyone to believe that
25 UtiliCorp could or would unilaterally eliminate any

1 provision that is the mandatory subject of bargaining of the
2 labor contract currently in effect. It's common knowledge
3 that any such provision in a labor agreement must be
4 negotiated and that either party has a right to unilaterally
5 make such changes.

6 Is that your testimony?

7 A. Yes, sir.

8 Q. When have you advised the union that you have
9 adopted their contract that you will -- I'm sorry.

10 When have you advised Local 1474 that if the
11 merger becomes effective, you will adopt the collective
12 bargaining agreement?

13 A. During our meetings in April I indicated that
14 if the merger were to go through, that we would continue to
15 honor the existing contract until it expired and we would
16 re-negotiate at that point.

17 Q. And that was a meeting with whom?

18 A. All employees of Empire and several meetings
19 across three different days.

20 Q. As a vice president of human resources, are
21 you not familiar with the proposition that negotiations take
22 place with an exclusive representative of the employees and
23 not with the employees themselves? Are you aware of that
24 general principle?

25 A. Sure. Yes, sir.

1 Q. And are you aware that in the negotiations of
2 the current collective bargaining agreement, which was
3 signed I think November of 1999 when the merger was taking
4 place, that the union sought changes in the successorship
5 language that would have compelled UtiliCorp to adopt the
6 contract? Are you aware of that?

7 A. I know there was discussions around that
8 language.

9 Q. And are you aware that Empire refused such an
10 agreement and said that UtiliCorp said no to such an
11 agreement and that what the contract provides is that upon a
12 merger, the purchaser, the surviving entity, will have an
13 option to either recognize the union or to adopt the
14 contract? Are you aware of that?

15 A. Generally, yes, sir.

16 Q. And there's a big difference between adopting
17 a contract and recognizing the union, isn't there?

18 A. Yes, sir. Uh-huh.

19 Q. So if the contract says that you can have the
20 option, when is it that you intend to tell the union that
21 you're adopting the contract? Are you telling them now?

22 A. When this merger closes, we can confirm that
23 we are.

24 Q. But you haven't done that. So at this point
25 we don't know whether you're doing to adopt the contract?

1 A. I tried to give the bargaining unit a sense of
2 comfort that we were not going to come in, throw the labor
3 agreement away. The working conditions that they currently
4 work under we would continue to honor until the contract
5 expired.

6 Q. Do you have any problem with making that
7 commitment to the exclusive representative of that
8 bargaining unit?

9 A. No, sir.

10 Q. Can your commitment to the bargaining unit --
11 is that an enforceable commitment --

12 A. In what --

13 Q. -- what you said in a meeting to a group of
14 employees that has a collective bargaining representative
15 with whom you did not deal?

16 A. I'm not sure I understand the question, sir.

17 Q. I'll withdraw the question.

18 At the outset of this hearing, I'm not sure
19 you were here, Mr. Dottheim invited all the parties to
20 comment on the applicability of this proceeding to Section
21 386.315 of the Missouri Statutes. Is this the Missouri law
22 at which you refer to at page 10, lines 10 to 14, of your
23 supplemental surrebuttal testimony?

24 A. What page was that?

25 Q. Page 3 -- hold on -- yes, page 3, lines 10 to

1 14 of the supplemental surrebuttal. Let me ask you, page 3,
2 line 10 has a sentence beginning three words from the end of
3 the line --

4 A. Uh-huh.

5 Q. -- that states, Furthermore, it is my
6 understanding the Commission is not authorized by Missouri
7 law to change the terms of a collective bargaining
8 agreement. Therefore, it is my belief the current federal
9 law would at least preclude the need for such provision.

10 Now, my question is, does your reference to
11 Missouri law -- is that a reference to Section 386.315 of
12 the Missouri Statutes?

13 A. Not specifically. That was my understanding
14 after a conference with our labor attorney.

15 Q. And you say "not specifically." Is that to
16 say there may be other statutes -- other Missouri Statutes?

17 A. It means that I was not referring to that
18 specific statute. It was from a conversation I had with our
19 labor attorney.

20 Q. So you really don't know what statute it was?

21 A. No, sir.

22 Q. Nor do you know the wording or what the
23 language of that statute is?

24 A. Not specifically, no, sir.

25 Q. If I were to show you that statute, you still

1 wouldn't know if that was the statute that was referred to
2 in your testimony --

3 A. That's correct.

4 Q. -- is that correct?

5 In discussion of that statute were you made
6 aware of how that statute came to be passed?

7 A. No, sir.

8 Q. Were you aware that it was passed in the
9 aftermath of a rate case?

10 A. No, sir, I was not.

11 Q. Where Southwestern Bell was seeking a rate
12 increase and at issue was terms of a collective bargaining
13 agreement with the communications workers? Are you aware of
14 that?

15 A. No.

16 Q. Were you aware even that that statute at least
17 on its face refers to a rate case rather than a merger case?

18 A. No.

19 Q. Okay. And at the time of this hearing, would
20 you acknowledge that there is no collective bargaining
21 relationship and no collective bargaining agreement between
22 Local 1474 and UtiliCorp?

23 A. Yes.

24 Q. And likely by the end of the merger -- the
25 effective date of the merger, the closing of the merger

1 there -- at that point you may, as you say, adopt the
2 contract and thereby at that time a relationship would be
3 created; is that correct?

4 A. That's correct.

5 Q. There's been testimony in this case as to
6 expanding and enhanced career opportunities for Empire
7 employees resulting from the merger. As vice president of
8 human resources of UtiliCorp, are you familiar with these
9 enhanced career opportunities resulting from the merger?

10 A. Yes, I am.

11 Q. What are they?

12 A. There are opportunities throughout our service
13 territories all over the nation for employees. And we post
14 those primarily for the non-union employees, but to the
15 extent that the existing local can't promote people from
16 within the organization because they don't have the skills
17 or abilities, we open those jobs up across the nation.

18 Q. Okay. So do these openings and vacancies and
19 opportunities to which you refer, are these career
20 opportunities arising as a result of the merger?

21 A. No, they're not. They're in the normal course
22 of business for UtiliCorp.

23 Q. Normal course. Give me an idea of the kind of
24 jobs you're talking about that open up across the country.

25 A. Well, they range from secretaries to -- to

1 linemen to plant operators, managers of our district
2 offices.

3 Q. Computer-type personnel, etc.?

4 A. Yes, sir.

5 Q. Other than the qualifications -- other than
6 the skills that the bargaining unit employees currently
7 possess and utilize -- strike that.

8 In your judgment, do the skills and
9 qualifications and background and experience of bargaining
10 unit employees equip them for movement into other positions
11 around the country other than the positions they were in?

12 A. They might.

13 Q. Like what?

14 A. It depends upon their background and career
15 history.

16 Q. A lineman that's been there for six years is a
17 lineman. Other than another lineman position that may open
18 up in Canada or Sedalia -- he's got a good skill, but how
19 does that skill get interchangeable or translate into other
20 unrelated types of work?

21 A. We often promote from within. So there might
22 be a supervisory position that opens up for which that
23 lineman might have an interest and could apply for.

24 Q. You're telling me that an Empire area lineman
25 employee of UCU has any chance in God's green earth of

1 getting a lineman supervisor position in another service
2 area where there are linemen that have been working there?
3 Has that ever happened?

4 A. I'm sure it has happened. I can't quote a
5 specific instance.

6 Q. Do you have any recollection where a lineman
7 from one UCU facility --

8 A. The --

9 Q. -- has been promoted into another service area
10 of UtiliCorp as a lineman supervisor?

11 A. I cannot give you that specific example. What
12 I can tell you is that we've had linemen promoted into local
13 supervisors who have then been moved into other management
14 positions.

15 Q. Absolutely. I would agree with you that the
16 opportunities that exist for linemen and other bargaining
17 unit personnel is primarily an upward progression within the
18 line of work and responsibility that they currently work.
19 Would you agree with that?

20 A. Primarily.

21 Q. My best chance of improving myself as a
22 lineman is if a lineman supervisory position opens up in my
23 workplace; is that right?

24 A. That would be the most common instance.

25 Q. That's right. And how about other bargaining

1 unit personnel, production workers, stores employees, meter
2 readers, are they equipped basically by training and
3 education and experience to take advantage of these
4 wonderful career opportunities that spring up around the
5 country and around the world in UtiliCorp's system?

6 A. In some instances.

7 Q. Can you give any example where a meter reader,
8 a production worker, a truck driver, an electrician, a
9 stores employee has ever been given upward mobility into
10 UtiliCorp's other installations around the country or around
11 the globe, one?

12 A. I would say that 90 percent of our management
13 team is made up from people who originally started -- within
14 the distribution department started as linemen or service
15 techs and worked their way up through the organization.
16 They're now sprinkled throughout the country. I cannot tell
17 you exactly what their career progression has been and where
18 they've lived and that sort of thing, no, sir.

19 Q. Do you have any basis for that assertion? At
20 what level are you talking about in your distribution
21 department? At what level of management?

22 A. Our director level, directors, director two
23 level.

24 Q. And how many of those are there?

25 A. I don't know the specific figure.

1 Q. Several?

2 A. Dozens.

3 Q. Among the bargaining unit work force in the

4 Empire area, realistically now between us here, would you

5 think the union would be well off in telling the people that

6 they represent that you're far better off for this because

7 you're going to have a lot better opportunities some place

8 else around UCU's system to get a better job?

9 A. Then they currently have today in their

10 current role?

11 Q. Yeah.

12 A. Yes, sir.

13 Q. Really? What about the employees that are

14 losing their jobs? What are the odds of these 60 em--

15 50 employees who have their positions eliminated getting

16 these positions you're talking about around the country and

17 around the globe?

18 A. We are going to look internally before we hire

19 anybody externally for any opportunities that come up. And

20 the skills, as you've said, of the linemen and plant workers

21 at Empire are a specialized skill that we certainly want to

22 retain in any opportunity that we have.

23 Q. As a lineman?

24 A. Yes, sir.

25 Q. Okay. Now, does UCU maintain travel benefits,

1 moving, relocation expenses, temporary lodging, protection
2 against cost of real estate transaction? Would that be
3 applicable to these linemen who get laid off here and take a
4 job in Kanipka?

5 A. Yes, sir, all of the above.

6 Q. So one of these -- you're telling me now if
7 one of these 50 employees loses a job and there's a position
8 available somewhere else in the country, you will relocate
9 him, you will pay his expenses, pay his moving expenses,
10 temporary lodging and the real estate -- and cover his real
11 estate risks?

12 A. Yes, sir. It's in our policy on our website
13 that every employee has access to.

14 Q. And does that apply to bargaining unit
15 personnel?

16 A. Yes, sir, it does.

17 Q. Now, if an employee is reduced by reason of
18 his job elimination, severance pay kicks in, does it not?
19 You referenced severance pay opportunities earlier in your
20 testimony?

21 A. Yes, I did.

22 Q. So I am a stores employee and I have the equal
23 right to anybody else to a store job across the country.
24 And you can get a stores employee in Philadelphia for a
25 Philadelphia job -- I'm making up Philadelphia -- or you

1 could move me from Joplin across country and give me that
2 job. What are the odds?

3 A. I can't tell you the specific odds.

4 Q. Well, cost would come into play, wouldn't it?
5 Cost is always a factor for a company, as you indicated
6 earlier?

7 A. Yes, sir.

8 Q. And that would be cost prohibitive, would it
9 not?

10 A. It would be more expensive to transfer that
11 employee than to hire the local employee.

12 Q. And if a linemen position opened up in Canada,
13 you would look first to the local pool for qualified linemen
14 in Canada before incurring the company cost of moving one of
15 these 50 displaced individuals up in Canada, would you not,
16 from a cost aspect?

17 A. Probably.

18 Q. And, in fact, once an employee accepts
19 severance pay, that employee is considered severed and
20 terminated and has no further link with the company; isn't
21 that correct? Isn't that the difference between a layoff
22 and a severance?

23 A. Yes, sir.

24 Q. And severance pay gets severance benefits and
25 it's -- I'm not trying to characterize it, but it's kissing

1 good-bye?

2 A. Does not preclude that person from being
3 re-hired.

4 Q. No. But they don't have any recall rights?
5 They're no longer an employee with their recall rights that
6 are afforded to employees?

7 A. As would be described in a typical labor
8 agreement, no, sir.

9 Q. That is correct?

10 A. That's correct.

11 Q. So they're worse off than current employees,
12 but perhaps ahead of somebody who's never worked there
13 before?

14 A. Yes, sir.

15 Q. All right. Earlier, and you may or may not
16 have been here, there was testimony about the public
17 interest being served by the creation of new jobs in
18 Missouri as a result of the merger. Do you know of any new
19 jobs being created in Missouri as a result of the merger,
20 and particularly any new bargaining unit jobs?

21 A. I'm not sure if the state line facility --
22 well, that wouldn't be as a result of the merger.

23 Q. That's not as a result of the merger though,
24 is it?

25 A. Right. I'm not aware of any specific union

1 positions being created as a result of the merger in
2 Missouri.

3 Q. There's been some testimony, and I know
4 there's question about it, but there is a view that
5 retirement benefits are a form of deferred compensation. Is
6 that UCU's and your view?

7 A. I believe that's the view of -- in FAS-106.

8 Q. Correct. And do you, as vice president of
9 human resources, adhere to that view in your --

10 A. We recognize that that's an obligation of the
11 employer to provide those retiree benefits if that's part of
12 our plan, yes, sir.

13 Q. And would you agree that retirement benefits
14 are an attraction or an inducement to an employee to come to
15 work?

16 A. They might be.

17 Q. And they may be such as to induce an employee
18 to keep that job, to stay at that location, I mean, to
19 continue working for that employer because retirement
20 benefits are mounting up --

21 A. That might be yes, sir.

22 Q. -- is that correct?

23 In negotiations in 2002 involving the
24 bargaining unit represented by Local 1474, as we sit here
25 now, it would be safe to assume, would it not, that you will

1 seek a change in the contract whereby future retirees,
2 namely, those active -- pre-retirement employees represented
3 by the union pay the cost of their healthcare benefits?

4 A. Pre-retiree employees?

5 Q. Active employees.

6 A. Active employees?

7 Q. I'm talking as opposed to those who have
8 already retired at that time.

9 A. Our goal would be to try to negotiate with the
10 union to have them move into our cafeteria-style plan.

11 Q. And that cafeteria-style plan means that
12 they're going to pay for their retiree health benefits.
13 Correct?

14 A. No, sir. That's a separate part of our plan.
15 We don't -- we have not --

16 Q. Well, the collective bargaining agreement --
17 strike that.

18 It is true that once an employee retires, a
19 union does not bargain on its behalf. You concur with that?

20 A. Yes, sir.

21 Q. But as to currently employed employees, the
22 union does negotiate retiree health benefits? The union has
23 a right to negotiate as a mandatory subject of bargaining,
24 does it not?

25 A. I don't know that that's been the case with

1 Empire in the past with regard to retiree medical.

2 Q. Okay. Your position would be that retirees at

3 Empire -- future retirees would, in fact, have to pay the

4 same cost of retiree health benefits that other UCU

5 employees currently pay?

6 A. That's our goal, yes, sir.

7 Q. And to the extent that Empire employees --

8 strike that.

9 To the extent that Empire retirees currently

10 pay, I'm going to say, \$50 a month, what do you think the

11 premium would be on the part of UCU retirees for retiree

12 benefits?

13 A. Depends on whether they're single or married.

14 Q. Right. Either way?

15 A. If they're single and they're under the age of

16 65, the current premium is \$200 a month.

17 Q. Single and family?

18 A. \$400 a month.

19 Q. Did you or the human resources department

20 under your direction play any role in any of the transition

21 teams or work with the transition teams specifically in

22 connection with the recommendation to eliminate 50

23 bargaining unit positions?

24 A. No, sir.

25 Q. None?

1 A. No, sir.

2 Q. So you don't know how the decision was made?

3 A. Not specifically.

4 Q. And you don't know what study or analysis was

5 made, if any, in connection with ascertaining that after the

6 elimination of 50 bargaining unit positions, service could

7 be delivered as safely and reliably as it has been delivered

8 by Empire today --

9 A. No, sir.

10 Q. -- is that right?

11 Did you see any reports, any documents

12 relating to the elimination of the 50 bargaining unit

13 positions?

14 A. Ultimately I did.

15 Q. And what type of reports were those?

16 A. They would have been the summarized reports of

17 total head count reduction and from where those were coming.

18 Q. So that would be reports of the total

19 projected reductions across the board union and non-union

20 alike?

21 A. Yes, sir.

22 Q. Identification of the classifications

23 effected?

24 A. Yes, sir.

25 Q. The number of employees losing their positions

1 within each of those classifications?

2 A. Number of positions being eliminated.

3 Q. Right. I mean, so office clerical, five;

4 stores, two --

5 A. Yes, sir.

6 Q. -- dispatchers, six?

7 And other than that information, was there

8 anything else contained in these reports that you saw?

9 A. Not that I recall.

10 Q. Did you see a dollar savings attached?

11 A. No, sir.

12 Q. As vice president of human resources, did it

13 occur to you to say, Wait a minute. Why are we doing this?

14 How much are we getting out of this? Is it worth it? Is

15 there another way to do this?

16 A. That data was rolled up into our project lead,

17 Vicki Heider, who would have applied those values against

18 our synergies to see if that made sense, if we were able to

19 serve the customers, provide reliable service.

20 Q. And what is Vicki's Heider's relationship to

21 you? And by that I mean in the hierarchy of things.

22 A. She reports -- she's part of US Utility

23 Operations and reports into the senior vice president of

24 USU.

25 Q. You have no interaction generally with Vicki

1 Heider?

2 A. She does not report to me.

3 Q. All right. So you really don't have any
4 familiarity with the issue of three-man versus two-man
5 crews?

6 A. No, sir.

7 Q. And you don't have any understanding or
8 familiarity with the way that the decisions were made to
9 eliminate bargaining unit positions?

10 A. No, sir.

11 Q. And you don't know how much savings is
12 attributed to the elimination of bargaining unit positions?

13 A. I do in terms of benefits in general for all
14 the positions, but in terms of the --

15 Q. So as to the bargaining unit positions, what
16 is the labor savings arising as a result of the labor
17 savings? I'm sorry. The benefit savings resulting from the
18 60 --

19 A. What I said was I know how the labor piece and
20 the non-labor -- or bargaining and non-bargaining unit piece
21 adds up in terms of benefit savings. I didn't segregate
22 them out.

23 Q. Explain that to me.

24 A. I didn't segregate them out in terms of the
25 benefit savings for union and non-union.

1 Q. Okay. What are the benefit savings occurring
2 as a result of elimination of positions in total?

3 A. I believe we did that at the beginning of the
4 testimony.

5 Q. That's the 2.8, 2.2?

6 A. Yes, sir.

7 Q. Are benefit costs pretty much a per capita
8 allocation? In other words, would it be fair to say that
9 the benefit savings from the elimination of an electrician
10 position is the same as the savings from a clerical position
11 and the same as the savings from a stores position or a
12 staff position?

13 A. We have --

14 Q. Benefits are pretty much comparable
15 irrespective of classification; is that correct?

16 A. Generally. There are some things that would
17 cause a premium to be slightly more for one employee than
18 another, but generally we try to come up with an average
19 figure when doing these projections.

20 Q. So if there was a yearly savings of
21 2.8 million, would I be far off recognizing that there are
22 270 elimination -- 270 positions eliminated and
23 50 bargaining unit positions, to assume that 50/270ths of
24 the 2.8 million would be attributable to the bargaining unit
25 as a safe ballpark figure?

1 A. I'm not sure. I'd have to do the math.

2 Q. Do you know whether any bonuses are being paid
3 to UCU officials in the event of a successful merger?

4 A. I know that there are not in the event of a
5 successful merger.

6 Q. There are not.

7 MR. JOLLEY: Might I have a moment?

8 JUDGE WOODRUFF: Yes, you may.

9 MR. JOLLEY: I have no further questions.

10 JUDGE WOODRUFF: All right. Thank you.

11 Now, for clarification of the record, we're
12 going to stay on Labor Protective Provision Condition, so
13 I'm going to limit the cross-examination to that. If we
14 need to, we'll bring him back for the previous issue for
15 cross-examination on that points.

16 Are there any other cross-examination on the
17 Labor Protective Provision?

18 Okay. Hearing none, there are no questions
19 from the Bench, therefore, no recross.

20 Is there any redirect?

21 MR. COOPER: Yes, your Honor.

22 REDIRECT EXAMINATION BY MR. COOPER:

23 Q. Mr. Browning, in response to a question about
24 new bargaining unit jobs, you mentioned the state line unit
25 and then went on to a different aspect of the answer. But

1 are there any bargaining unit jobs being created as a result
2 of the new state line facility?

3 A. Yes, sir, there are.

4 Q. Do you know how many?

5 A. I believe it's approximately 20 new positions.

6 Q. During the course of your cross-examination, I
7 think 50 bargaining unit positions and 50 bargaining
8 employees were kind of thrown back and forth
9 interchangeably. Are there really 50 bargaining employ--
10 bargaining unit employees that would lose jobs or are there
11 currently vacancies?

12 A. There are some vacancies, as I understand it,
13 currently. I believe there's approximately 23 vacancies.

14 Q. You were asked a question about ways to
15 address safety concerns other than in this merger
16 proceeding. To your knowledge, does this Commission have
17 jurisdiction over safe and reliable service?

18 A. I don't believe that that's their purview.

19 Q. Let me ask you this. There was some
20 discussion about the collective bargaining agreement. Under
21 the present agreement can bargaining unit employees file
22 grievances regarding unsafe work practices?

23 A. Yes, sir.

24 Q. Let me go back to my previous question. If I
25 were to tell you that the Commission does have jurisdiction

1 over safe and reliable service -- let's work with a
2 hypothetical as Mr. Jolley would have.

3 MR. SWEARENGEN: Or you could try a leading
4 and suggestive question.

5 MR. CONRAD: Now that you prompted the
6 witness.

7 THE WITNESS: I would have to say that I
8 misstated myself earlier.

9 BY MR. COOPER:

10 Q. If that is the case, do you believe that it
11 would be appropriate for this Commission to address safety
12 in a complaint proceeding perhaps?

13 MR. CONRAD: Say yes.

14 THE WITNESS: I've been told to say yes.

15 MR. COOPER: Mr. Conrad is a wise individual.
16 That's all the questions I have.

17 MR. CONRAD: Can I have that part of the
18 record certified?

19 JUDGE WOODRUFF: Oh, it's getting late in the
20 week now, isn't it?

21 Okay. You may step down, Mr. Browning.

22 THE WITNESS: Thank you.

23 JUDGE WOODRUFF: Mr. Jolley, call
24 Mr. Courtney.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may be seated.
2 You may inquire.
3 MR. JOLLEY: Might I have just a moment?
4 JUDGE WOODRUFF: Certainly.
5 (EXHIBIT NOS. 100 AND 101 WERE MARKED FOR
6 IDENTIFICATION BY THE COURT REPORTER.)
7 BILL COURTNEY testified as follows:
8 DIRECT EXAMINATION BY MR. JOLLEY:
9 Q. Would you state your name for the record.
10 A. My name is Bill Courtney.
11 MR. JOLLEY: Your Honor, I have had marked for
12 identification as Exhibits 100 and 101 the pre-filed
13 testimony -- the pre-filed cross surrebuttal testimony of
14 Bill Courtney as well as an errata sheet that was submitted
15 to the Commission with copies mailed to counsel. And I
16 would offer those Exhibits 100 and 101 into evidence.
17 JUDGE WOODRUFF: Okay. I believe this is the
18 only issue Mr. Courtney will be testifying on today; is that
19 right?
20 MR. JOLLEY: It is.
21 JUDGE WOODRUFF: Exhibits 100 and 101 have
22 been offered into evidence. Are there any objections to
23 their receipt?
24 Hearing none, they will be received into
25 evidence.

1 (EXHIBIT NOS. 100 AND 101 WERE RECEIVED INTO
2 EVIDENCE.)
3 BY MR. JOLLEY:
4 Q. I probably asked that question -- I should
5 have asked another question before I asked that one, I
6 think. Mr. Courtney, do you have any further corrections or
7 changes to your testimony?
8 A. Yes, I do. Your Honor, I have some
9 questions -- corrections, excuse me, other than the errata
10 sheet we had sent in previously.
11 JUDGE WOODRUFF: Go ahead.
12 THE WITNESS: Those corrections -- one of the
13 first corrections would be on page 3, line 19. Looking at
14 the word, Empire District Electric deals, that should be
15 scratched out. It should be deal, d-e-a-l.
16 So on page 5 the next correction would be
17 line 11. That should read, In excess of 16 years. Scratch
18 out the 14 years, please. Then on page 8, line 18 where it
19 says, Hydro equipment and alike, that should be scratched
20 out.
21 BY MR. JOLLEY:
22 Q. Bill, if you could make clear what you're
23 scratching out?
24 A. The word "alike." And please insert two words
25 "the like." If we can go on to page 12 -- page 12, line 7

1 there is a spelling error there. Instead of the word
2 "pease," there should be an "l" in there, p-l-e-a-s-e.
3 The next one would be on page 16, beginning
4 with line 7, after the comma after Interrogatories, please
5 insert the word "stated," s-t-a-t-e-d. Then on to line 8
6 after and, comma, please insert "by" implication, just the
7 word by, b-y. Am I going too fast?
8 JUDGE WOODRUFF: No, go ahead.
9 THE WITNESS: Line 9 the word -- after the
10 word "and," hyphen agreement -- right after the hyphen,
11 "would remain in effect," put those four words in there
12 please to say Would remain in effect.
13 The next one is line 11, where it says
14 14 years, that should be scratched out and insert 16 years,
15 the number 16. Line 13 the word "date" -- indicated in its
16 date, scratch "date" and put "data," d-a-t-a.
17 Then on page 23, line 8, please scratch the
18 word "remedy" and insert three words, "course of action."
19 And that -- that's the corrections.
20 JUDGE WOODRUFF: All right. Thank you.
21 MR. JOLLEY: Now, your Honor, I offer Exhibits
22 100 and 101 and tender the witness for cross.
23 JUDGE WOODRUFF: Did the corrections cause
24 anyone to make an objection?
25 Hearing none, it will now be received again.

1 (EXHIBIT NOS. 100 AND 101 WAS RECEIVED INTO
2 EVIDENCE.)
3 JUDGE WOODRUFF: All right. Thank you. Both
4 exhibits.
5 Okay. For cross-examination purposes are
6 there any questions for Mr. Courtney? Go ahead for
7 UtiliCorp.
8 CROSS-EXAMINATION BY MR. COOPER:
9 Q. Mr. Courtney, I'm going to start on page 7,
10 line 12 of your cross-surrebuttal testimony if you could
11 turn over to that for me.
12 MR. JOLLEY: I'm sorry, Counsel. Could you
13 tell me again?
14 MR. COOPER: It's going to be -- let's see --
15 page 7, line 12.
16 THE WITNESS: Yes. I found it.
17 BY MR. COOPER:
18 Q. I believe that there's a phrase there, part of
19 a sentence that starts with the word "it." It says, It is
20 unlikely that these contract provisions, which contemplated
21 an ongoing business operation by Empire District and normal
22 ebbs and flows in employment numbers in the ordinary course
23 of that business will prevent the elimination of jobs by
24 UtiliCorp under a merger plan approved by the Commission.
25 Do you see that?

1 A. Yes, I do.

2 Q. Now, when you say "these contract provisions,"

3 you're referring to the collective bargaining agreement

4 between Empire and the IBEW Local, aren't you?

5 A. That's correct.

6 Q. Could you tell me when that collective

7 bargaining agreement was signed?

8 A. It was actually signed -- I want to think

9 along February, March. I'm not sure.

10 Q. Of the year 2000?

11 A. That's correct.

12 Q. And to be effective October 25th of 1999.

13 Correct?

14 A. I believe that's correct.

15 Q. And did your union begin negotiating -- let me

16 back up.

17 When did your union begin negotiating that

18 collective bargaining agreement?

19 A. I'd say about the first week or two of

20 September of '99.

21 Q. Of 1999?

22 A. Uh-huh.

23 Q. The merger transaction that is the subject of

24 this case was announced in May of 1999, wasn't it?

25 A. I believe that's correct.

1 Q. And I assume you are familiar with the
2 collective bargaining agreement that's currently in effect?
3 A. Somewhat.
4 Q. It's, I guess my information, that Article 10
5 of that collective bargaining agreement states in part that
6 it is expressly agreed that these provisions are applicable
7 to the company's current proposed merger with UtiliCorp
8 United, Inc. Is that consistent with your memory?
9 A. What was that article again?
10 Q. Article 10?
11 A. Article 10 of the contract?
12 Q. Would you like to look at it? I've got one.
13 A. Yeah. I'm sorry. I should have brought one
14 up here with me. I apologize for that. Could you give me
15 the page number, please?
16 Q. Oh, sure.
17 MR. SWEARENGEN: I think that's where he was
18 talking about, I think.
19 THE WITNESS: Okay.
20 BY MR. COOPER:
21 Q. If you'll look over on page 41 --
22 A. Yes.
23 Q. -- the first full paragraph near the top of
24 the page.
25 A. It is expressly, yes.

1 Q. It is expressly agreed that these provisions
2 are applicable to the company's current proposed merger with
3 UtiliCorp United, Inc. Do you see that?

4 A. Uh-huh.

5 Q. To use Mr. Jolley's phrase from a little
6 earlier this afternoon, wouldn't you agree with me that the
7 merger transaction that's the subject of this case -- once
8 again in Mr. Jolley's terms, the cow was out of the barn on
9 that merger, your knowledge of that merger --

10 A. If you're --

11 Q. -- by the time --

12 A. If you're asking if I had knowledge of the
13 incoming merger, yes, I did. I had knowledge of it.

14 Q. Okay. You had knowledge of the merger before
15 the negotiations started and certainly by the time the
16 collective bargaining agreement was signed. Correct?

17 A. That's correct.

18 Q. Well, going back to the statement from your
19 cross-surrebuttal testimony that I quoted at the beginning
20 of this which said this agreement -- and by that I believe
21 it's the collective bargaining agreement?

22 A. Yes.

23 Q. Contemplated an ongoing business operation by
24 Empire District, what did you mean by that? Doesn't the
25 collective bargaining agreement contemplate a merger with

1 UtiliCorp United or at least the potential of that merger?

2 A. Well, it could have the potential of it, but
3 as we well witnessed here, we're a long ways down the road,
4 I think, from that.

5 Q. So when you negotiated the agreement, in spite
6 of the fact that you had knowledge of the announced merger,
7 you negotiated from the position that that merger would
8 never be approved or never closed by the two companies?

9 A. I'm not sure how we negotiated for sure.
10 Whether we were negotiating with Empire all the time or not,
11 I had my doubts at times.

12 Q. But that's not the question. If you
13 negotiated contemplating that Empire would continue to exist
14 and to perpetuity, I assume by your statement, didn't you
15 necessarily have to negotiate without consideration of the
16 possibility that UtiliCorp -- this merger might be approved
17 and UtiliCorp merge with Empire?

18 A. I think the elements we were trying to
19 negotiate were very fair and equitable, but they were
20 unreachable because of the involvement of UtiliCorp.

21 Q. Let me follow-up on that just a little bit.

22 A. Okay.

23 Q. Sounds like you have some experience in
24 negotiation processes?

25 A. Somewhat.

1 Q. And from what you're telling me, you recognize
2 that sometimes one party may pursue an objective and do so
3 with great effort but not be successful in the end in making
4 that a provision of the agreement. Would you agree with
5 that?

6 A. I believe when two parties negotiate, there's
7 always an end that can result. Either you come to a
8 collective bargaining agreement or the alternative is to
9 have no contract.

10 Q. And so in this case you, I guess on behalf of
11 the union, determined that the preferable end result was to
12 reach the collective bargaining agreement that's currently
13 in place. Correct?

14 A. There was a tremendous pressure exerted when
15 you have a utility as large as UCU that might be looking to
16 take your jobs. It does put undue pressure on you to
17 bargain a little harder.

18 Q. Now, from your testimony I understand that
19 your position -- or in your position at UtiliCorp you say
20 you coordinate the location of Empire District's underground
21 facilities; is that correct?

22 A. Yes. That's correct. It's -- that's kind of
23 a balled-up version of my job.

24 Q. Okay. Let me ask you a few questions to see
25 if you can confirm these for me. I've been told that you

1 last performed work as a lineman or any sort of line work in
2 approximately 1989. Would you -- yeah, 1989. Would you
3 agree with that?

4 A. Yes, sir. I was in Joplin, Missouri and I was
5 a foreman of that crew.

6 Q. And I've also been told that you didn't
7 complete Empire's lineman training that was begun in 1995
8 and which continues to today; is that correct?

9 A. If you're speaking to the practical course of
10 NUS that was given, which is a very low-grade apprenticeship
11 program, no, I did not take that. There was no need for me
12 to take it.

13 Q. And I've also been told that you've not
14 participated in any of the training courses offered by
15 Empire for its substation electricians, meter testers, those
16 sort of positions. Would that be correct also?

17 A. No. But -- I have not taken those. I'm very
18 familiar with them.

19 Q. I'm going to switch gears with you just a
20 second. On page 12 of your testimony I believe you describe
21 major outages and the hazards that you believe are
22 associated with that work. You generally remember that
23 testimony?

24 A. Pretty much.

25 Q. Now, on that testimony you don't mean to imply

1 that anyone at Empire has ever suggested that safety rules
2 or procedures be circumvented in the restoration of
3 services, are you?

4 A. Not on a contrary from management, but linemen
5 are an aggressive lot. I used to be one of them when I was
6 healthier. And do -- in the exercise of wanting to complete
7 service -- we do have quality employees as Mr. McKinney had
8 stated before, and there is -- there is sometimes an urgency
9 to get -- restore electrical service.

10 And I would not say that the company ever told
11 us to do that in an unsafe manner. However, you know, it's
12 a presumable thing that you need to get those customers on.
13 And some people do that. If you want to ask if I've ever
14 did it, yes, I have.

15 Q. So what you're referring to is really what you
16 think to be the natural inclination of the employee as
17 opposed to any policy, safety rules, that sort of thing that
18 may have been set down by the company?

19 A. Yeah. I don't want to give it as a general
20 term that our player -- our players -- our workers are --
21 work unsafe, but just -- by their attitude, they have an
22 aggressive attitude and I think I can get back in on that.

23 When you're a lineman, you do -- it's a
24 dangerous, risky, hazardous job and when you do it every
25 day, it's just like any other job. And sometimes wanting to

1 do a good job and provide reliable service for our
2 customers, those shortcuts are taken sometimes.

3 Q. Now, are there consequences for the taking of
4 those shortcuts, I guess, such as what you mentioned before
5 that you had participated in? Is there a process for the
6 reprimanding of employees for taking such shortcuts?

7 A. I think there's a process there. I would --
8 I'm not here to destroy Empire's safety program. You know,
9 it's a good company. It's 90 years old and I've worked for
10 them 32 years. And, in essence, I think they want to do the
11 right thing. I don't think that those are looked at
12 sometimes very hard, you know. Of course, we've got a
13 high-profile job, but at night we've got a low-profile job
14 basically.

15 Q. Well, who would have the best knowledge of
16 whether those shortcuts were taken? Your fellow linemen?
17 Would that be the case?

18 A. As far as best knowledge, would -- I'm not --

19 Q. Well, if one of the linemen were to take a
20 shortcut, as you describe in performing a function, Myron
21 McKinney, for example, wouldn't have knowledge of that on a
22 daily basis, would he? I mean, he wouldn't be out watching
23 or observing that work?

24 A. No.

25 Q. Who would be?

1 A. Myron has a lot more duties to do.

2 Q. Who would be watching or observing that work?

3 The fellow taking the shortcuts, his fellow linemen?

4 A. Well, if it was a two-man crew, there would

5 only be one fellow observing. If there was a three-man,

6 there would be two. And they could mutually consent whether

7 it was an unsafe accident --

8 Q. Let's turn --

9 A. -- if an accident happened.

10 Q. Yeah. Let's turn over to page 12 -- or I'm

11 sorry -- page 16 of your testimony. Now, up on lines 4

12 through 9 --

13 A. Four through nine.

14 Q. -- I believe you express that you have no

15 assurances from UtiliCorp that the terms of the current

16 collective bargaining agreement will remain in effect

17 following its expiration.

18 Do you see that?

19 A. Yes, I think I do. On what line was that

20 again?

21 Q. Lines 4 through 9.

22 A. Okay.

23 Q. Now, the current collective bargaining

24 agreement expires on October 31st of 2002, doesn't it?

25 A. Yes, sir.

1 Q. Do you have any assurance from Empire that the
2 terms of that collective bargaining agreement will remain in
3 effect following its expiration even if the merger is not
4 completed?

5 A. By that contract we have a signature on this,
6 so we're to assume that we would have a contract.

7 Q. But only through October 31st of 2002.
8 Correct?

9 A. I believe that would be correct.

10 Q. And either party can then cancel the agreement
11 as of its expiration by taking certain actions; is that
12 correct?

13 A. I'm well aware of that, because I believe I
14 was told that that probably would happen.

15 Q. Now, this refers to something you said
16 earlier, but in your testimony you seem to agree that the
17 Empire work force is a dedicated and skilled work force
18 that's been provid-- has been provided with enhanced
19 training over the years. Do you still agree with that?

20 A. The president said it, so I'm going to agree.
21 I'm an employee.

22 Q. You know that attitude would have been helpful
23 earlier in this proceeding.

24 Now, if I turn over to page 18 at lines 2 and
25 3 --

1 A. Okay.

2 Q. I'll give you a chance to get there so you

3 can --

4 A. Page 18, lines 2 and 3. Okay.

5 Q. You have a statement that employees in the

6 bargaining unit have received absolutely no training for

7 non-bargaining unit positions or for jobs that may be

8 available with other employers.

9 Now, do you mean to say by that that the

10 skilled work force that we referred to that's been provided

11 with enhanced training is not trained adequately to perform

12 their job for any other employer?

13 A. No. I think that's a misconception and that's

14 probably my fault. What I meant was, the other type jobs

15 other than the skilled jobs that they already do. That's

16 really what that means.

17 MR. COOPER: That's all the questions I have,

18 your Honor.

19 JUDGE WOODRUFF: Thank you.

20 QUESTIONS BY JUDGE WOODRUFF:

21 Q. I have one question --

22 A. Yes, sir.

23 Q. -- as a matter of curiosity. You said

24 sometimes linemen might cut corners during a storm or in the

25 aftermath of a storm. Can you give me an example of how

1 they might cut corners?

2 A. At night when you're working out there,
3 sometimes you're dealing with hot lines versus dead lines in
4 conjunction. And sometimes those hot lines need to be
5 covered up.

6 Q. Covered up with what?

7 A. With rubber goods.

8 Q. Okay.

9 A. Of different types. We have nicknames for
10 them, but -- lots of different types.

11 Q. I won't ask you to give me the nicknames.

12 A. That didn't sound good at all. Sorry about
13 that. But, anyway -- and so you would need to cover, you
14 know, that stuff up sometimes.

15 And the hazards are just varying hazards from
16 cars running over you because they can't see you to broken
17 poles that are broke at the top, you can't see the break,
18 they might come out on you or something like that. So it's
19 very hazardous job.

20 Q. Okay.

21 A. I don't know if I answered --

22 Q. In what ways would it be cutting corners?

23 A. Well, leave the rubber goods off of it or kill
24 the line if necessary and ground it as it's supposed to be.

25 Q. So you might not ground the line the way it's

1 supposed to be?

2 A. Yeah. Those things take time, they take
3 position and they take manpower. And that's why we're so
4 interested in the number of manpower that we need, because
5 if you don't have enough manpower to do it the safe way,
6 you're in trouble.

7 Q. So, for example, if you have the possibility
8 that a pole might be broken at the top, to cut corners you
9 might not survey it from the ladder?

10 A. You do things a lot more expedient and faster
11 than probably safety would allow sometimes. And that's a
12 lot of times created because you don't have enough help.

13 JUDGE WOODRUFF: Okay. Thank you.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: Any recross?

16 MR. COOPER: No, your Honor.

17 JUDGE WOODRUFF: Any redirect?

18 MR. JOLLEY: I'm going to try one.

19 JUDGE WOODRUFF: Go ahead.

20 REDIRECT EXAMINATION BY MR. JOLLEY:

21 Q. There was a question that the current
22 collective bargaining agreement can be canceled on
23 October 31, 2002 even without the merger. Do you recall
24 that question?

25 A. I'm -- yeah, I recall the question, but I'm

1 not sure just how he stated it.

2 Q. I'm restricted from leading you, but I'm going
3 to go ahead a little bit. There was a question that asked
4 whether Empire could cancel this agreement in October of
5 2002 even if the merger didn't take place. Do you recall
6 that?

7 A. Yeah. Yes, sir, I do recall that one.

8 Q. In the event of the cancellation, is Empire
9 required to continue the terms and, in fact, negotiate in
10 good faith until there's an impasse?

11 A. Absolutely not. Maybe I misstated the
12 question. I'm not sure what -- you mean at 2002 --

13 MR. JOLLEY: I'm getting into an area of law
14 and I'm going to stop right here.

15 MR. SWEARENGEN: We've all had this trouble
16 with that.

17 JUDGE WOODRUFF: All right.

18 THE WITNESS: I'll take another shot at it. I
19 don't mind.

20 JUDGE WOODRUFF: That's all right. He didn't
21 ask another question, so you can step down. Thank you,
22 Mr. Courtney.

23 MR. SWEARENGEN: Is there any chance of
24 getting Mr. Browning on and off?

25 JUDGE WOODRUFF: Is it going to be a quick

1 cross-examination?

2 MR. DOTTHEIM: Yes.

3 JUDGE WOODRUFF: Let's go ahead and bring

4 Mr. Browning up on the earlier issue. And that was the

5 Estimated Merger Savings, I believe.

6 Okay. Mr. Browning, welcome back to the

7 stand, and we'll try to get you finished today so you can go

8 on home.

9 THE WITNESS: Thank you.

10 JUDGE WOODRUFF: And I assume this would be

11 the last time he's appearing so we had three -- we had three

12 exhibits for Mr. Browning; is that right?

13 MR. COOPER: That's correct, your Honor. I

14 believe it was 19, 20 and 31.

15 JUDGE WOODRUFF: 19, 20 and 31 have been

16 offered into evidence. Are there any objections to their

17 receipt?

18 Hearing none, they will be received into

19 evidence.

20 (EXHIBIT NOS. 19, 20 AND 31 WERE RECEIVED INTO

21 EVIDENCE.)

22 MR. COOPER: Your Honor, we would tender

23 Mr. Browning for cross-examination on -- I believe it's the

24 Merger Savings issue.

25 JUDGE WOODRUFF: Is there any

1 cross-examination on this issue? Go ahead for Staff.

2 MR. DOTTHEIM: Thank you.

3 ROBERT B. BROWNING testified as follows:

4 CROSS-EXAMINATION BY MR. DOTTHEIM:

5 Q. Afternoon, Mr. Browning.

6 A. Good afternoon.

7 Q. I'd like to refer you to your surrebuttal
8 testimony, and I think it's Exhibit 20.

9 A. Surr-- oh, surrebuttal.

10 Q. Yes. Your surrebuttal testimony, page 2. And
11 I'd like to refer you to beginning at lines 17 which has a
12 question and there's an answer that carries over to the next
13 page to line 6.

14 JUDGE WOODRUFF: Excuse me, Mr. Dottheim. You
15 need to use your microphone.

16 MR. DOTTHEIM: I'm sorry.

17 JUDGE WOODRUFF: Thank you.

18 BY MR. DOTTHEIM:

19 Q. Again, I was referring you to -- I believe
20 it's Exhibit 20, your surrebuttal testimony, page 2,
21 carrying over to page 3, but starting at line 17 and
22 carrying over to page 3 and line 6.

23 You assert, do you not, that UtiliCorp's use
24 of the PeopleSoft for human resources information system
25 would not create cost savings for UtiliCorp other than

1 merger-related savings associated with this transaction?

2 A. No direct savings, that's correct, sir.

3 Q. If UtiliCorp were to engage in additional

4 merger and acquisition activity in the next five years,

5 would the PeopleSoft HRIS also allow for the creation of

6 merger savings related to those transactions?

7 A. That would be our hope, that it would create

8 or help us maintain some savings.

9 MR. DOTTHEIM: Thank you, Mr. Browning.

10 JUDGE WOODRUFF: All right. No questions from

11 the Bench and, therefore, no redirect -- or excuse me -- is

12 there redirect?

13 MR. COOPER: No, thank you, your Honor.

14 JUDGE WOODRUFF: All right. You may step

15 down. And that will conclude the testimony for today.

16 MR. DOTTHEIM: If I might address something --

17 JUDGE WOODRUFF: Go right ahead.

18 MR. DOTTHEIM: Mr. Hyneman, who I think has

19 already had his testimony received into evidence, he cannot

20 be here tomorrow. And I guess this broaches the area of --

21 in the St. Joseph Light & Power UtiliCorp case there were a

22 number of issues that settled, and we entered into the

23 practice of putting a witness or witnesses on the stand and

24 having them state what the resolution of the issue was.

25 JUDGE WOODRUFF: Okay.

1 MR. DOTTHEIM: We've got a similar situation
2 with similar issues.

3 MR. SWEARENGEN: Do you want to do that, or do
4 you want to just file something in writing later? I'm
5 perfectly comfortable with doing that.

6 MR. DOTTHEIM: I don't know what the judge
7 would like us to do. We are planning on -- even though we
8 went through that process in the St. Joseph Light &
9 Power/UtiliCorp case -- to also file, which hasn't occurred
10 as yet, but also file a document which sets out further what
11 the resolutions were. We can proceed in a similar manner.

12 Mr. Swearengen was just suggesting that we
13 proceed only by filing a document -- Stipulation Agreement
14 which sets out those individual items or we can also
15 actually do both.

16 JUDGE WOODRUFF: Well, we've probably already
17 talked about it longer than it will take to do it. So let's
18 go ahead and put Mr. Hyneman on the stand and we'll take
19 care of it that way.

20 Mr. Hyneman, I believe you've already been
21 sworn; is that right?

22 THE WITNESS: Yes, sir.

23 JUDGE WOODRUFF: You're still under oath. Is
24 this the Income Taxes Condition?

25 MR. DOTTHEIM: Yes. This is the Income Tax

1 Condition.

2 CHARLES R. HYNEMAN testified as follows:

3 DIRECT EXAMINATION BY MR. DOTTHEIM:

4 Q. And, Mr. Hyneman, can you explain the
5 resolution of the income taxes issue as it is your
6 understanding?

7 A. Yes. Empire District currently has on its
8 books and records an account called Accumulated Deferred
9 Income Taxes. This account is used in rate base -- in
10 Empire's rate base in a rate-making proceeding.

11 If this merger transaction is determined to be
12 a taxable event by the IRS, and this determination will be
13 made, I'm presuming, after closing, these deferred taxes
14 will be eliminated, therefore, they won't be used in rate
15 base for rate-making purposes which would have an effect of
16 increasing revenue requirement.

17 UtiliCorp has structured this transaction to
18 be a non-taxable event and does not believe it will be
19 taxable. However, in the event that it is, because you
20 cannot predict the IRS and their behavior, the -- it's my
21 understanding that the company has agreed that it will use
22 these deferred taxes in future -- in any future Empire rate
23 proceeding. And that's to the extent of my knowledge.

24 Q. And you said "use these deferred taxes"?

25 A. They've agreed to include the deferred tax

1 balance in Empire's rate base in a rate-making proceeding.

2 Q. And is that a UtiliCorp proceeding or an
3 Empire proceeding?

4 A. In a proceeding dealing with the division --
5 operating division Empire District Electric Company.

6 MR. DOTTHEIM: Thank you.

7 JUDGE WOODRUFF: Does anyone wish to
8 cross-examine?

9 MR. SWEARENGEN: I think that's substantially
10 correct, but once again, we would like to reduce this to
11 writing --

12 JUDGE WOODRUFF: Certainly.

13 MR. SWEARENGEN: -- and file something.

14 JUDGE WOODRUFF: Okay. You may step down
15 then.

16 THE WITNESS: Thank you.

17 MR. SWEARENGEN: We've got one housekeeping
18 matter.

19 JUDGE WOODRUFF: What's that?

20 MR. COOPER: Yes, your Honor. When Mr. Myron
21 McKinney took the stand earlier this week, we only marked at
22 that time his direct testimony. As a result of the Retiree
23 settlement, he will not be taking the stand again and so I'd
24 like to go ahead and mark and offer his surrebuttal and
25 supplemental surrebuttal at this time.

1 His surrebuttal is Exhibit No. 2 and his
2 supplement surrebuttal, I believe, would be No. 32.

3 JUDGE WOODRUFF: Okay. And we have already
4 admitted his direct, I believe; is that right?

5 MR. COOPER: I don't know that we have
6 received it or not. At that time we would have contemplated
7 that he would have been back on the stand.

8 JUDGE WOODRUFF: I show it as being received.
9 We'll do it again to be sure. We'll talk about --
10 Exhibits 1, 2 and 32 have been offered into evidence. Are
11 there any objections to their receipt?

12 Hearing none, they will be received into
13 evidence.

14 (EXHIBIT NOS. 1, 2 AND 32 WERE RECEIVED INTO
15 EVIDENCE.)

16 JUDGE WOODRUFF: Okay. Anything else while
17 we're still on the record? Then we'll go off the record.

18 (EXHIBIT NOS. 2 AND 32 WERE MARKED FOR
19 IDENTIFICATION.)

20 WHEREUPON, the hearing was adjourned until
21 September 15, 2000 at 8:30 a.m.

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