

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 January 22, 2006
8 Jefferson City, Missouri
9 Volume 4
10
11 In the Matter of the Tariff)
12 Filing of Algonquin Water)
13 Resources of Missouri, LLC, to)
14 Implement a General Rate Increase) Case No. WR-2006-0425
15 For Water and Sewer Service)
16 Provided to Customers in Its)
17 Missouri Service Areas)
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21 RONALD D. PRIDGIN, Presiding,
22 REGULATORY LAW JUDGE.
23 JEFF DAVIS, Chairman,
24 CONNIE MURRAY,
25 LINWARD "LIN" APPLING,
COMMISSIONERS.

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25 Service Commission.

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

2 JUDGE PRIDGIN: Good morning. We're on the
3 record. This is the hearing in Case No. WR-2006-0425 and
4 SR-2006-0426. They have been consolidated, and the case
5 name is in the matter of tariff filing of Algonquin Water
6 Resources of Missouri, LLC, to implement a general rate
7 increase for water and sewer customers in its Missouri
8 service areas.

9 I'm Ron Pridgin. I'm the Regulatory Law
10 Judge assigned to preside over today's hearing. Today is
11 January 22nd, 2007. We are in the Governor -- Hotel
12 Governor Office Building in Jefferson City, Missouri. The
13 time is about 8:35 a.m.

14 What I'd like to do is get entries of
15 appearance from counsel, and I will begin with Staff,
16 please, with General Counsel's Office, and then after we
17 get entries of appearance, I plan on going off the record
18 to mark exhibits and then going back on for opening
19 statement. So for the General Counsel's Office, please?

20 MR. KRUEGER: Keith R. Krueger for the
21 Staff of the Missouri Public Service Commission. My
22 address is P.O. Box 360, Jefferson City, Missouri 65102.

23 JUDGE PRIDGIN: Mr. Krueger, thank you. On
24 behalf of Algonquin Water Resources, please?

25 MR. COOPER: Dean L. Cooper and Paul

1 Boudreau from the law firm of Brydon, Swearengen &
2 England, P.C., P.O. Box 456, Jefferson City, Missouri
3 65102, appearing on behalf of Algonquin Water Resources of
4 Missouri, LLC.

5 JUDGE PRIDGIN: Mr. Cooper, thank you. On
6 behalf of the Office of the Public Counsel, please?

7 MS. BAKER: Christina Baker appearing for
8 the Office of the Public Counsel, address P.O. Box 2230,
9 Jefferson City, Missouri 65102. I'm appearing for the
10 Office of the Public Counsel and for the ratepayers.

11 JUDGE PRIDGIN: Ms. Baker, thank you.
12 Mr. Krueger?

13 MR. KRUEGER: Yes. I neglected to also
14 enter the appearance of Blane Baker, also of the General
15 Counsel's Office with the same address.

16 JUDGE PRIDGIN: Mr. Krueger, thank you. I
17 don't recall any other intervenors, any parties. Is there
18 any other party wishing to make an entry of appearance?

19 (No response.)

20 JUDGE PRIDGIN: All right. Seeing none.
21 Unless counsel has anything else to bring to my attention,
22 I would like to go off the record briefly and begin
23 marking exhibits, and when we're finished with that, I
24 will alert the Commissioners that we're ready to begin
25 opening argument. Is there anything from counsel before

1 we go off the record briefly?

2 MR. COOPER: No, your Honor.

3 MS. BAKER: No.

4 JUDGE PRIDGIN: Hearing nothing, we will go
5 off the record now and mark exhibits.

6 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

7 (EXHIBIT NOS. 1 THROUGH 28 WERE MARKED FOR
8 IDENTIFICATION.)

9 JUDGE PRIDGIN: We have marked exhibits.
10 We are back on the record, and we will now hear opening
11 statements from counsel. And according to the list of
12 issues, order of witnesses and order of cross filed by the
13 parties, Algonquin will give theirs first. So,
14 Mr. Cooper, if you'll give me just a moment. Be sure to
15 get the webcast operating properly.

16 Mr. Cooper, when you're ready, sir.

17 MR. COOPER: Thank you, your Honor. Good
18 morning, your Honor. Good morning, Commissioners.

19 Algonquin Water Resources of Missouri, LLC
20 is a subsidiary of its ultimate parent, Algonquin Power
21 Income Fund, which is publicly traded on the Toronto Stock
22 Exchange. This fund was established to own energy and
23 infrastructure-related assets in the United States and
24 Canada. Algonquin of Missouri owns and operates the
25 following resort property utility systems. They own a

1 water system in Holiday Hills Resort near Branson,
2 Missouri; a water and -- both water and sewer systems at
3 Ozark Mountain Resort near Kimberling City, Missouri; and
4 water and sewer systems at Timber Creek Resort near
5 DeSoto, Missouri.

6 Algonquin received approval from this
7 Commission to purchase these operations by the
8 Commission's Order in Case No. WO-2005-0206, issued on
9 August the 4th of 2005. The operations were purchased
10 from Silver Leaf Resorts, Inc., which operated under
11 various names but initially received certificates from
12 this Commission to operate the facilities in 1994 as to
13 Holiday Hills and Ozark Mountain, in 1998 as to Timber
14 Creek.

15 Silver Leaf was and is primarily in the
16 business of operating resorts. In fact, they remain the
17 resort owner at each of the three resorts served by
18 Algonquin.

19 Algonquin provides service to various
20 residential and commercial customers at those resorts.
21 However, Silver Leaf represents by far the largest
22 customer for the water and sewer services. At Timber
23 Creek, Silver Leaf is the only customer. At Ozark
24 Mountain and Holiday Hills, Silver Leaf represents about
25 one-half of the total number of accounts, and exclusive of

1 untreated water that's used for golf course irrigation at
2 Holiday Hills, about 75 percent of the water used.

3 The facilities at Ozark Mountain and
4 Holiday Hills were actually constructed and operated for
5 ten years or so before they were devoted to public service
6 with the grant of a certificate and filing of tariffs in
7 1994.

8 None of the water or the sewer operations
9 have ever been through a formal rate case. Initial rates
10 were established in 1994 and have been changed just once
11 since then, in September of 1998, as the result of a small
12 company rate case proceeding initiated on April the 4th of
13 1997. Silver Leaf did make other unsuccessful attempts to
14 change rates through the small company rate case process
15 in 2000, late 2003 and early 2004, but was unable to get
16 to new rates as a result of these processes.

17 Algonquin initiated this case with the
18 filing of tariffs and direct testimony on May the 5th of
19 2006. This case has worked its way through the normal
20 rate case process of audit and various rounds of testimony
21 to get to this point today.

22 What remains are several issues that have
23 been identified in the proposed list of issues that was
24 filed with the Commission. These issues include several
25 plant-related issues, to include the most basic such

1 issue, what amount should be used for plant in service.
2 Because of the history of these properties and the lack of
3 a litigated rate case in the past, the parties do not
4 agree on the starting point for plant. That issue
5 encompasses questions as to what the plant numbers should
6 be both prior to certification and post certification.

7 Closely related to this is an issue as to
8 whether any of the plant was contributed. This is a
9 situation where the utility company and the builder of the
10 resort were the same corporate entity initially. Staff
11 alleges that significant parts of the infrastructure
12 should be considered to have been contributed by the
13 developer side of the operation.

14 Two more two trad-- two traditional issues
15 have also been raised by the Staff and will also have an
16 impact on plant and ultimately rate base. First, the
17 Staff alleges that a percentage of the company's water
18 facilities, primarily its wells and storage facilities,
19 are oversized, thus creating what it cause excess
20 capacity. Based upon this alleged excess capacity, the
21 Staff asks that a certain amount of the investment it
22 acknowledges has been made be set aside as plant held for
23 future use such that the company will not earn a return.

24 Second, Staff alleges that a Holiday Hills
25 well construction projection completed in 2002 by Silver

1 Leaf suffered from cost overruns, and that Algonquin
2 should therefore also not be able to recover on the full
3 amount of the investment in that project. Algonquin
4 believes that Silver Leaf's actions, the owner of the
5 utility at that time, were reasonable under the
6 circumstances.

7 The plant-related issues are rounded out
8 with a minor difference between company and Staff as to
9 what depreciation -- what depreciation rate should be
10 used.

11 Rate of return is also an issue in this
12 case, as it is in most rate cases. The company will ask
13 the Commission to determine two elements; one, the
14 appropriate capital structure, and two, the return on
15 equity that should be used to determine rate of return.

16 Since its acquisition of these systems,
17 Algonquin at the request of its largest customer has
18 increased to three the number of employees that are
19 providing service directly to the three resorts and five
20 utility systems. Algonquin will ask that the costs of the
21 three employees be built into rates, while the Staff
22 indicates that essentially one and a half of these
23 employees should be built into rates.

24 The final expense issue is a rate case
25 expense issue. Staff has alleged that the company should

1 recover no expenses for pursuing a rate case in accordance
2 with the method provided for by the Missouri statutes.
3 Staff indicates that the company should have first pursued
4 and failed to reach a satisfactory resolution under the
5 small company rate case procedure before being allowed to
6 recover rate case expense in a formal case.

7 The company believes that this Staff
8 position is not supported by either the Commission's
9 statutes or past practice, and that Algonquin's choice was
10 a reasonable one under the circumstances.

11 Lastly, we will turn our attention to rate
12 design in this hearing. Even if the Commission were to
13 find in favor of the Staff on all of the issues to be
14 tried, there will be an increase in the company's revenue
15 requirement. Since 1994, these systems have had a single
16 set of water rates and a single set of sewer rates that
17 have applied to all three resorts.

18 Staff has recommended that the rates be set
19 on a resort by resort basis. In this case, it is possible
20 that that Staff approach will lead to an absurd result.
21 That is, that with a fairly significant overall increase
22 in revenue requirement, the actual residential water rate
23 at Holiday Hills could decrease.

24 Algonquin believes that if the single rate
25 is abandoned, that at a minimum Holiday Hills and Ozark

1 Mountain should remain linked for purposes of rate design
2 based upon the geographic, operational and age
3 similarities between those two facilities. Thank you.

4 JUDGE PRIDGIN: Mr. Cooper, thank you.
5 Ms. Baker?

6 MS. BAKER: Good morning, Commissioners,
7 Judge. My name is Christina Baker. I'm here on behalf of
8 the office of the Public Counsel, and I am here arguing
9 for the ratepayers of Algonquin. The ratepayers in this
10 case are being asked by Algonquin to more than double
11 their current rates.

12 The main issue in this case revolves around
13 what the plant will be and what Algonquin will be able to
14 use as plant to calculate what the rates will be. This is
15 an issue that has been discussed between Algonquin and the
16 Staff far beyond and before Algonquin bought the utility
17 from Silver Leaf.

18 Silver Leaf itself was foremost a
19 developer, not a water and sewer utility. Silver Leaf
20 treated its costs as developer's costs and recovered those
21 costs by including them in the prices that it charged for
22 its residential lots, time shares and condominiums.
23 Ratepayers have already paid for many of those costs
24 through the charges that they paid for their individual
25 properties. Ratepayers should not have to pay increased

1 costs and rates on something that they have already paid
2 for.

3 Algonquin argues that if they're not
4 allowed to recover their full purchase price of this
5 utility, then Silver Leaf will have gotten a windfall, but
6 in reality Silver Leaf only received a windfall because
7 Algonquin paid them for plant which Silver Leaf had
8 already been paid for through the ratepayers.

9 Algonquin is no novice in business
10 transactions. Algonquin purchased Silver Leaf with the
11 full knowledge of the shortcomings of the recordkeeping
12 practices of Silver Leaf. Algonquin had access to Silver
13 Leaf's tariffs and their annual reports to this
14 Commission. Algonquin was told specifically by the Public
15 Service Commission Staff before the purchase took place
16 that their purchase price contained an acquisition premium
17 which could not be recovered through rates.

18 Other issues that the ratepayers are being
19 asked to pay for include contributed plant, which Silver
20 Leaf itself had agreed was a contributed plant. There are
21 also increases based on what the Staff has come up with as
22 capacity within the utilities, which is above and beyond
23 what is necessary for the ratepayers and for proper
24 service for those customers.

25 There are also cost overruns that the Staff

1 has determined which the ratepayers should not be asked to
2 shoulder. Mainly, the Office of Public Counsel is
3 concerned that the plant determination be resolved in this
4 proceeding because it is unfair for the ratepayers to
5 continue to have -- to be asked to pay for Algonquin
6 trying to determine what the plant is and what the rates
7 should be.

8 Algonquin came to this proceeding through
9 the more formal ratemaking process, and Public Counsel
10 would put forth Staff's statements that this is not the
11 forum for Algonquin to be seeking their rate increase.
12 They are within the auspices of the small rate case, and
13 that's where this request should have gone. Any costs
14 that are borne by going through the more formal case
15 should not be placed onto the ratepayers.

16 Thank you very much.

17 COMMISSIONER MURRAY: Judge, may I ask a
18 clarifying question?

19 JUDGE PRIDGIN: Certainly.

20 COMMISSIONER MURRAY: I have one clarifying
21 question.

22 MS. BAKER: Certainly.

23 COMMISSIONER MURRAY: I thought I heard you
24 say that Algonquin was told before the purchase that the
25 price contained an acquisition premium. Did you say that?

1 MS. BAKER: There is testimony of a
2 previous case where Algonquin and Silver Leaf came in to
3 transfer the ownership of the utility, and in that case
4 and in the testimony from the Staff there are statements,
5 and I'm sure that it will come up in the testimony, that
6 the Staff was concerned that the 3.8 million that
7 Algonquin was offering to pay for Silver Leaf included
8 some of the things that we've talked about, which is
9 contributed plant and plant that had already been paid for
10 through the developer's costs, and so the cost of the
11 plant itself included money that Silver Leaf had already
12 recouped.

13 COMMISSIONER MURRAY: All right. I just
14 wanted to clarify that that was what you said, and you're
15 saying that there will be evidence to support that in the
16 record?

17 MS. BAKER: There is evidence in the
18 testimony, yes.

19 COMMISSIONER MURRAY: Thank you.

20 MS. BAKER: Thank you.

21 CHAIRMAN DAVIS: Judge, can I ask Ms. Baker
22 one question?

23 JUDGE PRIDGIN: Certainly.

24 CHAIRMAN DAVIS: Ms. Baker, I think it
25 was -- okay. Let me ask you this: Does OPC -- you tell

1 me if I'm wrong. As I understand it right now, Silver
2 Leaf, the resort, is not being charged anything for the
3 water that they're getting, the golf course irrigation
4 water; is that correct? Do you know?

5 MS. BAKER: I don't know exactly. I know
6 that the setup before the purchase was that Silver Leaf
7 was both the developer and the utility themselves. I know
8 that one of the big changes for Timber Creek will be that
9 they will be the customers.

10 CHAIRMAN DAVIS: Right. Okay. I may want
11 to come back and ask you some more questions about that, I
12 mean, that issue later.

13 MS. BAKER: Okay.

14 CHAIRMAN DAVIS: Thank you.

15 JUDGE PRIDGIN: Thank you, Ms. Baker.

16 Mr. Krueger?

17 MR. KRUEGER: Thank you, your Honor. Good
18 morning. May it please the Commission? My name is
19 Keith R. Krueger, and I represent the Staff of the
20 Missouri Public Service Commission in this proceeding.

21 The Applicant, Algonquin Water Resources of
22 Missouri, is here to ask for an increase in the rates it
23 charges for water and sewer services. Algonquin provides
24 service to three resorts, which were developed and are
25 still owned by Silver Leaf Resorts, Inc. The resorts are

1 Holiday Hills Resort, Ozark Mountain Resort, and Timber
2 Creek Resort. Holidays Hills is near Branson, Ozark
3 Mountain is near Kimberling City, and Timber Creek is near
4 DeSoto.

5 Algonquin provides water service to all
6 three resorts, but it provides sewer service to only Ozark
7 Mountain and Timber Creek. I'm sorry Ozark Mountain --
8 yeah, that's correct. There are about 392 residential
9 units at Holiday Hills, about 220 residential units at
10 Ozark Mountain, and about 194 residential units plus an RV
11 park at Timber Creek.

12 Algonquin also provides water for the
13 irrigation system on the golf course at Holiday Hills. In
14 response to the question that Chairman Davis asked a
15 moment ago, they are not presently paying anything for
16 that water, but it is proposed that they would.

17 CHAIRMAN DAVIS: Okay. And, Mr. Krueger,
18 it's Staff's position in this case that Algonquin is
19 presently under-recovering by a significant amount, is it
20 not?

21 MR. KRUEGER: It's Staff's position that
22 they are under-recovering but by a much smaller amount
23 than the amount that they claim.

24 CHAIRMAN DAVIS: Right. It's a much --
25 what is it, 300 percent versus 70 percent or something of

1 that nature?

2 MR. KRUEGER: Yeah. I'll get into that in
3 a moment.

4 CHAIRMAN DAVIS: Okay. I'm sorry. I
5 didn't know you were still giving your opening statement,
6 Mr. Krueger.

7 MR. KRUEGER: The rate increase that
8 Algonquin is requesting is massive by any standard.
9 Algonquin is seeking an increase of \$736,758 in the water
10 revenues from the three resorts that it serves. That's a
11 rate increase of about 269 percent. That's more than
12 tripling. The Staff recommends a much smaller increase in
13 the amount of about 81,000 -- in the amount of \$81,875.

14 Algonquin is also seeking an increase of
15 \$336,509 in the sewer revenues from the two resorts that
16 it serves. That would be a slightly smaller increase
17 percentage-wise, only about 241 percent. The Staff again
18 recommends a much smaller increase in the amount of
19 \$115,269.

20 Why is there such a big discrepancy in the
21 amount that Algonquin wants and the amount the Staff
22 believes is appropriate? Well, the biggest issue by far
23 is rate base. Algonquin is asking that about \$3.8 million
24 be included in rate base, and the Staff will present
25 evidence to show that the correct rate base is only about

1 1.2 million.

2 Algonquin makes a unique argument in
3 support of its rate base figure. It claims that there's a
4 large amount of what it calls unrecorded plant, plant that
5 Staff claims Algonquin did not pay for but which has
6 somehow slipped through the regulatory cracks and was just
7 never properly recognized in several rate case -- rate
8 cases and other proceedings that its predecessor Silver
9 Leaf had before the Commission since 1994.

10 Silver Leaf, which was then known as
11 Ascension Resorts, developed Ozark Mountain in 1982 and
12 Holiday Hills in 1984. Silver Leaf did provide water and
13 sewer service to these resorts, but it did not form a
14 separate utility for the purpose initially. Silver Leaf
15 was a resort operator, primarily interested in promoting
16 the sales of its resort properties, and it simply provide
17 the water and sewer service to its customers without a
18 separate charge for the water and sewer service.

19 In 1993, Silver Leaf came to the Commission
20 and obtained certificates of convenience and necessity to
21 provide water and sewer service to Ozark Mountain and
22 Holiday Hills. Silver Leaf eventually sold the sewer
23 facilities at Holiday Hills. Later, Silver Leaf developed
24 the third resort, Timber Creek near DeSoto, and obtained
25 certificates to provide water and sewer service to the

1 customers there.

2 In 2004, Silver Leaf made an agreement to
3 sell its water and sewer assets to Algonquin, and the
4 Commission approved this asset transfer, which closed in
5 August of 2005. Algonquin paid a little over \$13 million
6 for Silver Leaf's utility assets in Texas, Illinois and
7 Missouri, and the amount of that that was allocated to the
8 Missouri transaction was \$3.8 million.

9 Algonquin has operated the utility since
10 2005, and it now seeks this massive rate increase.
11 Algonquin's principal witness, Larry B. Loos, is an
12 engineer employed by Black & Veatch in the Kansas City
13 area. He's been called upon to serve as a master of all
14 trades in this case as he's presented all of Algonquin's
15 direct testimony. He will testify this week as an expert
16 on capital structure, cost of capital, acquisition
17 adjustment, revenues, expenses, rate base, rate design,
18 rate case expense, plant capacity, contributions in aid of
19 construction, depreciation, rates and rate design.

20 But Mr. Loos is not only an expert
21 consultant to Algonquin, he's also a client. He relates
22 that, in his direct testimony, that he had stayed at Ozark
23 Mountain Resort with his family a couple of times in the
24 1980s, and while he was there, he noticed that there were
25 nice facilities, complete with water and sewer service.

1 But when he undertook this assignment in
2 this case, he could not find records of the amount that
3 Silver Leaf had invested in these facilities, so he
4 started supposing. He supposed that Silver Leaf must have
5 constructed water lines to serve each of the units at
6 Holiday Hills and Ozark Mountain, and he supposed that
7 Silver Leaf must have constructed sewer lines to serve the
8 same units, and he supposed where the pipes must have been
9 constructed to serve those units, and then he supposed how
10 much it probably would have cost to construct those
11 facilities, and then he supposed how much the depreciation
12 would be on those facilities.

13 He also supposed that Silver Leaf did not
14 have records of its investment because it was not
15 regulated at the time and it simply failed to record its
16 investment. After adding all of unrecorded plant to the
17 plant that was shown and included on Silver Leaf's books,
18 Mr. Loos came to the conclusion that Algonquin's rate base
19 is about \$4.1 million. Remarkably, that's almost exactly
20 the same as the \$3.8 million that Algonquin paid for these
21 utilities.

22 In reality, Silver Leaf never recorded this
23 unrecorded plant on its utility books. Silver Leaf did
24 not reflect unrecorded plant in its submission to the
25 Commission in its annual report. Silver Leaf never

1 discussed the unrecorded plant with Staff during -- at any
2 time during the certificate case, two rate cases, one
3 complaint case, and the sale case. Silver Leaf never
4 attempted to reflect unrecorded plant in any of these
5 cases for recovery. Algonquin never brought the
6 unrecorded plant up at any time during the sale case. It
7 was not until this case where the unrecorded plant that
8 was constructed and installed over 20 years ago finally
9 materialized.

10 The Staff will show that the rate base of
11 the property that Algonquin acquired was about
12 \$1.2 million, but that it paid \$3.8 million for the
13 property. That is, it paid an acquisition premium of
14 about \$2.6 million. It now seeks to recover the full
15 amount of its purchase price, including the acquisition
16 premium, from its ratepayers.

17 The Staff will present evidence to show
18 that the water and sewer utilities -- that water and sewer
19 utilities typically invest in wells, treatment plants and
20 storage facilities which are all included in the company's
21 rate base. Water distribution mains and collecting sewer
22 pipelines on the other hand are typically contributed by
23 the developer, and the developer recovers its investment
24 in the sales price of the real estate that it develops,
25 and that that was -- and Staff contends that that was what

1 was done in this case.

2 Mr. Loos contends that Silver Leaf, the
3 developer, contributed no plant and that Silver Leaf the
4 utility did not receive contributions in aid of
5 construction of any kind from any source. Mr. Loos'
6 conclusions rest upon the premise that Silver Leaf was
7 simply too unsophisticated to properly record its
8 investment in utility plant during the time that it was
9 not regulated as a utility.

10 The Staff will present evidence to show
11 that that was not the case. Silver Leaf was a
12 sophisticated developer of resort properties, and Silver
13 Leaf has already recovered its investment in the so-called
14 unrecorded plant from the people that it sold the property
15 to, from its customers. The customers have already paid
16 once for the plant. Algonquin seeks to require them to
17 pay for it again through the rates that it wants to charge
18 for water and sewer service.

19 I should note that some of the witnesses
20 refer in their testimony to pre-1993 plants, and others
21 refer to pre-1994 plant. Although the terms differ, I
22 think that the witnesses in either case are referring to
23 the same type of -- same group of assets. Either
24 reference refers to the plant that Silver Leaf acquired
25 and put into service before it received its certificate of

1 convenience and necessity in 1994. It might be referred
2 to as pre-certificate plant.

3 In addition to the unrecorded plant issue,
4 other major issues that affect the rate base are the
5 Staff's proposed excess capacity adjustment and the
6 Staff's proposed construction cost overrun adjustment.
7 Algonquin is a so-called small company, and as such it was
8 qualified to seek a rate increase through the Commission's
9 small company rate increase procedure, but Algonquin
10 declined to do this, choosing instead to file a full
11 formal rate case and incurring the rate case expense in
12 the estimated amount of \$225,000.

13 It now seeks to recover this rate case
14 expense from the 900 or so residents, residences and the
15 golf course that it serves over the next five years. The
16 Staff opposes that request.

17 In addition to rate case expense, the other
18 biggest expense items in dispute are return on equity and
19 payroll expense. The Staff will present the testimony of
20 nine witnesses, and they will be pleased to answer your
21 questions on the subjects that they address. Thank you.

22 JUDGE PRIDGIN: All right. Mr. Krueger,
23 thank you.

24 CHAIRMAN DAVIS: I have a couple questions
25 for Mr. Krueger.

1 JUDGE PRIDGIN: Certainly.

2 CHAIRMAN DAVIS: Mr. Krueger, when you
3 referred to Staff in your opening statement, is that the
4 nine witnesses that are giving testimony here or is that
5 more people than the nine witnesses?

6 MR. KRUEGER: There have been more people
7 than the nine witnesses that have been involved in Silver
8 Leaf and Algonquin waters, I believe. I'm not sure which
9 particular reference you're referring to, but I'm
10 primarily referring to the nine witnesses that will be
11 testifying.

12 CHAIRMAN DAVIS: Who are the other people
13 that you are referring to? Tell you what, you can write
14 them out on a list of paper and you can have some time to
15 think about it. You can get back to us here in the next
16 couple of days.

17 MR. KRUEGER: Okay. It's a question I
18 wasn't prepared for, Commissioner.

19 JUDGE PRIDGIN: Mr. Krueger, thank you.
20 According to the order of witnesses, we will be going by
21 issue. The first issue that the parties listed will be
22 plant issues, and Mr. Loos would be the first witness. Is
23 there anything else before he takes the stand?

24 MR. COOPER: Yes, your Honor. I would like
25 to direct a few comments to the plant issues at this time,

1 then we will call Mr. Loos if we could.

2 JUDGE PRIDGIN: Certainly.

3 MR. COOPER: I'd like to follow up at this
4 time with really an issue-specific opening regarding these
5 plant issues that are before you. I would like to mention
6 first that there were questions of Ms. Baker in regard to
7 what had transpired in the acquisition case. I will tell
8 you that in the acquisition case, when Algonquin acquired
9 these facilities from Silver Leaf, there was certainly
10 Staff testimony indicating a Staff view of rate case. I
11 think you'll find that most if not all of those issues now
12 show up in this rate case.

13 You will also find from that acquisition
14 case that there was not agreement amongst the parties as
15 to those issues, that there was testimony filed on behalf
16 of Silver Leaf and Algonquin challenging those
17 determinations as to rate base, and the nature of that
18 acquisition case was such that determination of those
19 issues was not necessary at that time for the Commission
20 to reach a decision as to the standard that was before it
21 in terms of whether Algonquin could acquire or not acquire
22 those properties from Silver Leaf.

23 Now, you'll notice that on your list of
24 issues, this plant issue has really been described in two
25 parts. It's broken out between what amount, if any,

1 should be reflected as plant in service for plant existing
2 before 1993, or in some cases '94 as Mr. Krueger
3 mentioned, and what amount should be reflected as plant in
4 service for plant put in service after '92 to '93 time
5 frame, really after the certification of the facilities.

6 This distinction relates to the fact that
7 the water facilities of Holiday Hills and water and sewer
8 facilities of Ozark Mountain were operated for perhaps as
9 long as ten years prior to the Commission's grant of
10 certificates for those facilities.

11 One of the reasons for the existence of the
12 uncertainty as to this issue is the fact that these
13 properties have never been through a formal rate case
14 proceeding, as I mentioned before. Initial rates were set
15 with the issuance of the certificates, and rates were
16 changed once in 1998 as a result of a small company rate
17 proceeding. Until this case, no formal case has been
18 filed with or litigated before the Commission as to these
19 properties.

20 Algonquin witness Larry Loos who will
21 appear before you in a few moments has reviewed the
22 property records on behalf of Algonquin. One of the
23 things he noticed early in the process was that there was
24 no plant on the Silver Leaf books listed prior to 1993.
25 He found this strange because, as stated before, it was

1 clear that there were water and sewer facilities operating
2 at Holiday Hills and Ozark Mountain Resorts before '93 --
3 the sewer system in Holiday Hills was later sold. That's
4 why it's not an issue before you today -- and before the
5 Commission certificated Silver Leaf as a utility.

6 In response, Mr. Loos went about a process
7 where he determined what plant was in existence during
8 this time period, and then determined an original cost
9 estimate for that plant. As a result of this work,
10 Mr. Loos has recommended that plant in service for
11 pre-1993 property should in total be equal to about
12 1.9 million, and this is the amount of the difference
13 between the company and the Staff. The Staff believes
14 that either this plant is already included in its plant
15 numbers or that nothing should be included for this plant.

16 Algonquin believes that the plant in
17 service for the post-1992 time period should equal
18 4.7 million. The Staff's recommended amount is about
19 4.2 million. Algonquin believes that's a minimum amount
20 of plant that should be reflected for that time period
21 because of the way Staff conducted its audit. And
22 Algonquin believes that that audit is biased towards
23 finding a minimum amount of plant in service, not
24 necessarily the actual amount of plant in service that may
25 exist.

1 Mr. Loos started with the Silver Leaf books
2 and a concept of what plant is actually in the ground.
3 Algonquin believes his plant in service total is a
4 reasonable one and the amount that should be adopted --
5 and that it is the amount that should be adopted by the
6 Commission in this case.

7 At this time Algonquin would call
8 Mr. Larry W. Loos.

9 JUDGE PRIDGIN: Mr. Loos, if you'll come
10 forward to be sworn, please. If you'll raise your right
11 hand to be sworn, please.

12 (Witness sworn.)

13 JUDGE PRIDGIN: Thank you so much. Have a
14 seat. Mr. Cooper?

15 LARRY W. LOOS testified as follows:

16 DIRECT EXAMINATION BY MR. COOPER:

17 Q. Will you please state your name.

18 A. Larry W. Loos.

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

21 A. Black & Veatch Corporation. I serve as a
22 director and enterprise manager of solutions division.

23 Q. On whose behalf do you appear in this
24 proceeding today?

25 A. The companies, Algonquin Water Resources of

1 Missouri, LLC.

2 Q. Have you caused to be prepared for the
3 purposes of this proceeding certain direct, updated
4 direct, rebuttal and surrebuttal testimony in question and
5 answer form?

6 A. I have.

7 Q. Is it your understanding that that
8 testimony has been marked as Exhibits 1, 2, 3 and 4 for
9 identification in this case?

10 A. Yes.

11 Q. Do you have any changes that you would like
12 to make to that testimony at this time?

13 A. No.

14 Q. If I were to ask you the questions that
15 were contained in Exhibits 1, 2, 3 and 4 today, would your
16 answers be the same?

17 A. Yes.

18 Q. Are those answers true and correct to the
19 best of your information, knowledge and belief?

20 A. Yes.

21 MR. COOPER: Your Honor, at this time I
22 would offer Exhibits 1, 2, 3 and 4 into evidence and
23 tender Mr. Loos for cross-examination.

24 JUDGE PRIDGIN: Okay. Exhibits 1, 2, 3 and
25 4 have been offered. Any objections?

1 MR. KRUEGER: No objection.

2 MS. BAKER: No objection.

3 JUDGE PRIDGIN: No objection. Exhibits 1,
4 2, 3 and 4 are admitted.

5 (EXHIBIT NOS. 1, 2, 3 AND 4 WERE RECEIVED
6 INTO EVIDENCE.)

7 JUDGE PRIDGIN: Ms. Baker, any cross?

8 MS. BAKER: Yes.

9 CROSS-EXAMINATION BY MS. BAKER:

10 Q. Isn't it true that Silver Leaf's line of
11 business was primarily as a developer?

12 A. I disagree. I think I characterize them
13 more as time share developer and operator.

14 Q. Isn't it true that their primary line of
15 business was not as a public utility?

16 A. Yes.

17 Q. Isn't it normal practice for a developer to
18 recoup their development costs through the price of the
19 land, time shares, condominiums that are sold?

20 A. I have a little bit of difficulty with
21 recoup. I believe I have some testimony in my surrebuttal
22 on that. There's method of recovery of any cost they
23 incur, including development costs, as a developer would
24 be through sales.

25 Q. So it is normal practice for a developer to

1 recover their costs through their sales?

2 A. I didn't quite say that. The method that
3 they have to cover those costs is through sales. Whether
4 or not they actually recover it is a function of the price
5 that they're able to obtain on the sales.

6 Q. If Silver Leaf recouped or recovered its
7 cost through the price of land, time shares or
8 condominiums, wouldn't asking the ratepayers to pay those
9 costs through rates mean that the ratepayers would be
10 paying twice?

11 A. I disagree.

12 Q. Do you really think that Silver Leaf paid
13 out money and operated with that loss for years, all while
14 selling land and time shares and condominiums?

15 A. I don't know.

16 Q. The Public Service Commission Staff has
17 allowed some pre-1993 property to be included as plant in
18 service, hasn't it?

19 A. I didn't see any evidence of it.

20 Q. The Public Service Commission has told
21 Algonquin that they would include pre-1993 property if the
22 proper documentation and evidence such as invoices,
23 checks, construction costs, et cetera, for what you call
24 unrecorded plant were offered?

25 A. Yes.

1 Q. But there is no such evidence such as
2 invoices, checks, construction contracts for that?

3 A. My understanding, none has been located.

4 MS. BAKER: That's all the cross I have.

5 JUDGE PRIDGIN: Ms. Baker, thank you.

6 Mr. Krueger?

7 MR. KRUEGER: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. KRUEGER:

9 Q. Good morning, Mr. Loos.

10 A. Good morning.

11 Q. On pages 1 to 3 of your direct testimony,
12 you describe your qualifications. Do you have any degrees
13 other than the ones you mentioned on page 1?

14 A. No, I do not.

15 Q. Do you hold any professional registrations
16 other than the ones you mentioned on page 1?

17 A. I do not.

18 Q. Do you belong to any professional
19 organizations other than those you mention on page 2?

20 A. I do not.

21 Q. How often have you testified in utility
22 rate cases?

23 A. I believe it would be in excess of 100.

24 Q. On what subjects do you usually testify?

25 A. Cost of service, allocation issues.

1 Q. About how much of your time would you -- as
2 an expert would you say is devoted to cost of service?

3 A. During my career, it's probably been 60 to
4 70 percent.

5 Q. Okay. By cost of service, what do you
6 mean? Can you be more specific about that?

7 A. Allocation among classes or jurisdictions.

8 Q. Have you ever testified on behalf of a
9 developer in a utility rate case?

10 A. No.

11 Q. Has a developer ever consulted you for
12 advice on utility matters?

13 A. Not that I recall.

14 Q. Are you familiar with the way that
15 developers typically operate their businesses?

16 A. I believe to some degree, yes.

17 Q. They buy land?

18 A. Usually, yes.

19 Q. Subdivide and plat the land?

20 A. Not always, but typically, yes.

21 Q. Make certain improvements to it?

22 A. Typically, yes.

23 Q. Such as streets?

24 A. Yes.

25 Q. Curbs and gutters?

1 A. Yes.

2 Q. Perhaps they furnish amenities?

3 A. Would you define amenities?

4 Q. Golf course perhaps?

5 A. Typically, no. In the case of Silver Leaf,
6 at least at Holiday Hills, yes.

7 Q. Tennis courts?

8 A. Again, typically no, but in the case of
9 these resort properties, yes.

10 Q. Okay. On some occasions?

11 A. Yes.

12 Q. Also hiking trails perhaps?

13 A. Yes, at least at Silver -- or at Ozark
14 Mountain.

15 Q. And they arrange for the provision of
16 utilities?

17 A. Utilities are included, yes.

18 Q. Sometimes they install utility
19 infrastructure?

20 A. As evidenced in this case, yes.

21 Q. And advertise the improved lots for sale?

22 A. I don't recall the extent that improved
23 lots were offered for sale. The time share units were
24 complete units that were offered for sale in one fashion
25 or another. I believe the condominiums were sold as

1 individual housing units. There are some -- about 60 lots
2 at Holiday Hills that would be only ones that are
3 undeveloped plant.

4 Q. The developer typically is involved in
5 marketing the property that it's developed?

6 A. Yes.

7 Q. And all those activities that we've just
8 talked about cost them money?

9 A. Yes.

10 Q. And they usually have to borrow money for
11 these projects?

12 A. I believe they do, yes.

13 Q. There are finance costs associated with
14 that?

15 A. Whether they borrow money or it's
16 internally generated, there's finance costs, there's
17 capital costs.

18 Q. They also incur administration cost and
19 overhead in administering all these activities?

20 A. Yes.

21 Q. And incur tax obligations?

22 A. Any -- pardon? What kind of tax?

23 Q. Well, I didn't specify which kind of tax.

24 A. I heard something before tax.

25 Q. They incur tax obligations?

1 A. To the extent that whatever they're doing
2 is taxable, yes.

3 Q. So by the time they sell the land, they
4 have a lot more invested in each parcel than just the
5 price that they paid for the raw land?

6 A. Yes.

7 Q. And they price the improved parcels
8 accordingly?

9 A. I don't necessarily agree.

10 Q. Why would they not price the parcels in
11 accordance with what they have invested?

12 A. The business, the time share business,
13 resort business is highly competitive. As a result, I
14 believe that they set prices, they attempt to negotiate
15 prices based upon those market conditions with only
16 secondary consideration to the development costs they
17 have, because many times they're better off selling at a
18 loss or a reduced price level and realizing cash in that
19 manner, as opposed to waiting out and getting fair full
20 price.

21 Q. They are in business to make a profit?

22 A. Yes.

23 Q. And the way they make profit is by selling
24 it for more than what they have invested in it?

25 A. Yes.

1 Q. At the bottom of page 13 and top of page 14
2 of your direct testimony, you said Silver Leaf likely
3 viewed the utility property not much differently than the
4 swimming pools at the resort. Both are incidental to
5 facilitating the sale of time share units or land.
6 Correct?

7 A. Yes.

8 Q. Did they put those swimming pools in just
9 out of the goodness of their heart and because they wanted
10 to be nice to their customers or were they seeking to make
11 a profit off of that?

12 A. The inclusion or including a swimming pool,
13 tennis courts, other amenities in the resort package is
14 incidental to their marketing effort and hope to recover
15 the costs of those amenities through the sales at a market
16 price that reflects consideration of value that they have
17 added by addition of those amenities.

18 JUDGE PRIDGIN: Mr. Krueger, I don't know
19 if that answered your question, but if you could try,
20 Mr. Loos, not to narrate, I'd appreciate it.

21 BY MR. KRUEGER:

22 Q. With regard to utilities, do they put those
23 in just because they want to be nice to their customers or
24 because they want to make a profit from it?

25 A. Again, it's incidental to the sale.

1 Q. To increase the likelihood that they'll be
2 able to market it?

3 A. Yes.

4 Q. It's investment in the lot -- or in the
5 land?

6 A. I have a hard time with investment. It's a
7 cost.

8 Q. Okay. Silver Leaf is a developer?

9 A. Yes, as I indicated before.

10 Q. They wouldn't stay in business long if they
11 didn't sell their property for more than they invested in
12 it?

13 A. Whether it's one year, five years, ten
14 years long, in the long-term they have to sell or they
15 have to be able to recoup all costs and make a profit.

16 Q. All costs, including the cost of
17 improvements?

18 A. Yes.

19 Q. Do you know how long Silver Leaf has been
20 in the land development business?

21 A. I don't recall the organization, but
22 they've been at least Silver Leaf and its predecessors at
23 least back in 1982.

24 Q. And are they still in the land development
25 business?

1 A. Yes.

2 Q. Primarily in regard to resort properties
3 similar to Holiday Hills, Ozark Mountain and Timber Creek?

4 A. Yes.

5 Q. Do you know the extent of their activities?

6 A. I don't recall anything specific. It's
7 fairly substantial.

8 Q. Do they operate in many states?

9 A. Yes.

10 Q. So Silver Leaf is sophisticated enough to
11 stay in this resort development business for many years?

12 A. Yes.

13 Q. With many different resort numbers of
14 properties?

15 A. Yes.

16 Q. And in many states?

17 A. Yes.

18 Q. And that's because they've been profitable?

19 A. One would think, yes.

20 Q. And that they sold their properties for
21 more than what they had invested in it?

22 A. That assumption also follows.

23 Q. Okay. Now, you testified that the utility
24 plant in this case is unrecorded. Do you mean that it's
25 not recorded anywhere?

1 A. My reference to that was that it was not
2 recorded on the information that was provided to Algonquin
3 as a result of the sale case. It wasn't on their ledger
4 sheets, trial balances that were provided.

5 Q. Are you saying that it's not recorded
6 anywhere or it's not recorded as utility plant?

7 A. Well, it certainly was not recorded as
8 utility plant, but I found no record of it anywhere.

9 Q. Did you ask people at Silver Leaf where the
10 plant was recorded?

11 A. No. I work with Algonquin.

12 Q. I'm sorry?

13 A. I inquired of Algonquin.

14 Q. But you did not communicate with Silver
15 Leaf?

16 A. No.

17 Q. Okay. Are you familiar with Silver Leaf's
18 previous cases before this Commission?

19 A. Only to the extent that I read some
20 information with respect to them, I believe Commission
21 Orders, some Staff petitions.

22 Q. Are you familiar with a 1993 case where the
23 Commission granted Silver Leaf a certificate?

24 A. Yes.

25 Q. And set the rates that Silver Leaf could

1 charge its customers?

2 A. Yes.

3 Q. And also determined Silver Leaf's rate

4 base?

5 A. I don't believe there was a finding on rate

6 base.

7 Q. Do you know if Silver Leaf agreed to rate

8 base?

9 A. No, I don't.

10 Q. They did implement rates that were based --

11 that resulted from an implicit rate base, correct?

12 A. I assume so, yes.

13 Q. And the Commission did not include in rate

14 base any of what you now call unrecorded plant?

15 A. I don't recall one way or the other.

16 Q. Okay. Silver Leaf paid for the

17 construction of these utilities. It would have to be

18 recorded on their books somewhere, wouldn't it?

19 A. Recorded someplace at some time, yes.

20 Q. There would be a credit to a cash account

21 or some sort of cash account?

22 A. Yes.

23 Q. And a debit to some other account?

24 A. Yes.

25 Q. And probably an asset account?

1 A. Speculating somewhat, yes.

2 Q. Perhaps development costs?

3 A. Yes.

4 Q. And you couldn't find that account?

5 A. No.

6 Q. Because you didn't look in the right place?

7 A. I didn't have that information.

8 Q. Since Silver Leaf was not a regulated

9 utility at the time, they would not have had the USOA

10 accounts?

11 A. That's correct.

12 Q. I'm talking about the pre-certificate time.

13 A. Yes.

14 Q. But they would have had an account of some

15 sort where they could record these assets?

16 A. There would have been some recording, yes.

17 Q. You said in your direct testimony at

18 page 15, Silver Leaf may not have separately accounted for

19 its utility property until the need surfaced in connection

20 with establishing its initial rates. What did you mean

21 when you said they did not separately account for the

22 utility property?

23 A. They may not have identified it as utility

24 property. They may have just rolled it in with other

25 development costs.

1 Q. So they were recording this plant, just not
2 in an account that was set up to separately identify it as
3 utility property?

4 A. Based on the information I have, I assume
5 that's correct, yes.

6 Q. You testified in your direct testimony that
7 Algonquin acquired all of the utility property owned by
8 Silver Leaf. Were you involved in those negotiations?

9 A. No.

10 Q. Or consult with them at all on that
11 business deal?

12 A. No.

13 Q. Do you have any personal knowledge of how
14 Algonquin determined what price to pay for the property
15 when it negotiated the purchase?

16 A. No.

17 Q. Or any other way to know how Algonquin
18 determined the purchase price?

19 A. I don't know how they did it.

20 Q. Did Algonquin inventory the assets?

21 A. I don't know.

22 Q. Do you know if they did a due diligence
23 investigation?

24 A. I don't know.

25 Q. When did Algonquin learn of the existence

1 of this unrecorded plant?

2 A. I believe I was -- I informed them of this
3 in December.

4 Q. December of what year?

5 A. 2005.

6 Q. And the sale closed in August of 2005?

7 A. Yes.

8 Q. Information that Silver Leaf provided to
9 Algonquin on August 15th, 2005 said the plant amounted to
10 \$4,635,010, correct?

11 A. Yes.

12 Q. But you now say that this plant amounted to
13 about 6.3 million?

14 A. I'm saying the original cost value --

15 Q. Correct.

16 A. -- amounted to that, yes.

17 Q. So Silver Leaf understated the value of the
18 plant by about \$1.8 million?

19 A. On their books, yes.

20 Q. Silver Leaf sold \$6.3 million worth or
21 property value -- its original cost was \$6.3 million to
22 Algonquin believing that it was only worth 4.6 million?

23 A. I have no idea what their -- considerations
24 Silver Leaf had.

25 Q. And Algonquin didn't even know this

1 so-called unrecorded plant existed until sometime after
2 the sale?

3 A. I don't agree with that.

4 Q. Didn't you say you just -- you found out
5 about it in December of 2005?

6 A. As far as the recorded investment, the
7 assets, the pipe, water treatment facilities were in place
8 and Algonquin certainly was aware of that.

9 Q. So you're saying that Algonquin knew about
10 the plant, it just was not recorded? They didn't know
11 that it was recorded -- I'm sorry. They didn't know it
12 was unrecorded until December 2005?

13 A. That would be a fair characterization, yes.

14 Q. After you discovered this unrecorded plant,
15 you set out to determine how much it would cost to
16 construct that plant?

17 A. Yes.

18 Q. You didn't have actual data about the cost
19 to construct the facilities?

20 A. No, I didn't.

21 Q. So you had to find some way to estimate the
22 costs?

23 A. Yes.

24 Q. You first, quote, added system facilities
25 sufficient to serve the entire resort today; is that

1 right?

2 A. With respect to transmission distribution,
3 yes.

4 Q. The facilities weren't on the books, so you
5 just added them?

6 A. Not all the facilities were shown on the
7 maps.

8 Q. But you added them?

9 A. To the extent that there were skips, there
10 wasn't lines, there wasn't pipes shown on those maps, yes.

11 Q. The ones you couldn't find, you added?

12 A. Yes.

13 Q. Then you identified the lines which would
14 have been required prior to 1993?

15 A. Yes.

16 Q. But you didn't actually verify that they
17 were added prior to 1993?

18 A. Not separately, no.

19 Q. You just supposed that they must have been
20 added prior to '93?

21 A. I have a problem with supposed. I know
22 there had to be lines. Whether they were where I said
23 they were, I don't know, but there had to be lines.

24 Q. You then identified the pipe length
25 required?

1 A. Yes.

2 Q. But you didn't actually verify what pipe
3 length was installed?

4 A. Right.

5 Q. You didn't visually confirm how much pipe
6 length was installed?

7 A. Correct.

8 Q. Or the sizes?

9 A. That's correct.

10 Q. So you did sort of a virtual design of a
11 system that you knew must have been installed prior to
12 1993?

13 A. Yes.

14 Q. And you then estimated how much it would
15 cost to build that system 20 years ago or so?

16 A. Yes.

17 Q. Using the Handy-Whitman Index?

18 A. The Handy-Whitman was an element of how I
19 developed those costs, yes.

20 Q. It's a tool -- is that a tool to estimate
21 construction costs?

22 A. No.

23 Q. What is its use?

24 A. It's a tool to recognize and could be used
25 to eliminate or accommodate changes in price levels due to

1 inflation.

2 Q. So it accounts for the time difference
3 between today and the time that you believe the facilities
4 must have been constructed?

5 A. Yes.

6 Q. Okay. But you never verified how much this
7 construction actually cost?

8 A. That's correct.

9 Q. You never saw invoices?

10 A. Yes, I did not.

11 Q. Or purchase orders?

12 A. Did not.

13 Q. Or construction contracts?

14 A. Did not.

15 Q. Or accounting entries?

16 A. I did not.

17 Q. So it's just an estimate of how much it
18 must have cost to build the improvements that must have
19 been in place prior to 1993?

20 A. Yes.

21 Q. You did not do a complete inventory of the
22 assets?

23 A. No, I did not.

24 Q. Because you deemed it to be too expensive?

25 A. Yes.

1 Q. You'd rather rely on an estimate of what's
2 there?

3 A. I didn't believe that the benefit would
4 offset the cost of doing a full inventory.

5 Q. And you want the Commission to make that --
6 come to that same conclusion?

7 A. Yes.

8 Q. And you want the ratepayers to pay on the
9 basis of that estimated cost?

10 A. In part, yes.

11 Q. Do you know of any previous time when the
12 Missouri Public Service Commission has used estimates like
13 this to establish the rate base value of water or sewer
14 utility assets?

15 A. I don't recall any.

16 Q. The Commission generally uses documented
17 costs?

18 A. That is my understanding.

19 Q. So you don't know of a single time in the
20 93-year history of the Commission where it has done that,
21 where it has relied on estimated cost?

22 A. I don't recall an instance.

23 Q. Or where they've estimated the costs for
24 the assets of any other type of utility other than water
25 or sewer?

1 A. I'm not aware of a specific instance, no.

2 Q. Are you aware of an instance where another
3 state's commission has done so?

4 A. Yes.

5 Q. Frequently?

6 A. No.

7 Q. You determined Algonquin's plant in service
8 as of September 30, 2005 to about \$6.3 million?

9 A. Yes.

10 Q. And you determined the depreciation reserve
11 to be about 2.2 million as of the same date?

12 A. Yes.

13 Q. You do not include any figure for
14 contributions in aid of construction?

15 A. No, I do not.

16 Q. And that's because you believe Silver Leaf
17 the utility paid for all the utility plant?

18 A. Yes.

19 Q. Including all the water distribution lines?

20 A. Yes.

21 Q. All of the sewer collecting lines?

22 A. Yes.

23 Q. And that Silver Leaf the developer didn't
24 pay for any of that plant?

25 A. Well, what I'm saying is that it included

1 the value is those -- the developer, the utility, someone
2 paid for them.

3 Q. And is it your testimony that Silver Leaf
4 the developer never recovered these costs from its
5 customers?

6 A. I don't know.

7 Q. Is it your testimony that they didn't
8 attempt to recover the costs from their customers?

9 A. No.

10 Q. Are you familiar with any regulated utility
11 that pays for main extensions?

12 A. Yes.

13 Q. In Missouri?

14 A. I believe the gas and electric utilities
15 do.

16 Q. Any water utilities?

17 A. My understanding is that they are typically
18 handled by contributions.

19 Q. Or sewer utilities?

20 A. The same.

21 Q. In fact, that's what Silver Leaf's
22 extension policy provided?

23 A. Yes.

24 Q. And that's what Algonquin's extension
25 policy now provides?

1 A. Correct. Yes.

2 Q. So under Algonquin's present tariff, if
3 Silver Leaf the developer wants to build new condominiums
4 and an extension of the water main, who would pay for it?

5 A. According to the tariff, Silver Leaf would.

6 Q. Same for a sewer main?

7 A. Yes.

8 Q. But you are saying that in this case Silver
9 Leaf the utility paid for those mains and not Silver Leaf
10 the developer?

11 A. Yes.

12 MR. KRUEGER: That's all the questions I
13 have, your Honor.

14 JUDGE PRIDGIN: Mr. Krueger, thank you.

15 Let me see if we have any questions from the Bench.

16 Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you. I have
18 several questions, sir.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Let's see. Where do I start? Mr. Loos,
23 have you -- Loos, I guess it is, have you testified in
24 very many water and sewer cases?

25 A. No. Most of my work's been in energy

1 utilities.

2 Q. Now, I'm assuming in preparing for this
3 case that you noted the differences between the way that
4 at least this Commission has treated water and sewer
5 companies versus energy companies in terms of recovery and
6 contributed plant and that kind of thing with respect to
7 the tariff provisions?

8 A. Yes.

9 Q. Okay. I don't know if you've had an
10 opportunity to observe the difficulties that our
11 traditional treatment of water and sewer companies has led
12 to in this state. Have you had --

13 A. I understand there's been difficulties with
14 respect to the development costs and how they're
15 recovered.

16 Q. And we get to a point many times in these
17 water and sewer cases when property that has been
18 designated as contributed property is sold to a second
19 entity, and then at that time that second entity cannot
20 put that plant into rate base.

21 A. I understand that.

22 Q. All right. And the result of that is
23 frequently that there is nothing for the company to earn a
24 return on.

25 A. Yes.

1 Q. Does that, in your estimation, present a
2 difficulty in being able to recover enough in rates to
3 provide safe and adequate service?

4 A. I think it eventually could lead to that
5 very situation.

6 Q. Now, I heard you say earlier that when you
7 were questioned about the main extensions for gas
8 utilities and you indicated that the gas utilities do pay
9 for the main extensions; is that correct?

10 A. Yes. Typically gas and electric will have
11 a tariff provision that permits or requires that the
12 utility extend, say, the first 100 feet. Anything in
13 excess of 100 feet then is -- requires a contribution, and
14 I believe I mentioned this in my surrebuttal or rebuttal
15 testimony.

16 Q. And I have read all of the testimony last
17 week, but it's difficult to remember everything that's in
18 it at this point. To your knowledge, is it only water and
19 sewer companies that are ever treated in this manner in
20 terms of contributed property?

21 A. Based on my experience, I don't ever recall
22 seeing an energy utility that does. In our water
23 practice, we're -- we typically work with municipal
24 clients. We have special studies on impact fees that kind
25 of address that, but those seem to be out of the norm as

1 opposed to norm for these municipal systems.

2 Q. Municipal water and sewer systems?

3 A. Yes.

4 Q. And explain that a little bit more, if you
5 would, what you're referencing.

6 A. Well, the municipal systems, especially
7 when they're faced with large capital programs, will
8 investigate and many times implement what they call an
9 impact fee. And included in that impact fee is
10 consideration of not only extending the mains, but also
11 allowance for the additional treatment cost, supply cost
12 that goes into it.

13 Q. That goes into rates?

14 A. Yes. That would otherwise go into rates.
15 Several years ago where a municipal client, an electric,
16 they wanted to charge one rate for all customers, and so
17 they included with respect to all-electric homes an
18 allowance for production costs so they could use one rate
19 equitably between non-electric and all-electric houses.
20 It's very unusual.

21 Q. Okay. And I think everybody on the
22 Commission has struggled with how we treat water and sewer
23 companies and how we allow them to earn a return that will
24 give them an adequate income to provide safe and adequate
25 service. And as I was listening today to

1 Mr. Krueger asking you some questions, he mentioned, for
2 example, that a developer may put in a golf course when
3 developing an area; is that correct?

4 A. Yes.

5 Q. Now, that golf course, the cost of that
6 golf course, I'm assuming, would be recovered by the
7 developer with the sale of the lots as they're sold. Is
8 that typically what is done?

9 A. They certainly hope that that will be the
10 case, that they have a premium on the price of their lots
11 relative to one that's not on a golf course to accommodate
12 that. The same with the time share lots.

13 Q. If at some later time -- and I'm just
14 trying to draw an analogy here, just try to see if there's
15 some way that I can get to an understanding of what we do
16 and whether we need to change what we do. If the golf
17 course were later sold to another entity, completely
18 different entity, that golf course itself would have
19 value, would it not?

20 A. Yes, it would.

21 Q. Now, would the new owner have to look at
22 the value of what he or she was purchasing in order to
23 make a decision whether to purchase the asset, the golf
24 course itself?

25 A. The purchaser, we're talking -- speaking

1 now of an unregulated environment?

2 Q. Yes.

3 A. Would look at the value of the property
4 regardless of how it was paid for.

5 Q. And the purchaser would then plan to earn a
6 return on the value of that property or the purchaser
7 would not purchase it, I'm assuming. Would that be your
8 assumption?

9 A. We can accept that. I mean, there's
10 certain instances where a municipality or somebody would
11 purchase this, but --

12 Q. I'm talking about a private entity
13 purchasing.

14 A. Right. Very much so.

15 Q. Do you know what total percentage of rates
16 are paid by Silver Leaf itself?

17 A. I have some numbers -- well, I believe I
18 do. If I refer to my schedule in my original testimony, I
19 believe that separation is set forth with respect to the
20 total revenues, recalling that under current rates the
21 70 million gallons for irrigation is not billed.

22 Q. Okay. On the Schedule 2, sheet 1 of 1?

23 A. Yes.

24 Q. For example, under Silver Leaf percentage
25 of total --

1 A. Yes.

2 Q. -- this is a breakdown of each resort and a
3 breakdown of the water and the sewer in terms of the
4 percentage that is paid by Silver Leaf; is that correct?

5 A. Yes. And the number of bills is kind of
6 misleading because apparently a number of these time share
7 units are master metered, whereas the individual units are
8 not. I prefer to look at sales, deliveries and revenues,
9 as opposed to the bill count, customer count.

10 Q. All right. But then you have a total under
11 each one. You have a total for water 74.72 percent; is
12 that correct?

13 A. Yes.

14 Q. And then a total for sewer, 85.19 percent?

15 A. Yes.

16 Q. And those are the percentages of the total
17 rates that Silver Leaf is billed?

18 A. Yes.

19 Q. Now, if Silver Leaf did, in fact, recover
20 the cost of the plant from sale of lots or however, was
21 Silver Leaf also paid by Algonquin for the value of the
22 plant?

23 A. I can't go much beyond that Algonquin paid
24 \$3.8 million. Based on -- what my study, that 3.8 million
25 approximates what you can look at, at the original cost.

1 Other measures of the value would have been somewhat
2 higher.

3 Q. All right. But the plant itself was
4 purchased by Algonquin; is that correct?

5 A. Yes.

6 Q. So Algonquin paid Silver Leaf for the plant
7 that it purchased, did it not?

8 A. Yes.

9 Q. So Silver Leaf may indeed have been paid
10 twice for the plant?

11 A. Yes.

12 Q. And my -- and the problem I have with the
13 way that we treat contributed property is that if there is
14 nothing for the purchaser or very little, only a
15 percentage of the assets left in rate base upon which to
16 earn a return, it seems to provide a great disincentive
17 for anyone to purchase a water or sewer company.

18 A. I agree.

19 Q. But when Algonquin did purchase these
20 facilities, apparently there was not, at least I don't see
21 in the testimony that there was a great deal of study done
22 in terms of what was actually being purchased. And I
23 don't know if you're familiar with that. I don't know how
24 much you got into what the company went through when it
25 decided to purchase.

1 A. I believe typically on these kind of
2 transactions, the focus is not on X number of feet of pipe
3 on two treatment facilities. It's on whether the
4 facility, the adequacy of the facilities to meet demands
5 to provide the service, as opposed to a -- typically a
6 precise inventory of what's there.

7 Q. Okay. Let's take a scenario where if
8 everything had been contributed property, how would the
9 company earn through rates -- select through rates enough
10 to provide safe and adequate service?

11 A. Under traditional regulation, and very
12 strict traditional regulation, I can't see how they would.

13 Q. So if this Commission is concerned about
14 customers being able to receive safe and adequate service,
15 it should be concerned about how it provides the companies
16 the ability to receive enough revenue to accomplish that,
17 should it not?

18 A. Yes.

19 Q. On page 11 of your surrebuttal testimony --

20 A. Okay.

21 Q. -- you speak on lines 6 and following about
22 the assets being constructed and placed into service prior
23 to the tariff provision that Staff cites to support its
24 claim that the property should be treated as contributed
25 plant; is that correct?

1 A. Yes.

2 Q. What tariff -- is there a citation to that
3 tariff provision somewhere?

4 A. No, but we can certainly get you a copy of
5 the sheets that show that tariff provision.

6 Q. Okay. Please do that.

7 On page 12 of your surrebuttal, you list
8 some provisions from the NARUC Uniform System of Accounts
9 for Class A and B water utilities --

10 A. Yes.

11 Q. -- 1973, as revised in 1996; is that
12 correct?

13 A. Yes.

14 Q. Now, is that the latest revision, do you
15 know?

16 A. I understand that that's the revision that
17 is used by the Commission.

18 Q. All right. In each one of those
19 provisions, there is the language following the original
20 cost -- well, okay. Section 1, for example. Following
21 original cost, there is the phrase, estimated if not
22 known; is that correct?

23 A. Yes.

24 Q. And then in Section 2, following cost of
25 construction, there is the phrase, estimated if not known;

1 is that correct?

2 A. Yes.

3 Q. And then in Section 3, the original cost of
4 plant followed by the phrase, estimated if not known,
5 correct?

6 A. Yes.

7 Q. And you did bold that phrase in each one of
8 those sections?

9 A. Yes, I did.

10 Q. So I'm just wanting to verify with you,
11 that is actual language out of NARUC Uniform System of
12 Accounts; is that correct?

13 A. Yes, it is.

14 Q. And then in terms of the cost/benefit
15 analysis -- or I'm sorry. In terms of the full audit
16 rather than estimation, did you determine what the
17 approximate cost of doing a full audit of the facilities
18 would be?

19 A. I didn't make a detailed estimation,
20 but I was recalling the municipal client spent at least
21 three-quarters of a million dollars in an inventory of
22 their system to set up their accounting records. That was
23 for utilities.

24 But sending people out to identify where
25 precisely the lines are, the length of them, size of them,

1 various elements that would go into then developing what
2 the current cost of construction would be is fairly
3 substantial.

4 Q. So do you think that's possibly why the
5 NARUC Uniform System of Accounts refers to estimated if
6 not known?

7 A. I had never thought of it in those terms,
8 but it certainly is reasonable.

9 Q. Just go through my tabs here a second and
10 see if I have any other questions for you.

11 Oh, I did want to ask you about the fact
12 that Silver Leaf is such a percentage of the ratepaying
13 customers in both the water and the sewer areas, Silver
14 Leaf, who may indeed have been paid twice for the
15 facilities, would be the beneficiary of low rates
16 resulting from considering the property contributed; is
17 that correct?

18 A. Yes.

19 Q. In fact, the primary beneficiary?

20 A. Yes.

21 Q. Did Algonquin, to your knowledge, do any
22 analysis prior to the purchase of whether there was any
23 excess capacity that might be disallowed in rates?

24 A. Not to my knowledge.

25 Q. And I'm throwing this out as a question. I

1 don't know if you're capable of answering it. I'm not
2 sure that there's a -- there may be an answer right now,
3 but if this Commission did determine that it was
4 appropriate to value the property based on the estimated
5 cost, as Algonquin has proposed here and that your
6 testimony supports, would it be appropriate or possible to
7 design the rates such that Silver Leaf would be the only
8 customer who would pay the increased rates that would
9 result from that treatment?

10 A. I gave thought to that and couldn't come up
11 with a way that that could be done without charges being
12 discriminatory.

13 Q. Do you know -- do you do any analysis of
14 capacity -- appropriate capacity for a utility?

15 A. I have. I didn't in this case.

16 Q. You did?

17 A. I have, but I did not in this case.

18 Q. You did not in this case. Okay. In
19 general, is it appropriate to provide some capacity that
20 is not currently needed in order to plan for the future?

21 A. I believe so, yes.

22 Q. And is it appropriate to consider the
23 cost/benefit and perhaps including additional plant that
24 is not currently needed if the cost of including it with
25 currently needed plant is less than it would be to include

1 it two, three, four, five years later?

2 A. I believe it is, yes.

3 COMMISSIONER MURRAY: All right. I think
4 that's all I have right now. Thank you.

5 JUDGE PRIDGIN: Commissioner, thank you.
6 Commissioner Appling?

7 QUESTIONS BY COMMISSIONER APPLING:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. How are you doing?

11 A. Good.

12 Q. These water cases seem to get tougher and
13 tougher as we float downstream, you know, but I have
14 several questions. Some of them has been probably already
15 asked and you probably have answered them. So don't be
16 offended if I ask you again. Okay?

17 My first question, if condo and time share
18 owners, which I've been a part of condos and lived in them
19 and moved out of them and don't prefer them that great
20 anymore. But if the owners pay for plant when they pay
21 for the purchase of it, why should they be paying again?
22 If when they went through it the first time and they paid
23 for all of that, why are we back asking them to pay again?

24 A. The developer certainly would hope to
25 recover those costs and did. The question is, how is that

1 considered with respect to this case as subsequent
2 purchase, were those contributions included in value, were
3 they reflected in value? Typically in valuation matters,
4 they're not. They're considered a source of capital,
5 which does not affect the value. I believe I've got a
6 statement in my --

7 Q. Yeah, I read that. Well, that's a hurdle
8 for me to get over, but did Silver Leaf's outside
9 auditors, did they ever qualify their opinion based on
10 Silver Leaf's treatment of water and sewer? Did you ever
11 see any comments made by the outside auditors anywhere in
12 the report that's saying or mentioning anything of cost?

13 A. I looked at several SEC filings, 10-Ks, and
14 saw no reference like that.

15 Q. Shouldn't your company have known -- it
16 just stands to reason. I have a long background in real
17 estate. I ran all of the State-owned buildings for eight
18 years or so. But shouldn't Algonquin have known of the
19 pre-1993 plant issues before they purchased it? Shouldn't
20 somebody have dug in deep enough or tunneled down deep
21 enough to say, before we lay out this money, we should
22 know what happened?

23 A. Perhaps they should have, but my experience
24 with doing due diligence, typically that's not something
25 that's focused on.

1 Q. But are you sure you've -- you are familiar
2 with the term let the buyer beware, right?

3 A. I certainly am.

4 Q. Okay. And I'm sure you can pull that up
5 and probably reread that in your notes from your real
6 estate classes that you've taken in your lifetime, but
7 that certainly is the case here where the buyer should
8 have been aware of what took place.

9 Let's go to your surrebuttal testimony --
10 and I think this will be my last question -- and go to
11 page 21 and 22, I believe it is. I think it talks about
12 cost recovery. Just glance over that just a second, if
13 you wouldn't mind.

14 A. Okay.

15 Q. And I think I'm just looking for a yes or
16 no answer on this. Depreciation should reflect recovery
17 of the reasonable cost of plant during estimated use of
18 life?

19 A. Over its estimated life, yes.

20 Q. Yes. My last question for you, sir, is,
21 are you telling the Commission that utilities should earn
22 a return on investment that they have not made? That's a
23 tough one, I know that.

24 A. Well, no, I'm not. If I could explain, the
25 issue here is to what extent, if any, a portion of that

1 3 million that Algonquin wrote the check for, so to speak,
2 to Silver Leaf should be included in rate base and
3 depreciated. So it's -- they have paid for it. It has
4 been paid. It's whether or not they will be permitted to
5 at some point recover that investment through rates.

6 Q. So you're asking the ratepayers to pay for
7 a mistake that Algonquin made by not checking the records
8 and doing that?

9 A. Well, I wouldn't necessarily agree that it
10 was a mistake. They perhaps didn't do it, but it's -- I
11 mean, what is the value and to what degree would these
12 various elements be considered in an evaluation? The
13 facilities are certainly there. Algonquin certainly paid
14 for them. Should they be recovered?

15 Q. My last question, were you a part of the
16 decision made to go for a rate case and not take the small
17 company here?

18 A. I discussed it with counsel and management
19 of Algonquin, yes.

20 Q. Can you share with me why you decided to go
21 with a full rate case, please?

22 A. The experience, the relief had not been
23 considered acceptable to the utility. The -- under
24 the formal process, a suspension period of 11 months,
25 9 months, whatever, so that we make sure we've got rates

1 in effect. A small case, while there is a requirement, if
2 there is a result that is not acceptable, then we've got
3 almost two years before we have relief. Plus we did not
4 believe we could ever get resolution with the Staff on
5 these plant issues that we felt needed a Commission
6 decision.

7 COMMISSIONER APPLING: Thank you very much,
8 sir.

9 JUDGE PRIDGIN: Commissioner Appling, thank
10 you.

11 Mr. Chairman?

12 QUESTIONS BY CHAIRMAN DAVIS:

13 Q. Mr. Loos?

14 A. Loos.

15 Q. Sorry. What was Algonquin paying for when
16 they wrote a check out to Silver Leaf for \$3.8 million?

17 A. They purchased the utility assets, the
18 wells, the pipe, treatment facilities, the meters. I
19 believe that it references they purchased the assets.
20 Now, along with --

21 Q. Right. It was a big package deal. It was
22 like 12 million total or something like that?

23 A. Yes.

24 Q. And 3.8 was the Missouri jurisdictional
25 price?

1 A. Yes.

2 Q. Okay. And Mr. -- you heard Mr. Cooper's
3 opening statements, didn't you?

4 A. Yes.

5 Q. Now, did you hear Mr. Cooper indicate that
6 there was some sort of dispute at the time of the -- that
7 the acquisition of the assets was being approved by the
8 Missouri Public Service Commission?

9 A. There was an issue in the sale case, yes.
10 I believe that's what he was referring to.

11 Q. Okay. Could you refresh for my
12 recollection what that issue is again?

13 A. During the sale case, the Staff brought up
14 the issue of a portion of this property was contributed.
15 There were differences in book balances, and basically
16 laid those out. And the Commission's decision was that
17 those issues would be addressed in the first rate case.
18 And there was also, I believe, a statement by Algonquin
19 that they would not seek recovery of an acquisition
20 adjustment that the Commission found.

21 Q. But then you've previously given testimony
22 that you just discovered all this plant in approximately
23 December 2005, correct?

24 A. I found a lack of investment on certain
25 plant that was obviously there. No investment associated

1 with certain plant that was obviously there. That's why
2 the term unrecorded.

3 Q. So it was unrecorded, but -- okay. Do you
4 know what amount Algonquin is paying in property taxes for
5 its Missouri properties? What's the big total number?
6 Better yet, what's the assessed valuation of those three
7 properties?

8 A. There was a Data Request, and I don't
9 recall the total.

10 Q. Is that --

11 A. I might have it.

12 Q. Is this DR 47.1?

13 A. I believe so, yes.

14 Q. Do you have a copy of that?

15 A. Not in front of me. I don't know whether
16 I've got it with me at all.

17 Q. Okay.

18 A. But I did reference that in my surrebuttal.

19 Q. I read the references and I saw that there
20 were breakout amounts for taxes paid, but I was unable to
21 determine what the assessed valuation for each of those
22 properties was.

23 A. And I'm not sure -- I do not believe that
24 DR 47 shows what the assessed value is. It's just a
25 declaration of value that Algonquin submitted.

1 Q. Just a declaration of value that Algonquin
2 submitted? Can you find out what the assessed valuation
3 is for those three properties?

4 A. I can certainly look into it, yes.

5 CHAIRMAN DAVIS: Okay. Thank you, Judge.
6 No further questions.

7 JUDGE PRIDGIN: Mr. Chairman, thank you.
8 Commissioner Murray, any further questions?

9 COMMISSIONER MURRAY: Yes, I do, thank you.
10 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

11 Q. On page 20 of your rebuttal testimony,
12 Mr. Loos --

13 A. Yes.

14 Q. -- at line 6 and following, you say you
15 found no evidence that Silver Leaf ever required a
16 contribution from any customer or developer, much less
17 accepted an amount that was tendered. Further, since
18 Silver Leaf was, as far as I know, the only developer and
19 by far the largest customer, in terms of both number of
20 accounts and sales volumes, I find that the concept of
21 contributions makes no sense.

22 Did I read that correctly?

23 A. Yes.

24 Q. I'm wondering if there's any way that we
25 could attribute a calculation to -- a calculation of

1 contributions in aid of construction to the customers
2 other than Silver Leaf?

3 A. Again, I have trouble with the
4 discrimination aspects that I can't seem to get my mind
5 around.

6 COMMISSIONER MURRAY: All right. Thank
7 you.

8 JUDGE PRIDGIN: Commissioner Murray, thank
9 you.

10 I normally don't like to break in the
11 middle of a witness, but I may do so since he's been on
12 the stand for a while. Let me verify with counsel.
13 Ms. Baker, do you have many questions?

14 MS. BAKER: No, I do not.

15 JUDGE PRIDGIN: Mr. Krueger?

16 MR. KRUEGER: No.

17 CHAIRMAN DAVIS: Can I ask one more
18 question?

19 JUDGE PRIDGIN: Absolutely.

20 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

21 Q. I believe I recall in your testimony that
22 you had no objection to Staff's proposed rate design for
23 Silver Leaf as a -- I can't remember if it was a wholesale
24 customer or what, but essentially charging them, what was
25 it, \$1.25 for -- per thousand gallons of, what is it,

1 non-potable irrigation water; is that correct?

2 A. Yes, but the \$1.25 was my number. I
3 believe Staff came up with something fairly substantially
4 less than that. Mr. Russo would know what that number is,
5 but it's less than the \$1.25 I proposed.

6 CHAIRMAN DAVIS: Okay. It's less than the
7 \$1.25 that you propose. Okay. All right. Thank you.

8 JUDGE PRIDGIN: And, Mr. Cooper, do you
9 anticipate quite a bit of redirect?

10 MR. COOPER: Yes, your Honor.

11 JUDGE PRIDGIN: Then this looks to be a
12 convenient time to take a break. We'll resume with
13 redirect of Mr. Loos on plant issues. The clock at the
14 back of the wall shows about 10:40. Let's try to resume
15 about 10:55.

16 I'm sorry. Mr. Krueger?

17 MR. KRUEGER: You may have misunderstood my
18 response. I didn't mean to say I have no questions. I
19 don't have many.

20 JUDGE PRIDGIN: I'm sorry. We'll give you
21 the opportunity to recross then.

22 MR. KRUEGER: Now?

23 JUDGE PRIDGIN: I'm sorry. After the
24 break, please. If there's nothing further, we'll go off
25 the record.

1 (A BREAK WAS TAKEN.)

2 JUDGE PRIDGIN: We're back on the record.

3 A housekeeping thing or two before I forget. Tomorrow we
4 will not begin until 9:30. Agenda is at 8:30 in the
5 morning, and I'm going to allow the Commission time to get
6 through agenda before I resume. So we'll be on the record
7 tomorrow morning at 9:30.

8 Also, we're going to be webcasting local
9 public hearings from here, from this room for an Aquila
10 rate case, and I will need to adjourn tomorrow and
11 Wednesday by about 4:30, and that's to allow our technical
12 staff time to set up and test equipment as they're
13 webcasting the local public hearings from here. And so if
14 counsel could keep that in mind.

15 I know we're still on the first witness on
16 the first issue, and I realize this is a major issue and
17 that not all of the witnesses and issues will take this
18 long, but if you need to revise your anticipated finish
19 time of Wednesday afternoon and need to plan for Thursday
20 or Friday, that's something to keep in mind as the start
21 time tomorrow and the end times Tuesday and Wednesday.

22 Mr. Loos is ready to stand recross, if I'm
23 not mistaken. Anything else before we proceed?

24 (No response.)

25 JUDGE PRIDGIN: All right. Hearing

1 nothing, Ms. Baker, any questions?

2 MS. BAKER: I do have one.

3 RECROSS-EXAMINATION BY MS. BAKER:

4 Q. I guess my one question is, if Algonquin
5 was given notice that a large portion of the plant might
6 be disallowed by Staff, wouldn't it have been more prudent
7 to renegotiate with Silver Leaf than trying to make the
8 ratepayers shoulder the cost of the fight with Staff?

9 A. I don't necessarily agree that it's more
10 prudent. It would certainly be a consideration.

11 MS. BAKER: Thank you. No further
12 questions.

13 JUDGE PRIDGIN: Thank you. Mr. Krueger?

14 MR. KRUEGER: Thank you, your Honor.

15 RECROSS-EXAMINATION BY MR. KRUEGER:

16 Q. There's no question that Algonquin was
17 aware that Staff believed that there was a substantial
18 acquisition premium included in the purchase price that
19 Algonquin agreed to pay, correct?

20 A. As a result of the sales case, yes.

21 Q. And that was Case No. WO-2002-1040?

22 A. That sounds right.

23 Q. Okay. Commissioner Murray asked some
24 questions about whether the company has assets to earn a
25 return on. Even with Staff's rate base numbers, though,

1 Algonquin would have a substantial investment in the
2 plant, would it not?

3 A. It would have a rate base of about
4 a million-two. I have a problem with investment.

5 Q. It would have a million-two that it could
6 earn a return on?

7 A. Yes.

8 Q. Okay. And the company has about
9 900 customers? I'm sorry. I should probably rephrase
10 that. Serves 900 residences?

11 A. Accounts. Has about 900 accounts.

12 Q. I'm not sure. I'm trying to avoid the
13 problem with bills to Silver Leaf that might be for
14 multiple units that they own, so I'm trying to get at the
15 number of residences that are in the territory that
16 Algonquin serves.

17 A. I show -- and this is the updated
18 Schedule LWL-2 -- 4,820 residential bills, which includes
19 both one-inch and two-inch meters, which would indicate
20 multiple residences from one account.

21 Q. Okay. There are about 392 units at Holiday
22 Hills, I believe; is that right?

23 A. That sounds right.

24 Q. And a couple hundred at Timber Creek?

25 A. No. I believe there's 72 at Timber Creek.

1 Q. A couple hundred at Ozark Mountain, about
2 220?

3 A. Yes, I believe so.

4 Q. Okay. You don't contend that the company
5 should earn a return on rate base it did not pay for, do
6 you?

7 A. No, I do not.

8 Q. Okay. It's just a question of what they
9 did pay for?

10 A. I disagree that there's -- the question is
11 what they paid for. We know that they paid 3.8 million.
12 It's what they can earn a return on.

13 Q. In your surrebuttal testimony at page 9,
14 you discussed DR 47.1 that Chairman Davis asked you a
15 little bit about this morning, and it is stated there that
16 DR 47 -- Algonquin declared for its Holiday Hills
17 property, DR 47.1 shows that \$243,557 is property with a
18 purchase date prior to 1993. Do you see that?

19 A. Yes.

20 Q. And is that the declared -- what Algonquin
21 declared to be the value of the property, the pre-1993
22 property at Holiday Hills?

23 A. That's what's shown on the Data Request, so
24 I assume that that's the declaration.

25 Q. And how much is Algonquin seeking to

1 include in rate base for pre-1993 property at Holiday
2 Hills?

3 A. 743,000.

4 Q. Okay. And on that same page of your
5 surrebuttal testimony, you said that for Ozark Mountain
6 39 -- \$333,249 shows a purchase date prior to 1993, and
7 that again is what was the declared value of the pre-1993
8 property at Ozark Mountain, correct?

9 A. I didn't catch the exact number. The exact
10 number is 333,249.

11 Q. Yes.

12 A. Yes.

13 Q. And how much is Algonquin seeking to
14 include in rate base for pre-1993 property at Ozark
15 Mountain?

16 A. 542,268.

17 MR. KRUEGER: Thank you. That's all the
18 questions I have.

19 JUDGE PRIDGIN: Mr. Krueger, thank you.
20 Mr. Cooper, redirect?

21 MR. COOPER: Thank you, your Honor.

22 JUDGE PRIDGIN: And let me -- I'm sorry.
23 For the rest of the hearing, counsel's certainly free to
24 examine from the podium or from their tables, just as long
25 as you're at a microphone, wherever you're comfortable.

1 MR. COOPER: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. COOPER:

3 Q. Mr. Loos, I'll probably go about this in
4 various orders here, but let's start with a question that
5 Ms. Baker just asked you on recross. She asked you
6 whether under certain circumstances that it would have
7 been prudent for Algonquin to renegotiate its contract
8 with Silver Leaf. Does Algonquin have the power or did
9 Algonquin have the power to unilaterally renegotiate that
10 contract?

11 A. I don't think so.

12 Q. Where there's a signed contract in place,
13 that's a signed contract unless both agree to some change,
14 correct?

15 A. Yes.

16 Q. Mr. Krueger had asked you about some
17 customer numbers. I'd like to refer you to, I think it's
18 your direct testimony, Schedule LWL-0.

19 A. Okay.

20 Q. Are you there?

21 A. Yes.

22 Q. Now, those -- those are customer numbers,
23 correct, for water and sewer differentiated between --
24 well, let me back up. Describe to me what that schedule
25 is.

1 A. I'm not finding one about customers. Are
2 you speaking of Item 1, LWL-0?

3 Q. Item 3.

4 A. I'm sorry. Yes.

5 Q. And describe for us what that schedule
6 shows.

7 A. As I recall, this schedule shows the number
8 of residential and commercial account bills divided by 12,
9 and that would be residential bills, both the Silver Leaf
10 and non-Silver Leaf commercial to Silver Leaf and perhaps
11 one or two non-Silver Leaf accounts.

12 Q. You were asked by Ms. Baker whether under a
13 certain circumstance that customers of now Algonquin would
14 be paying twice for the cost of these utility systems, and
15 I believe you said that your answer was no. Why was your
16 answer no?

17 A. The customers are paying for service from
18 Algonquin. They paid for service from Silver Leaf. The
19 property in that market was sold based on market
20 conditions at the time the property was sold, whether that
21 property was in the form of a time interval, share
22 interval, whether it was in the form of a lot, in those
23 few cases where it's a lot, or a condominium. To say that
24 there's a certain amount that's related to an element of
25 the developer's cost structure, they paid a package.

1 Q. And that leads to my follow-up question.
2 When we're talking about fair market value for those lots,
3 do you believe that the purchaser cares whether -- or
4 cared in this situation whether the water and sewer
5 properties were owned by Silver Leaf or someone else?

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

7 Q. So no matter who the owner of the water and
8 sewer properties would have been, just the presence of
9 water and sewer available to those properties would have
10 impacted the fair market value?

11 A. The concerns of availability of service.

12 Q. Is it possible Silver Leaf recouped its
13 costs through the sale of these properties to Algonquin?

14 A. If the question is, did Silver Leaf have
15 money left over after all of its costs were covered, I
16 assume in the long-term that they did. On an individual
17 basis, I don't know.

18 Q. Do you know whether they were covered -- I
19 think you stated during cross-examination that you didn't
20 know what they did or didn't recover as a part of the sale
21 of these lots, correct?

22 A. That's correct.

23 Q. So if it's -- is it possible, then, that
24 they did not recover costs of construction or their costs
25 in the water and sewer systems at the time they were

1 selling lots?

2 A. It's possible.

3 Q. And if they did not, is it possible they
4 recovered those costs through the sale to Algonquin?

5 A. Yes.

6 Q. You were asked, I believe, by Ms. Baker
7 about, you know, the lack of -- I think it was called
8 proper documentation for the pre-1993 plant. Do you
9 remember that?

10 A. Yes.

11 Q. Does the existence of that documentation or
12 non-existence of that documentation change whether or not
13 that plant exists and is providing service to the
14 customers?

15 A. No, it has no bearing of the existence of
16 the plant.

17 Q. Now, you were asked some questions, I
18 believe it was by Mr. Krueger, about the certificate case
19 or cases around the 1994 time period and as to whether
20 there was any finding as to rate base. Do you remember
21 that?

22 A. Yes.

23 MR. COOPER: I would like to -- your Honor,
24 may I approach the witness?

25 JUDGE PRIDGIN: You may.

1 BY MR. COOPER:

2 Q. I'd like to hand you an Order. Have you
3 seen that Order before?

4 A. Yes, I have.

5 Q. What is it?

6 A. It's -- it's the Order in Case
7 No. WA-94-246 in the matter of the application of
8 Ascension Resorts, which is the predecessor of Silver
9 Leaf, for a certificate of convenience and necessity to
10 provide water and sewer services to the public in an
11 unincorporated area of Stone County, Missouri. That would
12 be Ozark Mountain.

13 Q. Could you turn to the third page of that
14 certificate --

15 A. Yes.

16 Q. -- or that Order. Do you see paragraph 8?

17 A. Yes.

18 Q. Could you read for us that paragraph?

19 A. That nothing in this Order shall be
20 considered as a finding by the Commission of the
21 reasonableness of the expenditures herein involved, nor of
22 the value for ratemaking purposes of properties herein
23 included, nor as an acquiescence in the value placed on
24 said properties by Ascension Resorts Limited.

25 Q. Thank you. You received several questions

1 about Silver Leaf's original recording or lack of
2 recording of the plant. In terms of your testimony, does
3 their recording or lack of recording of that plant make
4 any difference to you?

5 A. No, it does not.

6 Q. Why not?

7 A. Value is independent of how it was
8 originally reported. Value is incident to the assets
9 involved and the business that's being conducted. From a
10 valuation standpoint, when we value utility and business
11 property, we don't really look at what's reported as
12 costs. We look at the assets that are in the field.

13 Q. And it's possible for that plant to have an
14 original cost whether it's recorded on the books or not,
15 correct?

16 A. At some point there was a cost, original
17 cost of construction, yes.

18 Q. Now, you received some questions as well
19 about whether Algonquin knew about the unrecorded plant at
20 the time of the acquisition. What did Algonquin know
21 about that plant?

22 A. Algonquin was aware that the plant was
23 there to support a fully functioning water and sewer
24 system, as the case may be, for the three resorts. And
25 that was what their concern would be, is whether it worked

1 and how well it worked.

2 Q. And what would they have been buying?

3 A. The assets.

4 Q. All the assets that would be necessary to
5 provide that service?

6 A. Yes.

7 Q. I believe that your -- the numbers that you
8 have proposed for the pre-1993 plant were referred to as
9 supposed numbers or based upon various suppositions.
10 Could you describe for us the process that you went
11 through in coming up with an original cost for that
12 pre-1993 plant?

13 A. Well, I first identified that there was a
14 potential problem, that there was nothing recorded for
15 certain vintage of plants and knew that there was plant at
16 that time. I then set about to determine how I might
17 reasonably measure the cost of the original installation
18 of that plant, faced with two problems, two types of
19 property. One was treatment and supply, and the other is
20 distribution.

21 For the distribution, I took the system
22 maps that were available and noted what there's some
23 missing lines on them. Filled in the blanks to get a
24 reasonable measure of the system that would be existing
25 today, and then took off the links that existed. Those

1 links are shown in my Exhibit LWL-3.

2 I then went back and identified, based on
3 available information, those areas that were in existence
4 in 1993, and identified the lines that would be required
5 to serve those areas, then used the relationship of the
6 total system to the system that would have been pre-'93
7 and applied that to the unit cost of the post '93
8 property, after I'd eliminated the effects of inflation
9 through Handy-Whitman trim factors. The final step was
10 then to convert the Handy-Whitman trended numbers back to
11 original cost, a reverse of what I did originally.

12 For the treatment facilities, I contacted
13 our estimators in our water practice whose job it is to
14 daily estimate the cost of treatment and other water
15 facilities for a variety of purposes, including our own
16 construction contracts, to identify the estimated cost
17 associated with the storage and supply systems that
18 identified would have been in there in '93 but not
19 recorded on the books.

20 Q. Now, you were asked questions about what
21 future difficulties would result if rate base is
22 insufficient for an ongoing concern. Could you provide
23 some examples of what difficulties would be presented in
24 the future?

25 A. The biggest difficulty is not having the

1 funds to reinvest in the system when those facilities are
2 ultimately retired. If we don't have investment on the
3 books for facilities, there's a bit of a quandary as to
4 what is retired. But at some point these facilities will
5 have to be replaced, whether it's next year or 50 years
6 from now, they'll have to be replaced, and without
7 depreciation and earnings allowance, it's difficult to set
8 aside the moneys that are necessary to make that
9 investment to continue service to the customers.

10 Q. I believe Commissioner Appling had asked
11 you whether the utility should earn a return on, I think
12 he said investment that was not made. Is the question
13 here that there was no cost to the pre-1993 plant or the
14 question that there is no paper trail associated with that
15 cost?

16 A. I believe it's latter, that there's no
17 paper trail.

18 Q. Do you believe that there is pre-1993 plant
19 that's providing service today?

20 A. Absolutely certain.

21 MR. COOPER: That's all the questions I
22 have, your Honor.

23 JUDGE PRIDGIN: All right, Mr. Cooper.
24 Thank you. It looks like the next plant issues witness
25 would be Mr. Featherstone. Is he available?

1 MR. KRUEGER: Yes.

2 JUDGE PRIDGIN: Mr. Loos, you may step
3 down. Thank you.

4 (Witness sworn.)

5 JUDGE PRIDGIN: Thank you very much, sir.
6 If you would, please have a seat.

7 Mr. Krueger, when you're ready, sir.

8 CARY G. FEATHERSTONE testified as follows:

9 DIRECT EXAMINATION BY MR. KRUEGER:

10 Q. State your name and address for the record,
11 please.

12 A. Cary G. Featherstone.

13 Q. By whom are you employed and in what
14 capacity?

15 A. Missouri Public Service Commission. I'm a
16 regulatory auditor with the Staff.

17 Q. Did you prepare and cause to be filed in
18 this case the prefiled rebuttal testimony of Cary G.
19 Featherstone that's been marked for identification as
20 Exhibit 25?

21 A. I did.

22 Q. Do you have any corrections or changes to
23 make to that testimony at this time?

24 A. Not to my knowledge.

25 Q. Did you also prepare and cause to be

1 prefiled the document that's been marked as Exhibit 26,
2 the surrebuttal testimony of Cary G. Featherstone?

3 A. I did.

4 Q. Do you have any corrections or changes to
5 make to that document?

6 A. Yes. I have one on page 9, line 21, and
7 the word not should be removed. The sentence should read,
8 clearly the plant investment that Silver Leaf made prior
9 to the certification as a public utility was treated as
10 development cost and was correctly excluded from its
11 utility property records.

12 Q. Any other corrections or changes to that
13 document?

14 A. Not to my knowledge.

15 Q. With that change, if I asked you the same
16 questions as are asked in Exhibit 25 and 26 today, would
17 your answers be the same?

18 A. They would.

19 MR. KRUEGER: I would offer Exhibits 25 and
20 26 and tender the witness for cross-examination.

21 JUDGE PRIDGIN: Thank you. Exhibits 25 and
22 26 are offered. Any objections?

23 (No response.)

24 JUDGE PRIDGIN: Hearing none, 25 and 26 are
25 admitted.

1 (EXHIBIT NOS. 25 AND 26 WERE RECEIVED INTO
2 EVIDENCE.)

3 JUDGE PRIDGIN: Mr. Krueger, thank you.
4 And I'm sorry, Mr. Featherstone, could you repeat the
5 place of the correction in your testimony, please?

6 THE WITNESS: Yes. It's in the
7 surrebuttal, and it's page 9, line 21, and there appears
8 to be a -- there's a word not, it should be removed.

9 JUDGE PRIDGIN: All right. Thank you.
10 And for cross-examination, I certainly want
11 to allow, since it's anticipated in the order of cross,
12 allow OPC to cross, but because it looks like OPC and
13 Staff are aligned on most issues, I will probably limit
14 any cross you had on the grounds that it's friendly cross.
15 But did you have any questions for this witness?

16 MS. BAKER: I just have a few.

17 JUDGE PRIDGIN: Okay. When you're ready.

18 CROSS-EXAMINATION BY MS. BAKER:

19 Q. Good morning. Would you agree that it is
20 important to determine the plant values when determining
21 fair rates for the ratepayers?

22 A. Absolutely.

23 Q. Did the Staff determine the plant values
24 when Algonquin proposed to purchase the utilities from
25 Silver Leaf?

1 A. Yes, as of that point in time. There's
2 been additions and retirement since, but as of that point
3 in time, yes. If you're talking about the sale case,
4 which was I guess the spring and summer of 2005, yes, we
5 did.

6 Q. Did Staff discuss with Algonquin the plant
7 values they believed existed at that time?

8 A. We had several discussions with Algonquin
9 and Silver Leaf personnel, yes.

10 Q. Did Staff discuss their belief of an
11 acquisition premium?

12 A. Yes.

13 Q. Do you know if the Commission has ever
14 allowed an acquisition premium to be included in rates?

15 A. Not to my knowledge.

16 Q. Going back to the issue of the unreported
17 plant, wouldn't Silver Leaf have an incentive to list out
18 all their utility assets, including plant, when it offered
19 it for sale to Algonquin?

20 A. Yes.

21 Q. If there was more plant which was simply
22 unrecorded, wouldn't the asking price actually have been
23 higher?

24 MR. COOPER: Objection. I don't think
25 Mr. Featherstone has any foundation to answer that

1 question.

2 MS. BAKER: I'll rephrase.

3 BY MS. BAKER:

4 Q. In your review of documents, would it be
5 your belief that more utility assets would make for a
6 higher price?

7 A. Yes.

8 MS. BAKER: That's all the questions I
9 have.

10 JUDGE PRIDGIN: Thank you. Mr. Cooper?

11 MR. COOPER: No questions, your Honor.

12 JUDGE PRIDGIN: All right. Thank you. Let
13 me see if we have any questions from the Bench.
14 Commissioner Murray?

15 COMMISSIONER MURRAY: I have a few. Thank
16 you.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Good morning, Mr. Featherstone.

19 A. Good morning, Commissioner.

20 Q. Would you turn to page 7 of your rebuttal
21 testimony, please.

22 A. Yes, ma'am.

23 Q. On page -- on lines 2 and 3, you speak
24 about the buyer being aware of the differences in plant
25 values before it acquired the properties; is that correct?

1 A. Yes.

2 Q. Now, is that actual differences in plant
3 value or just plant value for ratemaking purposes that
4 you're speaking about?

5 A. In this context, I was talking about the
6 sale case and the acquisition price that the buyer -- in
7 this case it was Algonquin -- had negotiated with Silver
8 Leaf. I think the two become somewhat synonymous when
9 you're looking at the utility regulation in terms of cost
10 recovery in future rate cases, so that the Staff in the
11 2005 sale case wanted to make it abundantly clear that we
12 had issues with Silver Leaf in the past, in past rate
13 cases that we wanted the buyer to be aware of.

14 Q. So basically you're speaking about
15 differences for ratemaking -- differences in plant value
16 for ratemaking purposes?

17 A. Ultimately, yes.

18 Q. On line 14 and 15, you speak about the cost
19 overrun. What is the dollar amount that you are claiming
20 was a cost overrun? I'm sure it's in your schedules, I
21 know, but I --

22 A. Staff witness Vesely actually is the one
23 who has calculated that cost overrun, and if you go to
24 the -- if I can find it.

25 Q. That's all right. I'm not going to waste

1 the time now doing that. I'll do it with --

2 A. It's identified in the reconciliation.

3 Q. Okay. On page 17 of your rebuttal, at
4 lines 18 through 20, you indicate that Algonquin did not
5 pay for these so-called unrecorded plant investments.
6 What did they -- did Algonquin pay for when it made the
7 purchase, including \$3.8 million for Missouri?

8 A. In my view, Algonquin, in its due diligence
9 as the buyer, would have examined the physical properties.

10 Q. I'm just asking, what did they pay for?
11 That's my question.

12 A. The type of plant?

13 Q. What did the \$3.8 million, what was it for?

14 A. It would be a negotiated price to pay for
15 the assets that existed on the books and records of Silver
16 Leaf, in this case the three utility resort properties
17 operated by Silver Leaf in Missouri.

18 Q. So if they weren't in the books and
19 records, they weren't paid for; is that your position?

20 A. My position is that those assets would have
21 been developed cost -- developer's costs, and those would
22 have been recovered through the time share sales and
23 condominium sales.

24 Q. Let's pursue that a little bit. I realize
25 that's how we traditionally treat things for water and

1 sewer companies, but it doesn't appear that our
2 methodology works very well. And in a case like this, I
3 suppose it's a good idea to look at and at least discuss
4 some of the reasons for the methodology we use and
5 question whether they're really valid.

6 If a -- let's say 100 percent of the
7 property were contributed property, so when the water or
8 sewer company then is resold, is its value zero?

9 A. If all of the property would have been
10 contributed and that would have been taken into account in
11 the negotiated price, yes.

12 Q. So that no one should pay anything to
13 purchase a water and sewer -- water or sewer company that
14 has totally contributed plant?

15 A. No. They would be buying future cash
16 flows, future revenue streams, and they could, in essence,
17 be buying customer accounts. So they would be buying a
18 utility they would operate -- you talked about earlier the
19 safe and adequate service. They would have an opportunity
20 to recoup and recover their cost associated with the
21 provision of services.

22 Q. Okay. But then when it comes time to make
23 major repairs or replacement and there is no -- there has
24 been no depreciation and there's nothing really to draw
25 upon for something major, what happens then?

1 A. Of course, your hypothetical, it would be
2 likely that if there were truly no capital investment, if
3 there was truly no asset, it would more than likely be a
4 distressed property. Of course, that's not the case.
5 Your example's not the case for this particular rate case.
6 There is a -- and was an investment made by Algonquin,
7 and --

8 Q. Stop just a second. Why would it be a
9 distressed property in my scenario?

10 A. I don't think we've ever seen where there
11 was a totally 100 percent -- and I'm not as familiar with
12 the water and sewer industry as a lot of others who will
13 be testifying here, but I don't believe we've seen a pure
14 100 percent contributed rate base.

15 Q. But if we did, it would be a distressed
16 property; is that your testimony?

17 A. It could be.

18 Q. And why would that be? Why would it be
19 distressed?

20 A. It may be that because there has not been a
21 rate base per se and because there has not been the
22 depreciation, that the properties could have been run
23 down.

24 Q. So that kind of supports my theory that the
25 way we're treating contributed property for rate base

1 really can lead to the inability to provide safe and
2 adequate service, does it not?

3 A. Well, not as it relates to this case, no.

4 Q. But in general?

5 A. Perhaps I'm not as familiar with as I
6 should be in terms of a general policy statement. I would
7 probably defer you to the manager of the water and sewer
8 department, Dale Johansen. Perhaps he'd be a much better
9 witness to answer that question.

10 Q. All right. I'll pursue it with him then.
11 Thank you.

12 On page 18 of your rebuttal testimony, at
13 lines 9 and 10, you say the actual plant costs are
14 substantiated by sufficient supporting documentation
15 common to the construction industry, and this --
16 basically, this is discussing Missouri jurisdiction and
17 how utility rates are set in Missouri; is that correct?

18 A. Yes.

19 Q. Okay. My question for you is, you don't
20 believe, do you, that the actual plant costs of those
21 facilities that were not otherwise valued was zero, do
22 you?

23 A. Are you speaking of the -- what the company
24 refers to as unrecorded --

25 Q. Yes.

1 A. -- plant?

2 No. They had a value and continued to have
3 a value. They had a value to the resort property owners,
4 Silver Leaf, and they continue to provide service to those
5 end users, which what we believe would be a more plausible
6 way of thinking of it is -- is that the recovery of those
7 costs would have been through the time shares and the
8 customers of the resort properties. And it's important to
9 make that clear distinction between Silver Leaf the resort
10 and Silver Leaf the utility operator.

11 Q. Okay. Do you have supporting documentation
12 that the property that you say is contributed was
13 contributed?

14 A. Well, we know that we had pre-1993 or 1994
15 property that Silver Leaf clearly identified on its books
16 and records and Staff has reflected in its case, and Staff
17 witness Vesely will testify to that, provide evidence of
18 such. The breakdown of this asset base would indicate to
19 us that because there was a greater amount that wasn't
20 recorded, that someone had to contribute, someone had to
21 pay for it.

22 Silver Leaf was an ongoing concern, and the
23 evidence, I think, speaks to the fact that -- that because
24 it wasn't recorded as utility property, the only other
25 place, the only logical place that it could have been

1 recorded and could have been recovered would be the resort
2 property, Silver Leaf resort property time shares and
3 condominium sales.

4 Q. On page 22 of your rebuttal, at lines 12
5 and 13, you indicate that Staff has done extensive
6 analysis and examination of the plant recorded on Silver
7 Leaf's books and the related plant investment transaction
8 based on construction documentation. Has there been any
9 onsite investigation of the physical plant?

10 A. Yes. There were times over the years. I
11 think it's important to recognize that the Staff's
12 analysis of -- and of these issues, all of them except for
13 the unrecorded plant, this isn't the first time that this
14 has ever been brought forward. But as we've examined the
15 investment of Silver Leaf resorts, the three properties
16 over the years, that's dated back to the certificate case,
17 back to the early '90s. It's occurred in a 1997 rate
18 case. There's been two other cases that was a rate case
19 and a complaint case, and then really accumulated with all
20 of the information that had been brought forward in the
21 sale case in the 2005 time frame.

22 Q. Okay. Let's look at the property tax
23 assessment issue. You talk about it on page 24 of your
24 rebuttal.

25 A. Yes.

1 Q. Commissioner Davis asked the other witness
2 earlier about the assessed value. Do you know the answer
3 to the question that he asked?

4 A. I think that is correct, what was stated
5 earlier by the company witness, that those were -- he used
6 the term declared values, which is what the utility would
7 have identified at the first of the year to the taxing
8 authorities of what they believed to be the asset value.

9 But that is not a -- that is not an
10 assessment value that the taxing authorities -- they
11 typically take those values that the utility provides and
12 then they convert those to assessed values and then send a
13 document that would identify what those assessed values
14 were.

15 Q. And the reason that you're discussing this
16 issue, I assume -- well, let's go to page 25 of your
17 rebuttal where you indicate that Algonquin declared a
18 total amount for 2006 assessment purposes for Holiday
19 Hills of 679,361, and then you go on to give the amount
20 for Ozark Mountain and say, these amounts are nowhere near
21 the levels of the total plant balances, including the
22 newly discovered unrecorded plant amounts for these
23 utility operations.

24 What point are you making there?

25 A. My point is that just as the previous owner

1 did not recognize the unrecorded plant on the books and
2 records, Algonquin, if it really believed that this
3 property existed, if it exists for utility asset purposes,
4 valuation purposes, then it would have declared those
5 greater values to the tax authority and would have then
6 been prepared to pay the respective property taxes on
7 those values.

8 In other words, we view this as an
9 inconsistency in the company's presentation of what
10 unrecorded properly really is.

11 Q. Okay. Explain to me, if you will, for
12 taxation purposes, how -- does the regulatory treatment of
13 the utility assets determine the asset valuation for
14 taxation purposes?

15 A. For property tax purposes, yeah, it can.
16 As we go through, not necessarily in this case, but as you
17 go through in other cases where there have been
18 disallowances made and there's a writeoff of assets, those
19 become the assets that are on the books and records of a
20 company that it would declare, if you use that term
21 declare, to the taxing authority at the appropriate time.

22 Q. Okay. Did you look at what Silver Leaf --
23 the amounts for assessment purposes that Silver Leaf had
24 included?

25 A. I'm not sure. I don't recall whether that

1 Data Request asked for the pre-Silver Leaf. Silver Leaf
2 would have not included the unrecorded plant because they
3 never recognized that any such existed.

4 COMMISSIONER MURRAY: I think that's all I
5 have. Thank you.

6 THE WITNESS: Thank you.

7 JUDGE PRIDGIN: Commissioner, thank you. I
8 don't have any questions. Any recross?

9 MR. COOPER: Yes, your Honor.

10 RECROSS-EXAMINATION BY MR. COOPER:

11 Q. Mr. Featherstone, you were asked a question
12 by I believe Commissioner Murray, and she pointed out that
13 in your testimony you have a statement that the company
14 did not pay for unrecorded plant. And I believe your
15 answer was that they -- she asked you what they did pay
16 for, and you said plant that existed on the company's
17 books and records, correct?

18 A. Yes.

19 Q. Are you saying that Algonquin doesn't have
20 title to all the plant that it needs to provide service?

21 A. No, I'm not saying that at all.

22 Q. You'd agree with me that Algonquin has
23 title to all the plant that is providing service at the
24 three resorts at this point in time, correct?

25 A. Absolutely.

1 Q. You were also asked about a hypothetical
2 where a utility's plant would all be contributed, and in
3 that hypothetical, I believe you indicated that if someone
4 bought that utility they would be buying revenue stream,
5 correct?

6 A. Yes. Typically when companies are
7 evaluating acquisitions or potential sale of property,
8 certainly they look at the assets. But of course, they
9 also considered greatly the amount of revenue treatment
10 and future cash flows that a piece of property can
11 generate.

12 Q. And in that example, I assume we're talking
13 about a regulated entity, its future revenue stream would
14 be equal to its operating cost, correct, because it would
15 not have any rate base upon which to earn a return?

16 A. Now, are you speaking of the
17 hypothetical --

18 Q. The hypothetical, yes.

19 A. -- that Commissioner Murray asked with a
20 zero rate base or 100 percent contributed?

21 Q. Yes.

22 A. Could you re-ask your question?

23 Q. In that situation, its future revenue
24 stream would be certainly no more than its -- just its
25 operating costs to run that system, correct, as those

1 operating costs were established by this Commission in
2 setting its rates?

3 A. That and any future growth and development
4 that the new owner, the new utility property owner
5 intended to invest.

6 Q. So in the future, if there was investment
7 in plant, at that time they might then have some sort of
8 rate base, correct?

9 A. Absolutely.

10 Q. And only after whatever point in time that
11 investment became used and useful, correct?

12 A. Yes. And of course, all of these questions
13 relate to the hypothetical, which, of course, does not
14 exist with respect to Algonquin.

15 JUDGE JONES: Did the word yes answer your
16 question, Mr. Cooper?

17 MR. COOPER: I think it did.

18 JUDGE PRIDGIN: All right. Did you want
19 the remainder of that --

20 MR. COOPER: If you would like that --

21 JUDGE PRIDGIN: -- stricken.

22 MR. COOPER: That's all the questions I
23 have, your Honor.

24 JUDGE PRIDGIN: All right. Thank you.
25 Redirect?

1 MR. KRUEGER: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. KRUEGER:

3 Q. Getting back to the hypothetical with zero
4 rate base, where everything is contributed, would the
5 Staff allow any return on rate base in a circumstance like
6 that?

7 A. If everything is contributed and there is
8 no rate base, no.

9 Q. Would that mean it's impossible for the
10 company to make any profit?

11 A. On the investment, yes. It would, however,
12 recover its prudently incurred and reasonably incurred
13 costs to operate the facility.

14 Q. And what effect would growth in sales --
15 would that have any effect on the company's profitability?

16 A. Yes. The increase in revenues, all things
17 considered equal, if costs held constant, then the company
18 would increase its profitability through revenue increase.

19 Q. So it could realize profit based on a
20 growth in sales?

21 A. That's correct.

22 Q. And I think you also said on the basis of
23 return on future investments that the company might make,
24 that would be included in rate base?

25 A. Yes.

1 Q. Now, this hypothetical talked about all of
2 the property being contributed. That's not the
3 circumstance we're talking about here, is it?

4 A. Not at all.

5 Q. And what rate base is the Staff
6 recommending in this case?

7 A. For total water and sewer, for all three
8 resort properties, utility properties, the adjusted
9 net rate base, which is -- it has the contributions in
10 aid of construction deducted, the total rate base is
11 \$1.2 million.

12 Q. Okay. What kind of property is typically
13 contributed?

14 A. It would be the -- what I refer to as
15 the distribution, the pipes that go from the well out to
16 the -- in this case, the resort facilities, the time
17 shares, the condominiums, the actual distribution of the
18 water system, the collection of the sewer system back from
19 those facilities to the wastewater treatment.

20 Q. And what type of property is typically
21 provided by the utility?

22 A. Wastewater treatment facilities, the wells
23 and pumps, storage.

24 Q. To your knowledge, has the Commission ever
25 allowed a return on rate base if there's no investment?

1 A. Not to my knowledge. I'm not the best
2 person to ask that question in terms of the water and
3 sewer cases. There's probably better witnesses that you
4 could ask that question, Dale Johansen. But not to my
5 knowledge.

6 Q. If assets were contributed, can you think
7 of any reason why the Commission should allow the company
8 to earn a return on that contributed property?

9 A. No. There's no investment made by the
10 utility that would result in a return where the utility
11 should be provided a return on those investments that were
12 contributed.

13 MR. KRUEGER: Thank you. That's all the
14 questions I have.

15 JUDGE PRIDGIN: Mr. Krueger, thank you.
16 The next witness is Mr. Vesely, and it's about 10 'til 12.
17 I'm trying to figure out the better time to break for
18 lunch. Do counsel know about how much cross-examination
19 you anticipate of this witness?

20 MR. COOPER: I don't know how to assess
21 that exactly, but there is -- I do have cross, and it's
22 more than just a handful of questions.

23 JUDGE PRIDGIN: All right. This is
24 probably, then, the most convenient time to break for
25 lunch, and we'll come back and we'll begin with Mr. Vesely

1 this afternoon. The clock at the back of the room is
2 showing 10 'til 12. Let's resume at 1:15. Is there
3 anything else from counsel before we go off the record?

4 MR. COOPER: I have a scheduling matter,
5 but we can go off record to do it.

6 JUDGE PRIDGIN: All right. If there's
7 nothing else?

8 (No response.)

9 JUDGE PRIDGIN: All right. We stand in
10 recess. We will resume at 1:15.

11 (A BREAK WAS TAKEN.)

12 JUDGE PRIDGIN: We're back on the record.
13 The time is about 1:20 in the afternoon, and Mr. Vesely
14 has taken the stand to testify on plant issues. Anything
15 else from counsel before Mr. Vesely's sworn and stands
16 cross?

17 (No response.)

18 JUDGE PRIDGIN: All right. Mr. Vesely, if
19 you'd raise your right hand to be sworn, please. I'm
20 sorry. Am I pronouncing your name correctly.

21 THE WITNESS: Yes, sir.

22 JUDGE PRIDGIN: Thank you.

23 (Witness sworn.)

24 JUDGE PRIDGIN: Thank you very much, sir.
25 If you would please have a seat.

1 Mr. Krueger, when you're ready, sir.

2 GRAHAM A. VESELY testified as follows:

3 DIRECT EXAMINATION BY MR. KRUEGER:

4 Q. State your name and address for the record,
5 please.

6 A. It is Graham Vesely, and I'm employed by
7 the Missouri Public Service Commission, and my address is
8 615 East 13th Street, Kansas City, Missouri.

9 Q. And in what capacity are you employed by
10 the Commission?

11 A. As a regulatory auditor.

12 Q. Okay. Did you prepare and cause to be
13 prefiled in this case Exhibit 8, direct testimony of
14 Graham A. Vesely?

15 A. Yes, I did.

16 Q. And that also has a highly confidential
17 version, Exhibit 8HC, correct?

18 A. Yes.

19 Q. Do you have any corrections or changes to
20 make to Exhibit 8?

21 A. I do have just a few. This is my direct
22 testimony you're speaking of?

23 Q. Direct testimony, yes. And please let me
24 know if any part of it is HC so we can deal with that
25 appropriately.

1 A. None of it is HC. Just very briefly here,
2 page 11, line 5, Staff examined and reviewed purchase
3 orders, as opposed to purchased. Page 12, line 4, how did
4 you develop this Staff's position, as opposed to the Staff
5 position. Page 13, line 10, at the end of the line,
6 before arriving at its final, as opposed to it final. And
7 also on page 13, line 13, before the word unaccounted,
8 please insert known or unaccounted, and after the word
9 for, insert the words end of test year. And finally on
10 line 13, also -- or sorry, line 15.

11 Q. On the same page?

12 A. Same page, page 13, after the word
13 existence of this unaccounted for differences, please
14 change this to these unaccounted for differences. That's
15 all my changes to my direct testimony.

16 Q. Okay. And with those changes, is the
17 direct testimony true and correct?

18 A. It is.

19 Q. And if I asked you those same questions
20 today, would your answers be the same?

21 A. They would be.

22 Q. Did you also prepare and cause to be
23 prefiled Exhibit 9, rebuttal testimony of Graham A.
24 Vesely, which also includes an HC version?

25 A. Yes, I did.

1 Q. Do you have any corrections or changes to
2 that testimony?

3 A. Just two brief ones, please. Page 2,
4 line 6, after all plant, delete the word must, so that it
5 reads, all plant that meets this test. And on page 4,
6 line 7, at the end of the line, question it was required,
7 please delete the word it, so that it reads, in question
8 was required.

9 Q. So it's the very last word of the line?

10 A. Yes. The utility plant in question was
11 required to be contributed is the way it should read.

12 Q. Okay. Any other corrections or changes to
13 Exhibit 9?

14 A. That's it, sir.

15 Q. And with those changes, is that testimony
16 all true and correct?

17 A. It is.

18 Q. If I asked you the same questions today,
19 would your answers be the same?

20 A. They would be.

21 Q. Did you also prepare and cause to be
22 prefiled in this case Exhibit 10, surrebuttal testimony of
23 Graham A. Vesely?

24 A. Yes, I did.

25 Q. And do you have any corrections or changes

1 to make to that testimony?

2 A. No, sir, I do not.

3 Q. If I asked you those questions again today,
4 would your answers be the same?

5 A. They would be.

6 MR. KRUEGER: At this time, your Honor, I
7 would offer Exhibits 8H -- I'm sorry -- 8HC, 9, 9HC and 10
8 and tender the witness for cross-examination.

9 JUDGE PRIDGIN: Mr. Krueger, thank you.
10 Exhibits 8, 8HC, 9, 9HC and 10 have been offered. Any
11 objections?

12 (No response.)

13 JUDGE PRIDGIN: Hearing none, those
14 exhibits are all admitted.

15 (EXHIBIT NOS. 8, 8HC, 9, 9HC AND 10 WERE
16 RECEIVED INTO EVIDENCE.)

17 JUDGE PRIDGIN: Mr. Krueger, thank you.
18 Ms. Baker, any cross?

19 MS. BAKER: Yes.

20 CROSS-EXAMINATION BY MS. BAKER:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Who has the burden of showing the amount of
24 investment in plant?

25 A. We believe the utility does.

1 Q. When Algonquin filed this case, did Staff
2 request documentation such as invoices, checks,
3 construction contracts and the like regarding the amount
4 of plant at each of the three resorts?

5 A. Yes.

6 Q. Was there some pre-1993 plant that was
7 allowed by the Staff?

8 A. Yes, there was.

9 Q. Were invoices, checks, construction
10 contracts and the like provided for that pre-1993 plant
11 that was allowed?

12 A. Yes, contracts for the delivery of goods
13 and some services were provided.

14 Q. If Algonquin had provided adequate evidence
15 such as invoices, checks, construction contracts, would
16 Staff have allowed that plant?

17 A. It certainly would have considered that,
18 yes.

19 Q. Is it normal practice for a developer to
20 recoup their development costs through the price of land,
21 time shares or condominiums?

22 MR. COOPER: Your Honor, I would object at
23 this point. I think we have ventured into what we
24 sometimes call friendly cross, but probably my formal
25 objection would be that it's essentially a supplement or

1 it's improper supplementation of direct, rebuttal and
2 surrebuttal in this case. Had OPC wanted to put in this
3 type of evidence, it could have -- it could have filed
4 direct, rebuttal and surrebuttal at the appropriate point
5 in time.

6 JUDGE PRIDGIN: Ms. Baker?

7 MS. BAKER: This is a question that I asked
8 of Algonquin's witnesses as well, and he was allowed to
9 answer that question, and so I was just getting the same
10 question and the Staff's answer to that question.

11 JUDGE PRIDGIN: Did you object or did
12 anybody object to that question?

13 MS. BAKER: No, they did not.

14 JUDGE PRIDGIN: I'm going to sustain the
15 objection. This is friendly cross.

16 MS. BAKER: Do I need to repeat the
17 question?

18 JUDGE PRIDGIN: I sustained.

19 MS. BAKER: Oh, I'm sorry. Then that's
20 all.

21 JUDGE PRIDGIN: Thank you. Mr. Cooper?

22 MR. COOPER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. COOPER:

24 Q. Mr. Vesely, you would agree with me,
25 wouldn't you, that Silver Leaf had only one corporate

1 entity involved in the Missouri resort properties?

2 A. Yes, I would.

3 Q. So whether someone talks about Silver Leaf
4 the developer or Silver Leaf the utility or even if
5 someone wanted to refer to Silver Leaf as the customer,
6 it's all Silver Leaf Resorts, Inc., correct?

7 A. Yes, that's true.

8 Q. You don't know of any other corporate
9 entity that performed any of those functions or stepped
10 into any of those shoes in regard to Ozark Mountain,
11 Holiday Hills or Timber Creek, do you?

12 A. No. The Staff always understood that was
13 one ownership by one corporation. We made the distinction
14 between resort and utility activities.

15 Q. Even though it was one corporation,
16 correct?

17 A. Yes.

18 Q. And prior to the sale to Algonquin, if we
19 focus on Timber Creek, Silver Leaf essentially was in all
20 three positions in regard to Timber Creek, correct? It
21 was the -- you would say they were the developer, they
22 were the utility, and they were the sole consumer of
23 services there at Timber Creek, correct?

24 A. At Timber Creek, Silver Leaf is now and has
25 always been the only utility customer, if that's what you

1 asked. Otherwise, if you'd repeat the question.

2 Q. Did they also serve in the capacity or were
3 they also the utility for a point in time at Timber Creek?

4 A. Silver Leaf was the utility, yes.

5 Q. And in your mind, they were a developer of
6 Timber Creek as well, correct?

7 A. Oh, absolutely, yes.

8 Q. Now, when do you think the property at
9 Timber Creek, the utility property was devoted to public
10 service?

11 A. My understanding is that once -- once that
12 became regulated by the Commission, clearly after that
13 point it would be. So before that, it probably wasn't.

14 Q. And so when you say when it became
15 regulated by the Commission, I take it you mean 1998 when
16 a certificate was granted to Silver Leaf, or it was under
17 a different name at that time, I believe, but --

18 A. Yes.

19 Q. In 1998?

20 A. Yes.

21 Q. And so you believe that it was devoted to
22 public service at that point, even though -- well, let's
23 back up. In 1998, was Silver Leaf the only customer, the
24 only consumer of services at Timber Creek?

25 A. Yes.

1 Q. And was Silver Leaf also the water and
2 sewer utility at Timber Creek as of 1998?

3 A. Yes, it was.

4 Q. And when did that change?

5 A. It only changed after the sale of the
6 utilities to Algonquin effective August 14th, 2005.

7 Q. Now, as to Holiday Hills or the water
8 system at Holiday Hills and the water and sewer systems at
9 Ozark Mountain, you would agree with me, wouldn't you,
10 that those systems, there was some water system in place
11 at Holiday Hills and there was some water and sewer system
12 in place at Ozark Mountain prior to the grant of
13 Commission certificates in 1994?

14 A. Yes.

15 Q. I believe in your direct testimony -- and
16 I'm looking at pages 23 and 24, if you want to reference
17 that. Are you there?

18 A. Yes, sir.

19 Q. Now, at that point in your testimony, you
20 recite from a Silver Leaf Data Request response from, I
21 believe, a prior case that indicates there is plant, and
22 in this case I believe it's a well, that remains in
23 service at Timber Creek that was originally obtained by
24 Silver Leaf when it acquired the Timber Creek properties
25 from Thousand Trails, Inc., correct?

1 A. Yes.

2 Q. And then I believe you state that -- and
3 this is on line 17 and 18 on page 24 -- that without any
4 cost records, the Staff recommends against including any
5 investment in rate base for such plant, correct?

6 A. That's right.

7 Q. And that sort of concept shows up many
8 times in your testimony, doesn't it?

9 A. It does.

10 Q. So in your testimony, you state again
11 multiple times that without cost records or some sort of
12 paper trail, it's your belief there's just no plant for
13 purposes of rate base, correct?

14 A. That was my interpretation of the correct
15 position to take with regard to US of A, Uniform System of
16 Accounts.

17 Q. So if for whatever reason your
18 interpretation of the Uniform System of Accounts turned
19 out to be inaccurate, you might take a different position?

20 A. Yes.

21 Q. Now, the position you've taken today that
22 if there is no paper trail there is no plant for purposes
23 of rate base, I suppose that holds true even if in the
24 case of Timber Creek a person could look at that well and
25 see that it was still providing service to the customers,

1 correct?

2 A. That's correct.

3 Q. And you're not going to make any estimate
4 of the original cost of that plant under any circumstances
5 at this point in time, correct?

6 A. I will say that I have no experience
7 estimating plant, as opposed to including plant in rate
8 base after viewing actual cost documentation.

9 Q. Now, in your -- let's turn in your rebuttal
10 testimony, if we can, to page 14. Are you there?

11 A. Page 14?

12 Q. Yes.

13 A. Yes, I'm there.

14 Q. And at line 6 to 8 you've got a sentence
15 that says, Staff indicated that the plant installed before
16 1993 should generally be treated as contributed because of
17 a lack of costed documentation and due to questions on how
18 Silver Leaf may have accounted for recovering the cost of
19 such plant, correct?

20 A. Yes.

21 Q. And I believe that statement refers to the
22 point in time that the certificate cases were being
23 processed, correct?

24 A. Yes.

25 Q. So even in the '93-'94 time frame, there

1 were already problems as to documentation, weren't there?

2 A. I haven't seen anywhere that there were
3 problems mentioned. I did not personally work on that
4 case. I just know that some documents were provided to
5 the Staff because I have copies of those, and so those
6 documented costs were included in rate base.

7 Q. But the statement, I think you just told
8 us, refers to that time period, the '93-'94 time period
9 when that case was being processed, and it looks to me
10 like already at that point in time there was a recognized
11 lack of cost documentation. Would you agree with that?

12 A. No, not really.

13 JUDGE PRIDGIN: I think that answered the
14 question.

15 BY MR. COOPER:

16 Q. Now, you came to work for the Commission in
17 1999, correct?

18 A. Yes.

19 Q. And you weren't personally involved in
20 either of the '94 time period certificate cases, were you?

21 A. That's right.

22 Q. Now, going in your surrebuttal to page 11,
23 lines 1 through 7 --

24 A. Page 11?

25 Q. 11.

1 A. Which lines again?

2 Q. 1 through 7.

3 A. 1 through 7.

4 Q. Now, you were asked a question there as to

5 whether Algonquin paid Silver Leaf for pre-1993

6 investment, correct?

7 A. Yes.

8 Q. You then state that Algonquin would not

9 have paid for any pre-1993 plant investment not reflected

10 on Silver Leaf's books because Algonquin was not aware of

11 its existence, correct?

12 A. That's my understanding, yes.

13 Q. Now, does that mean that you think

14 Algonquin didn't buy all the utility plant that it needs

15 to provide service?

16 A. No.

17 Q. Does that mean that you don't think

18 Algonquin has title to all the plant that it needs to

19 provide service?

20 A. No.

21 Q. Wouldn't you agree with me that what

22 Algonquin pays for is plant?

23 A. I'm not sure I understand your question.

24 Q. Well, in the acquisition case -- I believe

25 you were involved in the acquisition case, weren't you?

1 A. I was.

2 Q. And there was a purchase agreement that was
3 reviewed by yourself and I'm sure others, correct?

4 A. Yes.

5 Q. And associated with that would have been
6 some sort of bill of sale as well as deeds to real estate,
7 correct?

8 A. Yes.

9 Q. Wouldn't you agree with me that in
10 reviewing that purchase agreement, that what Algonquin was
11 paying Silver Leaf for was plant, it was real estate, it
12 was assets?

13 A. Well, that's what it acquired, yes, of
14 course.

15 MR. COOPER: That's all the questions I
16 have at this point in time, your Honor.

17 JUDGE PRIDGIN: All right. Thank you. I
18 think I have a couple of questions, and then I'll give
19 Commissioner Murray a chance to ask questions.

20 QUESTIONS BY JUDGE PRIDGIN:

21 Q. Before the 1994 certification, were the
22 utilities operated separate and apart from the resorts
23 themselves?

24 A. No, they were not.

25 Q. And were they -- if you know, were they

1 reported for income tax purposes as separate entities?

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

3 Q. If Silver Leaf had restated plant basis at
4 the time of certification, would it have been required to
5 restate its tax returns for periods prior to
6 certification?

7 A. Tax returns?

8 Q. Yes.

9 A. Income tax returns?

10 Q. Yes.

11 A. I'm not sure I follow your question.

12 Q. Well, I guess I'm trying to understand
13 what, if anything, Silver Leaf did incorrectly, and I
14 guess my point is that perhaps if it's an unregulated
15 utility, it doesn't necessarily have any legal reason to
16 separate out its utility accounting from its resort
17 accounting. Is that your understanding?

18 A. That's right.

19 JUDGE PRIDGIN: Okay. That's my point.

20 Okay. I'm sorry. Thank you.

21 Commissioner Murray did you have any
22 questions?

23 COMMISSIONER MURRAY: I don't believe so,
24 thank you.

25 JUDGE PRIDGIN: Thank you. Any recross

1 based on my questions?

2 (No response.)

3 JUDGE PRIDGIN: All right. Redirect?

4 MR. KRUEGER: Thank you, your Honor.

5 REDIRECT EXAMINATION BY MR. KRUEGER:

6 Q. Mr. Vesely, I believe you testified in
7 response to a question from Ms. Baker that there was
8 pre-1993 plant was allowed?

9 A. The Staff was provided, yes, with some
10 actual cost documents for pre-'93 plant, and it included
11 this into rate base.

12 Q. Does that show up in your testimony
13 anywhere?

14 A. I filed a schedule attached to my rebuttal
15 testimony including copies of those original documents
16 showing costs paid for utility plant items, and that is
17 Schedule 4 attached to my rebuttal testimony. It's
18 multiple pages, 4-1 through 4-25, Schedule 4 attached to
19 my surrebuttal testimony.

20 Q. Okay. That appears to be a number of
21 different documents, but taken together, what do they
22 constitute?

23 A. They constitute what the Staff considers
24 good evidence of what was spent on these items of utility
25 plant at this time. And the date of the document is 1984,

1 which was the year when Holiday Hills, everyone seems to
2 agree, was founded, Holiday Hills Resort, that particular
3 resort. So this would have been the initial installation
4 of the utility systems at that resort.

5 Q. Now, would that pertain to what Mr. Loos
6 has referred to as unrecorded plant?

7 A. Yes.

8 MR. KRUEGER: That's all the questions I
9 have, your Honor.

10 JUDGE PRIDGIN: All right. Thank you.
11 Mr. Vesely, thank you very much. You may step down.

12 It looks like the next witness for plant
13 issues is Mr. Merciel. Mr. Merciel, if you'll come
14 forward to be sworn, please.

15 (Witness sworn.)

16 JUDGE PRIDGIN: Thank you very much. If
17 you would please have a seat.

18 Mr. Krueger, when you're ready, sir.

19 MR. KRUEGER: Thank you, your Honor.

20 JAMES A. MERCIEL, JR. testified as follows:

21 DIRECT EXAMINATION BY MR. KRUEGER:

22 Q. State your name and address for the record,
23 please.

24 A. James A. Merciel, Junior. The address is
25 200 Madison Street, Jefferson City, 65101.

1 Q. By whom are you employed and in what
2 capacity?

3 A. I'm employed by the Public Service
4 Commission. My title is assistant manager engineering. I
5 work in the water and sewer department.

6 Q. Did you prepare and cause to be prefiled in
7 this case Exhibit 17, direct testimony of James A.
8 Merciel, Jr.?

9 A. Yes, I did.

10 Q. Do you have any corrections or changes to
11 that prefiled testimony?

12 A. Well, not on direct. I would like to
13 update the surrebuttal.

14 Q. Okay. I'll move on to that in a little
15 bit.

16 A. Okay. No corrections then on that.

17 Q. So if I asked you the same questions as are
18 contained in the direct testimony today, would your
19 answers be the same?

20 A. Yes.

21 Q. Okay. Now, did you also prepare and cause
22 to be prefiled in this case rebuttal testimony of James A.
23 Merciel, Jr.?

24 A. Yes, I did.

25 Q. And that's Exhibit 18. Did you have any

1 corrections or changes to make to that document?

2 A. No.

3 Q. If I asked you those same questions today,
4 would your answers be the same?

5 A. Yes.

6 Q. Did you also prepare and cause to be
7 prefiled in this case Exhibit 19, the surrebuttal
8 testimony of James A. Merciel, Jr.?

9 A. Yes, I did.

10 Q. Do you have any corrections or changes to
11 make to that document?

12 A. Yes, I would like to make an update on that
13 one. On page 5 -- page 5, line 14, toward the end of the
14 line, it says 850 GPM, which means gallons per minute.
15 I'd like to change that number to 1,200 -- 1,200. And
16 then on line 17, it says to 12 percent, and I would like
17 to change that 12 to 28 percent.

18 Q. Are there any other corrections or changes
19 to the surrebuttal testimony?

20 A. No.

21 Q. In your surrebuttal testimony you stated
22 that Staff may well modify its position with respect to
23 fire flow. Do you recall making that statement?

24 A. Yes, I did.

25 Q. And has the Staff modified its position or

1 not?

2 A. Yes. That's basically the change that I
3 just made. I'm actually still looking at the issue, but I
4 think we're pretty close. I'm comfortable with where
5 we're at right now. This change reflects what I would
6 like to go ahead with.

7 Q. So if I asked you the questions that are
8 contained in the surrebuttal testimony, would your answers
9 be the same?

10 A. Yes.

11 MR. KRUEGER: I would offer Exhibits 17, 18
12 and 19 and tender the witness for cross-examination, your
13 Honor.

14 JUDGE PRIDGIN: Mr. Krueger, thank you.
15 Any objections to those exhibits?

16 (No responses.)

17 JUDGE PRIDGIN: Seeing none, Exhibit 17, 18
18 and 19 are admitted.

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

21 JUDGE PRIDGIN: Mr. Krueger, thank you.
22 Ms. Baker, any cross?

23 MS. BAKER: None right now.

24 JUDGE PRIDGIN: Thank you. Mr. Cooper?

25 MR. COOPER: Not on this issue, your Honor.

1 JUDGE PRIDGIN: All right. Thank you.

2 Commissioner Murray, any questions on this issue?

3 COMMISSIONER MURRAY: I don't believe so,
4 thank you.

5 JUDGE PRIDGIN: Thank you. I have no
6 questions, recross Mr. Merciel. Thank you.

7 Then the final witness on plant issues is
8 Dale Johansen, and if you'll raise your right hand to be
9 sworn, please.

10 (Witness sworn.)

11 JUDGE PRIDGIN: Thank you very much, sir.

12 Please have a seat, please.

13 Mr. Krueger, when you're ready.

14 MR. KRUEGER: Thank you, your Honor.

15 DALE W. JOHANSEN testified as follows:

16 DIRECT EXAMINATION BY MR. KRUEGER:

17 Q. State your name and address for the record,
18 please.

19 A. Dale W. Johansen, J-o-h-a-n-s-e-n,
20 200 Madison Street, Jefferson City, 65101.

21 Q. By whom are you employed and in what
22 capacity?

23 A. I'm employed by the Missouri Public Service
24 Commission, and I'm the manager of the water and sewer
25 department.

1 Q. Did you prepare and cause to be prefiled in
2 this case a document that's been marked for identification
3 as Exhibit 27, surrebuttal testimony of Dale W. Johansen?

4 A. I did.

5 Q. Do you have any corrections or changes to
6 that document?

7 A. No.

8 Q. If I asked you those same questions as are
9 contained therein today, would your answers be the same?

10 A. They would.

11 MR. KRUEGER: Your Honor, I would offer
12 Exhibit 27 and tender the witness for cross-examination.

13 JUDGE PRIDGIN: Mr. Krueger, thank you.
14 Any objection?

15 (No response.)

16 JUDGE PRIDGIN: Hearing none, Exhibit 27 is
17 admitted.

18 (EXHIBIT NO. 27 WAS RECEIVED INTO
19 EVIDENCE.)

20 JUDGE PRIDGIN: Ms. Baker, any cross?

21 MS. BAKER: None right now.

22 JUDGE PRIDGIN: Mr. Cooper?

23 MR. COOPER: No, thank you.

24 JUDGE PRIDGIN: Commissioner Murray, any
25 questions for this witness?

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Probably just a general policy question,
3 Mr. Johansen.

4 A. Yes, ma'am.

5 Q. You heard my questioning, I'm assuming, of
6 Mr. Loos and Mr. Featherstone earlier?

7 A. Yes.

8 Q. Is it true that our traditional treatment
9 of water and sewer companies in terms of disallowing in
10 rate base all contributed property even after the property
11 changes hands, there's a second owner, sometimes results
12 in the inability of the company to be able to provide safe
13 and adequate service?

14 A. I don't believe so, no.

15 Q. You don't believe that ever happens?

16 A. No.

17 COMMISSIONER MURRAY: Okay. Thank you.

18 JUDGE PRIDGIN: Commissioner, thank you. I
19 don't have any questions.

20 Any recross based on Bench questions?
21 Redirect?

22 MR. KRUEGER: No, your Honor.

23 JUDGE PRIDGIN: All right. Thank you.

24 Mr. Johansen, thank you very much.

25 If the parties are ready to go on to excess

1 capacity, and is Mr. Hamrick ready?

2 MR. COOPER: Yes, your Honor.

3 JUDGE PRIDGIN: Mr. Hamrick, if you'd raise
4 your right hand to be sworn, please.

5 (Witness sworn.)

6 JUDGE PRIDGIN: Thank you very much, sir.
7 Mr. Cooper, when you're ready.

8 MR. COOPER: Your Honor, consistent with, I
9 guess, our earlier discussion, I have a few remarks about
10 this issue before we go on to Mr. Hamrick, if that would
11 be all right.

12 JUDGE PRIDGIN: Yes, sir.

13 MR. COOPER: The excess capacity issue,
14 Staff has alleged that there's excess well and storage
15 capacity associated with the three water operations.
16 Accordingly, it has recommended that \$474,000 of the
17 investment that Staff found to exist at these properties
18 be treated as plant held for future use. This means that
19 Staff recommends that this amount of plant be separated
20 from rate base such that the company is not allowed to
21 earn a return on the investment until some point in the
22 future, when it is found that there's no longer any excess
23 capacity.

24 Now, as we've heard, Mr. Merciel has
25 changed his testimony somewhat on this point. It's

1 unclear to me at this point in time what the exact
2 difference is between Staff and company. Hopefully we'll
3 be able to narrow that down as we go a little farther
4 today. But I believe that Staff witness Merciel had
5 stated in his surrebuttal that he agreed with a portion of
6 the company's argument concerning the storage capacity and
7 would be revising his proposed adjustment as to that
8 issue.

9 Algonquin takes the position that there is
10 no excess storage at the Ozark Mountain, Holiday Hills or
11 Timber Creek resorts and the investment in those
12 facilities is prudent. Further, to the extent anyone
13 believes there is excess well capacity, Algonquin believes
14 that the actual cost difference is de minimis and should
15 not have an impact upon what amounts are included in plant
16 in service and ultimately net rate base.

17 This issue highlights a classic problem for
18 a utility. If it builds too little capacity, it is
19 subject to complaints related to its ability or inability
20 to provide safe and adequate service either now or in the
21 future when growth takes place. If the utility takes
22 advantage of economies of scale and builds a sufficient
23 amount for the future, it risks suffering from stranded
24 investment.

25 The plant that is the subject to this Staff

1 adjustment is used and useful. It is providing service to
2 customers and is sized in a way that makes the system able
3 to adjust to future growth. The company should be allowed
4 a return on and of the whole investment associated with
5 these facilities.

6 At this time, obviously, we would like to
7 call Mr. Hamrick.

8 BRIAN A. HAMRICK testified as follows:

9 DIRECT EXAMINATION BY MR. COOPER:

10 Q. And, Mr. Hamrick, would you state your full
11 name for the record.

12 A. Brian Anders Hamrick.

13 Q. By whom are you employed and in what
14 capacity?

15 A. Algonquin Water Services, senior project
16 manager.

17 Q. Have you caused to be prepared for the
18 purposes of this proceeding certain rebuttal testimony in
19 question and answer form?

20 A. Yes.

21 Q. Is it your understanding that that
22 testimony has been identified as Exhibit 5 at this point
23 in time?

24 A. Yes.

25 Q. Do you have any changes that you would like

1 to make to your testimony at this time?

2 A. Yes. I want to amend on page 8 where I
3 summarize my testimony, after line 9, I just want to
4 insert the following: I have reviewed the past two years
5 water demand data for the three resorts and I agree with
6 Mr. Merciel's peak hour calculations for each well site.
7 That's it.

8 Q. And the purpose of that correction is that
9 at the time you wrote your rebuttal testimony, you had not
10 had an opportunity to review all that --

11 A. That's correct.

12 Q. -- usage data, correct?

13 A. Correct. I've looked at it since then.

14 Q. Now, if I were to ask you the questions
15 that are contained in Exhibit 5 today, would your answers
16 as now amended be the same?

17 A. Yes.

18 Q. Are those answers as amended true and
19 correct to the best of your information, knowledge and
20 belief?

21 A. Yes.

22 MR. COOPER: Your Honor, I would offer
23 Exhibit 5 into evidence and tender the witness for
24 cross-examination.

25 JUDGE PRIDGIN: Mr. Cooper, thank you. Any

1 objections to Exhibit 5?

2 (No response.)

3 JUDGE PRIDGIN: Seeing none, Exhibit 5 is
4 admitted.

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

6 JUDGE PRIDGIN: Ms. Baker, any cross?

7 MS. BAKER: I just have one question.

8 CROSS-EXAMINATION BY MS. BAKER:

9 Q. Do you disagree that it's unfair for
10 ratepayers to be required to pay for capacity that is not
11 useful to them?

12 A. Will you repeat the question?

13 Q. Do you --

14 JUDGE PRIDGIN: I'm sorry to interrupt.
15 Mr. Hamrick, to the best you can, will you please speak
16 into the microphone? We have people listening online.
17 Thank you.

18 THE WITNESS: Will you please repeat the
19 question?

20 BY MS. BAKER:

21 Q. Sure. Do you disagree that it's unfair for
22 ratepayers to be required to pay for excess capacity that
23 is not useful to them?

24 A. I guess how do you define useful? Current,
25 what's there in the ground now, or are you talking ten

1 years down the road?

2 Q. That is useful to the ratepayers.

3 A. I guess I don't know.

4 MS. BAKER: Thank you. That's all the
5 questions I have.

6 JUDGE PRIDGIN: Thank you. Mr. Krueger?

7 MR. KRUEGER: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. KRUEGER:

9 Q. I guess first I'd like to ask if you could
10 repeat what your interlineation was on page 8. I didn't
11 get all of that.

12 A. I have reviewed the past two years of water
13 demand data for the three resorts, and I agree with
14 Mr. Merciel's peak hour calculations for each well site.

15 Q. That eliminates most of my questions. You
16 said that the storage capacity is necessary because you
17 need it for fire flow?

18 A. Right.

19 Q. And you include in the tank storage
20 capacity for, I think, each of the resorts
21 180,000 gallons --

22 A. Right.

23 Q. -- as a requirement to fight fire at the
24 rate of 1,500 gallons per minute for two hours?

25 A. Yes.

1 Q. But fire storage is only used and useful if
2 you can deliver the water from the tank to the burning
3 building?

4 A. How do you define used and useful?

5 Q. Well, would there be any purpose in having
6 a lot of storage if you can't actually get the water to
7 the fire that you're trying to put out?

8 A. Depends on the design of the system. You
9 can have a fire truck go to the storage tank and pull
10 directly from there, even if you're not able to deliver
11 the flow.

12 Q. If you can deliver -- you can only deliver
13 1,000 gallons per minute to the fire, how much storage
14 would you need?

15 A. I don't know. Do you have a calculator?

16 Q. I don't.

17 A. Then I don't know.

18 Q. Well, your testimony was based on
19 delivering 1,500 gallons per minute to a fire for two
20 hours?

21 A. Yes.

22 Q. Let's say that you could only deliver half
23 of that, how much storage would you need then?

24 A. Be 90,000 gallons plus your maximum day,
25 plus your reserve.

1 Q. And to the extent that the storage exceeded
2 90,000 gallons, would it be useful in fighting fires?

3 A. Yes.

4 Q. Even if you can't deliver to the fire?

5 A. Yes.

6 MR. KRUEGER: That's all the questions I
7 have.

8 JUDGE PRIDGIN: All right. Thank you.
9 Commissioner Murray, any questions?

10 COMMISSIONER MURRAY: Yes.

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Do you know what the dollar amount of this
15 issue is?

16 A. No, I don't.

17 Q. Okay. Do you know what it would cost to
18 add the amount of storage, assuming that the amount of
19 storage that Staff is claiming is in excess, do you know
20 what would be the cost to add it if it had not been
21 included originally?

22 A. So you want to add volume to the existing
23 storage tanks?

24 Q. Yes.

25 A. I couldn't say off the top of my head.

1 Depends on each site, if you're going to add a second
2 tank, if you're going to just expand the height of the
3 storage tank, just add another ring on it, depends how big
4 you need to go.

5 Q. So physically what is done is adding a ring
6 to the top of the existing tank?

7 A. Right. You just remove the roof and you
8 just weld a new ring on top.

9 Q. Now, your position is that there is no
10 excess capacity --

11 A. Right.

12 Q. -- at this time; is that correct?

13 And that is because the actual usage has
14 come within 11 percent of the stored volume?

15 A. Right.

16 Q. And that -- I'm assuming that there's no
17 way to tell exactly how much you will need at a given
18 time?

19 A. Right.

20 Q. So that if you come within 11 percent of
21 the maximum --

22 A. I actually was referring to a lot of times
23 when you design a storage tank and determine the storage
24 capacity of that tank, you'll add an additional 10 percent
25 of the maximum day demand to the capacity. That's

1 actually what I was referring to. That was the additional
2 10 percent that we add for emergency purposes.

3 Q. Okay. So at --

4 A. And also, when you come up with the volume
5 of the tank that you're looking for, usually the most
6 economical tanks don't come at that exact volume, so you
7 either get plus or minus 10 percent. You get the closest
8 size that's economical for the manufacturer to provide.

9 Q. Okay. So your testimony is to support the
10 fact that 10 percent is not an unusual difference?

11 A. Correct.

12 COMMISSIONER MURRAY: All right. I think
13 that's all I have. Thank you.

14 JUDGE PRIDGIN: Commissioner Murray, thank
15 you. Mr. Chairman?

16 CHAIRMAN DAVIS: No questions for this
17 witness, Judge.

18 JUDGE PRIDGIN: Thank you. I have no
19 questions.

20 Any recross based on Bench questions?

21 MR. KRUEGER: No, your Honor.

22 JUDGE PRIDGIN: Seeing none, any redirect?

23 MR. COOPER: Very briefly, your Honor.

24 REDIRECT EXAMINATION BY MR. COOPER:

25 Q. You were asked a question about excess

1 capacity that is not useful. In this case, are we talking
2 about any plant that's not being used to provide service
3 to the Algonquin customers?

4 A. Define plant.

5 Q. I think what we have, we have wells and we
6 have storage vessels that we're talking about in terms of
7 excess capacity, correct?

8 A. Correct.

9 Q. Are all the wells and storage vessels,
10 storage tanks, are they all being used today to provide
11 service to the Algonquin customers?

12 A. Yes.

13 MR. COOPER: That's all the questions I
14 have.

15 JUDGE PRIDGIN: All right. Thank you.

16 Mr. Hamrick, you may step down.

17 And I see that Mr. Loos is going to be back
18 on the stand on excess capacity?

19 MR. COOPER: Yes, your Honor.

20 JUDGE PRIDGIN: And, Mr. Loos, you're still
21 under oath, and I believe his exhibits have been admitted.
22 Is there anything to take up before he's tendered for
23 cross?

24 MR. COOPER: I don't believe so, your
25 Honor.

1 JUDGE PRIDGIN: Thank you. Ms. Baker, any
2 questions for this witness on this issue?

3 MS. BAKER: Yes.

4 LARRY W. LOOS testified as follows:

5 CROSS-EXAMINATION BY MS. BAKER:

6 Q. Algonquin is made up of three small utility
7 systems, isn't it?

8 A. Yes. At least its Missouri operations.

9 Q. The Missouri operation. Within Algonquin's
10 utility systems, there are a small amount or a small
11 number of actual homeowners or customers?

12 A. Most of them would be condominiums, but
13 I -- yes.

14 Q. When dealing with small utility systems
15 with a small number of customers, is it unfair to expect
16 such a small number of the ratepayers to accept the cost
17 of unneeded upgrades?

18 MR. COOPER: I object to the question. It
19 assumes facts not in evidence in terms of unneeded
20 upgrades.

21 MS. BAKER: I'll rephrase if you like.

22 BY MS. BAKER:

23 Q. We'll say, isn't it unfair to expect such a
24 small number of ratepayers to accept excess capacity that
25 is not useful?

1 A. That is not useful, yes.

2 Q. When dealing with a small number of
3 ratepayers, isn't it true that extra payments purely for
4 reasons of economies of scale have a very large impact on
5 the rates that the customers will be required to pay?

6 A. I don't believe that always follows.

7 MS. BAKER: That's all the questions I
8 have.

9 JUDGE PRIDGIN: Ms. Baker, thank you.
10 Mr. Krueger?

11 MR. KRUEGER: No questions on this issue,
12 your Honor.

13 JUDGE PRIDGIN: Commissioner Murray?
14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Mr. Loos, where in your testimony do you
16 address this issue?

17 A. It's in my rebuttal testimony. I just had
18 it.

19 Q. Page 12?

20 A. Yes.

21 Q. You speak about a 20 percent reserve
22 allowance; is that correct?

23 A. Yes.

24 Q. Is that what is included with the plant
25 here that we're talking about?

1 A. To my knowledge, there's no specific
2 allowance included. What I'm suggesting is if an excess
3 capacity adjustment is included, that it ought to be
4 measured after consideration of a 20 percent reserve.

5 Q. So in your estimation and your experience,
6 a 20 percent reserve is reasonable?

7 A. Yes, I believe so, in this instance.

8 Q. And it's your understanding that any
9 reserve here -- is it your understanding that any reserve
10 here is more in the nature of 10 percent?

11 A. I believe that there was a number of
12 10 percent that was considered. I'm looking both from the
13 standpoint of adverse conditions, perhaps weather
14 conditions, as well as allowance for some modest growth
15 would be included in that reserve amount.

16 COMMISSIONER MURRAY: I think that's all.
17 Thank you.

18 JUDGE PRIDGIN: Commissioner Murray, thank
19 you.

20 Mr. Chairman?

21 CHAIRMAN DAVIS: No questions of this
22 witness on this issue.

23 JUDGE PRIDGIN: Thank you. I have no
24 questions. Any recross?

25 MR. KRUEGER: No, your Honor.

1 JUDGE PRIDGIN: Redirect?

2 MR. COOPER: No, your Honor.

3 JUDGE PRIDGIN: Mr. Loos, thank you.

4 Mr. Merciel, are you ready to come back for excess
5 capacity, please? Mr. Merciel, you're still under oath,
6 sir. And I believe his testimony has already been
7 admitted. Anything else to take up before he's tendered
8 for cross?

9 MR. KRUEGER: No, your Honor.

10 JUDGE PRIDGIN: Ms. Baker, any questions?

11 MS. BAKER: Just one question.

12 JAMES A. MERCIEL, JR. testified as follows:

13 CROSS-EXAMINATION BY MS. BAKER:

14 Q. Do you believe that Staff's position
15 regarding the excess capacity is a fair approach to the
16 ratepayers?

17 A. Yes, I do, considering that this is what we
18 might call a developer system. That's our basis for this
19 type of adjustment.

20 MS. BAKER: No further questions.

21 JUDGE PRIDGIN: Thank you. Mr. Cooper?

22 MR. COOPER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. COOPER:

24 Q. Mr. Merciel, I'd like to try to first deal
25 with the number side of this issue, if we could. We've

1 knocked around a little bit the fact that in your
2 surrebuttal testimony I believe you made some changes --

3 A. Yes.

4 Q. -- to what was your initial excess capacity
5 adjustment, correct?

6 A. Yes, that is correct.

7 Q. And as I read the Staff's accounting
8 schedules, I guess I had initially totaled approximately
9 \$474,000 in an excess capacity adjustment; is that
10 correct?

11 A. Yes, it is.

12 Q. Okay. And that would be the amount that
13 you recommended be deemed to be plant held for future use,
14 correct?

15 A. Correct. As we originally filed it, that's
16 correct.

17 Q. And I get that from seeing an adjustment
18 for well capacity at Holiday Hills in the amount of
19 \$3,371; is that correct?

20 A. Oh, yes. Yes, it is.

21 Q. Okay. And then a tank adjustment at
22 Holiday Hills in the amount of \$198,518, correct?

23 A. I believe that's about right, yeah.

24 Q. And Ozark Mountain, there was a well
25 adjustment, \$12,296, correct?

1 A. Yes.

2 Q. Then at Timber Creek there was a well
3 adjustment in the amount of \$89,550?

4 A. Yes.

5 Q. And a storage tank adjustment in the amount
6 of \$170,972, correct?

7 A. Yes.

8 Q. Okay. Now, in reading your surrebuttal
9 testimony, I would anticipate that the numbers for the
10 storage tank at Holiday Hills and the recommended excess
11 capacity number for the storage tank at Timber Creek would
12 change; is that accurate?

13 A. Yes, that is correct.

14 Q. Okay. What are the new numbers?

15 A. Well, let me first say the dollars actually
16 come from Mr. Vesely, and I've not had the opportunity to
17 go over -- I can give you some numbers here, but they're
18 not going to be exact, but it ought to get us in the
19 ballpark. So with that, let's go ahead.

20 Q. The smaller the ballpark, the better.

21 A. Right. Okay. For Holiday Hills, where the
22 tank was -- and I have my own work paper here and some of
23 the numbers are round. I have \$198,000. That was our
24 disallowance for the Holiday Hills tank. That would
25 change to approximately \$24,400. And the other change is

1 the Timber Creek tank, where we had some number, and I
2 think the one you said was a little bit off. I have
3 171,000. I thought you said 179.

4 Q. I had 170,972.

5 A. Okay.

6 Q. I think we're --

7 A. Well, that's close then. I just have
8 171,000. It's a round number, but that would change to
9 58,400. Again, what I'm giving you is a round number. I
10 would need to go over this with Mr. Vesely to get exact
11 numbers, but that's going to be fairly close.

12 In the total where you said we had the
13 allowance of 474,171, that would change to something close
14 to 187,970. 187,972 is what I have on my paper. Again,
15 that's probably not exactly right.

16 Q. Are those numbers that you computed
17 essentially in the same method you had computed your
18 initial?

19 A. They are. And it's based on a fire flow of
20 1,500 gallons at Holiday Hills, which I want to say is not
21 a number I'm completely confident of, but I'm fairly
22 certain that system can do that. And that's changing
23 Timber Creek to a fire flow of 1,200 gallons. And I'm
24 basing that on some information I got from the fire
25 department in that area.

1 There's no change at Ozark Mountain. We
2 had no disallowance for its tank. That system really has
3 very little fire protection available in it, and there's
4 really not much to change there anyway.

5 Q. You didn't find any excess capacity to
6 start with?

7 A. Not at that system, no.

8 Q. Okay. Now, any alleged excess capacity or
9 over capacity applies only to Algonquin's water systems,
10 correct?

11 A. Yes.

12 Q. This is not a sewer system issue?

13 A. Right. We had -- yeah. I'd looked at
14 sewer systems. I don't believe they're operating over
15 capacity where we -- even in the sale case, we didn't make
16 any recommendation on a disallowance there.

17 Q. Now, this is kind of a -- it's probably a
18 small point at this point in time, but in your surrebuttal
19 testimony, I think you made the statement that fire
20 protection or fire flows weren't raised as an issue in the
21 sale case; is that correct?

22 A. Yes, I did say something like that.

23 Q. Okay. Did you have the opportunity to go
24 back and look at any of the testimony in this case?

25 A. I didn't look at all of it, no. I looked

1 at my own.

2 MR. COOPER: Okay. Your Honor, I'd like to
3 approach the witness, if I could.

4 JUDGE PRIDGIN: You may.

5 BY MR. COOPER:

6 Q. I've handed you the surrebuttal testimony
7 of Mr. Joel Wade from the acquisition case.

8 A. Yes.

9 Q. Does that refresh your memory?

10 A. Well, I'm sorry. Not really.

11 Q. Maybe not.

12 A. I don't doubt it was filed in the case, so
13 go ahead. I don't specifically remember.

14 Q. Okay. In looking at -- let's back up.
15 What was the case number of the acquisition case?

16 A. Case number is WO-2005-0206.

17 Q. And what I've handed you purports to be
18 surrebuttal testimony from Joel Wade, correct?

19 A. Yes.

20 Q. And does he discuss the fire flow issue?

21 A. I'm looking here. Looks like he does. I'm
22 looking at page 5. He does have a bullet paragraph by
23 fire flow, and maybe that's just addressing what I was
24 saying in my testimony, because I -- okay. Yeah, page 8,
25 he does give some numbers here.

1 Q. That's really the only point I want to make
2 with that.

3 A. Okay.

4 Q. Now, I believe in your direct testimony you
5 make the statement that there's not a simple way to
6 compute an over capacity adjustment, correct?

7 A. Yes.

8 Q. And is some of the reason that you believe
9 that that's the case -- let me back up.

10 Some of the reason that that's the case is
11 that it's not always possible to build in precise
12 increments such as Mr. Hamrick mentioned earlier in terms
13 of tank size, correct?

14 A. Yes, that's correct.

15 Q. Perhaps economies of scale may be involved
16 in the construction process as well, correct?

17 A. Sometimes, yes.

18 Q. And then in your surrebuttal testimony, I
19 think you point out that there's several components upon
20 which capacity has little or no impact, such as real
21 estate for the facility, labor and equipment to drill the
22 well, pump house structure, electrical control panel;
23 isn't that correct?

24 A. That's correct. I did say that.

25 Q. Now, having said that, I'm accurate in

1 saying, aren't I, that your initial over capacity
2 adjustment was essentially a straight percentage?

3 A. That is correct.

4 Q. And as I read your surrebuttal testimony,
5 that's based on the fact that, as to small utilities, you
6 just -- you think it's easier to do it that way; is that
7 correct?

8 A. Well, it's not so much because it's easier.
9 It's -- it's really more necessary in a lot of cases. We
10 do -- doesn't necessarily apply to this case, but we do
11 deal with developer-owned systems and many of them start
12 with zero customers, and in a lot of cases, the only
13 practical way to do it, the only practical way to make a
14 disallowance is to have a straight percentage. You know,
15 the system's going to serve X number of customers, and
16 when you only have a 10th of those customers, then we have
17 those customers pay 1/10 of the cost. And, of course, the
18 theory is, the more customers connect, then eventually the
19 utility may be owned by the developer, maybe not, but they
20 would recover all their plant costs. The point is the
21 developer takes the risk.

22 Q. Now, at this point in time, we're a fair
23 ways down the road from when these systems were created,
24 correct?

25 A. That's true, uh-huh.

1 Q. And we're not dealing with a situation with
2 zero customers, are we?

3 A. That's correct.

4 MR. COOPER: That's all the questions I
5 have, your Honor.

6 JUDGE PRIDGIN: Thank you. Any redirect?

7 MR. KRUEGER: No, your Honor.

8 JUDGE PRIDGIN: Mr. Merciel, thank you very
9 much. You may step down. I'm sorry. Any questions,
10 Commissioner Murray?

11 COMMISSIONER MURRAY: I don't believe so.

12 JUDGE PRIDGIN: Mr. Chairman?

13 QUESTIONS BY CHAIRMAN DAVIS:

14 Q. Mr. Merciel?

15 A. Yes, sir.

16 Q. How many, quote, small company informal
17 rate cases have you participated in, say, oh, I don't
18 know, the last two years?

19 A. Oh, I don't know. We have cases that I
20 don't participate in, some I do background work, and I
21 don't know how many I've participated in.

22 Q. Are you one of those Staff people that
23 Mr. Krueger was referring to earlier, do you think?

24 A. Well, I might have been. I think he was
25 talking about people that -- other people that

1 participated in -- and I'm not sure if you're talking
2 about the certificate case or rate case. I may be one of
3 those people.

4 Q. Okay. Well, let me ask this question
5 another way then.

6 A. All right.

7 Q. How many of those informal small company
8 water or sewer cases are you aware of, how many of those
9 took longer than 11 months to process?

10 A. Well, I have a hard time quantifying it,
11 but there certainly is a substantial number that have
12 taken longer than 11 months for one reason or another.

13 Q. Okay. But the answer is a substantial
14 number take longer than 11 months, correct?

15 A. I would have to agree with you, yes, sir.

16 Q. Okay. And therefore, if a company felt
17 like it's significantly under-recovering and it wanted to
18 get that money or at least a portion of that money in a
19 timely fashion, it would probably be in their best
20 interests to go ahead and file a formal rate case,
21 wouldn't it?

22 A. Well, another way to keep things moving is,
23 have information available to the Staff, have their books
24 and records ready. We've seen --

25 Q. I think I asked you a yes or no question,

1 Mr. Merciel. Your counsel can redirect if he chooses to
2 do so.

3 A. Okay.

4 Q. So the answer would be yes, no, maybe, I
5 don't know. Do you want to try one of those?

6 A. Okay. I will. I would say maybe.

7 Q. Maybe?

8 A. It may be a way to -- certainly would be a
9 way to address the time problem.

10 Q. Okay. And has it been your experience that
11 the people -- that at least some of the people who have
12 come in and participated in the small company rate case
13 process for water and sewer companies aren't very
14 satisfied with that process or the outcome?

15 A. That would certainly be true.

16 Q. Would certainly be true?

17 A. Absolutely.

18 CHAIRMAN DAVIS: Judge, I think we can
19 reflect that Mr. Merciel is somewhat emphatic about that.

20 Mr. Merciel, I have no further questions.
21 Thank you for your compelling testimony this afternoon.

22 JUDGE PRIDGIN: I have no questions.

23 Mr. Chairman, thank you. Do you have any, Ms. Baker?

24 MS. BAKER: No.

25 JUDGE PRIDGIN: Mr. Cooper?

1 MR. COOPER: No.

2 JUDGE PRIDGIN: Redirect?

3 MR. KRUEGER: Thank you, your Honor.

4 REDIRECT EXAMINATION BY MR. KRUEGER:

5 Q. Mr. Merciel, you testified a substantial
6 number of the small company rate cases take longer than
7 11 months?

8 A. Yes, I did.

9 Q. Can you tell me what the reasons are why
10 these cases take longer than 11 months?

11 A. Again, I don't work on all the cases, so I
12 don't really have all the information, but just, you know,
13 where I do work and working on them, you see all kinds of
14 reasons for them, including owners that file a case, maybe
15 go on vacation and records aren't available. For one
16 reason or another maybe records either aren't available or
17 they're in poor shape and the Staff is unable to use the
18 records we have available.

19 And in such cases, often the Staff will ask
20 for an extension of time and the company will agree to it.
21 I guess if they wouldn't agree, we could just go ahead
22 with what we have and try to put a case on as best the
23 Staff can. It may not be something the company would like
24 in that case. But we've seen a lot of reasons for the
25 cases going past the contemplated time frame.

1 Q. Would you say that these delays typically
2 result from actions or inactions of the Staff?

3 A. It is not because of actions or inactions
4 of Staff, in my opinion. It's due to what the Staff is
5 dealing with, with the companies.

6 Q. By what the Staff is dealing with, you're
7 talking about level of cooperation?

8 A. Cooperation or availability, yes.

9 Q. Availability of information?

10 A. Information and records, yes.

11 Q. You just can't or don't get the information
12 to the Staff?

13 A. Right. Yeah. It's not -- yeah. Probably
14 most cases, not even so much a lack of cooperation. It's
15 just what's available.

16 MR. KRUEGER: That's all the questions I
17 have.

18 JUDGE PRIDGIN: Mr. Krueger, thank you.

19 Mr. Merciel, thank you. Now you may step down.

20 THE WITNESS: Thank you.

21 JUDGE PRIDGIN: The next issue I show is
22 construction cost overrun, and I know Mr. Vesely is here.
23 Is Mr. Hernandez here already?

24 MR. COOPER: He is not. He will not arrive
25 until this evening, your Honor.

1 JUDGE PRIDGIN: Okay.

2 MR. COOPER: If we wanted to move on to the
3 contributions issue, we would be prepared to do that.

4 JUDGE PRIDGIN: That was my suggestion,
5 since it looks like all of these witnesses are here.

6 MR. KRUEGER: I was hoping to have a little
7 more time to prepare on that one. It was on the schedule
8 for tomorrow, and I was prepared for witnesses through
9 tomorrow noon, but not to ask questions on the -- on the
10 CIAC issue, so I'd prefer not to move on to that issue.

11 JUDGE PRIDGIN: Okay. Ms. Baker, any
12 preference one way or the other?

13 MS. BAKER: I'm not prepared either before
14 tomorrow afternoon.

15 JUDGE PRIDGIN: These are, again, the
16 contribution --

17 CHAIRMAN DAVIS: We were -- your Honor, I
18 apologize. I'm just a little befuddled here, because we
19 were thinking that Mr. Krueger said that he was prepared
20 through noon tomorrow, but obviously we're not prepared
21 through noon tomorrow if the list of issues says CIAC
22 issue is Tuesday morning.

23 JUDGE PRIDGIN: And that was my
24 understanding, that it was set for tomorrow morning. And,
25 Mr. Krueger, you're not ready to go on to that; is that

1 correct?

2 MR. KRUEGER: Let me restate my -- what I
3 said before. I'm not prepared to do the cross-examination
4 on the CIAC issue at this time. I devoted my preparation
5 time to working on preparation of the construction cost
6 overrun, which I understood would be taken before the CIAC
7 issue.

8 JUDGE PRIDGIN: All right. Well, it is --
9 it's against my better judgment perhaps, but maybe we
10 should recess. I don't know that it's going to -- I mean,
11 we're certainly ahead of schedule, and we had an entire
12 week set aside for the hearing and it looks like the
13 parties have only asked for three days. Is it still the
14 parties' anticipation that this hearing would complete by
15 Wednesday afternoon? Do you see anything standing in the
16 way?

17 MR. COOPER: I haven't seen anything so far
18 today that would lead me to believe that's a bad estimate.

19 MR. KRUEGER: It looks to me like we should
20 be able to finish.

21 COMMISSIONER MURRAY: Judge, can I say
22 something?

23 JUDGE PRIDGIN: Absolutely.

24 COMMISSIONER MURRAY: I'd just like to
25 suggest that particularly Staff in our cases that are

1 before us be prepared to move ahead if we get a little bit
2 ahead of schedule because, as you well know, we have
3 agenda meetings that are scheduled on Tuesdays and
4 Thursdays, which prevent us from being in the hearing room
5 during those times. So when we have an opportunity that
6 occurs like this on a Monday afternoon when we could be
7 present, it would be very helpful to us if we could keep
8 moving forward. And I would suggest that the parties, all
9 the parties be prepared to move ahead when we get a little
10 bit ahead of schedule.

11 MR. KRUEGER: I understand, Commissioner.
12 I've done my very best. I've been working an extremely
13 long schedule the past couple of weeks.

14 JUDGE PRIDGIN: If there's nothing further
15 from counsel, I think I had announced earlier -- I'm
16 sorry. Mr. Chairman, did you have anything?

17 CHAIRMAN DAVIS: No, your Honor.

18 JUDGE PRIDGIN: Mr. Krueger?

19 MR. KRUEGER: One issue we might be able to
20 take up would be rate design. The Staff's witness is
21 prepared at this time. I don't know whether the company
22 is.

23 MR. COOPER: We would be prepared if you
24 gave me about a 15-minute recess to go back to my office
25 and get something.

1 JUDGE PRIDGIN: Let's do that. We'll go
2 off the record. It's 2:25 back there. Let's make it a
3 full 20 minutes, since we're ahead of schedule. We'll go
4 back on the record at 2:45.

5 We'll stand in recess. Thank you.

6 (A BREAK WAS TAKEN.)

7 JUDGE PRIDGIN: We're back on the record,
8 and the parties have agreed they'd be ready to go on to
9 rate design and rate mitigation issues, which were
10 originally scheduled for Wednesday afternoon. That's
11 Mr. Loos from the company and Mr. Russo from Staff; is
12 that correct? Seeing some nods. All right. Mr. Cooper,
13 did you have a brief opening on this issue?

14 MR. COOPER: Very brief, your Honor. Since
15 1994, the systems in issue in this case have had a single
16 rate for water and sewer services that is applicable to
17 all three resorts. In this case, Staff proposes separate
18 rates for each of the resorts. If the single rate for all
19 three resorts is abandoned, Algonquin does not object to a
20 separate rate for water and sewer services at the Timber
21 Creek Resort and sewer services at Ozark Mountain Resort.

22 However, Algonquin believes that a single
23 potable water rate should be adopted for the Ozark
24 Mountain and Holiday Hills resorts because of the
25 operational and geographic similarities between the two

1 operations. A separate irrigation rate for delivery of
2 non-potable water should still be established under this
3 approach. Currently that water is only supplied for
4 irrigation purposes at Holiday Hills.

5 And we would call Mr. Larry Loos at this
6 time, your Honor.

7 JUDGE PRIDGIN: Mr. Loos, if you'd come
8 back to the stand and you're still under oath.
9 Mr. Cooper, anything to clean up before he's tendered for
10 cross?

11 MR. COOPER: No, your Honor.

12 JUDGE PRIDGIN: See if we have any
13 cross-examination. Ms. Baker?

14 MS. BAKER: None at this time, thank you.

15 JUDGE PRIDGIN: Okay. Mr. Krueger?

16 MR. BAKER: Mr. Baker.

17 JUDGE PRIDGIN: Mr. Baker, yes, sir.

18 LARRY W. LOOS testified as follows:

19 CROSS-EXAMINATION BY MR. BAKER:

20 Q. Hello, Mr. Loos. I'm Blane Baker. We
21 haven't met yet.

22 A. Good afternoon.

23 Q. You state in your rebuttal testimony that
24 you have no problem with Mr. Russo's overall design of
25 rates, that basically the only problem you have is with

1 the three separate rates for the three separate resorts;
2 is that correct?

3 A. Yes.

4 Q. You admit, though, in your rebuttal
5 testimony that there are a number of differences between
6 Ozark Mountain and Holiday Hills especially?

7 A. I believe I identified some differences in
8 my direct testimony, the principal being character and
9 lack of a golf course at Ozark Mountain.

10 Q. Other differences may -- Holiday Hills and
11 Ozark Mountain are located about 20 miles apart?

12 A. They are.

13 Q. They're not physically connected in any
14 way?

15 A. They are not.

16 Q. Besides the character that you mentioned,
17 Holiday Hills has more overall water facilities than Ozark
18 Mountain?

19 A. I don't recall that being the case.

20 Q. Well, Holiday Hills has two water treatment
21 plants, irrigation pumping house, administrative building?

22 A. Yes. Well, the administrative building
23 supports all three, but there are two wells there, two
24 treatment plants, associated with that resort.

25 Q. Holiday Hills is much larger in terms of

1 area and number of units than Ozark Mountain?

2 A. Yes. Now, perhaps not much right now, but
3 eventually substantially.

4 Q. Holiday Hills also has a higher level of
5 fire protection service than Ozark Mountain?

6 A. That's my understanding.

7 Q. Ozark Mountain has a sewer system, correct?

8 A. Holiday Hills does as well, but it's not
9 operated by Algonquin.

10 Q. Okay. And the investment in Holiday Hills
11 and Ozark Mountain per customer is different?

12 A. Yes.

13 Q. So Holiday Hills has a higher investment,
14 more customers and, therefore, a higher rate base than
15 Ozark Mountain?

16 A. It has a higher rate base. Whether the
17 relative rate base is higher, I don't recall.

18 Q. You propose in your direct testimony that
19 any increase in rates besides for the irrigation for the
20 golf course be phased in in two steps?

21 A. Yes.

22 Q. Is that -- are you still proposing that?
23 Is that something you're standing by now?

24 A. Yes. I believe that at the Staff level
25 recommendation, that -- in one step, but if we go

1 substantially higher than that, then I recommend a
2 phase-in.

3 Q. At what times now are you proposing this
4 phase-in to occur?

5 A. I would like to see the first step be in
6 effect for approximately a year.

7 Q. And the first rate increase, if this were
8 to happen, would increase customer charges by 50 percent
9 and approximately double the commodity charge?

10 A. That was my recommendation, as I recall.

11 Q. And then the second increase would increase
12 the customer charge a further 33 percent and then the
13 commodity charge by 75 to 90 percent?

14 A. I believe so, yes.

15 Q. But you also stated that during the first
16 step of that rate phase-in, if you did get the large, as
17 you're asking for, you would still be able to meet your
18 revenue requirements even though the full rate increase
19 would not be in effect?

20 A. I don't believe I said that we could meet
21 the full revenue requirement. We would certainly be
22 earning a rate of return that is less than the claimed
23 rate of return.

24 Q. And the new rate for the irrigation and the
25 golf course, regardless, would not be, if that were --

1 call single tariff pricing; is that correct?

2 A. Yes.

3 Q. And if we accepted Staff's recommendation
4 in this case, we would be moving away from single tariff
5 pricing back to district specific pricing; is that your
6 understanding?

7 A. Yes.

8 Q. And yet if the company -- if one or the
9 other of the service areas in the future needed a
10 significant increase in infrastructure, which would be
11 costly, the single tariff pricing would allow those costs
12 to be spread throughout the customer base, would it not?

13 A. It would.

14 Q. Whereas, district specific pricing tends to
15 result -- would you agree that that would tend to result
16 in more rate shock if there is a significant
17 infrastructure need within a district at any point in
18 time?

19 A. Yes. That's one of the consequences, is
20 the low cost area tends to go to a high cost area fairly
21 quickly; whereas, if you get more basis to spread it over,
22 it's more gradual.

23 Q. And would you also agree that some areas
24 might benefit at certain times and other areas might
25 benefit at other times?

1 A. Relative to district, yes.

2 Q. Okay. And then on your phase-in, you're
3 only suggesting phase-in with the -- if the rate base is
4 determined and the other issues are determined in the
5 company's favor. Is there a level at which you don't
6 recommend a phase-in or --

7 A. Staff recommends an increase of -- or
8 originally recommended an increase order of magnitude of
9 about 100 percent, and at that level, anything at that
10 level I think deserves consideration of a phase-in.

11 Q. By the way, I should know this, but have
12 the customers been notified that -- I'm sure they were
13 notified of the increase being sought?

14 A. I understand they were, yes.

15 Q. And do you know of any reactions? Are you
16 aware?

17 A. The report that I got was only the report I
18 have on public hearing that there was, as I recall, not
19 that much of a response to it.

20 COMMISSIONER MURRAY: You'll have to
21 forgive me. We have so many cases going on right now that
22 it's difficult to remember what hearings we've had and who
23 has said what. Thank you.

24 JUDGE PRIDGIN: Commissioner Murray, thank
25 you. Mr. Chairman?

1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. Can you -- I'm sorry, sir. Can you refresh
3 for my recollection what your differences of opinion is
4 with Staff with regard to the golf course, the non-potable
5 irrigation water rate?

6 A. I had originally recommended \$1.25 per
7 thousand gallons. I understand that the Staff is now
8 recommending, and Mr. Russo can certainly speak to this,
9 \$1.10.

10 Q. Okay. And in your opinion, what is the
11 difference between your \$1.25 and their \$1.10?

12 A. There really is none. The difference,
13 we're talking about the same order of magnitude. My
14 concern is I believe that anything over \$1.25, we run the
15 risk of them going out and drilling their own well, which
16 is certainly not in the company's or the other customers'
17 best interests.

18 Q. Right, because that would be a substantial
19 portion --

20 A. Yes.

21 Q. -- of revenue?

22 At \$1.25, how much revenue does that
23 generate?

24 A. My recollection is it's a little bit over
25 \$90,000, but let me check. \$87,500 based on my volume of

1 70 million gallons. Staff has used, I believe, 77 million
2 gallons.

3 CHAIRMAN DAVIS: Okay. All right. That's
4 all the questions I have, Judge.

5 JUDGE PRIDGIN: Mr. Chairman, thank you. I
6 don't have any questions. Any recross?

7 (No response.)

8 JUDGE PRIDGIN: No recross. Redirect?

9 MR. COOPER: Thank you, your Honor.

10 REDIRECT EXAMINATION BY MR. COOPER:

11 Q. Mr. Loos, you were asked some questions
12 about phase-in and I believe that you said that your level
13 where you thought that a phase-in should be considered was
14 100 percent; is that correct?

15 A. Yes.

16 Q. Now, as I understand it, because there's a
17 new rate being added in this case or at least proposed to
18 be added in this case, that is the irrigation rate on the
19 water side, would you agree with me that 100 percent, even
20 if it were 100 percent increase in revenue requirement, it
21 wouldn't be 100 percent increase on residential customer
22 rates?

23 A. I agree with that, yes, and I'm speaking to
24 the individual rates.

25 Q. If you have a phase-in, I assume that what

1 you're referring to is that you have, let's say, \$100 of
2 increased revenue requirements, but perhaps in the first
3 phase you pick up, as an example, \$50 of it and then you
4 wait and pick up the second \$50 in the second phase. Is
5 that kind of a simple way of describing that?

6 A. Yes, absent the consideration of
7 irrigation.

8 Q. Now, is there a carrying cost associated
9 with delaying recovery of part of that revenue requirement
10 until the second phase?

11 A. Yes.

12 Q. How would you propose to deal with that in
13 a phase-in?

14 A. It could be considered in a number of
15 manners. One would be just simply on the uncollected
16 revenues to include a carrying charge based on rate of
17 return. In other words, kind of treat that as a deferred
18 asset, deferred asset I think it is, in rate base and put
19 a modest allowance in the rate that goes into effect in
20 the second phase.

21 Q. Mr. Baker or the Staff asked you some
22 questions about differences between Holiday Hills and
23 Ozark Mountain in terms of their operations. Do you
24 remember that?

25 A. Yes.

1 Q. I want to ask you kind of a practical
2 question related to the proposed rates in this case.
3 We've indicated already that under Staff's proposal the
4 company's water revenue requirement would increase fairly
5 significantly, correct?

6 A. Yes.

7 Q. Are you familiar with the actual customer
8 rates that have been proposed by Staff?

9 A. Yes, at least the original ones.

10 Q. Okay. Well, I may not be able to go as far
11 as I want to with this. Are you familiar with the
12 customer rate that Staff was proposing most recently in
13 regard to Holiday Hills water on the residential side?

14 A. Yes. I believe -- I don't have it here,
15 but I believe I did see that.

16 Q. Would that be an increase or a decrease for
17 residential water users?

18 A. As I recall, it's a decrease.

19 Q. At the same time, the system as a whole
20 would be increasing rates to deal with an increased
21 revenue requirement, correct?

22 A. That's correct, very substantial increase.

23 Q. And that's part of the function of going
24 from the single tariff to the district specific approach,
25 correct?

1 A. It is.

2 MR. COOPER: That's all the questions I
3 have at this time.

4 JUDGE PRIDGIN: Mr. Cooper, thank you.

5 Mr. Loos, thank you very much. You may step down.

6 And I understand Mr. Russo will be the
7 Staff witness, and if you will come forward to be sworn,
8 please. If you'll raise your right hand to be sworn.

9 (Witness sworn.)

10 JUDGE PRIDGIN: Thank you very much, sir.

11 Please have a seat.

12 Mr. Baker, when you're ready.

13 MR. BAKER: Thank you, your Honor.

14 JAMES M. RUSSO testified as follows:

15 DIRECT EXAMINATION BY MR. BAKER:

16 Q. Would you please state your name and
17 business address for the record?

18 A. James M. Russo, R-u-s-s-o, and my business
19 address is P.O. Box 360, Jefferson City, Missouri 65102.

20 Q. Who are you employed by and in what
21 capacity?

22 A. Missouri Public Service Commission. I'm
23 the rate and tariff examination supervisor in the water
24 and sewer department.

25 Q. Did you prepare and cause to be filed

1 direct testimony labeled as Exhibit 23 in this case?

2 A. Yes.

3 Q. Do you have any changes to make at this
4 time to your testimony?

5 A. Yes, I do. Schedules 2 through 1 --
6 Schedule 2-1 through 2-5 have been revised and I have
7 those to submit.

8 Q. Besides --

9 COMMISSIONER MURRAY: I'm sorry. What was
10 that, 2-1 through 2 --

11 THE WITNESS: Dash 5.

12 COMMISSIONER MURRAY: 2-1 through 2-5?

13 THE WITNESS: Yes.

14 COMMISSIONER MURRAY: Thank you.

15 BY MR. BAKER:

16 Q. I've marked the revised schedule as
17 Exhibit 23A. Would you just like to substitute these
18 revised schedules for the schedules that are in your
19 direct?

20 A. That is correct.

21 Q. And besides what's contained in these
22 schedules, if I ask you the same questions today as those
23 in Exhibit 23, would your answers be the same?

24 A. Yes.

25 MR. BAKER: Your Honor, I move to submit

1 James Russo's direct testimony as Exhibit 23 and the
2 revised schedules as Exhibit 23A, and I tender the witness
3 for cross.

4 JUDGE PRIDGIN: Mr. Baker, thank you. Any
5 objections to these exhibits being admitted?

6 MR. COOPER: No, your Honor.

7 JUDGE PRIDGIN: Hearing no objection,
8 Exhibit 23 and 23A are admitted.

9 (EXHIBIT NO. 23A WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 (EXHIBIT NOS. 23 AND 23A WERE RECEIVED INTO
12 EVIDENCE.)

13 JUDGE PRIDGIN: I believe the witness has
14 been tendered for cross. Ms. Baker, any questions?
15 CROSS-EXAMINATION BY MS. BAKER:

16 Q. This is in regard to the rate mitigation
17 issue. Would you agree with me that rate shock is a very
18 real concern when proposing a rate increase?

19 A. Yes.

20 MS. BAKER: That's all the questions I
21 have.

22 JUDGE PRIDGIN: Thank you. Mr. Cooper?

23 CROSS-EXAMINATION BY MR. COOPER:

24 Q. Mr. Russo, could you put a dollar amount on
25 rate shock for me?

1 A. No.

2 Q. Would you agree with me that Algonquin and
3 Silver Leaf before it had a single water rate and a single
4 sewer rate since Holiday Hills and Ozark Mountain were
5 certificated in 1994?

6 A. Yes.

7 Q. Have you heard any public outcry to change
8 this approach in rates?

9 A. No.

10 Q. If I look at Exhibit 23A that was just
11 discussed, can -- well, let's back up.

12 Would you agree with me that the current
13 rates for residential users at Holiday Hills and, in fact,
14 at all the resorts would be a \$3 customer charge and then
15 a \$3.02 per thousand gallon commodity charge?

16 A. Yes. For the \$3 charge on a 5/8 meters 5/8
17 to 3/4 meter?

18 Q. Yes?

19 A. Yes.

20 Q. Now, if I turn in 23A to -- it's 2-3,
21 page 2-3, that will show me the existing rates versus your
22 proposed rates, correct?

23 A. That is correct.

24 Q. And so as you just referenced, if I look at
25 the line that says 5/8 inch-3/4 inch and work across, I

1 can see that \$3 customer charge that we talked about being
2 the existing rate, correct?

3 A. Yes.

4 Q. Now, you do have an increase to your
5 customer charge, don't you?

6 A. Yes.

7 Q. Okay. But then on the commodity side, you
8 go from 3.02 per thousand to 2.02 per thousand, correct?

9 A. Yes.

10 Q. And if I look up above there, can I tell
11 whether that's an overall increase or decrease to those
12 customers at Holiday Hills?

13 A. Not from this page, I don't think you can,
14 no.

15 Q. Well, I guess what I'm looking there is--
16 and tell me if I'm wrong. I see that under customer
17 charge, and it says Staff overall revenue increase on the
18 second line, I get 38,000. Down below where I look at
19 commodity charge, I see overall revenue increase of a
20 negative 42,000. I would take that to be an overall
21 decrease, but tell me where I'm going wrong with that.

22 A. Well, that's the irrigation, which is a new
23 charge. The Holiday Hills system overall has an increase,
24 but the other customers because of the irrigation charge
25 would have a decrease.

1 Q. Right. So the increase on Holiday Hills is
2 taken care of by the increase -- more than taken care of
3 by the new irrigation rate, right?

4 A. That's correct.

5 Q. And so the existing customers at Holiday
6 Hills would experience a rate decrease under your proposed
7 rate design?

8 A. That's correct.

9 MR. COOPER: That's all the questions I
10 have, your Honor.

11 JUDGE PRIDGIN: Mr. Cooper, thank you.
12 Commissioner Murray?

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good afternoon, Mr. Russo.

15 A. Good afternoon, Commissioner.

16 Q. Why did Staff recommend that we go to
17 district specific pricing?

18 A. You have -- this company here -- well,
19 let's take Timber Creek. The only customer there is
20 Silver Leaf. If you go back when the rates were
21 established, for instance, Timber Creek was -- in effect,
22 the rates were kept low so the other customers didn't have
23 to -- the non-Silver Leaf customers didn't have to pay for
24 that. It was basically Silver Leaf was subsidizing Silver
25 Leaf. That system came on in, I believe it was '98. The

1 investment there is completely different. It's at a
2 different location. It's DeSoto versus the Branson area.

3 Q. Hold on just a second. Let me ask you
4 something there. If you look at any water company that is
5 in different locations within a state and you're
6 considering single tariff pricing, isn't each area
7 somewhat different than the other areas?

8 A. I would say yes.

9 Q. So really that's an issue that if the
10 policy decision is to go towards single tariff pricing,
11 that's an issue that is absorbed within that policy
12 decision, right?

13 A. Yes.

14 Q. Go ahead.

15 A. When you get to the other two systems here,
16 the Holiday Hills and the Ozark Mountain, it's just
17 reasons that have been stated already. It's -- yeah,
18 they're 20 miles apart. They're not the same amount of
19 rate base in each one. The customer investment for
20 Holiday Hills, it appears, is, from what I can see and the
21 numbers supplied to me, about twice as great as Ozark
22 Mountain. If we continued with single rate pricing, there
23 would be heavy subsidization of Silver Leaf by the other
24 customers, in effect, is what is going to happen.

25 Q. What is the average commodity charge to a

1 residential customer in the state of Missouri?

2 A. I have no idea.

3 Q. Who would have that? Who would have an
4 idea?

5 A. I don't know if we really have that,
6 Commissioner. I can say that from the cases I've seen in
7 the last two years -- you said commodity, correct?

8 Q. Yes.

9 A. It's -- varies, but I would say 3 to \$5 is
10 probably typical in a lot of our systems, but I don't
11 know.

12 Q. So the dollars that you're recommending
13 here is below what we typically see; is that correct?

14 A. I'd say it's on the low end, yes.

15 Q. Now, is Staff's recommendation to go to
16 district specific pricing purely based on the makeup of
17 this company and the fact that such a large percentage of
18 the customer base is Silver Leaf?

19 A. That is part of it, yes.

20 Q. On the other hand, in the broader policy
21 issue, single tariff pricing versus district specific,
22 single tariff pricing does allow for mitigation of rate
23 shock when large infrastructure needs occur in one or
24 another district, does it not?

25 A. Yes, it does.

1 Q. Okay. Thank you.

2 A. You're welcome.

3 JUDGE PRIDGIN: Commissioner Murray, thank
4 you. Mr. Chairman?

5 QUESTIONS BY CHAIRMAN DAVIS:

6 Q. Mr. Russo, your estimate on the golf course
7 was between \$1.10 and I think -- you're at \$1.10?

8 A. Yes, sir.

9 Q. And what's the difference between your
10 \$1.10 and the \$1.25 that Mr. Loos is recommending?

11 A. I cannot identify that. There was -- his
12 rate was not based on anything that I could see. We --
13 I'm not sure where he got his rate from.

14 Q. Okay. Do you think it's fair that Silver
15 Leaf is paying absolutely nothing right now?

16 A. No.

17 Q. And the operation of law date in this case
18 is not until what, April; is that correct?

19 A. I don't know.

20 CHAIRMAN DAVIS: You don't know. No
21 further questions.

22 JUDGE PRIDGIN: Mr. Chairman, thank you. I
23 don't have any questions. Any recross?

24 MS. BAKER: No.

25 JUDGE PRIDGIN: Mr. Cooper?

1 MR. COOPER: No questions, your Honor.

2 JUDGE PRIDGIN: Redirect?

3 MR. BAKER: No.

4 JUDGE PRIDGIN: All right. Thank you,

5 Mr. Russo, you may step down, sir.

6 I don't know if counsel are prepared to go
7 any further today or not.

8 MR. KRUEGER: Your Honor, I have a couple
9 of possibilities to suggest.

10 JUDGE PRIDGIN: All right.

11 MR. KRUEGER: I did discuss with Mr. Cooper
12 briefly the possibility of taking construction cost
13 overrun issue witnesses out of order so that Mr. Vesely
14 would testify this afternoon and the company's witness
15 could testify tomorrow morning. I don't know whether that
16 works for Mr. Cooper.

17 MR. COOPER: My problem on the -- or the
18 two issues that Mr. Krueger and I discussed was that
19 Mr. Boudreau's going to help me with those particular two
20 issues, but in a similar approach, I guess, we've got that
21 contributions issue that's there. I think Mr. Krueger
22 said he's not prepared to cross Mr. Loos, but if we wanted
23 to go ahead and move on to Mr. Featherstone, Vesely and
24 Merciel on contribution, I wouldn't object to doing that.

25 JUDGE PRIDGIN: Okay. Mr. Krueger?

1 I'm sorry. Mr. Johansen's trying to hand you something.

2 MR. KRUEGER: Mr. Johansen's name did not
3 appear on the list of witnesses on rate design issue and
4 rate mitigation, but it was thought that he had some
5 testimony on that. Mr. Cooper has no cross. Unless
6 Public Counsel or the Bench has cross on it, we don't have
7 anything further then on rate design.

8 And I was conferring with Mr. Featherstone
9 when Mr. Cooper made his statements. I'm not sure what it
10 was.

11 MR. COOPER: I was asking -- I recognize
12 that on contributions that you don't want to cross-examine
13 Mr. Loos at this point in time, but I was wondering if
14 perhaps we could move on to that issue and deal with the
15 Staff witnesses out of order, and then we could bring
16 Mr. Loos back on that issue tomorrow, if you want.

17 MR. KRUEGER: I think that would be all
18 right.

19 JUDGE PRIDGIN: In that case, let's go on
20 to Mr. Featherstone, if he's available.

21 MR. COOPER: And, your Honor, while
22 we're -- if we're going to move on to that, I believe
23 earlier today Commissioner Murray had asked for copies of
24 the line extension tariffs for this company. I have both
25 the water and sewer if we wanted to mark those at this

1 time.

2 JUDGE PRIDGIN: Okay. That would be good.

3 MR. COOPER: We'll do that first. Then I
4 have one other request for you.

5 JUDGE PRIDGIN: All right. Thank you. I
6 believe we'll be up to No. 29, if I'm not mistaken.

7 MR. COOPER: 29 would then be Algonquin's
8 water extension, water mains tariff sheets, which would be
9 Rule 14. And we also have the cover sheet, the adoption
10 notice and the index for that same set of tariffs.

11 JUDGE PRIDGIN: All right.

12 MR. COOPER: And I take it Exhibit 30 would
13 be the sewer, and that would be Rule 11 extension of
14 collecting sewers, and again, would include the tariff
15 title page, the adoption notice and the general index as
16 well.

17 (EXHIBIT NOS. 29 AND 30 WERE MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 JUDGE PRIDGIN: Anything further before
20 Mr. Featherstone stands cross?

21 Mr. Cooper?

22 MR. COOPER: One other thing. It's more of
23 a procedural nature, but Mr. Hamrick, who testified
24 earlier today, does not appear on any other issues, and so
25 I would like to ask that he be excused.

1 JUDGE PRIDGIN: Any objections from
2 counsel?

3 MR. KRUEGER: No, your Honor.

4 JUDGE PRIDGIN: Seeing no objections, thank
5 you, Mr. Hamrick. He is released. And has, I believe,
6 Mr. Featherstone's testimony -- yes, it's been offered.
7 It's been admitted. Is there anything else to clean up
8 before he's tendered for cross?

9 MR. KRUEGER: No, your Honor.

10 JUDGE PRIDGIN: All right. Thank you. And
11 we are now moving on to contribution in aid of
12 construction. Ms. Baker, any cross on this issue?

13 MS. BAKER: Just one question.

14 CARY G. FEATHERSTONE testified as follows:

15 CROSS-EXAMINATION BY MS. BAKER:

16 Q. Silver Leaf being both developer and
17 utility, would they have had any incentive to account for
18 their infrastructure costs separately?

19 A. Not to my knowledge that they would have
20 any incentive, other than as a utility in the post-1993
21 certificate cases, they would have had an obligation to
22 follow the Uniform System of Accounts and account for it
23 separately at that point.

24 MS. BAKER: No further questions.

25 JUDGE PRIDGIN: Thank you. Mr. Cooper?

1 CROSS-EXAMINATION BY MR. COOPER:

2 Q. Mr. Featherstone, that's an obligation that
3 you say would have started with the granting of the
4 certificate?

5 A. It would most definitely start with the
6 granting of the certificate, yes.

7 MR. COOPER: Thank you. No other
8 questions, your Honor.

9 JUDGE PRIDGIN: Mr. Cooper, thank you.
10 Commissioner Murray, any questions?

11 COMMISSIONER MURRAY: Yes.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Featherstone, the Staff's position that
14 the developer contributed, made these contributions, there
15 is no hard evidence to support that; is that correct?

16 A. I'm not certain what you mean by hard
17 evidence. I think logically, as we talked earlier this
18 morning, since it was not being identified as a utility
19 property, the hard evidence is they would have no other
20 place to go to get recovery of the funds associated with
21 this constructive plan. And so I guess logically it would
22 have had to have been a developer cost that would have
23 been passed back through the time share sales and
24 condominium sales. And I assume you're speaking of the
25 pre-1993 property?

1 COMMISSIONER MURRAY: Yes. Okay. I think
2 that's all. Thank you.

3 THE WITNESS: Thank you.

4 JUDGE PRIDGIN: Thank you. Mr. Chairman?

5 CHAIRMAN DAVIS: No questions.

6 JUDGE PRIDGIN: Thank you. I don't have
7 any questions. Any recross? Any redirect?

8 MR. KRUEGER: No, your Honor.

9 JUDGE PRIDGIN: All right. Thank you.
10 Mr. Featherstone, thank you. You may step down.

11 THE WITNESS: Thank you.

12 JUDGE PRIDGIN: Is Mr. Vesely ready to go
13 on this issue?

14 You've already been sworn under oath. You
15 may have a seat. I believe his testimony has been offered
16 and admitted, so is there anything to clean up before he's
17 tendered for cross?

18 MR. KRUEGER: No, your Honor.

19 JUDGE PRIDGIN: All right. Any cross,
20 Ms. Baker?

21 GRAHAM A. VESELY testified as follows:

22 CROSS-EXAMINATION BY MS. BAKER:

23 Q. When Algonquin purchased the utilities from
24 Silver Leaf, they were aware that the tariff that was in
25 place included the CIAC for the distribution lines,

1 correct?

2 A. They certainly should have been aware that
3 there was a tariff in place, and they would have had to
4 become familiar with the tariff, Staff believes.

5 MS. BAKER: No further questions.

6 JUDGE PRIDGIN: Thank you. Mr. Cooper?

7 MR. COOPER: Yes, your Honor. May I
8 approach the witness?

9 JUDGE PRIDGIN: You may.

10 CROSS-EXAMINATION BY MR. COOPER:

11 Q. Mr. Vesely, do you have before you at this
12 time what has been marked for identification in this case
13 as 29 and 30, the Algonquin water extension tariff and the
14 Algonquin sewer extension tariff?

15 A. Yes, I do.

16 Q. Now, you purport to recite those tariffs
17 in, I believe, your direct testimony, correct?

18 A. Yes, that's correct.

19 Q. I think that's on pages 17 and through 19,
20 correct?

21 A. Let me check just quickly here. 17 through
22 19, yes.

23 Q. And I think substantively your recitation
24 is probably accurate, but I want you to compare the water
25 tariff that I handed you to the provision that you've

1 recited on page 17.

2 A. What I included in my testimony is a
3 partial excerpt from the tariff, from the water tariff.
4 It looks like the first four points maybe, four
5 paragraphs.

6 Q. I'm not sure whether the fourth one is the
7 same.

8 A. A through D.

9 Q. I'd agree with you maybe on A through C.

10 A. It looks like number -- or letter D,
11 paragraph D in my testimony is the same as paragraph F in
12 the tariff.

13 Q. So there's some other parts of that tariff,
14 wouldn't you agree with me, in between what you have as C
15 and what you have as D?

16 A. Yes, sir.

17 Q. And then additional provisions after --

18 A. Yes.

19 Q. -- that as well?

20 Now, let's do the same thing with the sewer
21 tariff. Maybe we can kind of cut through this somewhat
22 quickly, but I think -- would you agree with me that we
23 have a similar situation over there on the sewer tariff,
24 that what you have recited is not the complete extension
25 tariff?

1 A. No. I would agree. The Q and A there on
2 page 17 at the bottom, I say, please present the relevant
3 portions of the tariffs governing provision of sewer
4 service. I didn't want to repeat the whole length of the
5 tariff, which wasn't making any additional point.

6 Q. But there's maybe some things that are
7 additional items that aren't noted that would be a part of
8 the complete --

9 A. Oh, certainly.

10 Q. -- tariff, correct?

11 And the most complete depiction of both the
12 water and the sewer extension tariffs would be Exhibits 29
13 and 30, correct?

14 A. Yes.

15 Q. And both of those tariffs became effective
16 in 1994, correct?

17 A. That's correct.

18 Q. They would not have existed prior to that
19 date?

20 A. That's correct.

21 Q. Now, would you agree with me that both the
22 sewer and water extension tariffs require written
23 application?

24 A. That's what the letter of the tariff says,
25 yes.

1 Q. And you've not seen any written
2 applications between Silver Leaf the utility and Silver
3 Leaf the developer, have you --

4 A. No.

5 Q. -- in regard to line extensions?

6 A. No. That's right.

7 Q. Now, I think in your testimony, in your
8 surrebuttal, you kind of casually eliminate this problem
9 by stating that while it would have been preferable to
10 actually document the developer's application for being
11 connected to the utility systems, this omission is easily
12 explained by the affiliate relationship the utility had
13 with the developer, correct?

14 A. Yes. I thought that was the reason that
15 the paperwork process was not completed between the two
16 affiliates.

17 Q. That's a little more forgiving than the way
18 you've treated plant in service and its need for
19 documentation, isn't it?

20 A. I don't feel that there's any comparison
21 between those two examples, but your answer is yes, or the
22 answer to your question is yes.

23 Q. Now, on page I think it's 21 of your
24 rebuttal testimony, you seem to indicate that Silver Leaf
25 acknowledged that some level of contributed plant was

1 appropriate; is that correct?

2 A. Yes.

3 Q. You participated in the acquisition case
4 whereby Algonquin acquired the Silver Leaf properties,
5 didn't you?

6 A. Yes, I did.

7 MR. COOPER: Your Honor, at this time I'd
8 like to mark an exhibit, if I could.

9 JUDGE PRIDGIN: You may.

10 MR. COOPER: I take it this will be
11 Exhibit 31.

12 JUDGE PRIDGIN: Yes, sir.

13 MR. COOPER: This will be surrebuttal
14 testimony of Joe Connor in Case WO-2005-0206.

15 (EXHIBIT NO. 31 WAS MARKED FOR
16 IDENTIFICATION BY THE REPORTER.)

17 BY MR. COOPER:

18 Q. Do you have before you what's been marked
19 as Exhibit 31?

20 A. Yes, I do.

21 Q. Now, you said that you participated in the
22 acquisition case, correct?

23 A. Yes, I did.

24 Q. And did you review the testimony in that
25 case?

1 A. Yes, I did.

2 Q. And do you remember seeing Mr. Connor's
3 testimony?

4 A. Vaguely. It's very brief testimony.

5 Q. Who was Mr. Connor? Do you recall?

6 A. I believe he was a Silver Leaf employee.

7 Q. Could you turn to page 3, and starting on
8 line 13, I want to read you a question and answer.

9 Starting on line 13 there's a question, in light of this
10 rate history and the status of this case, is it
11 appropriate to try and determine the plant balances
12 identified by Staff within this case?

13 Is that a correct reading of that question?

14 A. Yes.

15 Q. And on line 16 there's an answer that
16 starts and says, no, I do not believe that there has been
17 a meaningful and reasonable process by which a
18 determination has been made that could have been reflected
19 in the accounts of Silver Leaf respecting any amounts, be
20 it depreciation, used and useful assets, CIAC, efficiently
21 installed assets, begin paren, Well No. 2, end paren, or
22 any related matter. Through the informal rate case
23 process in 1998, the Staff initiated an earnings
24 investigation in 2002 or otherwise.

25 Silver Leaf has not accepted most of the

1 positions and amounts Staff has proposed, and hence, it
2 cannot reasonably be expected that these should somehow
3 have been acceptable to Silver Leaf and have been
4 reflected in the books of the utility. Silver Leaf has
5 consistently rejected Staff's position on these matters
6 and has, therefore, not taken its recommendation.

7 Is that a correct statement of that answer?

8 A. You read correctly what is in his
9 testimony, yes.

10 MR. COOPER: Okay. Thank you. Your Honor,
11 I would like to ask that the Commission take
12 administrative notice of Mr. Connor's testimony from the
13 acquisition case.

14 MR. KRUEGER: Your Honor, I'm going to
15 object to this because this is impermissible hearsay.
16 Mr. Connor's not here to give me an opportunity to ask him
17 questions, and if this is offered for the -- to prove the
18 statements contained therein, it is hearsay and I object.

19 MR. COOPER: Your Honor, I think that the
20 Commission can take official notice or administrative
21 notice of anything that's a public document that's
22 properly filed in its records, first off.

23 Second off, I think it is relevant because
24 of Mr. Vesely's statement as to what Silver Leaf accepted
25 or previously accepted, and beyond that, I think it's

1 appropriate to impeach Mr. Vesely's statement as to what
2 Silver Leaf may have accepted or didn't accept.

3 MR. KRUEGER: What he said, your Honor, is
4 that it's offered for the proof of the matter that Silver
5 Leaf has not accepted, which is a statement that's
6 contained therein, and I won't have the opportunity to
7 cross-examine Mr. Connor about that.

8 JUDGE PRIDGIN: If I understood, I don't
9 think Mr. Cooper's offered it into evidence. He's asking
10 the Commission to take judicial notice -- or
11 administrative notice, rather, of this testimony. And if
12 it's been in the Commission's electronic filing
13 information system, I think we can take administrative
14 notice of it. It's not been offered into evidence, and so
15 we'll simply take notice of that testimony.

16 BY MR. COOPER:

17 Q. Mr. Vesely, a little bit ago I asked
18 whether you had seen any written application associated
19 with or between Silver Leaf in its development function
20 and Silver Leaf in its utility function in regard to water
21 and sewer extensions. And I believe you said you hadn't
22 seen those written applications. Let me expand that
23 question.

24 Have you seen any written applications as
25 to any other entity and Silver Leaf in regard to water or

1 sewer extensions?

2 A. No.

3 Q. Nor, I believe, have you seen any written
4 applications regarding water or sewer extensions after
5 Algonquin acquired the property, correct?

6 A. That's correct.

7 MR. COOPER: That's all the questions I
8 have, your Honor.

9 JUDGE PRIDGIN: Mr. Cooper, thank you.
10 Let's see if we have any Bench questions. Commissioner
11 Murray?

12 COMMISSIONER MURRAY: Thank you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. On page 17 of your direct testimony, in
17 talking about the main water and sewer lines not
18 increasing the investment base of Silver Leaf, you say on
19 line 2 -- 2 and 3 that this interpretation has met with
20 some resistance in the past, and I want to question you a
21 little bit more about that resistance. And I think
22 I'm going to go back to the testimony that was in Case
23 No. WO-2005-0206 of Mr. Joe Connor. And did you say you
24 personally participated in that case?

25 A. Yes, I did.

1 Q. So when you make your statement in your
2 testimony that Staff's interpretation has met with some
3 resistance, would that be the case that you're
4 referencing?

5 A. No. Actually, I became aware of this
6 resistance earlier on. It was during the 2000 year's
7 small informal company case, and the communications with
8 the company, the -- they had expressed still some
9 reservations.

10 Q. Okay. Regarding the Case No. WO-2005-0206,
11 Staff had made a recommendation there, and was the
12 recommendation -- would that recommendation have resulted
13 in a negative rate base?

14 A. A negative rate base?

15 Q. The testimony of Mr. Connor indicates that
16 it would have.

17 A. I've never heard of that issue.
18 Mr. Connor's testimony is obviously surrebuttal. There
19 was no opportunity to respond to it.

20 Q. But did you review it for preparation of
21 this case?

22 A. Actually, no, but it's brief enough I
23 can -- I've read it since Mr. Cooper has brought this to
24 my attention.

25 Q. The contribution in aid of construction

1 value that was identified by Staff in that case, is it
2 correct that it was approximately 1.3 million?

3 A. What the Staff computed, yes.

4 Q. And that is what Mr. Connor says would have
5 resulted in a negative rate base. What rate base would
6 have been the result?

7 A. That's -- I believe the question here,
8 negative rate base may apply to the excessively large CIAC
9 number that the company had shown, which in my testimony,
10 page 21, is stated at 3.3 million. This is rebuttal
11 testimony, page 1, line 5, where I point out that Silver
12 Leaf reported on its 2004 annual report 3.3 million CIAC.

13 We don't believe that's correct. It's very
14 well that if one uses that sort of CIAC number, it might
15 have produced an unreasonable result that's not -- it's
16 not the Staff's position, though.

17 Q. And that number that you assigned on
18 page 21 of your rebuttal is a number taken from?

19 A. The 2004 annual report of Silver Leaf. The
20 only reason I reported it there is to show that Silver
21 Leaf had begun to reflect CIAC in its annual reports,
22 which is one indication of its acceptability. I have
23 another indication, which is my schedule where I include a
24 letter, a copy of a letter from Silver Leaf, acknowledging
25 having discussed with the Staff tariff requirements for

1 CIAC.

2 Q. Do you know what schedule that is?

3 A. This is Schedule 5 attached to my rebuttal
4 testimony. Looks like this (indicating).

5 Q. I see it. Thank you.

6 A. It is very clear from that letter that
7 Silver Leaf had signaled the intention beginning to
8 reflect CIACs. Now, they may not have numerically
9 reflected it correctly, and we're not certainly holding
10 the company to their own CIAC numbers. We are
11 independently calculating our own CIAC as documentation
12 would support, just as with all other plant in service.

13 Q. Now I'm going to ask you about what
14 Mr. Cooper asked you initially regarding the -- what
15 appears to be a quotation of the tariffs in your
16 testimony, direct testimony on page 17 and 18. Where
17 if -- in reading this testimony, which is what we
18 Commissioners would be doing, how can we look at that and
19 determine that there is something left out of those
20 tariffs? How can we determine that you only cited what
21 you considered the relevant portions?

22 A. Well, hopefully that's very clear on
23 line 30 where I say, please present the relevant portions
24 of tariffs governing the provision of sewer service, and
25 where --

1 Q. Just a second. What you cite as D is not
2 D. I see no ellipses anywhere that indicate that.

3 A. That's flat out a mistake. I don't really
4 recall presenting it in that format. It may have been
5 changed by someone who believed that I had simply
6 mislabeled the paragraph.

7 Q. Okay. So you would agree that that is not
8 the appropriate way to indicate that you're quoting
9 something?

10 A. Absolutely.

11 COMMISSIONER MURRAY: Okay. Good. Thank
12 you. That's all I have.

13 JUDGE PRIDGIN: Commissioner Murray, thank
14 you. Mr. Chairman?

15 QUESTIONS BY CHAIRMAN DAVIS:

16 Q. Mr. Vesely, can you identify for me all of
17 the, quote, Staff people that you have discussed this case
18 with?

19 A. Yes, sir. My supervisor Mr. Featherstone;
20 legal counsel Mr. Krueger; manager of the water/sewer
21 department Mr. Johansen; member of the water/sewer
22 department Mr. Merciel; member of the water sewer
23 department Mr. Russo; member of the Kansas City office
24 Mr. Heinemann; another member of the water sewer
25 department Mr. Nickel. That would be most of them. Oh,

1 Kansas City auditor Mr. Williams.

2 Q. Is that Steve Williams?

3 A. That is Phil Williams.

4 Q. Phil Williams. Okay. Now, did you discuss
5 your testimony with Mr. Featherstone and Mr. Johansen
6 before you prepared your direct testimony?

7 A. Yes.

8 Q. And did you just tell them, this is what
9 I'm going to say?

10 A. Yes.

11 Q. Okay. And so you didn't change anything
12 based on any of those conversations?

13 A. I made changes, I would say, after I'd
14 written testimony. I mean, I certainly had it reviewed by
15 all these individuals.

16 Q. Okay. So they reviewed your testimony?

17 A. Yes.

18 Q. And you made changes to your testimony
19 based on their review?

20 A. Yes.

21 Q. And can you tell me what changes you made?

22 A. Obviously I don't remember every change I
23 made, but from Mr. Featherstone, I would say suggestions
24 beefing up original cost, language, citations of the
25 Uniform System of Accounts. Also some language describing

1 what a test year is. I recall that because those were
2 fairly lengthy additions to my testimony.

3 Q. Now, did -- you talked with
4 Mr. Featherstone before you originally prepared your
5 direct testimony in this case, correct?

6 A. Oh, yes.

7 Q. Okay. Did you have any impressions, based
8 on your conversations with Mr. Featherstone, about the
9 direction that he wanted you to go in this case?

10 A. Oh, yes, certainly.

11 Q. What were those impressions?

12 A. It was to clarify or to draw as clear a
13 distinction as possible between the Staff's approach, the
14 difference between the Staff's approach and the company's
15 approach in arriving at the recommended rate base and
16 plant in service balances. Namely the Staff's case
17 obviously relying on original cost theory to the maximum
18 extent rather than estimated costs or projected cost or
19 any other variations.

20 CHAIRMAN DAVIS: No further questions at
21 this time, Judge. But Mr. -- I'm sorry, is it Vesely --
22 is Mr. Vesely here in the Jeff City office or is he in
23 Kansas City?

24 JUDGE PRIDGIN: Kansas City; is that
25 correct?

1 THE WITNESS: Yes, sir.

2 CHAIRMAN DAVIS: Is he going to be here
3 tomorrow?

4 THE WITNESS: Oh, yes, sir.

5 CHAIRMAN DAVIS: Okay. I may want to call
6 him back.

7 JUDGE PRIDGIN: Okay. Thank you. I have
8 no questions. Any recross?

9 MS. BAKER: No.

10 JUDGE PRIDGIN: Mr. Cooper?

11 MR. COOPER: No, your Honor.

12 JUDGE PRIDGIN: Any redirect?

13 MR. KRUEGER: No, your Honor.

14 JUDGE PRIDGIN: All right. Thank you, Mr.
15 Vesely. Thank you very much.

16 Is Mr. Merciel ready to go? You may have a
17 seat. You're already under oath.

18 Mr. Krueger, anything to take up before
19 he's tendered for cross?

20 MR. KRUEGER: No, your Honor.

21 JUDGE PRIDGIN: Cross-examination,
22 Ms. Baker?

23 MS. BAKER: None, at this time.

24 JUDGE PRIDGIN: Mr. Cooper?

25 MR. COOPER: Yes, your Honor.

1 JAMES MERCIEL testified as follows:

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Merciel, in your rebuttal testimony, I
4 believe you have a quote that says that the regulated
5 water and sewer utilities have the best chance of being
6 viable entities if the utility owners invest in the
7 central facilities such as wells, storage tanks, sewer
8 treatment facilities and for larger systems, perhaps major
9 feeder pipelines or trunk sewers; is that correct?

10 A. Yes.

11 Q. And I think you also explain in a different
12 part of your testimony or have the statement that it's
13 sometimes difficult to estimate a level of rate base in
14 depreciation reserve when records don't exist. Would you
15 agree with that?

16 A. I would agree with it. I think I probably
17 said that in here.

18 Q. Okay. And I think that you sum up this --
19 kind of this line of reasoning by saying that from a
20 practical standpoint and from a ratemaking standpoint,
21 these unrecorded facilities would normally have been
22 contributed so there's no rate impact and it is not an
23 issue that needs the Commission's attention. Does that
24 sound familiar to you as well?

25 A. Yes. Yeah. That sounds like -- I haven't

1 found where you're reading in my testimony, but I'm pretty
2 sure I said that.

3 Q. If you so casually go from assuming that
4 any unrecorded facilities would have been contributed,
5 doesn't that go contrary to the first statement I read
6 from your testimony that says that in order to be viable,
7 utility owners really need to have -- be deemed to have
8 invested in the central facilities?

9 A. Well, no, I don't think it's contrary. The
10 Staff long ago determined that it's good to have some
11 investment on the part of utility owners, and we
12 determined that the level investment required in the
13 central facilities is a good way for them to invest their
14 money. The fact is, a lot of them don't have any
15 investment in it. You know, a lot of these systems were
16 built by developers, they were written off and it was
17 contributed to the utility company. There's simply no
18 investment by the utility. I mean, that's a fact.

19 Q. I mean, I read your -- I read some of
20 these statements to mean that if the documentation doesn't
21 exist -- let's set aside for a second whether there's --
22 it was actually contributed or wasn't contributed. But if
23 the documentation for the original cost doesn't exist,
24 that the Staff's going to just assume that it was
25 contributed; is that accurate?

1 A. Well, I think the accurate way of saying it
2 is if they can't show they have any money in it, talking
3 about utility stockholders, if they can't show they have
4 investment, then they're not able to show that there
5 should be a return that customers should be paying. I
6 think that's the direction.

7 Q. Are they not able to show investment if you
8 can look out the window and see the plant sitting there?

9 A. That's not showing the utility investment.
10 The plant is indeed there, but it's not showing an
11 investment. That doesn't mean the utility owners invested
12 the money.

13 Q. Someone invested the money?

14 A. Someone did. Someone did.

15 Q. And the question is just what the cost was,
16 correct?

17 A. That and should and ratepayers be paying
18 for it.

19 Q. Now, in your rebuttal testimony, you agree
20 with a question asking whether permitting Algonquin to
21 include estimated unrecorded plant in rates would serve to
22 reward utilities for their failure to maintain adequate
23 records. Does that sound familiar? I can point you to
24 it.

25 A. Yes, it does sound familiar.

1 Q. Look over on page 6, I think, lines 10
2 through 12.

3 A. Yes.

4 Q. Let's say what we're talking about, that
5 the plant in question -- and this is a hypothetical.
6 Let's say the plant in question is central facilities,
7 well, storage tanks, sewage treatment facilities, the sort
8 of central facilities that you had mentioned in your
9 testimony.

10 A. Yes.

11 Q. And adequate records or what the Staff
12 would deem to be adequate records of its original cost are
13 not available, but -- and assume with me we can come up
14 with a reasonable estimate of their costs. Would it still
15 somehow reward the utility for failure to maintain
16 adequate records if a reasonable estimate were used?

17 A. Well, yes, it could.

18 Q. And let me ask you this, then: Wouldn't in
19 that situation utilizing a reasonable estimate as to the
20 cost of those central facilities merely get you back to
21 where you started, that would be that would give the
22 utility a chance to be viable?

23 A. I -- well, first of all, I don't think this
24 is the only -- this is not the only issue of viability,
25 but if customers pay for the plant in some other manner,

1 such as specifically it was included in their lot sales or
2 if they paid maybe a connection charge, maybe there aren't
3 any records of connection charges that were paid. I mean,
4 there could be a number of situations to where these
5 customers already paid the funds for the plant
6 construction, and if that's the case, they could be
7 definitely paying for something they already paid for.

8 Q. Now, in this case, you're not aware, are
9 you, of any lot sales agreements that itemize any sort of
10 utility cost?

11 A. In this case, I'm not.

12 Q. And you're not aware in this case of any
13 connection charges either, are you?

14 A. No, I'm not. But we also included the
15 central facilities to where, you know, what we could see,
16 that is included in this case.

17 MR. COOPER: That's all the questions I
18 have, Judge.

19 JUDGE PRIDGIN: Mr. Cooper, thank you.
20 Commissioner Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good afternoon, Mr. Merciel.

23 A. Good afternoon, again.

24 Q. You indicated earlier, I believe, in
25 response to a question from Mr. Cooper that -- I believe

1 it was from Mr. Cooper -- that a lot of these systems have
2 no investment; is that correct?

3 A. That is correct.

4 Q. Wouldn't that equate to that hypothetical
5 that I posed earlier where a rate base could be zero?

6 A. Yes. Yes.

7 Q. And you say a lot of these systems have
8 that?

9 A. There are companies with zero rate base,
10 yes.

11 Q. And what is the result of the way we treat
12 those companies in terms of rate base there? They are not
13 able to earn a return on any investments; is that correct?

14 A. Correct. There's no return on investment
15 and there's no depreciation. Their income is strictly on
16 their expenses. There's some salary and management,
17 things like that for the people running it, but there's no
18 investment and no return on it.

19 Q. So basically all they are allowed to earn
20 is just enough to cover whatever their expenses are?

21 A. Basically day-to-day expenses, yes.

22 Q. In your experience here -- and I know
23 you've been here a long time. In your experience, have
24 you seen that create problems for companies?

25 A. Well, I think the only problem that creates

1 is a rate shock when they -- you know, when a company does
2 invest some money, if they have to do some major upgrade
3 or major replacement. It's more rate shock. You don't
4 have anything to retire, and when you go from zero
5 investment to lots of investment, it's a rate shock.

6 I wouldn't say the lack of rate base in
7 itself causes the company to go -- well, to go bad, so to
8 speak. I think there are many other factors that do that.

9 Q. But in your experience with the treatment
10 of particularly small water companies, over the years,
11 through the methodologies that are used, do you think
12 we've been successful in regulating water companies?

13 A. Well, yeah, I think we've been successful.
14 That's certainly not to say there isn't -- you know, there
15 is probably room for improvement. There might be some
16 better ideas, but I think over the years this point about
17 getting companies to invest in the central facilities, I
18 think we've come a fairly good ways on that. We do that
19 when we can, if it's a new system. If it's an existing
20 system, it's a little harder to do, but when developers
21 come in with a new development, we insist on that. We
22 have for some time now, and I think that's been helpful.

23 Q. When you say for some time, approximately
24 how long?

25 A. Well, since -- since -- certainly since the

1 early '80s. I can't -- there's a lot of these lake
2 developments and rural subdivisions that went into service
3 in the '70s, and I wasn't here quite that long ago. And
4 probably some of them had some investment and some of them
5 didn't. I'm not sure how consistent the Commission was at
6 that time.

7 I will say some of them -- some of those
8 are still in bills, and even if they had investment,
9 they're not growing. There's a system that got put into
10 place and even if there was rate base, it's depreciated
11 out now. You know, after you go 30 years and then tanks
12 and, you know, structures, that's -- it's the end of
13 depreciation life. So the point is, there are companies
14 that never had any rate base and there were some companies
15 that did have base, but they don't know because it's all
16 depreciated out.

17 Q. And is it your understanding that some
18 jurisdictions allow different methods for water and sewer
19 companies to provide a fund or potential -- for use when
20 this large expenditure needs to occur?

21 A. I'm not sure how some of them handle large
22 expenditures. There certainly are some other ratemaking
23 principles, like just using strictly operating ratios,
24 basically ignoring the investment using operating ratios.
25 Some states do different things on depreciation. So there

1 are some variations throughout the country.

2 Q. And with your experience over the years
3 with water and sewer companies, do you think it's
4 important than the Commission be cognizant of the
5 companies being able to earn a return that allows them to
6 provide safe and adequate service?

7 A. Well, yes. Yes. We -- these companies
8 need to be able to earn a return on the investment. If
9 that's what they have, they need to be able to recover
10 their expenses, they need to be able to pay their
11 employees the time they spent on the system, including
12 management time. Sometimes it's hard to determine what
13 that is, but, yeah, these companies need to be -- need to
14 be collecting what they need to run the systems.

15 Q. Now, in this instance where Algonquin
16 purchased from Silver Leaf, it's your position, I believe,
17 that Algonquin should have performed a due diligence
18 review as to how the property would have been reported
19 prior to making the purchase; is that correct?

20 A. Yes, that is -- that is correct.

21 Q. And in your opinion, was that done?

22 A. Well, I don't really know whether it was
23 done or not. They may have looked at their -- I'm sure
24 they looked at something of what they were acquiring. I
25 think our point is the Staff -- the Staff position on the

1 over capacity, we wanted to make sure that that was on the
2 record and that Algonquin knew what the Staff's position
3 was, and that was really the point I was trying to make
4 when I made that estimate.

5 Q. But as to that issue, there was no
6 determination made as to how -- whether Staff's position
7 would be acceptable in a rate case; is that correct?

8 A. That's correct. We put it out there and
9 that's pretty much as far as it went, other than perhaps
10 some talking about it at the table, but nothing else on
11 the record.

12 Q. So if the company -- if Algonquin looked at
13 that and personally felt the Staff's position was not
14 defensible, that would not have been a negative in
15 deciding to purchase?

16 A. I'm sure that's correct, yeah.

17 COMMISSIONER MURRAY: I believe that's all
18 I have. Thank you.

19 JUDGE PRIDGIN: Commissioner, thank you.
20 Mr. Chairman?

21 CHAIRMAN DAVIS: No questions for
22 Mr. Merciel at this time.

23 JUDGE PRIDGIN: Any recross, Ms. Baker?

24 MS. BAKER: No.

25 JUDGE PRIDGIN: Mr. Cooper?

1 MR. COOPER: Very briefly, your Honor.

2 RECROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Merciel, you were asked some questions
4 by Commissioner Murray about a system where there is no
5 investment, no rate base. Do you remember those?

6 A. Yes.

7 Q. And I think you said that in setting rates,
8 of course, in that situation, they would have no
9 depreciation expense and no return on investment, correct?

10 A. Yes.

11 Q. So let's say if all else is equal, if their
12 expenses go up, they're going to be losing money, aren't
13 they?

14 A. Yes, unless they file a rate case. Right.
15 There's very little cushion there. Let me also say, in
16 some of the small companies, not so much rate cases but in
17 certificate cases, a lot of times we'll build in a -- what
18 do we call it, a -- a contingency. We build in a
19 contingency fund. It might be a thousand bucks a year on
20 a small system, just to give a little bit of a cash
21 cushion.

22 Q. So some very small cushion?

23 A. Some amount, yeah.

24 Q. Now, let's go the other way. I think
25 Mr. Featherstone earlier today said that in this situation

1 that these systems could make money if they experienced
2 growth, if all else was equal. Do you remember that?

3 A. Yes.

4 Q. Now, setting aside the issue of whether the
5 Staff would really haul in somebody on a complaint case in
6 that situation, but just technically looking at their
7 revenues post growth versus their expenses if they are not
8 increased, wouldn't you technically say -- or the Staff
9 would allege that they are overearning in that situation?

10 A. I'm sorry. I didn't follow you well enough
11 to be --

12 Q. I went about it in a long, round-about way
13 there. Going back to set up our hypothetical, we've got
14 our hypothetical company, it has no investment.

15 A. Okay.

16 Q. Okay. Thus it has no depreciation
17 expenses, no return on its investment?

18 A. Right.

19 Q. Whatever its rates are are based strictly
20 upon its operating expenses, correct?

21 A. Okay. Uh-huh.

22 Q. Let's say nothing else changes, but it adds
23 customers.

24 A. Okay.

25 Q. It grows a little bit in the next year.

1 Now, I believe Mr. Featherstone said that was an
2 opportunity for the company to make money, correct?

3 A. Yes.

4 Q. But at the same time, wouldn't you agree
5 with me that whatever money they're making if they were in
6 a complaint case in that situation would be deemed to be
7 overearnings because the money they're making exceeds
8 their operation expenses?

9 A. Yeah, I see what you mean. Yeah, the
10 answer is yes. I don't think such a situation would --
11 would --

12 Q. Necessarily provoke the Commission to --

13 A. Yeah, exactly.

14 Q. -- haul them in and --

15 A. We wouldn't be talking about a lot of
16 money.

17 Q. Right. But technically, if you had to look
18 at that, you'd view it as an overearning situation?

19 A. It could be. It could be.

20 MR. COOPER: Okay. That's all the
21 questions I have, your Honor.

22 JUDGE PRIDGIN: All right. Thank you.

23 Redirect?

24 I'm sorry. Commissioner Murray?

25 COMMISSIONER MURRAY: Sorry to prolong

1 this, but I'm thinking here and it's dangerous.

2 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

3 Q. I just wanted to get your opinion on
4 something, because there's something troubles me greatly.
5 I don't know if it's just that I truly don't understand it
6 or if it's just truly a bad policy. Take a developer who
7 puts in the infrastructure. Let's say that the developer
8 has some investment in it, and then over a certain number
9 of years it's depreciated out to where there is a zero
10 rate base, and then the developer then sells that to
11 another purchaser. Say it's \$1 million, the price paid
12 for that.

13 Now, the investor, a new investor has
14 \$1 million tied up, and apparently all that new investor
15 with that million dollars that could otherwise be invested
16 and earn a return, that million dollars sits there and all
17 it allows that new investor to do is to recover
18 out-of-pocket expenses to provide service and perhaps a
19 salary or two or three or four, whatever.

20 But this investor -- assume even it's a
21 family of five and this investor says, well, okay, I'll at
22 least provide jobs for five of us. Wouldn't it be better
23 for that investor to go out -- for that family of five to
24 go out and get a paying job where somebody else was paying
25 them an income, not assume any of those risks, and earn a

1 return on that million dollars somewhere else?

2 A. In that situation, yes.

3 Q. So what is the incentive the way we -- the
4 way we regulate for an investor to come in and provide
5 water and sewer service?

6 A. Well, when we talk about incentive, there
7 may not be a lot of incentive for a small investor to
8 get into the water and sewer business. But I will say on
9 the scenario you provided, there is certainly not an
10 incentive for anybody to pay \$1 million for zero rate
11 base. That's -- that's money that -- well, I guess you
12 could call it a waste of the investment because it
13 wouldn't be recognized as a legitimate investment.

14 Now, it would be reasonable for maybe that
15 family to acquire the system with zero rate base, acquire
16 it for little or nothing and then invest \$1 million. Then
17 they can earn a return on that \$1 million. It's a system
18 that needs some improvements.

19 Q. How often do we see purchasers acquiring
20 properties for little or no investment?

21 A. Not as much as I would like. Seems like
22 when you have a system that needs different ownership,
23 owners are pretty hard to come by unfortunately.

24 Q. And isn't the value of the infrastructure,
25 isn't there value in that infrastructure?

1 A. Well, maybe and maybe not. And again, as
2 we discussed before, if it's depreciated out, the
3 customer's already paid for it, or we would consider it
4 was being contributed. They already paid for it in the
5 price of their lot, and no, I don't think there is any
6 dollar value. It's -- it's valued at zero. It's already
7 been paid for.

8 Q. So technically if the company decided, it's
9 all -- there is nothing left, it's all depreciated out,
10 I'm just going to walk away, then the customers would be
11 to the point where they would have to invest in new
12 infrastructure or they would have to take over, I guess?

13 A. Well, yeah, that could certainly happen,
14 but that's the point. If that's the need, if that system
15 is at zero, if it's at zero rate base and it needs some
16 improvements, that's what our problem is. A lot of times
17 the owners can't or won't put the money into it, and we
18 have to go through gyrations, receivership or whatever, to
19 get somebody involved who will invest the money.

20 The way it's supposed to work, when the
21 system needs investment, the owner will put money into it
22 and then they can earn a return on it after filing a rate
23 case.

24 Q. After a couple of years sometimes, two or
25 three years perhaps?

1 A. Maybe, perhaps.

2 Q. And then maybe they'll lose.

3 Q. Well, that's another issue, too, how
4 successful are the rate cases? But in theory, they should
5 be able to file a rate case, recover the -- well, you have
6 rates set based on modern expenses and earn a return on
7 the investment, and then they can -- they can go on. But
8 with all that, if we artificially create rate base on
9 something that's already valued at zero and then somebody
10 buys it for some amount, that's not -- that's not helping
11 the situation we have when we're talking about a system
12 that needs improvements.

13 COMMISSIONER MURRAY: All right. I think
14 I've pursued that long enough. Thank you.

15 JUDGE PRIDGIN: Commissioner, thank you.

16 Mr. Chairman, questions?

17 QUESTIONS BY CHAIRMAN DAVIS:

18 Q. Let me draw an analogy here. I think I
19 understand your point fairly clearly, Mr. Merciel. So
20 say, for instance, you've got an electric utility in the
21 upper midwest that has a nuclear power plant that's almost
22 depreciated out, and then if they were to just turn around
23 and sell that plant to someone like, say, Florida Power &
24 Light at fair market value, and then Florida Power & Light
25 puts it all back in rate base for their customers, it's

1 not necessarily a very equitable outcome for the customers
2 who are purchasing that power, is it?

3 A. That would be my opinion, correct.

4 CHAIRMAN DAVIS: Okay. No further
5 questions.

6 JUDGE PRIDGIN: Thank you. I have no
7 questions. Any recross, Ms. Baker?

8 MS. BAKER: No.

9 JUDGE PRIDGIN: Mr. Cooper?

10 MR. COOPER: No questions.

11 JUDGE PRIDGIN: Redirect?

12 MR. KRUEGER: Thank you, your Honor.

13 REDIRECT EXAMINATION BY MR. KRUEGER:

14 Q. Mr. Merciel, you testified that there are
15 companies with zero rate base?

16 A. Yes.

17 Q. How would it happen that a company would
18 have a zero rate base?

19 A. Well, there are two ways. One is a
20 developer constructing a subdivision, and as a developer
21 built the water or water and sewer system along with it,
22 wrote it all off as part of development costs and then
23 came in and certificated a water and sewer company. But
24 everything's all written off, it was already paid for, and
25 so they're -- in a case like that, they're -- the company

1 starts with no rate base. We don't really like to see
2 that, but we do once in a while. In that case the company
3 started with zero.

4 And the other situation is, we have all
5 these lake developments and subdivisions that got started
6 in the late '60s and early '70s. I know when I was
7 growing up I'd see advertisements with all these lake
8 properties out here in the outstate. A lot of these got
9 built, and maybe there have been some improvements over
10 the years, but a lot of them got built. There could have
11 been rate base at the time, say in 1970, but here we are
12 35 years later. You know, tank life's about 35 or 40
13 years, structures are about 25 years and treatment plant
14 is about 25 or 30 years. So even if you had -- even if
15 you had investment in a treatment plant in 1970, that is
16 depreciated down to zero today.

17 Q. So in the second case you're talking about,
18 they started out with plant?

19 A. Right.

20 Q. It's fully depreciated?

21 A. Yeah. If it's a growing system, if the
22 subdivision department is growing or expanding, they might
23 have added plant or taken out old plant, replaced it with
24 a larger one or maybe even replaced an older plant with a
25 new one because it's deteriorated. In a case like that,

1 you're -- and that's the way large companies do. Like in
2 a municipal, you're always improving and expanding and
3 upgrading, so you're retiring the old plant and always
4 putting in new plant or installing new component, so
5 there's always new rate base going online and old getting
6 retired.

7 But there's so many new subdivisions that
8 got built and they're sitting and they've been operating,
9 most of them operating fairly well for 30 or
10 40 years, but there's just no money going into it.

11 Q. And the first case that you described where
12 the developer -- where there's a developer contribution,
13 the company starts out with zero rate base?

14 A. Correct. The regulated utility, right.

15 Q. Because everything is CIAC?

16 A. The developer built it and wrote it off,
17 either got his money in land sales and then you start from
18 there.

19 Q. But in that case all of their property
20 would be CIAC?

21 A. Yes.

22 Q. Okay. Now, if a company has zero rate
23 base, does that mean that there is no way for the owners
24 to get anything out of the company?

25 A. Well, not through investment. They

1 wouldn't get anything through any investment because they
2 still have their time they put into it, you know, if
3 they're working. And, you know, usually in a case like
4 that, you have the owner who's -- he's the operator and
5 he's the manager. Might be a one-man show or maybe
6 husband and wife, something like that. And they'll get
7 something for their time that they put into it.

8 Q. Okay. Now, is Algonquin one of these
9 companies that has zero rate base?

10 A. No, it's not.

11 Q. Commissioner Murray, I believe, questioned
12 you about if an investor pays \$1 million for a plant with
13 zero rate base. Can you tell me what an acquisition
14 premium is?

15 A. I believe I can. It's an accounting term,
16 and I might get it backwards, but -- well, yeah, the
17 acquisition premium, that's where there is a -- where you
18 pay an amount that's beyond what the value is, and the
19 difference between what you pay and what the -- what the
20 value -- talking about rate base, that would be the
21 acquisition premium.

22 Q. The difference between the price paid and
23 the rate base value?

24 A. Yes. Yes.

25 Q. Okay. And has the Commission allowed

1 recovery acquisition premiums?

2 A. Typically, no. I don't know of any cases
3 in water and sewer where they have.

4 Q. In the hypothetical that Commissioner
5 Murray described, what would the -- do you know what the
6 acquisition premium would be in that circumstance?

7 A. In that case it would be \$1 million.

8 Q. Okay. And should it be the policy of the
9 Commission to encourage investors to pay \$1 million for
10 plant with zero rate base?

11 A. I don't believe it should be.

12 MR. KRUEGER: That's all the questions I
13 have, your Honor.

14 JUDGE PRIDGIN: Mr. Krueger, thank you.
15 Mr. Merciel, thank you. You may step down.

16 Let me ask the parties real quickly, looks
17 like Mr. Johansen is the last CIAC witness.

18 CHAIRMAN DAVIS: Can I ask Mr. Merciel one
19 question before he leaves?

20 JUDGE PRIDGIN: Sure, absolutely.

21 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

22 Q. Mr. Merciel, should it be the policy of
23 this Commission to routinely bankrupt small water and
24 sewer companies through the small rate case process?

25 A. It should not.

1 Q. Okay. But it has happened, hasn't it?

2 A. Well, I don't know that. I don't know the
3 problems come from here.

4 Q. Well, let me rephrase the question. Have
5 there been companies forced into receivership as a result
6 of the small rate case process?

7 A. As a result of the small rate case process?

8 Q. Have there been companies that have either
9 voluntarily or involuntarily gone into receivership after
10 participating in the small company rate case process?

11 A. That's a yes. I almost answered yes to
12 your previous question. I think the answer is yes.

13 CHAIRMAN DAVIS: Thank you, Mr. Merciel.

14 JUDGE PRIDGIN: Mr. Chairman, thank you.

15 Let me see if we have recross based on Bench questions.

16 Any recross?

17 (No response.)

18 JUDGE PRIDGIN: Seeing none --

19 MR. COOPER: Hold on.

20 JUDGE PRIDGIN: Recross?

21 MR. COOPER: I think so.

22 FURTHER RE CROSS-EXAMINATION BY MR. COOPER:

23 Q. Let's talk about the policy of the
24 Commission in this regard with our company with a zero
25 rate base. And I think you earlier answered that it would

1 be foolish for the investor that was being referred to to
2 pay \$1 million for a utility company that has zero rate
3 base, correct?

4 A. Yes, that's correct.

5 Q. Okay. Now, would you agree with me that
6 the way the Commission's policy works in this regard, in
7 fact, drives that utility company seller to sell to some
8 non-regulated entity that can receive a return of its
9 purchase price outside the Commission's jurisdiction?

10 MR. KRUEGER: Your Honor, I object. I
11 think he should be limited to recross based on questions
12 from the Bench.

13 JUDGE PRIDGIN: Mr. Cooper?

14 MR. COOPER: I think we went back into the
15 policy of the Commission in regard to water and sewer
16 companies, so that's where I've gone with my question.

17 JUDGE PRIDGIN: All right. I agree. I'll
18 overrule.

19 THE WITNESS: Okay. I believe it could
20 have that effect to where owners would rather sell to a
21 municipality or district. There's really no question
22 about it.

23 MR. COOPER: That's all the questions I
24 have.

25 JUDGE PRIDGIN: All right. Thank you.

1 Redirect?

2 FURTHER REDIRECT EXAMINATION BY MR. KRUEGER:

3 Q. Mr. Merciel, do you know any companies that
4 have been forced into bankruptcy or receivership by the
5 small company rate case process in your opinion?

6 A. Well, Hickory Hills is the one that comes
7 to mind, and they did go through a rate case process and
8 weren't at all happy with the outcome and they did submit
9 to voluntary receivership.

10 Q. And you believe that was because of the
11 small company rate case process?

12 A. Well, I don't know that it was the process
13 or the outcome of the case. That might be two different
14 things. I mean, the procedure itself I think worked.
15 They went through it, weren't happy with it. They ended
16 up -- well, we ended up with a hearing. I mean, the
17 procedure worked. I think the result of the rate case is
18 what they weren't happy with.

19 Q. Do you think a full formal rate case would
20 have been a viable alternative for them?

21 A. No, not in this case because they did have
22 the opportunity to go to hearing on some of the issues.
23 That's usually not the case with a small company case, but
24 it was in the case of Hickory Hills. So in that case, a
25 formal case wouldn't have -- I don't think would have

1 gotten them anything that they didn't have.

2 MR. KRUEGER: Thank you. That's all the
3 questions I have.

4 JUDGE PRIDGIN: Mr. Krueger, thank you.
5 Mr. Merciel, thank you very much. You can step down.

6 Mr. Cooper, I don't know if you know the
7 answer to this. Do you anticipate having quite a bit of
8 cross on Mr. Johansen on this issue?

9 MR. COOPER: I do not. If we want to go
10 ahead and move on to him, that would be --

11 JUDGE PRIDGIN: That's fine. That should
12 be our last witness for the day. I'm sorry.

13 Mr. Johansen, if you'd come forward,
14 please. You can have a seat and you've been sworn. Your
15 prefiled testimony has been admitted.

16 Anything, Mr. Krueger, before he's tendered
17 for cross?

18 MR. KRUEGER: No, your Honor.

19 JUDGE PRIDGIN: All right. Thank you.
20 Ms. Baker?

21 MS. BAKER: Just one question.

22 DALE W. JOHANSEN testified as follows:

23 CROSS-EXAMINATION BY MS. BAKER:

24 Q. Do you agree that the Staff's application
25 of tariff provisions here in this case is consistent with

1 how Staff has -- how Staff's treatment has been of similar
2 tariff provisions for water and sewer?

3 A. Yes, ma'am.

4 MS. BAKER: That's all that I have.

5 JUDGE PRIDGIN: All right. Thank you.

6 Mr. Cooper?

7 MR. COOPER: No questions, your Honor.

8 JUDGE PRIDGIN: Thank you. Let me see if
9 we have any Bench questions. Commissioner Murray?

10 COMMISSIONER MURRAY: Just give me a
11 second.

12 I'm tempted to ask you the same questions
13 that I asked Mr. Merciel, but I think from your response
14 earlier I probably know the answers, so I don't believe I
15 have any questions.

16 JUDGE PRIDGIN: Thank you. Mr. Chairman?

17 CHAIRMAN DAVIS: No questions.

18 JUDGE PRIDGIN: Thank you. I have no
19 questions. Mr. Johansen, thank you very much.

20 If there's nothing further from counsel,
21 I would like to resume -- and I guess this is something
22 we can take up off the record as far as schedules. We've
23 got Mr. Loos remaining on the CIAC issue, and do the
24 parties want to go ahead and resume with him or go to
25 Mr. Hernandez on construction cost overruns? They're both

1 slated for tomorrow morning.

2 MR. COOPER: Keith, do you have a
3 preference one way or the other?

4 MR. KRUEGER: I don't have a preference.

5 JUDGE PRIDGIN: All right. Let's just go
6 ahead then and go back to schedule. We'll go back to
7 Mr. Hernandez, and that way we will kind of jump back into
8 how the schedule was set up to go with THE construction
9 cost overrun issue. We'll have Mr. Loos to testify on
10 CIAC, and then we will be up to the Tuesday afternoon
11 matters, which will be depreciation and rates.

12 Is there anything else counsel needs to
13 bring to my attention before we go off the record?

14 CHAIRMAN DAVIS: What time are we starting
15 tomorrow, Judge?

16 JUDGE PRIDGIN: 9:30 tomorrow. If there's
17 nothing else, thank you very much. We'll go off the
18 record. We stand in recess until 9:30 tomorrow morning.
19 Thank you.

20 WHEREUPON, the hearing of this case was
21 recessed until January 23, 2007 at 9:30 a.m.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.

4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Midwest Litigation
6 Services, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
My commission expires March 28, 2009.

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