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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
TRANSCRIPT OF PROCEEDINGS  
Hearing  
January 22, 2006  
Jefferson City, Missouri  
Volume 4

In the Matter of the Tariff )  
Filing of Algonquin Water )  
Resources of Missouri, LLC, to )  
Implement a General Rate Increase ) Case No. WR-2006-0425  
For Water and Sewer Service )  
Provided to Customers in Its )  
Missouri Service Areas )

RONALD D. PRIDGIN, Presiding,  
REGULATORY LAW JUDGE.  
JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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FOR: Staff of the Missouri Public  
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 property 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 RE-CROSS-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 RE-CROSS-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 RECCROSS-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	I N D E X	
2	PLANT ISSUES	
3	Opening Statement by Mr. Cooper	17
	Opening Statement by Ms. Baker	23
4	Opening Statement by Mr. Krueger	27
5	ALGONQUIN'S EVIDENCE:	
6	LARRY W. LOOS	
	Direct Examination by Mr. Cooper	40
7	Cross-Examination by Ms. Baker	42
	Cross-Examination by Mr. Krueger	44
8	Questions by Commissioner Murray	64
	Questions by Commissioner Appling	77
9	Questions by Chairman Davis	81
	Further Questions by Commissioner Murray	84
10	Further Questions by Chairman Davis	85
	Recross-Examination by Ms. Baker	88
11	Recross-Examination by Mr. Krueger	88
	Redirect Examination by Mr. Cooper	92
12	STAFF'S EVIDENCE:	
13	CARY G. FEATHERSTONE	
14	Direct Examination by Mr. Krueger	101
	Cross-Examination by Ms. Baker	103
15	Questions by Commissioner Murray	105
	Recross-Examination by Mr. Cooper	115
16	Redirect Examination by Mr. Krueger	118
17	GRAHAM A. VESELY	
	Direct Examination by Mr. Krueger	122
18	Cross-Examination by Ms. Baker	125
	Cross-Examination by Mr. Cooper	127
19	Questions by Judge Pridgin	135
	Redirect Examination by Mr. Krueger	137
20	JAMES A. MERCIEL, JR.	
21	Direct Examination by Mr. Krueger	138
22	DALE W. JOHANSEN	
	Direct Examination by Mr. Krueger	142
23	Questions by Commissioner Murray	144
24		
25		

1	EXCESS CAPACITY	
2	Opening Statement by Mr. Cooper	145
3	ALGONQUIN'S EVIDENCE:	
4	RIAN A. HAMRICK	
	Direct Examination by Mr. Cooper	147
5	Cross-Examination by Ms. Baker	149
	Cross-Examination by Mr. Krueger	150
6	Questions by Commissioner Murray	152
	Redirect Examination by Mr. Cooper	154
7		
	LARRY W. LOOS	
8	Cross-Examination by Ms. Baker	156
	Questions by Commissioner Murray	157
9		
	STAFF'S EVIDENCE:	
10		
	JAMES MERCIEL	
11	Cross-Examination by Ms. Baker	159
	Cross-Examination by Mr. Cooper	159
12	Questions by Chairman Davis	167
	Redirect Examination by Mr. Krueger	170
13		
14		
	RATE DESIGN/RATE MITIGATION	
15		
	Opening Statement by Mr. Cooper	175
16		
	ALGONQUIN'S EVIDENCE:	
17		
	LARRY W. LOOS	
18	Cross-Examination by Mr. Baker	176
	Questions by Commissioner Murray	180
19	Questions by Chairman Davis	183
	Redirect Examination by Mr. Cooper	184
20		
	JAMES RUSSO	
21	Direct Examination by Mr. Baker	187
	Cross-Examination by Ms. Baker	189
22	Cross-Examination by Mr. Cooper	189
	Questions by Commissioner Murray	192
23	Questions by Chairman Davis	195
24		
25		

1	CONTRIBUTION IN AID OF CONSTRUCTION	
2	STAFF'S EVIDENCE:	
3	CARY G. FEATHERSTONE	
	Cross-Examination by Ms. Baker	199
4	Cross-Examination by Mr. Cooper	200
	Questions by Commissioner Murray	200
5		
	GRAHAM A. VESELY	
6	Cross-Examination by Ms. Baker	201
	Cross-Examination by Mr. Cooper	202
7	Questions by Commissioner Murray	210
	Questions by Chairman Davis	214
8		
	JAMES MERCIEL	
9	Cross-Examination by Mr. Cooper	218
	Questions by Commissioner Murray	222
10	Recross-Examination by Mr. Cooper	228
	Further Questions by Commissioner Murray	231
11	Questions by Chairman Davis	234
	Redirect Examination by Mr. Krueger	235
12	Further Questions by Chairman Davis	239
	Recross-Examination by Mr. Cooper	240
13	Further Redirect Examination by Mr. Krueger	242
14	DALE JOHANSEN	
	Cross-Examination by Ms. Baker	243
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

	EXHIBITS INDEX	MARKED	RECEIVED
1			
2			
3	EXHIBIT NO. 1		
3	Direct Testimony of Larry W. Loos	28	42
4	EXHIBIT NO. 2		
5	Updated Direct Testimony of Larry W. Loos	28	42
6	EXHIBIT NO. 3		
7	Rebuttal Testimony of Larry W. Loos	28	42
8	EXHIBIT NO. 4		
8	Surrebuttal Testimony of Larry W. Loos	28	42
9	EXHIBIT NO. 5		
10	Rebuttal Testimony of Brian A. Hamrick	28	149
11	EXHIBIT NO. 6		
12	Rebuttal Testimony of Charles A. Hernandez	28	
13	EXHIBIT NO. 7		
14	Surrebuttal Testimony of Charles A. Hernandez	28	
15	EXHIBIT NO. 8NP/8HC		
16	Direct Testimony of Graham A. Vesely	28	125
17	EXHIBIT NO. 9NP/9HC		
18	Rebuttal Testimony of Graham A. Vesely	28	125
19	EXHIBIT NO. 10		
20	Surrebuttal Testimony of Graham A. Vesely	28	125
21	EXHIBIT NO. 11		
22	Direct Testimony of Matthew J. Barnes	28	
23	EXHIBIT NO. 12		
24	Rebuttal Testimony of Matthew J. Barnes	28	
25	EXHIBIT NO. 13		
26	Surrebuttal Testimony of Matthew J. Barnes	28	

1	EXHIBIT NO. 14		
2	Direct Testimony of "Kofi" Agyenim Boateng	28	
3	EXHIBIT NO. 15		
4	Rebuttal Testimony of "Kofi" Agyenim Boateng	28	
5	EXHIBIT NO. 16NP/16HC		
6	Surrebuttal Testimony of "Kofi" Agyenim Boateng	28	
7	EXHIBIT NO. 17		
8	Direct Testimony of James A. Merciel, Jr.	28	141
9	EXHIBIT NO. 18		
10	Rebuttal Testimony of James A. Merciel, Jr.	28	141
11	EXHIBIT NO. 19		
12	Surrebuttal Testimony of James A. Merciel, Jr.	28	141
13	EXHIBIT NO. 20		
14	Direct Testimony of Rosella L. Schad	28	
15	EXHIBIT NO. 21		
16	Rebuttal Testimony of Rosella L. Schad	28	
17	EXHIBIT NO. 22		
18	Surrebuttal Testimony of Rosella L. Schad	28	
19	EXHIBIT NO. 23		
20	Direct Testimony of James M. Russo	28	189
21	EXHIBIT NO. 23A		
22	Revised Schedule 2-1 - 2-5	189	189
23	EXHIBIT NO. 24		
24	Direct Testimony of Gary R. Bangert	28	
25	EXHIBIT NO. 25		
	Rebuttal Testimony of Cary G. Featherstone	28	103

1	EXHIBIT NO. 26		
2	Surrebuttal Testimony of Cary G.		
	Featherstone	28	103
3	EXHIBIT NO. 27		
4	Surrebuttal Testimony of Dale W.		
	Johansen	28	143
5	EXHIBIT NO. 28		
	Staff Accounting Schedules	28	
6	EXHIBIT NO. 29		
7	Schedule of Rates, Rules, Regulations		
	and Conditions of Service Governing the		
8	Provision and Taking of Water Service	198	
9	EXHIBIT NO. 30		
	Schedule of Rates, Rules, Regulations		
10	and Conditions of Service Governing the		
	Provision and Taking of Sewer Service	198	
11	EXHIBIT NO. 31		
12	Surrebuttal Testimony of Joe W. Conner,		
	Case No. WO-2005-0206	206	
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
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C E R T I F I C A T E

STATE OF MISSOURI            )  
                                  ) ss.  
COUNTY OF COLE             )

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation  
Services, and Notary Public within and for the State of  
Missouri, do hereby certify that I was personally present  
at the proceedings had in the above-entitled cause at the  
time and place set forth in the caption sheet thereof;  
that I then and there took down in Stenotype the  
proceedings had; and that the foregoing is a full, true  
and correct transcript of such Stenotype notes so made at  
such time and place.

Given at my office in the City of  
Jefferson, County of Cole, State of Missouri.

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR  
Notary Public (County of Cole)  
My commission expires March 28, 2009.