

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 STATE OF MISSOURI
3 _____
4 TRANSCRIPT OF PROCEEDINGS
5 HEARING
6 January 23, 2007
7 Jefferson City, Missouri
8 Volume 5
9 _____
10 In the Matter of the Tariff Filing of)
11 Algonquin Water Resources of Missouri,)
12 LLC, to Implement a General Rate)Case No.
13 Increase for Water and Sewer Service)WR-2006-0425
14 Provided to Customers in Its Missouri)
15 Service Areas)
16 _____
17 RONALD D. PRIDGIN,
18 REGULATORY LAW JUDGE.
19 JEFF DAVIS, Chairman
20 CONNIE MURRAY,
21 STEVE GAW
22 LINWARD "LIN" APPLING,
23 COMMISSIONERS.
24 _____
25 REPORTED BY:
26 TRACY L. THORPE TAYLOR, CCR
27 MIDWEST LITIGATION SERVICES

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

2 JUDGE PRIDGIN: All right. Good morning.
3 We're back on the record. This is Case No. WR 2006-0425.
4 We're reconvening January 23rd, 2007. The time's about
5 9:40 a.m.

6 Let me double check with counsel. According
7 to my schedule, we will begin this morning with construction
8 cost overrun issue, Mr. Hernandez, Mr. Vesely will be the
9 witnesses on that. We will then move on to contribution in
10 aid of construction and finish that with Mr. Loos and then we
11 will be up to the Tuesday afternoon issues of depreciation,
12 capital structure and return on equity. Is that correct,
13 counsel?

14 MR. BOUDREAU: I believe that's correct, yes.
15 Thank you.

16 MR. KRUEGER: Yes, it is.

17 JUDGE PRIDGIN: Is there anything counsel
18 needs to bring to my attention before Mr. Hernandez takes the
19 stand?

20 All right. Seeing nothing, Mr. Hernandez, if
21 you'll come forward to be sworn, sir.

22 (Witness sworn.)

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

25 And, Mr. Boudreau, when you're ready, sir.

1 MR. BOUDREAU: Thank you. May it please the
2 Commission. May I just make a quick opening statement? It's
3 not --

4 JUDGE PRIDGIN: Yes, sir.

5 MR. BOUDREAU: -- really so much a statement.
6 It's just kind of framing up the issue.

7 JUDGE PRIDGIN: Yes, sir.

8 MR. BOUDREAU: Just for the benefit of the
9 Commission, this issue concerns a project by the prior owner
10 of this operation, Silver Leaf Resorts, concerning
11 construction at Holiday Hills Resorts of a water plant -- of
12 water plant infrastructure around an existing borehole that
13 had not previously been used to supply portable water. The
14 project consisted of a wellhead refurbishment, piping storage,
15 a pump station and associated facilities.

16 Staff has recommended a disallowance for this
17 project in the amount of \$186,373 associated with this project
18 by the prior owner. In summary, I think Staff alleges that
19 the amount represents a cost overrun in that the low bid
20 contractor services were terminated and the project was let to
21 the second low -- second lowest bidder to be completed. Staff
22 alleges, I think, general mismanagement by the prior owner,
23 Silver Leaf.

24 My client contends that the decision to
25 replace a troubled contractor was prudent and that the

1 ultimate cost of the project was reasonable. And I think in
2 this regard, it's important to remember that the lowest bid
3 does not necessarily translate into the lowest ultimate cost
4 for any particular project.

5 The costs associated with well No. 2 project
6 at Holiday Hills were prudently incurred and Silver Leaf's
7 decisions, we believe, were reasonable based on the facts
8 known to them at the time the decisions were made. And,
9 therefore, we don't think that the Commission should adopt
10 Staff's proposed adjustment. The company's witness on this
11 topic is Mr. Charles Hernandez.

12 CHARLES HERNANDEZ testified as follows:

13 DIRECT EXAMINATION BY MR. BOUDREAU:

14 Q. And with that, Mr. Hernandez, I'd ask you to
15 state your name for the record, please.

16 A. Charles Hernandez.

17 Q. Would you spell your name for the court
18 reporter, please?

19 A. C-h-a-r-l-e-s, last name Hernandez,
20 H-e-r-n-a-n-d-e-z.

21 Q. By whom are you employed, sir, and in what
22 capacity?

23 A. I'm employed by Algonquin Water Services and
24 I'm their regional operations manager.

25 Q. Are you the same Charles Hernandez who's

1 caused to be marked or filed with the Commission in this case
2 prepared Rebuttal and Surrebuttal Testimony marked
3 respectively as Exhibits 6 and 7?

4 A. Yes, sir.

5 Q. Was that testimony prepared, sir, by you or
6 under your direct supervision?

7 A. Yes, sir.

8 Q. Do you have any corrections you would like to
9 make to either of those items of testimony at this time?

10 A. No, sir.

11 Q. If I were to ask you the same questions as are
12 contained in your pre-filed Rebuttal and Surrebuttal Testimony
13 today, would your answers today be substantially the same?

14 A. Yes, sir.

15 Q. And are your answers true and correct to the
16 best of your information, knowledge and belief?

17 A. Yes, sir.

18 MR. BOUDREAU: With that, I would offer
19 Exhibits 6 and 7 into the record and tender Mr. Hernandez for
20 cross-examination.

21 JUDGE PRIDGIN: Mr. Boudreau, thank you.

22 Exhibits 6 and 7 have been offered. Any
23 objections?

24 MR. KRUEGER: Yes, your Honor. I object to
25 the Exhibit 6, the Surrebuttal Testimony of Michael J. Brown,

1 that was attached to that testimony on the basis that it's
2 hearsay testimony. Mr. Brown is not here to testify. I won't
3 be able to ask him the questions I need to ask him about the
4 substance of that testimony. There's no opportunity for the
5 Commission to observe his demeanor. It's hearsay and it
6 should be stricken.

7 JUDGE PRIDGIN: Mr. Boudreau?

8 MR. BOUDREAU: I have a number of responses.
9 Number one, Mr. Hernandez is here in his capacity as an expert
10 witness on construction costs and he's entitled to rely on the
11 testimony and materials as necessary to form his opinions.

12 Second of all, I think the Commission can take
13 administrative notice, at a minimum, of the testimony of
14 Mr. Brown, which was offered in a prior case. And, frankly, I
15 think that Staff has opened the door to this issue on the
16 grounds that they're talking about -- they've offered
17 testimony about what Silver Leaf did or didn't do previously.

18 And obviously there's been a change in
19 identity of the owners and to an extent, out of necessity,
20 this company needs to rely on the best information it has
21 about what transpired in the past. And the best information
22 would be from the prior owner and that would be the testimony
23 that was offered by Mr. Brown. So on those grounds, I'd say
24 the testimony is admissible for the purposes offered.

25 JUDGE PRIDGIN: Any other objections?

1 MR. KRUEGER: May I respond to that?

2 JUDGE PRIDGIN: You may.

3 MR. KRUEGER: I agree that the best
4 information would be from the prior owner, but the prior owner
5 is not here. Mr. Brown prepared this testimony and was
6 pre-filed in the previous case. That case did not go to
7 hearing, it was not offered, it was not admitted, it was only
8 pre-filed.

9 And it appears that Mr. Hernandez's testimony
10 based simply -- is based simply upon an acceptance of all of
11 the conclusions that Mr. Brown has reached. And I think the
12 way that Mr. Brown reached those conclusions is relevant and I
13 think I should have an opportunity to inquire about it.

14 JUDGE PRIDGIN: I'm going to overrule the
15 objection and Exhibit 6 will be admitted.

16 (Company Exhibit No. 6 was received into
17 evidence.)

18 JUDGE PRIDGIN: Any objections to 7?

19 MR. KRUEGER: No, your Honor.

20 JUDGE PRIDGIN: All right. Exhibit 7 is
21 admitted.

22 (Company Exhibit No. 7 was received into
23 evidence.)

24 JUDGE PRIDGIN: Ms. Baker, any cross?

25 MS. BAKER: Just one question.

1 JUDGE PRIDGIN: Yes, ma'am.

2 CROSS-EXAMINATION BY MS. BAKER:

3 Q. Algonquin was aware of Staff's determination
4 of construction cost overruns before it purchased the utility
5 from Silver Leaf, wasn't it?

6 A. I have no knowledge of that, ma'am.

7 MS. BAKER: That's my only question.

8 JUDGE PRIDGIN: Thank you.

9 Mr. Krueger?

10 MR. KRUEGER: Thank you, your Honor.

11 CROSS-EXAMINATION BY MR. KRUEGER:

12 Q. Good morning, Mr. Hernandez.

13 A. Good morning.

14 Q. Mr. Vesely stated in his Direct Testimony that
15 Larry Schneider Corporation performed another construction
16 contract for Silver Leaf at Timber Creek. Do you recall --
17 did you read -- first of all, did you read Mr. Vesely's
18 testimony?

19 A. Yes, sir.

20 Q. And do you recall that statement?

21 A. Yes, sir.

22 Q. Do you know if that's true?

23 A. To the knowledge I have right now -- would you
24 restate the question again, sir?

25 Q. Mr. Vesely stated that Larry Schneider

1 Corporation performed another contract -- construction
2 contract for Silver Leaf at Timber Creek at about the same
3 time as this well No. 2 project was going on.

4 A. Yes, sir.

5 Q. Is that true?

6 A. Yes, sir.

7 Q. Okay. And he also stated that Larry Schneider
8 Corporation performed a contract for Silver Leaf at Holiday
9 Hills at about the same time as this well No. 2 project was
10 going on?

11 A. In a similar time frame, yes, sir.

12 Q. Yes. And is that true also?

13 A. Yes, sir.

14 Q. Okay. Do you know Michael Brown?

15 A. Yes, sir.

16 Q. What is your acquaintance with him?

17 A. He's my main contact with Silver Leaf.

18 Q. Okay. How often have you talked to him?

19 A. Sometimes a few times a week, sometimes I talk
20 to him only once a week.

21 Q. Calling your attention to your Rebuttal
22 Testimony at page 3, lines 7 to 13, you have there a
23 description of the project that was well No. 2 that you're
24 talking about. Do you see that?

25 A. In my Rebuttal or Surrebuttal?

1 Q. In your Rebuttal Testimony.

2 A. I don't have my Rebuttal with me. Do you have
3 a copy of it?

4 MR. BOUDREAU; Hold on a second.

5 THE WITNESS: I'm sorry, sir. I just brought
6 my Surrebuttal.

7 COMMISSIONER APPLING: What page are you on,
8 Mr. Krueger?

9 MR. KRUEGER: I'm referring to the Rebuttal
10 Testimony, page 3.

11 COMMISSIONER APPLING: Gotcha.

12 THE WITNESS: Yes, sir.

13 BY MR. KRUEGER:

14 Q. There's a description of the well No. 2
15 project there.

16 A. Yes, sir.

17 Q. And it appears that description is identical
18 to Mr. Brown's description in the Surrebuttal Testimony that
19 he filed in the prior case; is that correct?

20 A. I don't remember, sir.

21 Q. Is that where you got the description of the
22 project?

23 A. From talking to Mike Brown, yes, sir.

24 Q. But you didn't just copy it from what he said?

25 A. I didn't mean to.

1 Q. Okay. Did you do any other investigation into
2 that project?

3 A. Yes. I talked with Stan Giliham of
4 Construction Management Services, the second low bidder.

5 Q. Did you review plans and specifications?

6 A. With Stan I did, yes, sir.

7 Q. Did you review change orders?

8 A. From Stan, sir? No.

9 Q. Okay. Now, you're talking about the second
10 low bidder?

11 A. Yes, sir.

12 Q. Which would be Construction Management
13 Services?

14 A. CMS, yes, sir.

15 Q. Okay. I'm interested in whether you
16 investigated -- what your investigation of Larry Schneider
17 Corporation -- Larry Schneider Construction consisted of.

18 A. Conversations with Mike Brown.

19 Q. Did you review change orders that Larry
20 Schneider Construction submitted?

21 A. Not personally, sir. Just in verbal
22 conversation with Mike Brown.

23 Q. I'd call your attention to page 3, lines 14 to
24 15. And I'm sorry, page 3, line 14 through page 5, line 8.
25 The question there begins, Having reviewed the information

1 provided by Mr. Brown and the allegations made by Vesely -- by
2 Mr. Vesely, do you have an opinion, and it goes on. And your
3 answer is, Yes.

4 Are those the materials that you reviewed to
5 form your opinion?

6 A. Yes, sir.

7 Q. Just the materials provided by Mr. Brown?

8 A. Mr. Brown and CMS.

9 Q. You referred in your testimony to Larry
10 Schneider Company -- Larry Schneider Construction, I'm sorry,
11 as a failing contractor?

12 A. Yes. On this project.

13 Q. What led you to that conclusion?

14 A. Conversations with Mike Brown and conversation
15 with Stan Giliham after he took over the project.

16 Q. Did Larry Schneider Construction fail?

17 A. They did not want to or could not finish the
18 project within the bid they bid, the low bid. I feel they
19 lowballed the project and were trying to make up the costs.

20 Q. How was this manifested?

21 A. I'm not sure --

22 Q. How did they demonstrate that they were not --
23 could not or would not finish the project?

24 A. In the conversations with Mike Brown, they
25 were falling behind the project and they were doing increased

1 number of change orders to make up the difference in costs.

2 Q. Do you know how many change orders they
3 submitted on that?

4 A. No, sir, I don't.

5 Q. You say there was an increased number of them?

6 A. A disproportionate amount of change orders.

7 Q. On that project?

8 A. On that project.

9 Q. But you don't know how many?

10 A. No, sir. I just know the costs increased.

11 Q. Do you know how much the cost increased?

12 A. Not at this moment, no, sir.

13 Q. Okay. You stated that Larry Schneider
14 Construction would be tempted to cut corners on the project.

15 A. From my past experience in projects I have
16 found that if the contractor's not making enough money on the
17 project, they sometimes cut corners to -- to meet their budget
18 goals.

19 Q. And so you concluded if other contractors
20 sometimes do it, Larry Schneider Construction would do it as
21 well?

22 A. Yes, sir.

23 Q. Okay. What led you to that conclusion?

24 A. My 30 years of experience in dealing with
25 contractors.

1 Q. Thirty years of experience in dealing with
2 Larry Schneider Construction?

3 A. No, sir. Dealing with just contractors in
4 general.

5 Q. But you think that contractors are all alike?

6 A. No, sir.

7 Q. Okay. Did you do any analysis to compare the
8 costs of continuing with Larry Schneider Construction versus
9 changing contractors?

10 A. No, sir.

11 Q. So you don't know how much more it might have
12 cost to continue with Larry Schneider Construction?

13 A. I don't, sir.

14 Q. But the low bid was \$102,000 more than Larry
15 Schneider Construction's bid, was it not -- I mean the second
16 low bid?

17 A. \$80,000 difference.

18 Q. I believe -- -I believe that Mr. Vesely
19 testified that the difference was \$102,000. Would he have
20 been mistaken?

21 A. Talking to CMS, some extra projects were added
22 onto that water well that Stan told me that -- Stan gave me a
23 price of a little over 300,000 for that project, for water
24 well No. 2. Some extra equipment was added on -- not related
25 to the project, but outside the fence of the project was added

1 and charged to that project.

2 Q. This was prior to the time that the project
3 was completed?

4 A. Towards the end of the project, I think.

5 Q. Okay. I'm interested in knowing the
6 difference in the low bid and the second low bid as initially
7 submitted. Do you know how much that was?

8 A. Stan's -- Stan's bid was 421 and LSC was 329,
9 so -- so about 90,000 difference.

10 Q. Okay. And did you do any analysis to compare
11 the costs of continuing with Larry Schneider Construction
12 versus changing contractors to see whether that would have
13 exceeded that \$90,000 difference?

14 A. No, sir.

15 Q. Okay. Sir, in your testimony, you stated that
16 the first contractor left off the project?

17 A. Yes, sir.

18 Q. What do you mean by left off?

19 A. From my conversations with Mike Brown, he
20 couldn't -- he did not want to finish the project for the
21 original cost and would not finish the project for the
22 original cost so he left the project.

23 Q. Did he quit or was he fired?

24 A. To my knowledge, he left, he quit.

25 Q. To your knowledge?

1 A. To my knowledge, sir.

2 Q. And the basis of your knowledge is what?

3 A. My conversations with Mike Brown, sir.

4 Q. And what did Mike Brown tell you exactly?

5 A. To be honest, sir, I can't remember that

6 conversation. I'm -- I'm sorry.

7 Q. Okay. You said that CMS constructed the

8 project in a cost effective manner?

9 A. Yes, sir.

10 Q. What do you mean by that?

11 A. They came in and finished the project within a

12 reasonable cost.

13 Q. Did they have any change orders?

14 A. Not that I know of, sir.

15 Q. Okay.

16 A. Can I correct that last statement, sir?

17 Q. Yes.

18 A. There was -- I think there was a change order

19 in for two vaults that were installed at a later time.

20 Q. Do you know how much that amounted to?

21 A. About 27,000.

22 Q. Okay. Is a change order necessarily a bad

23 thing?

24 A. Not always.

25 Q. Okay.

1 Commissioner Appling?

2 QUESTIONS BY COMMISSIONER APPLING:

3 Q. Morning, sir.

4 A. Good morning.

5 Q. What are you -- you live in Arizona. Right?

6 A. Yes, sir.

7 Q. Okay. So you're not really a hands-on manager
8 here in the state of Missouri?

9 A. No, sir.

10 COMMISSIONER APPLING: Okay. I don't think I
11 have any questions of you, sir. Thank you very much.

12 THE WITNESS: Thank you.

13 JUDGE PRIDGIN: Thank you, Commissioner.

14 Mr. Chairman, no questions. I have no
15 questions.

16 Any recross, Ms. Baker? Mr. Krueger, any
17 recross?

18 MR. KRUEGER: No, your Honor.

19 JUDGE PRIDGIN: Redirect?

20 MR. BOUDREAU: Just a few questions, your
21 Honor.

22 JUDGE PRIDGIN: Yes, sir.

23 REDIRECT EXAMINATION BY MR. BOUDREAU:

24 Q. Mr. Hernandez, in response to a question by
25 Commissioner Murray about your knowledge of the second

1 contractor, CMS --

2 A. Yes, sir.

3 Q. -- you did speak with Stan Gilham, is that his

4 last --

5 A. Giliham. Giliham.

6 Q. And he's the owner or operator of CMS?

7 A. Yes, sir.

8 Q. So you did speak with him about this

9 particular project; is that correct?

10 A. I speak with him often.

11 Q. Okay. In response to a question that you were

12 asked by Mr. Krueger about change orders being necessarily --

13 are they necessarily a bad thing, and I believe your answer

14 was no?

15 A. No, it's not a bad thing if you're changing a

16 order for a reason for an improvement or something that was

17 missed completely.

18 Q. Okay.

19 A. In my previous experience, companies that

20 are -- that have lowballed the project and trying to make up

21 the costs because they bid too low will put change orders in

22 for items that should be covered under the contract.

23 Q. Okay. But to follow up on that, you mentioned

24 there was at least one change order that you -- that you're

25 aware of that -- with respect to CMS's performance on this

1 project related to a couple of water vaults?

2 A. Yes, sir.

3 Q. And that was basically additional work that
4 was added to the original project; is that correct?

5 A. Yes, sir. It had nothing to do with well
6 No. 2.

7 Q. Okay. Do you recall whether Mr. Brown's
8 testimony in the prior case, the WO docket that's been
9 referred to, he mentioned that there were some change orders
10 in connection with projects other than the well No. 2 at
11 Holiday Hills?

12 A. Yes, sir.

13 Q. Following up on that last question, is it your
14 understanding then that Silver Leaf's decision to change or to
15 move onto another contractor, other than Mr. Schneider's
16 operation, was driven by more than just its performance on
17 this particular project?

18 A. It was driven by his -- by his lack of
19 performance maybe, I would say.

20 Q. On -- on --

21 A. On the -- on well No. 2.

22 Q. And on other projects as well?

23 A. On other projects, he seemed to do okay from
24 what I could tell. But on this particular project, I -- I
25 just feel he underbid it and he was just trying to make up the

1 difference.

2 MR. BOUDREAU: Okay. Thank you. That's all
3 the questions I have.

4 JUDGE PRIDGIN: All right. Mr. Boudreau,
5 thank you.

6 Mr. Hernandez, thank you very much. You may
7 step down.

8 And next Mr. Vesely on the same issue.

9 Mr. Vesely, you're still under oath from yesterday.

10 Mr. Krueger, anything you need to clear up? I
11 believe his testimony's already been admitted. Anything you
12 need to clear up before he's tendered for cross?

13 MR. KRUEGER: No, your Honor.

14 JUDGE PRIDGIN: All right. Thank you. See if
15 we have any cross-examination. Ms. Baker?

16 GRAHAM VESELY testified as follows:

17 CROSS-EXAMINATION BY MS. BAKER:

18 Q. Mr. Vesely, according to your testimony, the
19 evidence showed that Silver Leaf was not adequately prepared
20 to go forward with construction when it awarded the contract
21 for well No. 2 at Holiday Hills Resort, doesn't it?

22 A. Yes.

23 Q. And the evidence indicates that the cost
24 overruns were a result of Silver Leaf's own imposed delays
25 rather than contractor failure, doesn't it?

1 A. Yes, that's right.

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

3 JUDGE PRIDGIN: Thank you.

4 Mr. Boudreau, cross?

5 MR. BOUDREAU: Yes, thank you.

6 CROSS-EXAMINATION BY MR. BOUDREAU:

7 Q. Mr. Vesely, with respect to Mr. Brown's
8 Surrebuttal Testimony in Case No. WO-2005-0206, he mentioned
9 an unacceptably high number of change orders submitted by
10 Larry Schneider and Company on a number of different projects
11 being done for the Silver Leaf Resorts; isn't that correct?

12 A. Yes. He mentions that.

13 Q. Did you examine Silver Leaf's experience with
14 these other projects that he mentioned?

15 A. For one thing, I don't believe he specified
16 any projects.

17 Q. Did you ask any questions of Mr. Brown or
18 Silver Leaf about the other projects that he mentioned?

19 A. I testified to -- to the discovery that I
20 conducted in this case.

21 Q. Okay. So your testimony then is you did not
22 look into the -- inquire about or look into other projects
23 that were mentioned by Mr. Brown?

24 A. I don't think he mentioned any specific
25 projects. I have reviewed other projects for Silver Leaf done

1 by Larry Schneider's and construction -- Larry Schneider and
2 Company --

3 Q. Okay.

4 A. -- and I became aware of no excessive change
5 orders.

6 Q. Okay. On the projects that you investigated.
7 But you --

8 A. Yes.

9 Q. -- didn't necessarily look into the projects
10 that Mr. Brown was referring to?

11 A. I don't believe he specified any projects.

12 Q. Did you ask Mr. Brown or the company about
13 what projects he was talking about or did Staff? Maybe not
14 you personally. Did Staff?

15 A. Could you remind me what testimony of
16 Mr. Brown are you referring to?

17 Q. I was referring to his Surrebuttal Testimony
18 in Case No. WO-2005-0206.

19 A. It was Surrebuttal Testimony. There was, of
20 course, no opportunity to respond. And no, I had no further
21 discussions with Mr. Brown --

22 Q. So --

23 A. -- after he made those allegations in
24 Surrebuttal.

25 Q. Okay. So did you not follow up -- so I

1 understand your testimony, Staff did not follow up on that
2 statement by Mr. Brown?

3 A. In his Surrebuttal, that's true.

4 Q. Okay. So you're really not in a position to
5 contradict Silver Leaf's assessment of its business
6 relationship with Larry Schneider and Company; isn't that
7 correct?

8 A. I believe I am, because I have reviewed
9 extensively the information that was provided regarding this
10 specific contract. I found absolutely no indication of
11 excessive change orders.

12 Q. Well, my question isn't so much about this
13 contract, but about its business relationship with this
14 contractor on this project and other projects.

15 A. Well, again, I'm aware of two other major
16 projects accomplished by this specific builder for Silver Leaf
17 in the past. And I reviewed the documentation and those
18 projects appear to have been completed successfully with no
19 mention of any difficulties.

20 Q. So based on the scope of your inquiry, you're
21 comfortable with what you've said, but you've also testified
22 that you didn't necessarily follow up on the projects to
23 discern what Mr. Brown was talking about in terms of problems
24 with change orders; isn't that correct?

25 A. Change orders on other projects, that's right.

1 Q. Now, is it your understanding that Silver Leaf
2 ceased doing business with Larry Schneider and Company
3 altogether --

4 A. Yes.

5 Q. -- at some point?

6 A. Yes.

7 Q. Now, this would suggest something other than
8 trouble on just one project, wouldn't it?

9 A. Well, clearly the relationship went sour as a
10 result of this project between the builder and Silver Leaf.

11 Q. So it's your testimony that you think it was
12 just this one project that caused that business relationship
13 to dissolve?

14 A. I have no indications otherwise, yes.

15 Q. Was your review of the particular project in
16 question here based on any first-hand knowledge about the
17 project itself while it was going on?

18 A. Well, I performed an audit of Silver Leaf's
19 operations shortly after the project completed.

20 Q. Were you onsite at any point while the project
21 was being done?

22 A. Once it was completed, in the same year I was
23 onsite.

24 Q. Okay. After completion of the construction?

25 A. It was completed.

1 Q. Okay. So you don't have any first-hand
2 knowledge about the actual construction as it was going on?

3 A. What do you mean by "first-hand knowledge"? I
4 have extensive documentation provided by Silver Leaf as to how
5 the construction project progressed.

6 Q. Based on an audit after the construction was
7 completed; is that correct?

8 A. Documents -- construction documents relaying
9 the course of events of the project, yes.

10 Q. Okay. So you -- okay. I think I understand
11 your testimony. But to go back, you weren't onsite during the
12 construction period?

13 A. No.

14 Q. I think your testimony or -- is that you agree
15 that there's been -- there was some ongoing business
16 relationship between Silver Leaf and Larry Schneider and
17 Company. Correct?

18 A. Yes.

19 Q. Is it your view that Silver Leaf was not in
20 the best position to make a business assessment about the
21 reliability of that contractor?

22 A. Could you repeat that?

23 Q. Yeah. Is it your view that Silver Leaf was
24 not in the best position to make a business assessment about
25 the reliability of Mr. Schneider's construction company?

1 A. No. I would say the opposite since Silver
2 Leaf was well experienced and familiar with Larry Schneider
3 and chose -- selected him as a successful bidder on this
4 project.

5 Q. Okay. I want to go back to the two
6 construction projects that you mentioned. I think it's
7 page 36 of your Rebuttal Testimony.

8 A. You say 36 of Rebuttal?

9 Q. Well, hold on a second. Let me --

10 A. That doesn't sound right.

11 Q. It probably isn't right. Let me get my --
12 bear with me here. It was page 36, sir, but it's your Direct
13 Testimony. I apologize for that. Are you there?

14 A. Yes, sir.

15 Q. You mention one project with a contract price
16 of -- I think it's \$579,788 and you state it was successfully
17 completed I think is your assessment; is that correct?

18 A. Yes, it is.

19 Q. Do you know what that -- let me back up. The
20 figure that you mentioned, that was the contracted price?

21 A. It was very close to the original contracted
22 price, as I recall.

23 Q. Well, you have contract price 700 and -- or
24 \$579,788 --

25 A. That's right.

1 Q. -- on line 16?

2 A. That's right.

3 Q. Do you know what the actual total cost of the
4 project was, including any change orders that were applicable
5 to it?

6 A. Yes. I reviewed those documentation -- those
7 documents and I compared the original bid versus what was
8 spent to the end and there wasn't -- there wasn't a great
9 difference.

10 Q. Okay. Is the same also true with respect to
11 the other contract that you mentioned, \$111,356?

12 A. Yes.

13 Q. Okay. I want to turn to page 34 of your
14 Direct. You give a chronology of events on that page.

15 A. I do.

16 Q. Starting at line 24 you have a date,
17 November 7th, 2000. Do you see that?

18 A. I do.

19 Q. And there's a reference in that bullet point
20 about a change order No. 1?

21 A. Yes.

22 Q. And cost impact of \$31,209?

23 A. Yes.

24 Q. That was a change order in connection with the
25 project that we're talking about here, the well No. 2 at

1 Holiday Hills?

2 A. It's my understanding that was a change order
3 initiated by the owner as -- as required by the owner, yes.

4 Q. This was a -- I'm going to ask you to expand
5 on that. What was it in connection with? It was additional
6 work that the owner wanted done?

7 A. That's right.

8 Q. What work was that?

9 A. There's extensive description of the work in
10 the response, Data Request 29, which is where all of these
11 documents on this sequence are taken from. The company first
12 realized and notified, on March 17th, 1999, the builder that
13 the location of the building had to be changed and other
14 changes.

15 Q. So it's your testimony that the change in the
16 location of the building of about 100, 150 feet resulted in a
17 change order of \$31,200?

18 A. Not by itself. On July 17th, 2000, the
19 builder is notified of additional changes to the project
20 beyond those stated previously to the builder on January 14th
21 of that year. And, again, the builder was requested to
22 provide a cost impact of these further changes as requested by
23 Silver Leaf.

24 Q. Okay. So as I understand your testimony, this
25 was a quote that was given by Larry Schneider Construction to

1 Silver Leaf based on some changes that Silver Leaf was
2 suggesting to the project?

3 A. Not just suggesting, but requiring.

4 Q. Okay.

5 A. For which it had halted all progress on the --
6 on the construction because of the essential nature of the
7 changes.

8 Q. Well, I understand that. But I guess my
9 question was, I was trying to get some clarification on your
10 testimony. The 31,000 wasn't a suggestion by the company. It
11 was the cost that the contractor was offering to the company
12 to address whatever changes the company was specifying; is
13 that correct?

14 A. Yes. The sequence is that the company
15 specified changes and the builder provided a cost in response.

16 Q. Okay.

17 JUDGE PRIDGIN: And, Mr. Vesely, to the extent
18 that you can, next time you're asked a question, something
19 like, is that correct, if you could limit your answer to yes
20 or no or something like that.

21 I'm sorry, Mr. Boudreau.

22 MR. BOUDREAU: Thank you.

23 BY MR. BOUDREAU:

24 Q. So what we're talking about is a change in
25 location of the structure of about 100 to 150 feet; is that

1 correct?

2 A. No. That is --

3 Q. I'm going to go through it. I'm going to ask
4 you if there were some other things, but that was part of what
5 we're talking about here --

6 A. Yes.

7 Q. -- the change in location?

8 And what other, if you can -- I mean, I don't
9 know -- I don't know if I want to go here if it's too
10 detailed, but if you can, what other sorts of changes were
11 being sought by Silver Leaf?

12 A. Well, if you -- if you refer to my item in
13 sequence June 21st, 2000 where Silver Leaf's engineer, Mike
14 Saunders, exchanges correspondence with Silver Leaf stating, I
15 have not yet determined a solution to the irrigation water
16 problem. He was working on a major revision to the project,
17 which involved really a major change in how the irrigation
18 well was going to be made to work with the -- the regulated
19 water system.

20 Q. This was going to require some substantial
21 additional facilities or construction? I mean, what were we
22 talking about here?

23 A. Well, first of all, it took a lot of figuring
24 out on the engineer's part as exactly how to revise this
25 design to make it work.

1 Q. This was the company's engineer?

2 A. The company's engineer, Mike Saunders --

3 Q. Okay.

4 A. -- of Wasteline Engineering.

5 Q. Okay.

6 A. So that's a key explanation for the delays to
7 the construction.

8 Q. Well, I understand that. But that wouldn't be
9 a cost in the cost impact, the company engineer's time.

10 A. A brief description of what this involved,
11 this portion of the change orders required of the builder, is
12 that originally water from the well was going to be simply
13 re-routed from where it was going originally to the golf
14 course.

15 It was going to be entirely re-routed into the
16 regulated water system, which was treated water and drinkable
17 water, which is not raw water as it had been before. And then
18 from the treated water system, which is the regulated water
19 system, a portion of that flow was going to be sent to the
20 golf course for irrigation.

21 And at some point Silver Leaf realized that it
22 could not send treated, chlorinated water to the golf course
23 for irrigation. So it had to revise its approach to making a
24 dual use of this well for both drinking water purposes in the
25 regulated system and irrigation using raw water, untreated

1 water to the golf course.

2 Q. Okay. And this is the change that you're
3 referring to in terms of the June 21st entry?

4 A. Yes.

5 Q. Were those specifications ever reduced to a
6 detailed proposal?

7 A. Specifications were provided to -- to the
8 builder, yes.

9 Q. Okay. Did you review the change order bid
10 that was provided by the contractor?

11 A. Yes, I did.

12 Q. What sort of detail? I mean, did that detail
13 the costs associated with the changes that the company was
14 seeking?

15 A. Yes, it did.

16 Q. Okay. Did you make a determination about
17 whether you thought the \$31,000 was reasonable given the scope
18 of change?

19 A. I-- nothing came to my attention that seemed
20 unreasonable, I can tell you.

21 Q. Okay. Is it Staff's position that once having
22 awarded a project to a contractor, that a utility should stick
23 with that contractor regardless of performance on the project?

24 A. No. And I don't -- I don't think that applies
25 to this situation.

1 Q. Circling back to the discussion you and I had,
2 there was some testimony by Mr. Brown in Case
3 No. WO-2005-0206. I believe he stated that, The change in
4 location of the project was minor to insignificant issue and,
5 more importantly, did not significantly increase costs.

6 Do you recall that testimony?

7 A. I do.

8 Q. Do you disagree with that?

9 A. Yes, I do.

10 Q. Okay. And it was based on what we just talked
11 about in terms of the company's proposed changes to the
12 specifications? Is that the basis for that?

13 A. No, it's not. There's an aspect of it that
14 Mr. Brown is not considering. It isn't so much the direct
15 cost of that portion of the change, but it's the -- the delay
16 aspect, halting the project. It was more -- more delay and
17 the delays accumulated to become extraordinary, in my
18 experience, in this project.

19 Q. Well, I understand your testimony about the
20 delay, but on a bid project, the term of the project itself
21 doesn't really change the cost of the project. I mean, if
22 it's bid at a certain price and it's completed in 12 months
23 rather than 6 months, assuming that it's completed at the bid
24 price, it's completed at the bid price. Right?

25 A. Right.

1 Q. Okay. I want to go to page 35 of your Direct
2 Testimony, if you would. You have a number of line item
3 adjustments or line items associated with your recommended
4 adjustment starting at line 8. Do you see that?

5 A. Yes.

6 Q. Now, your line item of \$102,395 assumes that
7 Larry Schneider and Company would have performed the work at
8 the contract price; isn't that correct?

9 A. As he was obligated to do by contract, yes.

10 Q. But there's really no way of knowing whether
11 that assumption would have held, is there?

12 A. That assumption held unless we have
13 information to the contrary. That's a contract, after all.

14 Q. So it's your testimony -- you can say with
15 certainty that had he completed the -- had Larry Schneider and
16 Company performed the work, that they would have done it for
17 the bid price?

18 A. He was obligated by contract to perform at
19 that price, yes.

20 Q. He might have had some liability for not
21 completing it at that price in a contract dispute, but there's
22 no assurance he would have completed it at that price, is
23 there?

24 A. If you're just asking me to guess as to the
25 future, now then to that extent, no one knows.

1 Q. You also refer to at lines 15 and 16 on that
2 same page to an apparent \$25,624 over-billing error by CMS
3 that was undetected by Silver Leaf. Do you see that?

4 A. Yes, I do.

5 Q. Is it your testimony that after pointing to
6 concerns about over-billing by the prior contractor, that
7 Silver Leaf just missed \$26,000 in overcharges?

8 A. That -- that's apparently what took place
9 during all the turmoil of the termination of the original
10 contract and the re-awarding to a second bidder, trying to
11 carry forward somehow credit for payments already made to the
12 first bidder and incorporating everything into the second try
13 at completing this work.

14 Q. So you're saying the \$25,000 or -- 25,6 was
15 just missed? Is that your testimony?

16 A. That's the way it appears.

17 Q. Okay. Would you agree with me that that
18 amounts to about 8 percent of the adjusted CMS bid?

19 A. Yeah. Subject to check, yeah, I would -- I
20 would --

21 Q. Is it possible that that amount that you've
22 identified was associated with the cost of adding two water
23 vaults that were outside the scope of work defined in this
24 particular project?

25 A. Could you expand on that, please?

1 Q. I'm just asking you, is it possible that the
2 \$25,624 that you've identified as an apparent over-billing
3 error could have been associated with the cost of adding two
4 water vaults that were outside the scope of the project? I
5 believe Mr. Hernandez mentioned those.

6 A. Adding them at what point?

7 Q. Near or after the completion of the well
8 project.

9 A. I have seen a reference to -- to that amount,
10 yes.

11 Q. Okay. But you're recommending disallowance of
12 that amount?

13 A. Subject to clarifying that that was not indeed
14 a double billing error, yes.

15 Q. You also have a line item amount of 42-- I'm
16 going back to your recommended adjustment box. You have a
17 line item amount of \$42,292, which represents the lost value
18 of work done by Larry Schneider and Company. Do you see that?

19 A. Yes.

20 Q. And I just want to understand this. Is your
21 calculation intended to assess the value of work performed by
22 Larry Schneider and Company?

23 A. No.

24 Q. What is it intended to represent?

25 A. It's the difference between what was paid to

1 Larry Schneider and what value that work was given in terms of
2 providing a credit in the second contract to complete the
3 work. I mean, if it had -- if it had been a dollar for dollar
4 transfer from what was paid to the first builder and carried
5 as a credit to the second builder, this item would not exist.

6 Q. Let me circle back around. I think I
7 understand what you're saying, but I guess my question is a
8 little bit different. Your entry says, Loss in value of work
9 done. So is it fair to assume that you're looking at the work
10 that was done by the prior contractor up to the point where
11 the relationship was severed? Is that what you mean by "work
12 done"?

13 A. Yes. And work paid for.

14 Q. Okay. Did that analysis take into account any
15 materials and supplies that were already procured by Larry
16 Schneider and Company and left available for CMS to complete
17 the project?

18 A. Yes.

19 Q. Okay. So that fits under your category of
20 "work done"?

21 A. Work is to include materials and/or labor,
22 yes.

23 Q. Okay. So to the extent that there were
24 materials that had been acqui-- that had been acquired for
25 this project by the prior contractor --

1 A. Yes.

2 Q. -- those materials would have been available
3 to the subsequent contractor --

4 A. Yes.

5 Q. -- is that correct?

6 Do you know what the final, total, actual cost
7 of this project was, the No. 2 well at Holiday Hills? I don't
8 see it in the testimony. That's the only reason I'm asking.

9 A. I have seen that total. There were other --
10 the total price that was booked to this project involved the
11 work of other -- other contractors also plus design costs.

12 Q. But you have seen that number at some point?

13 A. I have seen that total, yes.

14 Q. Okay. Now, without regard to the debate about
15 whether or not Silver Leaf should have changed contractors and
16 stuck with the original contractor, regardless of that
17 analysis, was the cost of the project to improve well
18 No. 2, was it, in your view, imprudently high or unreasonable?

19 A. Yes.

20 Q. So basically your testimony -- I mean, is that
21 based on the fact that you think it could have been done
22 cheaper or that you think under any standard, that the
23 finished value of this project was unreasonable?

24 A. No. The first.

25 MR. BOUDREAU: Okay. I don't believe I have

1 any other questions for this witness. Thank you.

2 JUDGE PRIDGIN: Mr. Boudreau, thank you.

3 Bench questions, Commissioner Murray?

4 COMMISSIONER MURRAY: Thank you.

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good morning, Mr. Vesely.

7 A. Good morning.

8 Q. What was the dollar figure difference between
9 Schneider's low bid and the next lowest bid?

10 A. It was about \$82,000, as I recall. I have --
11 I have here the list of -- of bids. Bids received
12 August 13th, 1998 by Silver Leaf showing Larry Schneider and
13 Company as the low bidder at 339,000. CMS or Construction
14 Management being the second low bidder at 421,000. The
15 difference was about \$82,000, as I recall.

16 Q. Now, is it your position that the low bid was
17 the appropriate bid to have accepted and that that contractor
18 would have completed the project at cost and that, therefore,
19 any amount above that should be disallowed?

20 A. No. That's not my position exactly. My
21 position is that the decision of who to award a contract to
22 obviously is important. That is a critical decision that
23 Silver Leaf and its engineer made jointly. They decided that
24 this low bidder was a reasonable bidder, he was -- he was a
25 known entity of Silver Leaf, he had performed. And the

1 contract was indeed awarded to the low bidder for that price.

2 Q. Are you finished?

3 A. And under contract, the -- the low bidder was
4 obligated then to -- to carry out this work, the original
5 contract work for the original contract price. Any changes
6 that Silver Leaf ordered subsequently to the contract would
7 have, of course, changed the original terms of the contract,
8 including the price and possibly the duration. But that would
9 have affected -- that would have affected another bidder too,
10 any other bidder.

11 Q. And are you saying that Silver Leaf did make
12 changes to what was requested originally in the original
13 bid --

14 A. Not --

15 Q. -- that added to the price?

16 A. Changes requested by the builder, yes. Not
17 originated by the builder.

18 Q. I'm sorry. What changes were requested by
19 whom?

20 A. All the changes that -- that I am aware of
21 under that contract were initiated at the owner's request.
22 There were no claim litigation type changes where the builder
23 is saying, no, what you're requesting is really not in the
24 original contract, I want more money for that. I'm very aware
25 of those kinds of circumstances. There's no indication

1 whatsoever that any of that took place.

2 Q. And there is indication that Silver Leaf asked
3 for changes that were not in the original contract; is that
4 correct?

5 A. Yes. Very much so.

6 Q. And that there were additional costs connected
7 to those changes?

8 A. Yes.

9 Q. And are those quantified with each change
10 requested?

11 A. Yes. But I -- I haven't proposed any
12 disallowance of the cost of the change orders themselves. I
13 regard that work as having been necessary all along. Whether
14 it was in the original contract or was added subsequently. I
15 haven't taken issue with those. I've given the company the
16 benefit of the doubt that those costs were necessary.

17 Q. Okay. So your position is that changes that
18 were made that cost extra were prudent and there's no
19 disallowance recommended there; is that correct?

20 A. Yes. It was the timing of the -- the
21 realization of the actual needs of the contract that were
22 imprudent. This just indicates to me that Silver Leaf really
23 was never prepared to award this contract when it did when a
24 year and a half after awarding, it was still struggling with
25 how to proceed with the work.

1 Q. So where are you arriving at your disallowance
2 figure?

3 A. Disallowance is the difference between what
4 Silver Leaf could have obtained the work at, at what price,
5 and what it actually obtained the work at because of the way
6 it handled the matter, awarding the contract prematurely,
7 losing the benefit of being able to carry out the work using
8 the low bidder after delaying the low bidder all the way until
9 April of '01 after having first stopped the bidder on
10 March of 1999, so two years later for a job that by contract
11 was supposed to be completed within six months.

12 Q. So how are you separating the changes that
13 were made to the original order?

14 A. I'm -- I'm -- I'm considering those as would
15 have been in the price under either scenario, whether the work
16 had been performed by the low bidder or actually the way it
17 was performed by the second low bidder. So none of those
18 dollars are part of my disallowance.

19 Q. And the total of your disallowance for this
20 issue is?

21 A. It's -- it's stated on -- shown on page 35 of
22 my Direct Testimony at \$186,000. And it is broken down into
23 three components so as to be able to understand.

24 Q. I'm sorry. What page?

25 A. Page 35 of my Direct Testimony I have a table.

1 Q. The first component, Cost increase due to
2 switch from lowest to second lowest bidder, that is not the
3 difference then between the originally submitted bids between
4 the lowest and the next lowest bidder; is that correct?

5 A. That difference you're speaking of between the
6 two bids is the largest part of that amount.

7 Q. Okay. But that's --

8 A. It's --

9 Q. -- not my question.

10 A. -- not exactly --

11 Q. That's not my question.

12 A. There was another -- no.

13 Q. Let me ask my question.

14 A. Sure.

15 Q. My question is, there were originally
16 submitted bids. And of those originally submitted bids,
17 Schneider's was the low bid; is that correct?

18 A. Yes.

19 Q. And the next lowest bid was about \$82,000
20 different?

21 A. Yes.

22 Q. So the 102,000, which you're referencing here
23 in your first component, is not the difference between the
24 originally submitted low bid and next lowest bid; is that
25 correct?

1 A. That's correct.

2 Q. The difference is the actual increase that
3 resulted from switching partway during the project to another
4 bidder; is that accurate?

5 A. No.

6 Q. Okay.

7 A. The difference I'm referring to is the initial
8 \$82,000 difference in the bids plus where it appears to be an
9 over -- a double -- double charging error. So those total up
10 to -- plus any minor -- there's some minor components, total
11 up to \$102,000.

12 Q. So between the difference -- the difference
13 between Schneider's low bid and the next lowest bid of 82,000,
14 there was another 20,000 in there somewhere?

15 A. Yes.

16 Q. All right. And then the loss in value of work
17 done by the low bidder, how did you arrive at that number?

18 A. I arrived at that by taking information from
19 the company to the effect that it paid 153,000 to the first
20 builder.

21 Q. Okay.

22 A. And the second builder provided a credit of
23 111,000 for the value that the first builder was paid for.

24 Q. So are you saying that because the second
25 bidder only valued the amount paid to the first bidder at

1 111,000, that anything paid above that was not prudently
2 incurred?

3 A. Yes. The -- these terms were offered by the
4 second builder, they were accepted by Silver Leaf and they
5 represented a clear duplication of costs occasioned strictly
6 by switching builders.

7 Q. And then the delay period, Excess capitalized
8 interest during the delay period, how do you arrive at the
9 conclusion that there would have been no delay period had they
10 continued with the first bidder?

11 A. No, the delay periods were, in fact, there
12 under the first bidder.

13 Q. Okay. So how does this -- how could Silver
14 Leaf have avoided that delay period, in your estimation?

15 A. Very simply to have been better prepared with
16 this contract. This contract needed to be planned very
17 differently.

18 The fact that the golf course could not be
19 irrigated with chlorinated, treated water and that had to be
20 instead irrigated with non-treated water, that information was
21 available to Silver Leaf all the time. This is Silver Leaf's
22 golf course. All that was required is for them to speak with
23 their golf course manager and understand that he did not want
24 chlorinated water spread over his golf course.

25 So the project, as originally designed, was

1 not acceptable to Silver Leaf itself and was -- was then
2 thoroughly revised once the contract had already been awarded
3 and stopped.

4 Q. And the original design was of Silver Leaf's
5 doing?

6 A. Absolutely.

7 COMMISSIONER MURRAY: Okay. Thank you.
8 That's all I have.

9 JUDGE PRIDGIN: Commissioner Murray, thank
10 you. No questions from Commissioner Appling and I have no
11 questions.

12 Any recross, Ms. Baker?

13 MS. BAKER: None.

14 JUDGE PRIDGIN: Mr. Boudreau?

15 MR. BOUDREAU: Perhaps, yes.

16 RECROSS-EXAMINATION BY MR. BOUDREAU:

17 Q. In response to some questions from
18 Commissioner Murray, I think you came back around to the
19 original contractor was obligated under the contract to
20 complete the project at the bid price; is that correct?

21 A. Yes.

22 Q. Would you agree with me though that assuming
23 that the original contractor decided he wasn't going to
24 complete it for the bid price, that the remedy for Silver Leaf
25 is litigation? They could sue for damages. Right?

1 A. This is a hypothetical on your part, is it?

2 Q. Yes. Yes. You're talking about obligations
3 to complete at a particular price so I want to kind of pursue
4 this line.

5 A. Yes.

6 Q. And litigation can result in delays before
7 it's played itself out?

8 A. It -- it can. But litigation can be also put
9 off until the contract is finished -- until the work is
10 finished anyway.

11 Q. That's possible too. In terms of what we're
12 talking about here, by your own testimony is I think a
13 difference of what, 82,000?

14 A. That's the starting difference between the low
15 bidder and the second low bidder.

16 Q. Okay. And you wouldn't have any idea in terms
17 of what the cost to litigate that degree of dispute would be?
18 In other words, is it reasonable to believe that a businessman
19 could look at an \$82,000 difference and decide this isn't
20 worth the cost of litigation, I'd rather just work something
21 out and move on to another contractor?

22 A. I don't -- I don't think I follow your
23 question.

24 Q. Well, there's a cost associated with
25 litigation, isn't there?

1 A. Are we, again, talking hypothetical here?

2 Q. I think just generally. There's a cost
3 associated with litigation. You have to hire lawyers. Right?

4 A. Yes. There's a cost.

5 Q. And the lawyers charge the company for their
6 time, don't they?

7 A. Sure.

8 Q. Okay. So we're talking about an \$82,000
9 dispute; isn't that correct? I mean, it was the difference
10 that you indicated between the bid price and the second bid?

11 A. No, but that's not the extent of my
12 disallowance --

13 Q. Well, I understand that. But I mean, you said
14 that he was -- the first contractor was contractually
15 obligated to complete it at the bid price.

16 A. Yes.

17 Q. And you said that's basically an \$82,000
18 difference between that and the second lowest bid. So that
19 would be presumably the damage that Silver Leaf would have
20 realized; isn't that correct?

21 A. The damages had already taken place. They
22 were due to all the delays.

23 Q. Well, what would -- what would Silver Leaf's
24 remedy be if the original contractor decided, I'm just not
25 going to complete it at the bid price? I'm just not going to

1 do it?

2 A. Again, this is hypothetical. There's nothing
3 in the record that tells me any of that took place.

4 Q. Well, I understand that. But I'm just trying
5 to figure out based on your statement that there's contractual
6 obligation to complete this work --

7 A. Uh-huh.

8 Q. -- what your understanding is about how this
9 plays out in the real world, how a contract dispute plays out.
10 Now, would you agree with me there's delay associated with
11 litigation?

12 A. Again, not if litigation takes place after the
13 work is done and then they -- they dispute the dollars that
14 need to be exchanged.

15 Q. So that would likely result in Silver Leaf
16 paying more than they thought they should have to pay and then
17 seeking to recover it?

18 A. Not necessarily. I mean, there can be simply
19 an outstanding claim on the builder's part and then he pursues
20 if it's in regard --

21 Q. Well, my hypothetical is the contractor
22 decides, I'm not going to complete it at the bid price. So
23 he's not going to go ahead and complete it. I guess my
24 question -- bottom line, there's time associated -- time
25 delays associated with litigation; isn't that correct?

1 A. As a very general concept, yes.

2 Q. And there's a cost associated with litigation?

3 A. Yes.

4 Q. So it's not as simple as just saying, the
5 original contractor was just contractually obligated to finish
6 it at a particular price. That's an abstract concept. In the
7 real world that plays out a lot differently, doesn't it?

8 A. No. I don't believe that. I believe --

9 Q. Let me move on. In response to some questions
10 from Commissioner Murray about your tabulation in your Direct
11 Testimony --

12 A. Uh-huh.

13 Q. -- about how you calculated your adjustment,
14 the way that you calculated assumes that the contractor would
15 have completed the work at the bid price; is that correct?

16 A. That's a valid assumption for all we know,
17 yes.

18 Q. Okay. And as far as the second element in
19 terms of work done, I think you and I explored the idea that
20 there was some materials that were paid for by Silver Leaf
21 that the original contractor acquired that were made available
22 to the second contractor when he took over the project; isn't
23 that correct?

24 A. That's correct.

25 Q. So that's part of what you're recommending be

1 disallowed is whatever materials were made available to the
2 second contractor?

3 A. Really it's just in total, the fact that the
4 first builder was paid and then the second builder was paid
5 again.

6 Q. Yeah. But the first builder was paid and some
7 of what he was paid for was his work and some of what he was
8 paid for was materials that he acquired for the completion of
9 the project.

10 A. That's my understanding.

11 Q. And those materials that he hadn't used up to
12 the point where that relationship was severed were made
13 available to the second contractor; isn't that correct?

14 A. Yes, yes.

15 Q. And that's part of what you recommended be
16 disallowed in this \$42,292?

17 A. My disallowance is to the difference in
18 dollars between what was paid and what was credited.

19 Q. I understand that. But what was paid and what
20 was credited included some materials that weren't really used
21 yet?

22 A. No. That's right. They were then
23 incorporated into the project by the second builder.

24 Q. Okay. And you've also -- we've talked about
25 the roughly \$26,000 that may or may not have been associated

1 with a couple of extra water vaults that were installed by
2 CMS; isn't that correct?

3 A. Yes.

4 MR. BOUDREAU: Okay. That's all the questions
5 I have. Thank you.

6 JUDGE PRIDGIN: Mr. Boudreau, thank you.
7 Redirect, Mr. Krueger?

8 MR. KRUEGER: Thank you, your Honor.

9 REDIRECT EXAMINATION BY MR. KRUEGER:

10 Q. Mr. Boudreau asked you some hypothetical
11 questions. The first one was about a question that asked you
12 to assume that the original contractor, Larry Schneider
13 Company, was not willing to perform the original work at the
14 original price. Is that the way you understood the
15 assumption?

16 A. Mr. Boudreau's assumption?

17 Q. Yes.

18 A. Yes.

19 Q. Did you see any evidence that Larry Schneider
20 Company was not willing to perform the original work at the
21 original price?

22 A. No, I did not.

23 Q. Mr. Boudreau also asked you a hypothetical
24 question about -- or several hypothetical questions about
25 costs associated with litigation. Do you remember those?

1 A. Yes.

2 Q. Was there any litigation involved in this
3 case?

4 A. None to my knowledge.

5 Q. Do you know if there was any ever threatened
6 by either party?

7 A. At the very end I believe, yes, there was.

8 Q. What do you mean by "the very end?"

9 A. Approximately the middle of 2001, there was
10 some correspondence in the file at the time the first contract
11 terminated and after it terminated.

12 Q. It was after the first contract terminated?

13 A. It was around that time and after, yes.

14 Q. Okay. Now, I want to ask you about this
15 over-billing error that you referred to in your Direct
16 Testimony at page 35, lines 14 to 16. You referred to an
17 over-billing error of \$25,624. Can you tell me what that
18 consists of?

19 A. Well, what it -- what it appears to have -- to
20 have been is a double counting of change order work on the
21 part of the second builder. It isn't quite clear, but it
22 appears that that may have happened where the revised bid of
23 the second builder already included the cost of a change order
24 and then the cost of that change order was added again to the
25 contract price.

1 Q. So are you saying that Silver Leaf paid the
2 second contractor, CMS, twice for the same work?

3 A. From the documentations that I -- that were
4 made available to me in Data Request 29, it appears that could
5 have taken place.

6 Q. Okay. I want to talk about your figure for
7 loss in value of work done by low bidder.

8 A. Could you tell me where -- where you're
9 referring to?

10 Q. Well, it's first mentioned on page 35 of your
11 Direct Testimony.

12 A. 35, Direct. Okay.

13 Q. You list an item of \$42,292 for loss in value
14 of work done by low bidder.

15 A. Yes.

16 Q. Can you go through just the arithmetic of how
17 that was calculated?

18 A. Beginning with reviewing Silver Leaf's ledger,
19 total charges made and paid to the first builder, LSC,
20 153,412.

21 Q. So Silver Leaf paid \$153,412 to LSC, that's
22 Larry Schneider Company --

23 A. For all of the work and all of the involvement
24 of the first builder.

25 Q. That's all the work that Larry Schneider

1 Company did on that contract --

2 A. Yes.

3 Q. -- prior to termination?

4 A. And then the second builder, in consideration
5 for the work done by the first builder, offered credits of
6 106,120 and a credit of 5,000. So the difference between what
7 was paid to the first builder and the credits offered by the
8 second builder came up short by 42,292.

9 Q. Okay. Thank you. In your Direct Testimony on
10 page 34, you mentioned -- you have an entry there for
11 November 7, 2000 regarding change order No. 1. Do you see
12 that?

13 A. Yes.

14 Q. I assume that was the first change order that
15 was issued on that case -- on that contract; is that right?

16 A. Yes.

17 Q. Who requested that change?

18 A. This was Silver Leaf.

19 Q. And did Silver Leaf also ask Larry Schneider
20 Company how much it would cost to make the change?

21 A. It did.

22 Q. And the amount -- the answer was \$31,209?

23 A. Yes.

24 Q. Okay. Were there other changes, that you know
25 of prior to the time the contract -- change orders prior to

1 the time that the contract was terminated?

2 A. Not to my recollection.

3 Q. Okay.

4 A. The -- the contract terminated, was put on
5 hold again January 26th, so there really wasn't much activity
6 in between, then terminated May 8th of 2001.

7 Q. What effect do delays in construction have on
8 the cost of the project?

9 A. Well, depending on who initiates them, but I
10 mean, if the owner initiates -- causes delays, the owner is
11 liable for cost increases.

12 Q. Why would a delay -- you're saying that a
13 delay would cause a cost increase?

14 A. Very likely. As likely would incur a claim
15 from a builder due to lost cost during idle -- idle time.

16 Q. Why would a delay increase the builder's
17 costs?

18 A. The builder has the cost of his staff on hand,
19 he may have equipment rented, he may have a onsite trailer
20 where he makes his office out of. These costs are -- are
21 incurred by the day so it's important for -- for him to be
22 able to make progress on a construction, which is the only way
23 he's making money is if he's actually carrying out the work as
24 opposed to having been idle.

25 Q. Is there a time specified in a contract for

1 the performance of the work?

2 A. There is, yes. And it was six months for this
3 job.

4 Q. And were any of these delays requested by
5 Larry Schneider Company?

6 A. No.

7 Q. They were all requested by Silver Leaf?

8 A. Yes. To my understanding.

9 Q. When construction work is delayed and
10 additional costs result, how is that typically resolved?

11 A. Could you clarify? Just elaborate on what you
12 mean.

13 Q. You testified that the work was to be done in
14 six months.

15 A. Yes.

16 Q. And that there were delays.

17 A. Yes.

18 Q. And that Larry Schneider Company claims this
19 cost them money?

20 A. Implicit in that, yes.

21 Q. So what does -- how does a contractor respond
22 to something like that?

23 A. Well, a contractor typically would request
24 additional compensation.

25 Q. And would that result then in a change order?

1 A. Yes.

2 MR. KRUEGER: That's all the questions I have.

3 JUDGE PRIDGIN: All right. Mr. Krueger, thank

4 you. I think the Bench may have other questions.

5 Commissioner Murray?

6 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

7 Q. I apologize, but I have to get more
8 clarification on one part of this. Your cost increase due to
9 switch from lowest to second bidder, I find that very
10 confusing. You indicated that the costs between -- cost
11 differential originally was \$82,000; is that correct?

12 A. Yes.

13 Q. And then somewhere there was an error in the
14 second lowest bidder's bid of \$25,624?

15 A. The revised bid, not the original bid. The
16 original bid is my basis for the comparison, the \$82,000. The
17 second lowest bidder's bid was revised once he was ask-- he
18 was asked to pick up the contract at the point where the first
19 bidder left off. Obviously the first bidder had performed
20 some work so bidder No. 2 did not start from scratch with his
21 original bid. He provided a credit for the -- the work that
22 was done by the first bidder.

23 Q. So what would have been the amount of bidder
24 No. 2's bid, revised bid?

25 A. It was 320,504.

1 Q. Was the revised bid?

2 A. Yes.

3 Q. And the original bid of bidder No. 2?

4 A. 421,900.

5 Q. Okay. But what you --

6 A. So even though the revised bid is lower, it

7 isn't -- it isn't as low as it ought to be considering that

8 some funds had already been paid to the first bidder. The

9 second bidder reduced his bid to consider the credits for the

10 work done by the first bidder, but not dollar for dollar.

11 There were -- \$42,000 of that was simply lost due to the

12 switch, lost --

13 Q. But that was accounted for separately?

14 A. I call that -- I break it out. I call it loss

15 in value.

16 Q. Okay. But that doesn't affect your first

17 item --

18 A. The first item --

19 Q. -- 102,000?

20 A. That's right. The first item is \$82,000 just

21 comparing unmodified original bids, first low bidder and

22 second low bidder. Plus there's that apparent over-billing.

23 Q. Of what amount?

24 A. Of 25,624.

25 Q. And if you add those two numbers together,

1 they come up to 107,624, not your 102,395.

2 A. There's a \$5,000 credit that the second bidder
3 only offered. So that further reduces that \$107,000 number
4 down to 102,000.

5 Q. Now, where did the apparent over-billing come
6 in? Was that with the original bid, the rebid?

7 A. It was in the modified bid of the second
8 builder.

9 Q. And if the modified bid contained an
10 over-billing --

11 A. To me that makes the second bid larger than
12 what it should be and, therefore, I felt that should be a
13 portion of the disallowance. It's an increase in the
14 disallowance from the original 82 and plus an over-billing is
15 the way I -- it appears.

16 Q. So, in other words, this second revised bid
17 would have been \$25,000 -- approximately \$25,000 less had that
18 error not been there?

19 A. That's the way it appears, yes.

20 Q. And when you say "that's the way it appears,"
21 when we're looking at disallowances, I think we need to have
22 good evidence for disallowances. That appears from what
23 evidence?

24 A. Right. Documents provided, Data Request 29,
25 there's a sheet that -- that shows the calculations of

1 switching from the original bid of the -- of the second
2 builder and giving a credit for the work for which the first
3 builder was paid and thereby arriving at the modified second
4 builder's bid.

5 So it is convoluted, that's true. It is
6 convoluted. The only part of it that is simple is the
7 comparison of the original bids, the low bidder and the high
8 bidder, \$82,000.

9 Q. So would it make more sense since we can
10 establish a rationale for the 82,000 without being so
11 convoluted, to reduce that suggested disallowance by
12 approximately \$20,000?

13 A. There's no doubt that the evidence for the
14 \$82,000 is much stronger.

15 Q. So there would be a rationale to make a
16 disallowance of 166,373 or --

17 A. The --

18 Q. -- 160,000?

19 A. -- the over-billing -- the apparent
20 over-billing there I valued at 25,624 and that portion I just
21 can't -- I would agree with you, Commissioner, that it's not
22 as firm and I'm left with just interpreting the documents that
23 were provided to me in the data request.

24 Q. So if we wanted to get at numbers that were
25 more supportable from the documents that you have, what would

1 we subtract?

2 A. Well, this involves the -- the first line item
3 on page 35, Cost increase due to switch from lowest bidder to
4 second lowest bidder, 102,395. We could subtract -- if we
5 were to subtract the billing error, we would subtract 25,624
6 from that.

7 COMMISSIONER MURRAY: Okay. I think I'll stop
8 here. Thank you.

9 JUDGE PRIDGIN: Commissioner, thank you.
10 Commissioner Appling?

11 COMMISSIONER APPLING: I don't think so. I
12 think I'm totally confused so I probably should stop there.

13 QUESTIONS BY COMMISSIONER APPLING:

14 Q. But you only -- the only question that I have
15 and I think it's been taken and clarified already, the 42- and
16 the 41,000 dollars that you have calculated on page 35, where
17 did you get those two numbers from? Where did they come from?

18 A. Well, the first one -- I provided the numbers
19 as an explanation to Mr. Krueger just shortly. The first
20 builder was paid 153,000 to accomplish a portion of the work.

21 Q. Right. That's at the beginning of the
22 project.

23 A. And then the second builder picked up where
24 the first builder left off to a large extent and so the work
25 that the first builder had performed did not need to be

1 performed again by the second builder. So the second builder
2 needed to reflect a credit in his original bid.

3 Q. But that only shows the difference in the
4 original builder -- original contract for 339,000 plus the
5 revised was 320. So that's, what, \$19,000 difference in the
6 two bids?

7 A. No. I mean the original bid was 421,900.

8 Q. That's for the second -- that's for the
9 second -- I'm talking about the lowest bidder was 339,000.
10 Right?

11 A. Yes.

12 Q. Okay. And then when you went back and he was
13 not able to complete the project --

14 A. Right.

15 Q. -- you went back to the second lowest bidder,
16 which was 421. So the revised is based on what the original
17 contractor had done and not completed?

18 A. No. The -- the revised is based on the second
19 builder's original bid --

20 Q. Okay.

21 A. -- which was higher than the first builder.

22 Q. Okay. So you're not comparing one against the
23 other --

24 A. No.

25 Q. -- you're comparing the second bidder against

1 the first original bid that he made?

2 A. Because the circumstances changed from builder
3 one to builder two, yes.

4 Q. Okay. Thank you, sir.

5 A. If we -- if we had continued with builder one,
6 the outcome would have been spending less money, as I have --
7 as I have recommended here.

8 Q. Okay. The project did complete?

9 A. It was completed eventually.

10 Q. And did Silver Leaf sign off on the project
11 being completed?

12 A. They did.

13 COMMISSIONER APPLING: Okay. Thank you.

14 JUDGE PRIDGIN: Commissioner, thank you. And
15 I don't have any questions.

16 I normally don't like to break in the middle
17 of a witness. Let me see what kind of further questions we
18 have. Ms. Baker, any recross?

19 MS. BAKER: I have one.

20 JUDGE PRIDGIN: Okay. Just a second.

21 Mr. Boudreau?

22 MR. BOUDREAU: Two or three questions, your
23 Honor.

24 JUDGE PRIDGIN: Any redirect, Mr. Krueger?

25 MR. KRUEGER: Two or three.

1 JUDGE PRIDGIN: Okay. Ms. Baker, we'll see
2 how the two and three go. I'm a lawyer. I'm pretty sure I
3 know how it will go. Ms. Baker.

4 FURTHER RECROSS-EXAMINATION BY MS. BAKER:

5 Q. Okay. My question is, Algonquin hasn't
6 provided you with any evidence to explain your apparent -- or
7 the apparent \$25,624 over-billing error, have they?

8 A. No. Well, other than maybe what
9 Mr. Boudreau's suggested right in here. I believe --

10 Q. But they have had your Direct Testimony -- it
11 was filed in December. Correct?

12 A. If I could --

13 Q. And up until today --

14 A. Wait. Let me see. Where did I refer to that
15 figure? Yes, it is in my Direct Testimony filed December
16 2006.

17 Q. And so they had not given you any evidence to
18 explain?

19 A. We've had no contact on that matter, no.

20 MS. BAKER: Thank you.

21 JUDGE PRIDGIN: Mr. Boudreau?

22 MR. BOUDREAU: Yes. Thank you.

23 FURTHER RECROSS-EXAMINATION BY MR. BOUDREAU:

24 Q. At the risk of muddying waters that are
25 probably already sufficiently muddied, I want to circle back

1 around to this 25,000 -- this mystery \$25,000 that you and I
2 have been talking about and you just had a conversation with
3 Commissioner Murray about. And I want to ask this question.
4 You heard Mr. Hernandez's testimony earlier today about the
5 two additional water vaults?

6 A. Yes, I did.

7 Q. Okay. Are those two water vaults, are they
8 included in your schedule of fixed asset additions?

9 A. They would be reflected to the extent that
10 they're included in these contract costs.

11 Q. But they don't appear as specific additional
12 items that you've included in your schedules?

13 A. Items are included by accounts so it's not
14 really by -- by description of the physical item. It's by
15 dollars and account.

16 Q. Commissioner Appling also asked you about your
17 42,000 -- roughly 42,000 line item associated with work
18 done -- additional work done by the -- or work done by the low
19 bidder. Do you recall that?

20 A. It's a difference in what the low bidder was
21 paid for and what -- what credit the second builder offered --

22 Q. Right.

23 A. -- for the -- for the work that the first
24 builder was paid for.

25 Q. Okay. Is it reasonable to assume that the

1 credit that was given by the second bidder was based on his
2 estimate, his bid about what it would cost to do equivalent
3 work?

4 A. Oh, absolutely.

5 Q. And that's already been accounted for, I
6 think, in your first adjustment, the \$102,000 number; isn't
7 that correct?

8 A. I don't believe so, no.

9 Q. Well, is it fair -- you mentioned the 82- or
10 83,000 dollar number, which is the difference between the
11 \$422,000 bid and the \$339,000 bid?

12 A. Yes.

13 Q. And that would include the difference in the
14 two contractors' estimates of what it would cost to do that
15 project; isn't that correct?

16 A. Under the original conditions, yes.

17 Q. Yes. And when the second contractor comes in
18 and says, okay, I'll complete it, I mean, he's still looking
19 at it from his perspective about what he thinks the bid should
20 have been in the first place, how he evaluated the work?

21 A. Well, I mean, yeah. The differences were --
22 are reflected -- as long as you're comparing the same scope of
23 work, the differences are reflected in the difference of the
24 original bids.

25 MR. BOUDREAU: Okay. That's all I have.

1 Thank you.

2 JUDGE PRIDGIN: All right. Thank you.

3 Mr. Krueger?

4 FURTHER REDIRECT EXAMINATION BY MR. KRUEGER:

5 Q. I want to take one more shot at the arithmetic
6 on these first two items that are listed on page 35 in that
7 box there. And I want to try to figure out how much Silver
8 Leaf did ultimately pay for this work, the combined total that
9 they paid to both companies for the work as originally
10 specified. Construction Management Specialist's bid was
11 421,900. Correct?

12 A. Yes.

13 Q. And when the project was subsequently awarded
14 to them, they gave a \$5,000 credit?

15 A. Well, there were -- there were more credits
16 than that. One of the credits is itemized separately as a
17 \$5,000 credit.

18 Q. So then were they willing to do the original
19 work for not 421,900 but for 416,900?

20 A. The second bidder, yes, to that extent, they
21 were -- they were -- they would have been lower.

22 Q. And they also gave a credit of \$111,120 that
23 you discussed at the top of page 36 of your testimony for work
24 that was provided by Larry Schneider Company?

25 A. What number did you say?

1 Q. 1-- \$111,120.

2 A. Well, that's the combination of the -- the 106
3 and the 5,000 that I gave you previously.

4 Q. Right.

5 A. Yes.

6 Q. And then that would reduce the total amount
7 paid to them by 111,000 to 305,000?

8 A. I don't have a calculation of that.

9 Q. Okay.

10 A. But that sounds right.

11 MR. KRUEGER: I think this may not be as easy
12 for me to prove as I was hoping so I'll address it in my
13 brief. I just have one other question.

14 BY MR. KRUEGER:

15 Q. Is it your testimony that the billing error
16 should be subtracted, that \$25,624 billing error should be
17 subtracted from the adjustment?

18 A. That's the position I filed, yes.

19 Q. You're staying with the position you filed or
20 are you changing?

21 A. I -- it's -- it's always subject to check,
22 isn't it, the work? I certainly don't want to hold any
23 incorrect assumptions or interpretations of documents against
24 the company.

25 Q. Okay. What I'm getting at is the question

1 that Commissioner Murray asked about which would be the most
2 appropriate things to take off of this adjustment. And one of
3 the things that was talked about was \$25,624 over-billing
4 error. Are you saying that that should be subtracted from
5 your recommended disallowance?

6 A. Well, agreeing with the Commissioner that I
7 don't have as firm a hold on that number, I could concede that
8 number, yes.

9 MR. KRUEGER: Okay. Thank you. That's all
10 the questions I have.

11 JUDGE PRIDGIN: Mr. Krueger, thank you.

12 Mr. Vesely, thank you. You may step down.

13 And let me inquire of counsel briefly because
14 we've gone from ahead of schedule to at or behind schedule
15 here this morning already.

16 We've got Mr. Loss I think is the only witness
17 left on the -- on the CIAC issue and I guess I'm wondering
18 what kind of cross-examination counsel anticipates, because
19 I'm trying to decide whether to go ahead and break for lunch
20 or take a quick break and come back and go on and try to stay
21 on schedule.

22 MR. KRUEGER: I don't have a lot of questions
23 for him.

24 MS. BAKER: I have about three questions.

25 JUDGE PRIDGIN: Okay. I show about 11:25 at

1 the clock at the back of the wall. Let's break until about
2 11:40 and we'll plan to come back and take Mr. Loss on the
3 CIAC issue and then break for lunch. We're off the record.

4 (A recess was taken.)

5 JUDGE PRIDGIN: We're back on the record.
6 Mr. Loss has taken the stand to stand cross-examination on the
7 CIAC issue. Anything else from counsel before he stands
8 cross?

9 MR. BOUDREAU: No, your Honor.

10 JUDGE PRIDGIN: Seeing nothing, again,
11 Mr. Loss you're still under oath from yesterday. And if
12 there's nothing else counsel needs to clean up, may he be
13 tendered for cross-examination?

14 MR. COOPER: Yes, sir.

15 JUDGE PRIDGIN: All right, thank you.

16 Ms. Baker?

17 LARRY W. LOOS testified as follows:

18 CROSS-EXAMINATION BY MS. BAKER:

19 Q. At the time that the mains were constructed,
20 most of them were for the benefit of Silver Leaf itself; isn't
21 that true?

22 A. For its business, yes.

23 Q. Algonquin knew that there was a provision
24 regarding contributions in aid of construction in Silver
25 Leaf's tariffs before the purchase, didn't it?

1 A. I assume they did, but I have no -- no
2 knowledge in fact.

3 Q. All right. Algonquin knew before it purchased
4 the utility, that Silver Leaf had reflected contributions in
5 aid of construction in its Annual Reports to the -- submitted
6 to the Commission, didn't it?

7 A. Again, I presume so.

8 MS. BAKER: No further questions.

9 JUDGE PRIDGIN: Thank you.

10 Mr. Krueger?

11 MR. KRUEGER: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. KRUEGER:

13 Q. Mr. Loss, I want to ask you some questions
14 about the Exhibits 29 and 30 that were discussed yesterday.
15 These are the tariff sheets. Do you have those?

16 A. I don't have them before me. Water is 29?

17 Q. Correct. I want to first ask you a couple
18 questions about that one. The second page states, and I won't
19 read all the words, but Algonquin Water Resources of Missouri
20 hereby adopts, ratifies and makes its own, all tariffs filed
21 with the Public Service Commission under the name Silver Leaf
22 Resorts, Inc.; is that correct?

23 A. Yes.

24 Q. And that's basically the substance of what
25 appears on that page?

1 A. Yes.

2 Q. Now, on the fourth page of that same document
3 is Rule 14, Extension of Water Mains?

4 A. Yes.

5 Q. And it says at the top there, Name of issuing
6 utility, Ascension Resorts Limited. Correct?

7 A. Yes.

8 Q. Now, notwithstanding the name that appears at
9 the top of that page, would you agree that Algonquin has
10 adopted this Rule 14?

11 A. Yes.

12 Q. And the effective date for that rule was
13 August 21, 1994, as indicated in the bottom of the -- bottom
14 right-hand corner of the page?

15 A. Yes.

16 Q. And then with regard to Exhibit 30, basically
17 the same things apply. And would you agree with that?

18 A. Yes.

19 Q. And would you agree that Rule 11, as it
20 appears there in Exhibit 30, has been adopted by Algonquin?

21 A. Yes.

22 Q. These line extension policies have been in
23 effect since February -- since August 21, 1994?

24 A. Yes, that's what the tariff sheet shows.

25 Q. Okay. And they are still effective?

1 A. It's my understanding, yes.

2 Q. They both require the applicant to tender to
3 the company a contribution in aid of construction?

4 A. Yes.

5 Q. They are mandatory in language?

6 A. I interpret them to be.

7 Q. No exceptions are shown?

8 A. Again, I don't see any exceptions.

9 Q. But Silver Leaf didn't enforce those rules?

10 A. Based on the evidence that I've seen, they did
11 not.

12 Q. Okay. With regard to unrecorded plant that we
13 talked about yesterday, is it your position -- I'm sorry. It
14 is your position that that plant that was not recorded
15 properly as utility plant when it was constructed, should now
16 be recorded on the utility's books?

17 A. I can't accept the characterization that "that
18 was not recorded properly as utility plant."

19 Q. Okay. Because of the word "properly"?

20 A. Yes.

21 Q. Okay. Deleting that --

22 A. Deleting that and the reference to utility.
23 It was not utility plant.

24 Q. Okay. Let me read the question in a way that
25 I think maybe we'll agree on. With regard to the unrecorded

1 plant, it is your position that plant that was not recorded as
2 utility plant when it was constructed, should now be so
3 recorded?

4 A. Yes.

5 Q. Okay. And would you agree then that
6 contributions in aid of construction that was not contributed
7 when construction should also be recorded at this time?

8 A. If we're speaking strictly to the unrecorded
9 plant, no.

10 Q. I'm not talking about unrecorded plant. I'm
11 talking about the plant that was required to be contributed,
12 according to tariffs, to the water and sewer extension
13 policies.

14 A. Which according to the tariff, would have
15 applied to the post-1993 plant -- 1993 plant. I still don't
16 think it should be applied because it was not collected.

17 Q. So with regard to the unrecorded plant, it was
18 not recorded, but that oversight should now be corrected?

19 A. It became a utility plant in 1994. It
20 probably should have been recorded at that time.

21 Q. Okay.

22 A. And all that I'm suggesting now is that it be
23 recorded as utility plant because it was purchased and -- for
24 value and is being used as a provision of service to
25 customers.

1 Q. Should we not also correct the fact that the
2 contributions in aid of construction were not contributed as
3 required by the tariff?

4 A. I don't -- I don't believe so. Fundamental in
5 valuation is -- is the concept that contributions represent
6 the contribution of investment. And typically in connection
7 with valuation you do not deduct contributions in
8 determination of value. That is just something done in
9 connection with original cost rate-making.

10 Q. In your Rebuttal Testimony at page 20, you
11 mention what an equitable line extension policy might provide.
12 Do you recall that testimony?

13 A. Yes.

14 Q. You talked about 100 feet of main extension
15 and a service investment and so forth?

16 A. Yes. I was -- if I might explain, I was
17 introducing the concept there whether it's 100 feet or
18 150 feet or it's revenue test, I was just introducing the
19 concept and used 100 feet in my example.

20 Q. Okay. But there is no such provision in any
21 of the tariffs of Algonquin; is that correct?

22 A. That is correct.

23 Q. Okay. Would you agree that there is a
24 difference between your unrecorded plant adjustment that
25 Algonquin is proposing in this case and the CIAC adjustments

1 made by Staff for the post-certificate plant?

2 A. Yes.

3 Q. Okay. Staff's CIAC adjustment relates to
4 plant installed after the 1994 certificate case -- 1994
5 certificate was granted to Silver Leaf. Correct?

6 A. Specifically, yes, though this provision has
7 been cited as a reason not to recognize the pre-1993 plant.

8 Q. And Algonquin's unrecorded plant adjustment
9 relates to the pre-1993 time period?

10 A. Yes.

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

13 JUDGE PRIDGIN: Mr. Krueger, thank you.

14 Commissioner Murray, any questions?

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good morning.

17 A. Good morning.

18 Q. I'd just like to ask you a couple of questions
19 related to your Surrebuttal Testimony on page 22. You speak
20 about the pre-1993 property that Mr. Vesely suggests should be
21 considered contributed plant. And you say there at line 14
22 that you don't agree. And you first indicate that the
23 distribution and collection system costs, you say, recommend
24 being included.

25 Are you saying there that you're recommending

1 that that 729,000-and-some-odd dollars of distribution in
2 collection system costs are not contributed property?

3 A. Yes, I am.

4 Q. And what rationale are you using for that
5 portion of the property?

6 A. In -- in -- in order for that property to be
7 considered contributed, one has to retro-- retroactively apply
8 the tariff provision. And one of the, I believe, rules in
9 rate-making is that we do not apply tariff provisions
10 retroactively.

11 Q. Okay. And then as to the 1.1 million in
12 supply and treatment related plant, is this also pre-1993
13 property?

14 A. Yes, it is.

15 Q. And there you say you can't see any rationale
16 for considering that plant as contributed. And I'm assuming
17 you're saying because it is not distribution and collection
18 system?

19 A. That's -- that is correct.

20 Q. So there are two -- there would be two
21 arguments against including the 1.1 million?

22 A. Yes. Or it -- two arguments against treating
23 the 1.2 million as a contribution.

24 COMMISSIONER MURRAY: Yes. Thank you. I
25 think that's all. Thank you.

1 THE WITNESS: Yes.

2 JUDGE PRIDGIN: Commissioner Appling?

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. How are you doing, sir?

5 A. Good.

6 Q. I'm trying to get my arms around a couple of
7 things here so bear with me in the questions here. Sooner or
8 later I'm going to be called on to make a decision for or
9 against you, so bear with me. Okay?

10 A couple of questions. What other utility
11 properties did your company purchase from Silver Leaf? Did
12 you purchase anything other than just the three properties
13 that you have here in Missouri? Was there anything else?

14 A. Yes. At -- Algonquin -- as a part of the
15 deal, Algonquin purchased properties in Illinois, Texas and
16 Missouri.

17 Q. Right.

18 A. In total the purchase price was 13.8 -- or
19 13.2 million, of which 3.8 million relates to these properties
20 in Missouri. And it's solely the utility property, it's all
21 the utility property and only the utility property on these
22 three resorts in Missouri. And I understand it's the same in
23 the others, but I don't know as the details on the other
24 states like I do Missouri.

25 Q. Okay. My questions keep teeter-tottering on

1 the fact of how much investigation was done before your
2 company purchased this. And that's a small hang-up for me
3 right now. So my next question is, did you investigate
4 Algonquin's allocation of the purchase price to the Missouri
5 properties? Did you investigate -- did you do an
6 investigation on that?

7 A. No, I did not.

8 Q. Okay. A couple more. How many small water
9 and sewer operation do Algonquin own? Do you have a feel for
10 the total number? It's not that important. If you've got a
11 number you could provide out there, that would be fine.

12 A. I don't know. I would presume we could
13 provide you a list of everything.

14 Q. Yeah, all right.

15 A. There's only three in Missouri.

16 Q. Okay. And I suppose those are the ones that
17 I'm really concerned about because I don't think I'm going to
18 be making any decisions on the ones in Texas or Illinois. But
19 are most of them -- and you probably haven't flown over them
20 and looked at them, but are most of the properties about the
21 same size as the Missouri properties or is there any larger?

22 A. No. There's -- there's -- I believe that --
23 that of the Texas properties, in particular, that there's some
24 that are larger and there's some that are smaller, along the
25 lines of Timber Creek. But that's information I've got kind

1 of outside of my investigation here just from my perception of
2 what other properties Silver Leaf has.

3 COMMISSIONER APPLING: Okay. Judge, I think
4 that's all the questions I have unless Commissioner Murray has
5 another question.

6 JUDGE PRIDGIN: Commission Murray?

7 COMMISSIONER APPLING: I like to stir up
8 questions for her. I'm not smart enough to ask the question,
9 but I do a pretty good job of stirring the nest up. Thank
10 you.

11 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Mr. Loss, with regard to the questions I was
13 asking you earlier about the two amounts on page 22 of your
14 testimony, those -- if you put those together, they total a
15 little over \$1.9 million. Would you agree?

16 A. Yes.

17 Q. And for the CIAC issue, is there another
18 amount included in that issue?

19 A. Well, the -- the base CIAC issue, as I recall,
20 is around \$500,000. But that base issue applies only to the
21 post-'93 property. What I am responding to here is the
22 suggestion that there should be no value attributed to the
23 pre-'93 property because of the argument that Mr. Vesely sets
24 forth that it should have been -- it would be considered as
25 treat-- as contributed.

1 Q. Now I am really confused.

2 A. Can I try again?

3 Q. Let me see. The fact that we're jumping back
4 and forth between issues makes it a little more difficult, but
5 the CIAC issue, does it include pre-1993 and post-1993
6 property?

7 A. No. It's only -- it's -- it's -- the CIAC
8 adjustment that Staff is proposing relates to post-'93
9 property as I understand.

10 Q. Post. All right. So what is the purpose of
11 your testimony on page 22 where you're talking about pre-1993
12 property?

13 A. Perhaps that belonged in another section, but
14 it was in response to his -- Mr. Vesely's suggestion that if
15 there were 19-- pre-1993 property, that it shouldn't be
16 counted because it should be treated as contributed.

17 Q. But you are saying that it should be counted.
18 Correct?

19 A. Yes.

20 Q. So that appears to me to be a CIAC issue.

21 A. It's -- they're intertwined at this point
22 especially.

23 Q. All right. But the post-1993 CIAC issue is
24 around 500,000?

25 A. That's my recollection.

1 Q. And your argument, in a nutshell, against
2 Staff's position on the post-1993 properties?

3 A. Is that the -- that the tariff provisions were
4 never applied by -- by Silver Leaf. The tariff anticipates
5 money changing hands, anticipates an application, an estimate
6 provided by the utility, I believe there's a third provision.
7 None of which we can find any record was ever done.

8 Q. And how do you explain the fact that in the
9 Annual Report Silver Leaf included -- well, scratch that.

10 COMMISSIONER MURRAY: Okay. Thank you.

11 THE WITNESS: Yes.

12 JUDGE PRIDGIN: Any further Bench questions?

13 FURTHER QUESTIONS BY COMMISSIONER APPLING:

14 Q. Why don't we just ask a couple more. I'm
15 sorry. I'm sorry, guys. I know everybody want to go to lunch
16 here, but I'm trying to get clarified.

17 All of the costs that we're seeing here, sir,
18 before in '93, '92 and which you don't -- which we're not able
19 to assemble the records for the original cost of this
20 project --

21 A. Yes.

22 Q. -- and there's some ways that you're going to
23 make an estimate, you've come up with something that Staff has
24 said you've got to come up with some receipts and stuff in
25 order to justify this to us. Is there any where that you can

1 show an estimate of what you think it would cost to do that or
2 is that what you proposing and trying to do here?

3 A. That's what I'm proposing. I suggest in my
4 testimony that the way that we handle this on a more
5 comprehensive basis is that we go out and we count the number
6 of feet and size of pipe --

7 Q. Right.

8 A. -- all that and price it out, estimate what it
9 would cost to construct today and then back trend it, adjust
10 it back to what the original cost would have been. But that's
11 an expensive --

12 Q. That's a costly endeavor?

13 A. Right. And, frankly, I don't believe that the
14 benefit offsets the cost. I think we can make a reasonable
15 estimate.

16 Q. What do you think is a reasonable estimate?

17 A. Of the values that I have, 729,000
18 distribution related to --

19 Q. Okay.

20 A. -- of treatment and supply.

21 Q. But I'm just trying to get in the back of my
22 mind exactly what you're trying to do here. I think -- I read
23 your testimony and I think I understand, but I wanted to just
24 clarify so bear along with me, Staff, just a little bit to try
25 to get there so that I have in the back of my mind whether I

1 say yes or no to that, you know, further down the road.

2 But is there anything else you wanted to add
3 to that?

4 A. No. You know, other than what we -- we have
5 is, you know, an application of, you know, attempt to -- apply
6 original cost rate-making to a situation where there's been a
7 transition from an unregulated entity to a regulated entity.
8 At that interface, there's some additional -- I wouldn't say
9 rules, but there's some additional considerations.

10 Q. That kicks in?

11 A. Right. And that -- that consideration is
12 language that's in the Uniform System of Accounts and is
13 fundamental in original costs that the value that goes on the
14 books for original cost represents the cost when first devoted
15 to public service.

16 Well, the property's not devoted to public
17 service until 1994. Had Algonquin purchased it in 1993,
18 arguably they could have claimed the purchase price as value
19 because that would have been the cost when first devoted to
20 public service because prior to that, it was not.

21 So that represents an extension with respect
22 to the property -- the pre-'93 property from a valuation
23 perspective. The post-'93, property we don't consider
24 contributions as a deduction to value.

25 Q. But there's a key entity in this whole issue

1 of what we're talking about and that's the ratepayer --

2 A. Yes.

3 Q. -- and how much we want to stack on top of him
4 to pay based on some -- I don't know whether it was errors or
5 what, but some not such good record keeping on the part of the
6 people that owned it before you all bought it.

7 COMMISSIONER APPLING: That's all the
8 questions, Judge, I have. Thanks very much.

9 JUDGE PRIDGIN: Thank you. If there are no --
10 I'm sorry, Commissioner Murray.

11 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Let's take your scenario that if Algonquin had
13 purchased in '94, the plant that would have been included at
14 that point, is that the approximately 1.9 million?

15 A. What I -- in my previous response, the amount
16 that they would have claimed or could have claimed for that
17 original cost is the amount that they paid, whether it be
18 1.9 million, whether it be 2.9 million. At that point perhaps
19 a determination by the Commission is, well, was 2.9 million
20 prudent. And this goes back to some of your concerns
21 yesterday with respect to the zero plant.

22 Q. Okay. Because that would have been the first
23 time that it was placed -- devoted to public service, the
24 amount that would have been determined, you're saying, would
25 not have been based on original cost, but it would have been

1 based on purchase price?

2 A. Yes. In that particular situation, according
3 to the original cost theory.

4 Q. But at the time in 1994, the plant -- original
5 cost of a plant was around the \$1.9 million figure?

6 A. I estimate the cost at pre-'94 plant to be
7 around 1.9 million.

8 Q. So assuming that that purchase had been
9 made -- a prudent purchase had been made, it might have been
10 around that figure?

11 A. Right. I -- I -- I developed this from the
12 standpoint of original cost. I didn't want to attempt to make
13 an argument for more than original cost.

14 Q. And how much plant is -- or how much rate-base
15 is Staff including, do you recall, offhand?

16 A. I want to say 1.2 million, but it may be 1.5.

17 Q. So the major difference between the company
18 and Staff is the pre-1993 property; is that right?

19 A. Well, in part, yes. What we look at here is
20 gross value of 1.9 million. That property's been depreciated
21 so the net amount after depreciation is considerably less.

22 Q. And then the fact that post-tariff
23 application, which was what date?

24 A. Approximately 19-- well, the tariff sheet says
25 August 21st, 1994.

1 Q. Following that, the amount of property that --
2 if the tariff had been applied, would have been contributed,
3 would have been -- do you have an approximate amount for that?

4 A. Of the -- of the -- that's the 500,000 -- my
5 recollection, the 500,000 is contributions the Staff has.

6 Q. And I'm sorry to do this, but if you can,
7 without too much difficulty, can you just put together the
8 numbers that I know brought you up to beyond 3.8 million but
9 that, in your mind, justify the 3.8 million?

10 A. Yeah. If you can -- if you would refer to my
11 updated schedule, LWL-3 --

12 Q. Which is attached to what?

13 A. My updated testimony. Or if you don't have
14 that, you can go to the original LWL-3.

15 Q. Got it. And LWL-3?

16 A. Yes.

17 Q. Okay. I'm there.

18 A. You have the original?

19 Q. Yes. The updated. I'm sorry.

20 A. Okay. I'm sorry. The original is identical
21 down to the point we start talking about 2006 plant. The
22 plant in service that's reported on Algonquin's books, before
23 this adjustment in several of its books as of September 30,
24 2005 is shown on line 8 as \$4.6 million.

25 Q. I must be on the wrong place. I've got

1 LWL-3, page 1 of 1, sheet 1 of 1 and it's depreciation expense
2 rates and it is attached to your updated Direct Testimony.

3 A. That's -- that is sheet 2 of 2.

4 Q. What I'm looking at?

5 A. Well, the -- the depreciation rate. The
6 depreciation expense rates are on the second sheet.

7 Q. Mine is labeled sheet 1 of 1. Okay. I have
8 another LWL-3, 1 of 1. Isn't that interesting? All right.
9 I'll go back to the first one. Line No. 8, Installed after
10 December 31, 1992, 4.6 million.

11 A. Right. Then the -- the next three lines of
12 numbers 12, 13 and 14 represents the cost that I estimate with
13 respect to the pre-1993 property. Shows to be a collection
14 source of supply and then a credit for the sewer investment
15 that's shown on Holiday Hills on the books.

16 Adding the -- the per books amounts with
17 the -- Silver Leaf showed with this adjustment, I come down to
18 grand total of \$6.3 million in plant, which is line 19. I
19 calculate, based on depreciation rates that I'm using and the
20 age of the plant, total reserve, 2.2 million associated with
21 that.

22 Q. Okay.

23 A. The deducted reserve from the 6.3 million, I
24 then have a net plant amount of 4.3 million, which is \$308,000
25 more than the 3.8 million that Algonquin paid for the

1 property.

2 COMMISSIONER MURRAY: Okay. Thank you.

3 THE WITNESS: Uh-huh.

4 JUDGE PRIDGIN: Commissioner, thank you.

5 Any further Bench questions? Any recross?

6 Ms. Baker?

7 RECROSS-EXAMINATION BY MS. BAKER:

8 Q. Wouldn't you agree that Silver Leaf, as
9 primarily a developer, reaped its profits from the selling of
10 the residential property, the time shares and the
11 condominiums?

12 A. If they had profits, that's the primary source
13 of their profits they made.

14 MS. BAKER: No further questions.

15 JUDGE PRIDGIN: Thank you.

16 Mr. Krueger?

17 MR. KRUEGER: Thank you, your Honor.

18 RECROSS-EXAMINATION BY MR. KRUEGER:

19 Q. You said that if Algonquin had purchased the
20 property in 1993, they could have reported the purchase price
21 in rate-base?

22 A. I believe so, yes, according to my
23 interpretation of net original cost rate-making and Uniform
24 System of Accounts.

25 Q. All of the purchase price?

1 A. Yes.

2 Q. Regardless of how much they paid?

3 A. Yes. The determination would have been
4 whether or not the amount they paid was prudent.

5 Q. So that's the issue then for the Commission is
6 to determine what is a prudent price for them to have paid in
7 1993 or for Silver Leaf to have paid?

8 A. Well, the -- we're speaking -- speaking of a
9 third party, you know, the hypothetical. Had Algonquin
10 purchased in 1993 from Silver Leaf, then that would have been
11 a position at least I would have suggested that Algonquin take
12 as far as the rate-base they reported for regulatory purposes.

13 Q. But you would have been obliged to show that
14 that was a prudent price, whatever they had paid?

15 A. I assume so.

16 Q. Okay. Why would Silver Leaf enter -- excuse
17 me, enter into a contract with itself or submit an application
18 to itself for a line extension?

19 A. That's what the tariff says.

20 Q. Don't the main extension policies allow for
21 the customer to construct the main extensions?

22 A. Yes. After an application and an estimate.
23 And -- and -- excuse me, and a change in title.

24 Q. And if that were done, there would be no money
25 changing hands. Correct?

1 A. Yeah. But there would be a title changing
2 hands.

3 Q. There are no other developers or customers
4 other than Silver Leaf that would be requesting main
5 extensions in this area; is that correct?

6 A. As far as I know, it's exclusive to Silver
7 Leaf.

8 MR. KRUEGER: Okay. Thank you. That's all
9 the questions I have.

10 JUDGE PRIDGIN: Mr. Krueger, thank you.

11 Mr. Cooper?

12 REDIRECT EXAMINATION BY MR. COOPER:

13 Q. Mr. Loss, you were asked by Ms. Baker a
14 question about whether Silver Leaf had reflected CIAC in its
15 Annual Report. Do you remember that?

16 A. Yes.

17 Q. Did Silver Leaf reflect CIAC in its internal
18 books and records?

19 A. No, it did not. At least I could not find any
20 record of it.

21 Q. You were asked several questions about the
22 portion of your Surrebuttal on page 22 where you have a
23 portion of distribution and collection system costs -- or let
24 me back up. You have split the pre-1993 plant between
25 distribution and collection system cost and supply and

1 treatment-related plant costs. Do you remember that?

2 A. Yes.

3 Q. Now, the numbers that are reflected there on
4 page 22, those are plant-in service numbers. Correct?

5 A. Yes, they are.

6 Q. And I think you got to this, but just to try
7 to clarify it, even if there's no CIAC applied to those
8 numbers, depreciation will reduce those before we get to net
9 rate-base numbers. Correct?

10 A. Yes.

11 Q. Do you know what the net rate-base number
12 would be for those two categories?

13 A. If I don't have it, I can provide it. I don't
14 have it before me, but I believe it's in one of our work
15 papers and I'd be more than happy to -- to supply that.

16 Q. Do you still have Exhibits 29 and 30 before
17 you?

18 A. Yes.

19 Q. I think you were asked some questions about
20 whether in this application and contract process was the
21 exclusive method for extending mains. Do you remember that?

22 A. Yes.

23 Q. Okay. Could you turn, first, in Exhibit 29 to
24 the last page of that exhibit?

25 A. I have that.

1 Q. Okay. And do you have -- is there a
2 paragraph G? Do you see that?

3 A. Yes.

4 Q. And would you agree with me that that says,
5 The company reserves the right to further extend the main and
6 to connect mains on intersecting streets and easements?

7 A. Yes.

8 Q. Now, if you would turn to Exhibit 30 and
9 paragraph H.

10 A. Yes.

11 Q. Is the first sentence of H similar to the one
12 I just read from Exhibit 29?

13 A. Yes.

14 MR. COOPER: Okay. That's all the questions I
15 have, your Honor.

16 JUDGE PRIDGIN: All right. Mr. Cooper, thank
17 you.

18 This looks to be the perfect time to break for
19 lunch. And according to my schedule, Mr. Loss will be back on
20 the stand to stand cross-examination on depreciation rates.
21 And then if time permits after depreciation rates, Mr. Vesely
22 will go onto capital structure and return on equity with
23 Mr. Loss again and Mr. Barnes. Is that counsel's
24 understanding?

25 MR. COOPER: Yes, your Honor.

1 JUDGE PRIDGIN: If there's nothing further
2 from counsel -- Mr. Cooper?

3 MR. COOPER: There is, Judge. At this point
4 in time I think we -- I think we've worked our way through the
5 plant issues. I would like to offer Exhibits 29 and 30, which
6 are the two extension tariffs from the company's tariff books.

7 JUDGE PRIDGIN: Okay. 29 and 30 have been
8 offered. Any objections?

9 MR. KRUEGER: No objection.

10 MS. BAKER: No.

11 JUDGE PRIDGIN: Hearing none, Exhibits 29 and
12 30 are admitted.

13 (Company Exhibit Nos. 29 and 30 were received
14 into evidence.)

15 JUDGE PRIDGIN: If there's nothing further
16 from counsel, we'll resume -- the clock at the back of the
17 wall shows 12:20. Let's try to resume about 1:35. And,
18 again, I'll remind counsel that we will need to wrap up this
19 afternoon about 4:30 to allow our technical staff to test for
20 webcasting a local public hearing this evening. Thank you
21 very much. We are off the record.

22 (A recess was taken.)

23 JUDGE PRIDGIN: All right. Good afternoon.
24 We're back on the record. Unless counsel has anything else to
25 bring to my attention, I'd like to get Mr. Loss back on the

1 stand to stand cross-examination on depreciation. Is there
2 anything else from counsel before we do that?

3 MR. COOPER: No, your Honor.

4 MR. KRUEGER: No, your Honor.

5 MS. BAKER: No.

6 JUDGE PRIDGIN: Mr. Loss, you're still under
7 oath.

8 And, Mr. Cooper, anything you need to clear up
9 before he's tendered for cross?

10 MR. COOPER: No, your Honor. We would tender
11 Mr. Loss for cross-examination on the issue of depreciation.

12 JUDGE PRIDGIN: Thank you very much.

13 Ms. Baker, any questions?

14 MS. BAKER: Just one.

15 LARRY W. LOOS testified as follows:

16 CROSS-EXAMINATION BY MS. BAKER:

17 Q. The depreciation calculations in your
18 testimony include your proposed unrecorded plant, don't they?

19 A. Yes.

20 MS. BAKER: That's all.

21 JUDGE PRIDGIN: All right. Thank you.

22 Mr. Krueger?

23 MR. KRUEGER: Mr. Baker will be doing the
24 cross.

25 JUDGE PRIDGIN: Mr. Baker, sorry.

1 CROSS-EXAMINATION BY MR. BAKER:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Do you believe a reasonable overall
5 depreciation rate should fall around 2 to 3 percent?

6 A. Yes.

7 Q. Reserve ratios for mass accounts, you say
8 should generally fall below 50 percent also?

9 A. Below 50 percent, yes.

10 Q. Just for me to be clear, reserve ratio is the
11 amount of depreciation reserve divided by the total plant in
12 service?

13 A. Yes.

14 Q. And the depreciation reserve is subtracted
15 from plant invested to determine the rate-base?

16 A. Yes.

17 Q. By lowering the depreciation rates then, the
18 reserve ratio is then lower?

19 A. Yes.

20 Q. So that 2 to 3 percent depreciation rate will
21 result in a lower reserve ratio overall?

22 A. Within -- within a 2 percent -- 2 to 3 percent
23 depreciation rate, lowering it within that range will result
24 in a lower ratio, yes.

25 Q. As reserve ratio decreases then, the rate-base

1 increases?

2 A. Yes.

3 Q. Can we look at schedule LWL-3 in your Direct
4 Testimony, sheet 2 of 2? You adjusted some of Staff's
5 proposed depreciation rates in this schedule, didn't you?

6 A. Yes.

7 Q. You also adjusted some of the service lives
8 proposed by the Staff?

9 A. Yes. They follow each other.

10 Q. They follow each other. So --

11 A. Yeah.

12 Q. -- service lives basically have to be adjusted
13 if you adjust depreciation rates --

14 A. Right.

15 Q. -- or vice-versa?

16 In Schedule LWL-3 you propose that the
17 depreciation rate for computer equipment and software be
18 5.5 percent?

19 A. Yes.

20 Q. Staff recommended 14.3 percent for computer
21 equipment and software, didn't they?

22 A. Yes.

23 Q. You also adjusted the service lives of
24 computer equipment and software to 18.18 years?

25 A. Yes.

1 Q. And Staff proposed 6.99 years?

2 A. Yes.

3 Q. Is it reasonable to expect computer equipment
4 and software to have a useful life of 18.18 years?

5 A. Typically, no.

6 Q. Then I'm not sure why it would -- why it was
7 adjusted to that then.

8 A. Well, the existing reserve ratio is
9 120 percent, which obviously is -- indicates a rate that is
10 too high. So basically what I did was reduce that to
11 5.5 percent, which resulted in a reserve ratio of
12 46 percent.

13 Q. So you just tinkered with the numbers until
14 you got a reserve ratio that was more acceptable?

15 A. Yeah. It -- more reasonable, yes.

16 Q. In your LWL schedule, you also recommended
17 depreciation rate of 2.5 percent for office furniture and
18 equipment?

19 A. Yes.

20 Q. And Staff proposed a depreciation rate of
21 5 percent be used?

22 A. Yes.

23 Q. And you also adjusted the service life there
24 to 40 years. Correct?

25 A. Yes.

1 Q. And Staff proposed 20 years?

2 A. Yes.

3 Q. Again, is it reasonable to expect office
4 furniture and equipment to have a useful life of 40 years?

5 A. Typically, no.

6 Q. Again, you tinkered with the numbers until you
7 got something -- a reserve ratio that was acceptable?

8 A. That was more reasonable, yes.

9 Q. There were a couple other instances in there
10 where you adjusted Staff's proposed service lives and
11 depreciation rates. Correct?

12 A. Yes.

13 Q. And the overall effect of this is to lower
14 depreciation rates. Right?

15 A. Yes.

16 MR. BAKER: That's all I have for now. Thank
17 you.

18 JUDGE PRIDGIN: Mr. Baker, thank you.

19 Do we have any Bench questions? Commissioner
20 Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. When you were questioned earlier, you
23 indicated that 2 to 3 percent is a fairly common depreciation
24 rate. Is that what you said?

25 A. I would expect it to be between 2 and

1 3 percent.

2 Q. Okay. Do you have any idea why Staff would
3 have some rates as high as 14.3 percent?

4 A. Well, that's -- that's on computer equipment.
5 It -- they -- Staff has the service life associated with that
6 of seven -- seven years. And typically, at least in the past,
7 seven years has been a fairly long period, but life perhaps is
8 a tad greater now typically, but that's not unusual.

9 When we talked -- when I speak of the 2 to
10 3 percent range, I was speaking of overall as opposed to
11 individual accounts.

12 Q. Okay. So for computer equipment, it would not
13 be unusual to see 14 percent or above?

14 A. That's -- that's correct.

15 Q. And there was an item on line No. 8, well
16 pump, which Staff showed a 10 percent depreciation over
17 10 years and you showed 5 percent over 20 years. Your
18 5 percent gives -- over 20 years gives a lower reserve ratio.
19 Is the well pump -- electric pump equipment expected to last
20 20 years?

21 A. Typically not. However, we're showing a
22 reserve ratio in this particular instance slightly in excess
23 of 100 percent, which suggests that it's at least 10 years
24 old, which is the service life described -- to -- by Staff.
25 So the -- the existing plant, to the extent we have records,

1 has been in service for, on average, 10 years.

2 Q. And would that be so with computer equipment
3 in that -- you indicated a reserve ratio of 120 percent, I
4 believe, although on your schedule it looks to me like it says
5 134.7 percent.

6 A. Well, I see 120 percent. I don't see the 134.

7 Q. Okay. There must be something wrong with the
8 schedule I have attached to your updated --

9 A. Okay.

10 Q. -- Direct Testimony.

11 A. Well, let's start there. Okay. Updated
12 134.7, correct.

13 Q. So what would that above 100 percent indicate
14 to you of that reserve ratio?

15 A. It indicates that the service life of the
16 property exceeds the service life that is used in
17 depreciation.

18 Q. So that it's already over seven years old?

19 A. Yes.

20 Q. And yet -- so giving it 18 years is actually
21 giving it another 11?

22 A. You could look at it that way. I mean, there
23 could be a number of problems that create the high reserve
24 ratios. You know, perhaps there's some stuff that has been
25 retired, but I'm unaware of anything.

1 Also unaware of any problem with that
2 equipment which is -- would suggest it needs to be immediately
3 retired. So basically I've assumed that until more definitive
4 information becomes available, to increase it to the level
5 that approximates 50 percent reserve.

6 Q. You're looking at a pool of computer equipment
7 and software; is that right?

8 A. Yes.

9 Q. Is it typical or appropriate in setting
10 depreciation expense rates to adjust them based on what you
11 want to show as a reserve ratio?

12 A. One of the things that we do, especially when
13 we're dealing with systems where there's insufficient data to
14 do comprehensive analysis, is to examine the reserve ratios to
15 tweak or fine tune the depreciation rates to make sure that
16 they're more in line with an indication of what the life of
17 the property has been that is evidenced by the reserve ratio.

18 Q. So by setting computer equipment and software
19 for a service life of 18.18 years, what are you saying is
20 really the expected service life?

21 A. Well, I've got it -- expected average service
22 life of 18.18 years. If a -- if we were to examine this
23 3 years from now, we may conclude that it's still something in
24 excess of the 7 years that Staff is used, but something less
25 than 18 years.

1 Q. So the result of the difference between your
2 proposal and Staff's proposal in terms of depreciation expense
3 rates would be that you have a higher rate-base upon which to
4 earn a return?

5 A. Yes. But a lower depreciation expense.

6 Q. And what is the bottom line difference? Do
7 you have an amount for that in revenue per year?

8 A. Per year? No. I don't have -- I don't
9 have -- I didn't make a calculation of what it would be for
10 per year, I don't believe.

11 Q. Any idea, approximately?

12 A. No.

13 COMMISSIONER MURRAY: All right. Thank you.

14 JUDGE PRIDGIN: Commissioner, thank you.

15 Commissioner Appling, no questions. And I
16 have no questions.

17 Recross, Ms. Baker?

18 MS. BAKER: Yes. I just have one.

19 RE CROSS-EXAMINATION BY MS. BAKER:

20 Q. Isn't the large reserve ratio that Staff has
21 calculated indicative that Algonquin needs to start planning
22 to retire some of the equipment and invest in updated
23 equipment?

24 A. That might be the case. It also could be the
25 case that there's some equipment that needs to be retired.

1 MS. BAKER: Thank you.

2 JUDGE PRIDGIN: Thank you.

3 Recross, Mr. Baker? Redirect, Mr. Cooper?

4 MR. COOPER: No, your Honor.

5 JUDGE PRIDGIN: All right. Thank you.

6 Mr. Loss, thank you very much, sir.

7 Is Ms. Schad ready to take the stand?

8 (Witness sworn.)

9 JUDGE PRIDGIN: Thank you very much.

10 Mr. Baker, when you're ready, sir.

11 MR. BAKER: Thank you, your Honor.

12 ROSELLA SCHAD testified as follows:

13 DIRECT EXAMINATION BY MR. BAKER:

14 Q. Would you please state your name and business

15 address for the record?

16 A. My name is Rosella Schad. And business

17 address is 200 Madison, Jefferson City, Missouri.

18 Q. Who are you employed by and in what capacity?

19 A. I'm employed by the Commission in the capacity

20 of an engineer.

21 Q. Did you prepare and cause to be filed Direct

22 Testimony, Rebuttal Testimony and Surrebuttal Testimony

23 labeled respectively as Exhibits 20, 21 and 22 in this case?

24 A. I did.

25 Q. Do you have any changes to make at this time

1 to any of your testimony?

2 A. I don't believe so.

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

5 A. They would.

6 MR. BAKER: Your Honor, I move to submit
7 Rosella Schad's Direct, Rebuttal and Surrebuttal Testimonies
8 as Exhibits 20, 21 and 22 and I tender the witness for cross.

9 JUDGE PRIDGIN: Mr. Baker, thank you.

10 Exhibits 20, 21 and 22 have been offered. Any
11 objections?

12 Seeing none, Exhibits 20, 21, 22 are
13 admitted.

14 (Staff Exhibit Nos. 20, 21 and 22 were
15 received into evidence.)

16 JUDGE PRIDGIN: Cross-examination, Ms. Baker?

17 CROSS-EXAMINATION BY MS. BAKER:

18 Q. The Staff depreciation calculations do not
19 include Algonquin's so-called unreported plant, do they?

20 A. Could you repeat again?

21 Q. The Staff's depreciation calculations do not
22 include Algonquin's so-called unrecorded plant, do they?

23 A. Well, the depreciation calculations for the
24 lives, that's a determination and they were not applied
25 against the uncontributed plant --

1 Q. Okay.

2 A. -- to my understanding.

3 Q. All right. And so the same would be that the
4 depreciation calculations also do not include the contributed
5 plant or CIAC, as well?

6 A. Correct.

7 Q. Okay. Isn't it true that Staff's depreciation
8 rates more accurately reflect the average service lives of the
9 water and sewer plant equipment and their respective
10 functions?

11 A. We believe that they do.

12 MS. BAKER: Thank you. No further.

13 JUDGE PRIDGIN: Ms. Baker, thank you.

14 Mr. Cooper?

15 MR. COOPER: No questions.

16 JUDGE PRIDGIN: Thank you.

17 Commissioner Murray?

18 COMMISSIONER MURRAY: Thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good afternoon, Ms. Schad.

21 A. Good afternoon.

22 Q. On pages 1 and 2 of your Surrebuttal
23 Testimony, you were asked a question and you answered on
24 page 2 regarding the proration of the depreciation rates that
25 Mr. Loss recommends to account for the high reserve ratios in

1 Staff's calculations.

2 On page 2 you answer that, Staff believes that
3 the depreciation rates should reflect the average service life
4 and net cost of removal that water and sewer plant assets and
5 the respective functions experience. And you go on to say
6 that, In the recommendations, Staff identifies both the
7 average service life and the net cost of removal percentage
8 that are appropriate for each plant account.

9 On Schedule 1-1 of your Rebuttal Testimony,
10 you set out the rates for water. And I see the depreciation
11 rate and the average service life in years. How can we tell
12 where you're identifying the average -- I see where you
13 identify the average service life, but how can we tell where
14 you identify the net cost of removal percentage?

15 A. These are part of our generic rates. And to
16 the extent if we've seen a net salvage percentage in the
17 accounts, we would have a different column. We generally have
18 not been seeing any in -- in the small water and sewer
19 companies.

20 Q. So you're saying that none of these accounts
21 would either have a negative or a positive net salvage?

22 A. I believe that some of them have a positive
23 salvage if I was to take a look at these -- well, not in this
24 particular company. For instance, this -- this company
25 doesn't have any transportation equipment. We have more

1 accounts then these in our generic set of rates and they would
2 be -- if there was a -- in those other accounts, may be some
3 where there are some negative salvage percentages or positive
4 salvage percentages, but not in the ones particularly
5 applicable to this company.

6 For instance, this company doesn't have a
7 transportation account, which we generally see a positive one.
8 And it's -- they don't have anything posted to that account,
9 they don't use that account.

10 Q. Now, is that the same in the water?

11 A. Yes. The water and the sewer.

12 Q. Water and sewer?

13 A. Right.

14 Q. So in your testimony here where you say you
15 identify both the average service life and the net cost of
16 removal percentage, you're speaking generically, not that you
17 did so in this case?

18 A. I -- I didn't see any in this case. We can
19 take the generic one and work with them to the extent it's
20 appropriate for a company. We just, in this particular
21 company, did not see any and we did not make any adjustment
22 for -- to that extent then.

23 Q. All right. And does it appear that -- I
24 should have asked the company witness this, but does it appear
25 that Algonquin did not note any salvage values either?

1 A. Correct.

2 Q. Okay.

3 A. Well, and part of our dilemma was in looking
4 back, we're not seeing retirements posted like we think that
5 there are retirements occurring so we -- we have some booking
6 issues, I guess.

7 Q. All right. Now, the reserve ratio that
8 Mr. Loss was expressing concern about, for example, if you
9 look at computer equipment and software where it shows
10 134.7 percent on his Schedule LWL-3 --

11 A. Yes.

12 Q. -- page 2 of 2 in his updated -- it's actually
13 page 1 of 1 in my updated, but I'm not sure how it shows on
14 yours.

15 A. All right.

16 Q. The fact that there is over 100 percent in
17 that reserve ratio, what does that mean to you?

18 A. The first thing is that's his determination of
19 a reserve ratio based on what his -- what -- based on what he
20 has as his plant balance and what he has as his reserve. It's
21 not necessarily what Staff would have -- have as the
22 depreciation reserve ratio. Those are the company's
23 determinations.

24 Q. Do you show anywhere where you show Staff's
25 reserve ratio?

1 A. I don't believe I have those in a sheet, no.

2 Q. Is that an important calculation, in your
3 opinion?

4 A. I always take a look at it. I think we
5 generally do consider that important to look at.

6 Q. And in what way is it important?

7 A. Well, we can help identify what we're seeing.
8 For instance, if -- if it is high, as we -- or relatively
9 high, our aggregate -- actually I think in my work papers, I
10 had about 46 percent aggregate all company, all accounts.

11 What we're taking into effect there is if we
12 don't have a couple of accounts, 343 and 345 on the water
13 side, for instance, with plant dollars in those accounts,
14 which are the long-lived accounts, more like a 40- to 50-year
15 life. So by default, if you're just working with plant
16 accounts that have shorter lives, like your pumping equipment,
17 then your reserve ratio is going to look higher.

18 Q. And that indicates -- is it true that it
19 indicates that the equipment -- at least some of the equipment
20 is already beyond the indicated service life?

21 A. Well, not necessarily. If -- like if you had
22 pumping -- let's say if you had pumping equipment and you were
23 50 percent reserve, it would mean that you're about half of
24 its life.

25 Q. What does it mean if it's 100 percent reserved

1 or 120 percent reserved?

2 A. Well, it would mean that you have collected
3 all the dollars. On -- the other concern that we have is that
4 because we feel there's been a fair amount of plant maybe that
5 has not been retired, those dollars would continue to
6 depreciate, building out the reserve.

7 And we think that given the opportunity, if
8 the company could get all of its retirements actually booked
9 on the book, that that would help bring down that reserve
10 ratio and it would not be as high as what it's represented
11 today.

12 For instance, on the computer equipment, in
13 talking to the staff there at the company, they had purchased
14 a new computer in about 2004 and that was already taken out of
15 service when the new company took them over, but yet had not
16 been retired off the books even though it was a relatively
17 short-lived purchase.

18 Q. Okay. When a reserve ratio reaches
19 100 percent, does that indicate that the plant -- that that
20 account has been fully depreciated --

21 A. Yes.

22 Q. -- or not?

23 It does?

24 A. Yes.

25 Q. So at that point there is no more expense,

1 depreciation expense?

2 A. It will continue until the company comes back
3 in if, in fact, that is the reserve.

4 Q. Okay. But we have a -- if we have a proposal
5 by Staff that shows a reserve ratio of 100 percent or greater
6 for certain accounts, as Mr. Loss calculated them, would that
7 indicate that Staff is saying there should be no depreciation
8 expense for that account?

9 A. If, in fact, that is a correct reserve ratio,
10 if it was at 100 percent or more, if Staff felt like it was
11 and all items had been retired that probably should have been,
12 Staff would stop the depreciation.

13 Q. And that would also mean that there's nothing
14 in rate-base for that particular equipment or property.
15 Right?

16 A. Right.

17 Q. So there's nothing in rate-base and there's no
18 earning for expense?

19 A. Correct.

20 Q. When you look at a service life, do you
21 normally consider that computer equipment and software has an
22 approximate seven-year service life?

23 A. I would consider that to be approximate. We
24 might see some five years, some eight, but I would say it's
25 somewhere in the five to eight years is what we'd be seeing on

1 a small company.

2 Q. And which calculation comes first, the service
3 life and then the depreciation expense rate?

4 A. First you have a life and then given whatever
5 your net salvage percentage is, then you determine a rate.

6 Q. So if Staff had used a rate -- a service life
7 of five years for computer equipment, for example, the
8 depreciation expense rate would have been higher than
9 14 percent?

10 A. It would have been 20 percent.

11 COMMISSIONER MURRAY: Okay. I think that's
12 all I have. Thank you.

13 JUDGE PRIDGIN: Commissioner Murray, thank
14 you.

15 Commissioner Appling?

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. How are you doing?

18 A. Good.

19 Q. Good. Do you have your Direct Testimony in
20 front of you?

21 A. Yes.

22 Q. Okay. I'm a little confused. Let's go to
23 page 3 there. And maybe I don't have all the exhibits that I
24 need. Probably missing one piece of paper here. And the
25 question down there on depreciation, there's one, two, three

1 questions I think. Question number one, What are the
2 depreciation rates as shown in Schedule 2? I probably don't
3 have Schedule 2 attached to this Direct Testimony. But,
4 Rosella, what is the depreciation on this case? What are you
5 recommending here?

6 A. I'm --

7 Q. Talk to me.

8 A. I'm recommending depreciation rates that
9 would -- we would apply to small water and sewer companies.

10 Q. And what is that? What is that rate? What is
11 the average rate that you apply to sewer company?

12 A. Well, it's by account. I don't know what the
13 aggregate would be.

14 Q. Right.

15 A. But we do it by account.

16 Q. Okay. Do you remember what you had on this --
17 on Algonquin? Is that on Schedule 2?

18 A. It's on Schedule 2-1, Schedule 2-2.

19 Q. Okay. And that's the average for that
20 company, for this company, I mean for --

21 A. We would -- we would find it representative
22 for this company. And if we had needed to, we would have made
23 some modifications to any given account, if necessary.

24 Q. Do you feel all right with the fact that they
25 don't have all of their data that they needed at the

1 beginning? You feel okay with your recommendation here?

2 A. I think my -- I think the rates are -- are
3 applicable and good. I think that we do have to work with
4 trying to get some retirements posted on the company. I think
5 the reserve ratio will look quite a bit different once we do
6 that.

7 COMMISSIONER APPLING: Okay. Thank you.

8 JUDGE PRIDGIN: Commissioner Appling, thank
9 you. I have no questions.

10 Any recross, Ms. Baker?

11 MS. BAKER: No.

12 JUDGE PRIDGIN: Mr. Cooper?

13 MR. COOPER: Yes, your Honor.

14 RE-CROSS-EXAMINATION BY MR. COOPER:

15 Q. Ms. Schad, you said that your overall reserve
16 ratio I believe was 46 percent; is that correct?

17 A. I believe that's what I had earlier when I
18 took just a small section of trying to look at the company.

19 Q. Okay. I assume that if it's overall
20 46 percent, you would have had some accounts that would have
21 been greater than 46 percent?

22 A. I -- I don't think I looked at it per se by
23 the account. I just took the whole -- the whole company and
24 was looking at how much was in the reserve to the plant.

25 Q. So you didn't do account by account like

1 Mr. Loss had done to determine those --

2 A. No.

3 Q. -- those account-specific reserve ratios?

4 A. Oh, I did not.

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

6 your Honor.

7 JUDGE PRIDGIN: Mr. Cooper, thank you.

8 Any redirect?

9 All right. Thank you. Ms. Schad, thank you

10 very much.

11 All right. Is Mr. Vesely ready to come back

12 to the stand on depreciation? Is Mr. Vesely here?

13 MR. COOPER: There's not much, if there is

14 anything, I can find in his testimony about depreciation so --

15 MS. BAKER: I don't have any.

16 MR. COOPER: While he's listed on the list of

17 issues, I --

18 MS. BAKER: I don't have any -- I don't have

19 any cross.

20 JUDGE PRIDGIN: Okay.

21 MR. COOPER: I have no questions for him.

22 JUDGE PRIDGIN: Okay. You have no cross.

23 Does the Bench need a moment to see if you have any cross on

24 this issue?

25 If it's all right with the parties then, we'll

1 dispense with recalling Mr. Vesely.

2 All right. We would then be ready to go on to
3 capital structure and return on equity and Mr. Loss. Anything
4 from counsel before he's tendered for cross on these issues?

5 MR. BOUDREAU: Yes, please.

6 JUDGE PRIDGIN: Mr. Boudreau?

7 MR. BOUDREAU: If it pleases the Commission, I
8 just have a couple of opening comments, then maybe just one or
9 two clarifying questions for Mr. Loss and then I'll tender him
10 for cross.

11 JUDGE PRIDGIN: Yes, sir.

12 MR. BOUDREAU: We're dealing here with capital
13 structure and cost of capital. It really boils down to two
14 issues between the company and the Staff, the first issue
15 being capital structure itself.

16 Algonquin Water Resources is an LLC, which is
17 a limited liability company, which is a subsidiary of
18 Algonquin Power Income Fund. Algonquin Water Resources has no
19 capital structure of its own and is financed solely through
20 equity infusions from its parent.

21 AWR has a capital structure of 42-to-58 debt
22 to equity based on its parent capitalization as of
23 September 30th, 2006, which is reflected in the testimony of
24 Mr. Loss in his Rebuttal, page 6. Staff has proposed a
25 hypothetical capital structure of 52-48 debt to equity.

1 Algonquin thinks that it makes sense to look
2 to the parent company's capital structure as of
3 September 30th, 2006, the end of the updated test year, as the
4 best determinant of the actual capital costs for the company;
5 whereas, Staff's proposed capital structure looks to different
6 companies for guidance.

7 The company's 42-58 capital structure's within
8 a broad area of reasonableness and just as a point of
9 comparison, the Commission recently examined KCPL, which had a
10 45-55 ratio of debt to equity. So I would suggest that that's
11 reasonably comparable to the company's capital structure as of
12 September 30th, 2006.

13 The other issue in this category is return on
14 equity. While the Staff and the company are fairly close on
15 the cost of debt capital, there's a wide disparity on return
16 on common equity. The company recommends a return on equity
17 within a range of 11.25 to 12 percent; whereas, Staff is
18 recommending 8.06 to 9.06.

19 The company believe that's Staff's
20 recommendation seriously understates the risk of investing in
21 this company, which is a very small utility company with a
22 very small customer base.

23 The company's case on this issue is presented
24 in the testimony of Mr. Loss. And at this point, I just have
25 a couple of questions to put to Mr. Loss before I tender him.

1 LARRY W. LOOS testified as follows:

2 DIRECT EXAMINATION BY MR. BOUDREAU:

3 Q. Mr. Loss, I noted on page 6 of your Rebuttal
4 Testimony that Algonquin Power Income Fund's capital structure
5 as of September 30th, 2006 is 58 percent equity and 42 percent
6 long-term debt; is that correct?

7 A. Yes.

8 Q. Have you calculated a cost of capital for the
9 company based on that capital structure?

10 A. Yes. Including cost of debt at that same --
11 same time, overall cost of capital rate of return is
12 9.64 percent.

13 MR. BOUDREAU: That's all the questions I have
14 for the witness. I'll tender him for cross. Thank you.

15 JUDGE PRIDGIN: Mr. Boudreau, thank you.

16 Ms. Baker?

17 CROSS-EXAMINATION BY MS. BAKER:

18 Q. Isn't it true that Algonquin Power is a
19 Canadian company, not an American publicly traded company?

20 A. That's true. It is traded on trial
21 DocExchange, yes.

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

23 JUDGE PRIDGIN: Thank you.

24 Mr. Krueger?

25 MR. KRUEGER: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. KRUEGER:

2 Q. Good afternoon, Mr. Loss.

3 A. Good afternoon.

4 Q. Your undergraduate degree is in engineering?

5 A. Yes.

6 Q. Did you take any classes in financial analysis
7 in your undergraduate program?

8 A. I believe I did.

9 Q. Can you explain, or do you recall?

10 A. As -- as an undergraduate, I was in the honors
11 program and early on I became interested in -- in business
12 school. And so I was able to take a number of electives in --
13 in business as an undergraduate and in preparation for my MBA
14 program.

15 Q. And then you did receive an MBA?

16 A. Yes.

17 Q. What kind of classes in financial analysis did
18 you take then?

19 A. Basic financial analysis.

20 Q. One class?

21 A. It may have been two. I don't know. I don't
22 recall.

23 Q. Have you ever taught classes in financial
24 analysis?

25 A. Not outside the workplace.

1 Q. Did you have any other advanced study in the
2 field of financial analysis other than your MBA program?

3 A. Other than beyond experience, no.

4 Q. Have you ever written articles on the subject
5 of financial analysis?

6 A. No.

7 Q. Do you belong to any professional
8 organizations that are related to financial analysis or cost
9 of capital?

10 A. No.

11 Q. How often have you testified as an expert on
12 financial analysis and cost of capital issues?

13 A. I believe it's been about five times.

14 Q. Have you ever testified on those issues when
15 that was your only issue?

16 A. No.

17 Q. I'm sorry?

18 A. No.

19 Q. Thank you. Have you ever presented expert
20 testimony before this Commission on the subject of financial
21 analysis?

22 A. No.

23 Q. In your Direct Testimony, you did not provide
24 any testimony about the returns on equity that have been
25 ordered or agreed upon in other states, did you?

1 A. I don't believe I did.

2 Q. In fact, you didn't cite a single case with
3 regard to the cost of capital?

4 A. That's correct.

5 Q. Nor did you refer to or cite decisions in
6 other cases in your Rebuttal Testimony?

7 A. That's correct.

8 Q. Or in your Surrebuttal Testimony?

9 A. Correct.

10 Q. You did not rely on the decisions in other
11 states?

12 A. Well, I'm certainly aware of the decisions in
13 other states and the standards that are posed. They're well
14 known and pretty much standard in the industry. I didn't
15 consider it would be necessary to go through that litany.

16 Q. In your Direct Testimony, you did not cite a
17 single treatise or other academic work?

18 A. No, I did not.

19 Q. Nor in your Rebuttal or Surrebuttal Testimony?

20 A. I did not.

21 Q. You relied instead exclusively on your version
22 of a discounted cash flow method for determining proper return
23 on capital?

24 A. My application, yes.

25 Q. Now, in doing this, you selected a group of

1 comparable companies as proxies for Algonquin?

2 A. With respect to return on equity, yes.

3 Q. Just as Mr. Barnes did?

4 A. Yes.

5 Q. And then you tried to determine the proper ROE
6 for those comparable companies?

7 A. Based on that proxy group, I developed my
8 recommended rate of return on equity.

9 Q. And then you set your recommendation for
10 Algonquin based upon the ROE for those comparable companies?

11 A. Yes. In consideration of the risk --
12 Algonquin's relative risk.

13 Q. And that's essentially the same approach that
14 Mr. Barnes used?

15 A. Yes.

16 Q. I'd like to call your attention to
17 Schedule LWL-4 in the Direct Testimony that you filed in this
18 case. I'm referring now to the Direct Testimony, not the
19 updated.

20 A. Okay.

21 Q. I believe that schedule consists of six pages
22 and I'd call your attention to sheet 1 of 6. That shows a
23 common equity percentage as of September 30, 2005 of
24 70.72 percent. Correct?

25 A. Actually, the capital structure is based on

1 2004 calendar year. It's noted in the following page.

2 Q. I'm sorry. It's noted where?

3 A. On the following page.

4 Q. Oh, okay.

5 A. Reference, Algonquin Power Income Fund, 2004
6 Annual Report.

7 Q. So that capital structure was accurate as of
8 December 31, 2004, not December 30, 2005?

9 A. Yes.

10 Q. Then in your Rebuttal Testimony on page 6, at
11 lines 12 to 16 you state that the capital structure is based
12 on actual capital structure as of December 31, 2005?

13 A. In my update, yes.

14 Q. Well, I'm referring to your Rebuttal Testimony
15 now.

16 A. Yes.

17 Q. Okay.

18 A. And in -- that reference is to my updated
19 testimony.

20 Q. Okay. And you recommended a capital structure
21 of 65.18 percent equity?

22 A. That is what I have in the update, yes.

23 Q. So as of December 31, 2005, the common equity
24 was 65.18 percent?

25 A. Yes.

1 Q. Then on lines 18 to 20 you state that the
2 common equity was 65.18 percent. I'm sorry. You state that
3 the capital structure was 58.21 percent equity as of
4 September 30, 2006?

5 A. Yes.

6 Q. So the equity percentage has been declining
7 then from 70 percent at the end of 2004 to 65 percent in
8 December 2005 then to 58 percent in September of 2006?

9 A. There has been a decline, yes.

10 Q. Okay. And you chose 65.18 percent?

11 A. That was -- that was the -- the value that I
12 had available when I prepared my update.

13 Q. Okay. But you are now recommending that that
14 be reduced to the 58 percent figure?

15 A. Consistent with the update September 30, 2006,
16 with the information we have today, yes.

17 Q. Okay. Now, I'd like to ask you to compare two
18 possible situations. One where a company has a common equity
19 percentage of 50 percent and another where the company has a
20 common equity percentage of 70 percent. All other things
21 equal, would investors require a higher ROE to invest in the
22 company that has a 70 percent equity percentage or would they
23 require a lower ROE for that company?

24 A. Traditionally, I believe they would require a
25 higher ROE.

1 Q. A higher ROE even though the equity percentage
2 is higher?

3 A. There's a -- there's a greater level of --
4 of -- let me see, I might have that reversed. I do. There's
5 a relatively less risk at 70 percent than at 50 percent.

6 Q. Because they stand in line behind fewer
7 debtors?

8 A. Yes.

9 Q. Okay. And would you agree that a 70 percent
10 equity percentage is very high for a regulated water and sewer
11 utility company in this part of the United States?

12 A. I believe that's fair.

13 Q. Would you agree that even 60 percent is high
14 for regulated water and sewer utilities in this part of the
15 United States?

16 A. We're getting subjective with respect to
17 unusual. There are probably some but most likely not the
18 majority.

19 Q. Now, you determined the ROE based on an
20 analysis of comparable companies?

21 A. Yes.

22 Q. Do you know what their equity percentages are?

23 A. About 50/50 from average.

24 Q. Okay. When you came to your final conclusion
25 in regard to the recommended ROE for Algonquin, did you take

1 into account the fact that you were basing it on an equity
2 percentage that's higher than the equity percentage of your
3 comparable companies?

4 A. I considered relative risk and that would be
5 one factor.

6 Q. Okay. Nonetheless, you came to a conclusion
7 that Algonquin required a higher ROE than these companies?

8 A. The high end of the -- of the range, yes.

9 Q. Now, I want to talk about how you developed
10 your recommendation on ROE to make sure that I understand it.
11 Based upon the Direct Testimony you filed -- and, again, I'm
12 not referring to the updated, but to the Direct -- you began
13 with a group of eight comparable companies?

14 A. I believe so. I'm not seeing the eighth one,
15 but eight.

16 Q. I believe in your testimony you mentioned York
17 which you had in group two and then eliminated; is that right?

18 A. Yeah. And that's what I'm not seeing on my
19 schedule.

20 Q. All right. So you had two groups of --
21 initially two groups of four companies and then eliminated
22 York from group two?

23 A. Yes.

24 Q. And the difference between group one and group
25 two is that group two had less data available?

1 A. Less comprehensive data, yes.

2 Q. Now, I call your attention to sheet 4 of 6 of
3 schedule LWL-4 --

4 A. Okay.

5 Q. -- which you use to calculate your dividend
6 yield. Correct?

7 A. Yes.

8 Q. And you calculate that to be 3.00 percent to
9 6.25 percent?

10 A. Yes.

11 Q. Now, I want to understand how you came to that
12 conclusion. For each company in group one you attempted to
13 measure or estimate average annual yield in several ways?

14 A. Correct.

15 Q. And then you calculated an average of those
16 measures of average annual yield?

17 A. A median value as opposed to an average.

18 Q. Okay. Tell me what you mean by "median."

19 A. Well, there's two -- there's two
20 fundamental -- or I consider it to be very fundamental methods
21 or measures of central tendency. One is average and one is
22 median. Median value says that I've got 50 percent of the
23 values higher than the median value and 50 percent lower. The
24 average is simply the arithmetic average of all of the values,
25 in this case, eight.

1 Q. Okay. Now, looking then at group one,
2 column B, how did you select 3.05 as the median? That appears
3 on line 6.

4 A. Right. There's four values. There are two
5 values in excess of 3.05, there's two values below 3.05. 3.05
6 was selected based on the two central values, 3.6 and 2.5.

7 Q. Okay. So it would have to be between 2.5 and
8 3.6 in order for half of them to be above and half below?

9 A. That's correct.

10 Q. But how did you pick the exact spot of 3--

11 A. That's the -- that's the average of those two
12 central values.

13 Q. Okay. And so then the medians that you
14 calculated for annual average yield are shown on line 6,
15 columns B through G to the extent that they're available?

16 A. Yes.

17 Q. And then, likewise, for each company in group
18 two you followed the same process?

19 A. Yes.

20 Q. And calculated the medians for each of those?

21 A. Yes.

22 Q. And those medians are shown on line 11,
23 columns B through G?

24 A. Yes.

25 Q. And then on line 12, you calculated a combined

1 median?

2 A. Yes.

3 Q. How did you determine a combined median?

4 A. That would be the median of the seven

5 individual values of the seven companies regardless of group.

6 Q. And next, for each company in group one, you

7 attempted to measure or estimate yield on average book in

8 several ways?

9 A. Based on several values, not in several ways.

10 Q. Okay. And so for each of the companies in

11 group one you came up with six measures of yield on average

12 book?

13 A. Six separate measures based on different

14 periods of analysis, yes.

15 Q. Right. Which are shown on line 6, columns H

16 through M?

17 A. Yes.

18 Q. And similarly, you calculated medians for the

19 companies in group two?

20 A. Yes.

21 Q. And then calculated a combined median?

22 A. Yes.

23 Q. Which is shown on line 12, columns H

24 through M?

25 A. Yes.

1 Q. Then from that you go to DCF dividend yield of
2 3.00 percent to 6.25 percent. How did you get from line 12 to
3 line 15?

4 A. The dividend yield, if we examine the values
5 above, we'll see there's basically two groups. The average
6 annual yield is in the range of 2.95 to 3.5 percent. The
7 yield on average book is in the range of -- the medians are in
8 the range of 6.31 to 7.58. Based on the examination of those
9 two ranges, that's how I selected the range that I put down on
10 line 13.

11 Q. Was that by an averaging process or just by
12 kind of visual observation?

13 A. By inspection.

14 Q. Okay. And what is the difference between
15 average annual yield and yield on average book?

16 A. Average annual yield is the dividend divided
17 by an average price. Yield on book is the dividend divided by
18 book value of the stock.

19 Q. Yield is dividend divided by average price?

20 A. Yes.

21 Q. And by that you mean market price?

22 A. Yes.

23 Q. I'd call your attention to page 31 of your
24 Direct Testimony.

25 A. Okay.

1 Q. Before I ask this question, let me ask, do you
2 have an opinion on which yield figure is more relevant, the
3 yield based on market or on book?

4 A. The investor tends to look at market yield;
5 however, since we're applying this to an original cost, in
6 order to produce that market yield requires a book measure.

7 Q. Okay. Would you now read the answer you gave
8 on line 17 to 23 on page 31?

9 A. Do I read aloud?

10 Q. Yes, please.

11 A. The theory underlined, the DCF model, is the
12 value of equity capital is equal to the present value of the
13 expected future stream of net cash flows. The theory suggests
14 that when an investor buys a stock, the investor expects a
15 return derived from cash flows received in the form of
16 dividends plus depreciation in market price, paren, the
17 expected growth rate, end paren. Thus, the dividend yield on
18 market price plus a growth rate equals return on equity
19 expected by investors.

20 Q. Okay. That's fine. Thank you. So you stated
21 there that the dividend yield on market price is what is used.

22 A. It's what the investors look at. But is
23 required -- the book value is required because we're using our
24 original cost.

25 Q. Is that consistent with DCF -- the theory

1 underlying the DCF model?

2 A. I believe it's consistent in the application.
3 It's not in -- consistent with the broad theory, but in the
4 application we have in regulation, original cost regulation, I
5 believe it is.

6 Q. And broad theory though, is that dividend
7 yield on market price -- the dividend yield is based on market
8 price?

9 A. Yes. Dealing with the broad markets, yes.

10 Q. Okay. Now, going back to Schedule LWL-4,
11 sheet 5 of 6.

12 A. Okay.

13 Q. Actually, I think that summary there consists
14 of pages 5 and 6; is that right?

15 A. It does.

16 Q. And you use that to calculate your DCF growth
17 rate?

18 A. Yes.

19 Q. Which you ultimately determined to be
20 6.00 percent to 9.00 percent?

21 A. Yes.

22 Q. I want to understand how you arrive at that
23 number. So you, again, list the eight companies?

24 A. Yes.

25 Q. And put them into the same two groupings?

1 A. Yes.

2 Q. And in the first portion, which was lines 1

3 to 12, you attempt to measure or forecast cash flow per share.

4 Correct?

5 A. Yes.

6 Q. And then you determine a median for group one?

7 A. Yes.

8 Q. And a median for group two?

9 A. Yes.

10 Q. And a combined median which is on line 13?

11 A. Again, yes.

12 Q. Then you attempt to measure or forecast

13 earnings per share, which is the next section of the sheet

14 there, lines 14 to 26?

15 A. Yes.

16 Q. Dividends per share on lines 27 to 40?

17 A. Yes.

18 Q. Price per share, which is on lines 41 to 54,

19 which is on actually sheet 6?

20 A. Yes.

21 Q. And book value per share, which is on lines

22 41 to 53?

23 A. Yes.

24 Q. Now, there are data in -- there are percentage

25 rates there in several columns. Are columns C and D based on

1 market value?

2 A. No. C and D is based on historical data.

3 Q. Does the historical data have to do with

4 market or book?

5 A. It depends on the measure.

6 Q. Which one of these measures depend on market?

7 A. On cash flow per share would be a book
8 measure; earnings per share, likewise; dividends per share,
9 also book; price per share, market; and book value per share
10 is book.

11 Q. Okay. So price per share is the only one
12 that's market?

13 A. Yes.

14 Q. Okay. And does the same thing apply to
15 columns E and F?

16 A. Yes.

17 Q. Okay. Then at the bottom of -- or near the
18 bottom of page -- of sheet 6 of 6 you have a recap?

19 A. Yes.

20 Q. For cash flow per share, it shows 3.25 percent
21 dash 4.75 percent to 8.25 percent. What is the meaning of
22 those numbers?

23 A. Basically the -- I see a range of 3.25 to 4.75
24 based on historical trends and up to 8.25 based on forecast.

25 Q. Okay. So for each of those five measures

1 then, the number that is to the right-hand side of the word
2 "to" has to do with forecast?

3 A. Yes, as I recall.

4 Q. And the number to the left-hand side is a
5 range for the historic?

6 A. As I recall, yes.

7 Q. Okay. And how did you determine those numbers
8 that go on the recap?

9 A. Based on inspection on the values above.

10 Q. Okay. Not a calculation, just inspection?

11 A. Yes.

12 Q. Now, moving back to Schedule LWL-4, sheet 3 of
13 6, did you show there the dividend yield that we've talked
14 about --

15 A. Yes.

16 Q. -- on line 1?

17 A. The ranges that I show in sheet 4, yes.

18 Q. And the growth rate goes on line 2?

19 A. Yes.

20 Q. And then you show a DCF range on line 3?

21 A. Yes.

22 Q. And that is simply the sum -- the lower part
23 of the range is the sum of the lower numbers and the higher
24 part of the range is the sum of the higher numbers?

25 A. Yes.

1 Q. Then on line 4 for the mid-range, you've added
2 the low number for yield to the high number for growth?

3 A. Yes.

4 Q. And the high number for yield to the low
5 number for growth?

6 A. Yes.

7 Q. Okay. And then that gives you what you call
8 the mid-range?

9 A. Yes.

10 Q. Okay. Is that procedure described in any of
11 the textbooks or articles that you're aware of?

12 A. Not that I recall seeing any place.

13 Q. Okay. So is this an analysis of your own
14 or --

15 A. Well, it's -- it's a consideration of -- of
16 making sure that I have things in equilibrium. The 3 percent
17 value and the 9 percent value I think are based on market
18 measures; whereas, the 6 percent and 6 percent value are based
19 on book measures. To be consistent then, I can combine those
20 measures. The broad range 9 percent to 15 percent, there's
21 some dislocation between the values that I've added together.

22 Q. Is this a type of analysis that's widely used?

23 A. As far as I know, not.

24 Q. Okay. Do you know of anybody else that uses
25 it?

1 A. I don't recall seeing anybody.

2 Q. And then for your single-point estimate, tell
3 me how you chose that.

4 A. Well, I found the -- the range of -- the
5 mid-range of 12 to 12.25. I selected a single-point estimate
6 of 12.50 recognizing what I considered to be the extremely
7 significant risk associated with the small size of Algonquin,
8 the extremely high concentration of sales in a single
9 customer, that customer also being extremely risky. And
10 those -- those combinations I considered as well as equity
11 ratios that 12.5 percent would be appropriate given the 12 to
12 12.25 percent range, I came up with the mid-range.

13 Q. What led you to conclude that those are risky
14 features of the company?

15 A. Well, I don't -- I don't recall ever -- ever
16 seeing a utility that has sales of close to 80 percent or in
17 excess of 80 percent concentrated with one customer, 7--
18 75 percent of its revenues within -- with one customer. And
19 then that customer being in the business that I consider to be
20 extremely risky.

21 Q. So it's because it's nothing you've seen
22 before?

23 A. No. I'm -- there may be one out there, but
24 I've never encountered one.

25 Q. But the reason you regard it as risky is

1 because you've never seen it before?

2 A. No. Because I -- based on my experience in
3 the time-share industry, I consider it extremely risky as well
4 as a concentration of sales and business with a single
5 customer.

6 Q. Did you read Mr. Barnes' Direct Testimony in
7 this case?

8 A. I did some time ago, yes.

9 Q. In his Direct Testimony, page 2, lines 10
10 to 11 he states, Thus, the cost of common stock equity K is
11 equal to the expected dividend yield, D-1 divided by P-0, plus
12 the expected growth in dividends, G, continuously summed into
13 the future. Do you agree with that statement?

14 A. I agree that that's the fundamental DCF
15 formula.

16 Q. Okay. So according to the fundamental DCF
17 formula, when you're trying to estimate growth, you're trying
18 to determine the expected growth of dividends continuously
19 summed into the future?

20 A. Yes. And, you know, to reach that, there's
21 some fundamental underlying assumptions.

22 Q. Okay. And when financial analysts use growth
23 in market value, they're only using it as a proxy for the
24 estimated growth and dividends; is that right?

25 A. The -- the -- I look at it the other way

1 around. The growth of the dividends is the proxy for the
2 growth of the price.

3 Q. Well, what the investor is actually looking
4 for and the way the investor evaluates his return is the
5 dividends continuously summed into the future, is it not?

6 A. I don't. I look at -- I look at what I think
7 the anticipated price is going to be because I don't plan on
8 keeping that stock forever.

9 Q. But the reason that somebody else will buy the
10 stock is because they are expecting dividends into the
11 indefinite future. Is that not right?

12 A. I -- I -- I fail to -- I can't understand that
13 because we have an awful lot of companies that don't pay
14 dividends.

15 Q. But they are, in any event, expecting to have
16 a return on their investment based upon the earnings of the
17 company?

18 A. Anticipation of growth in price, which
19 traditionally has been fuelled by growth and earnings of the
20 company.

21 Q. Now, I want to move forward to your updated
22 Direct Testimony, Schedule LWL-4, sheet 1 of 1. Actually, I
23 think there are five sheets there, all of them labeled sheet 1
24 of 1. And I'm talking about the fourth one. Did you find
25 that?

1 A. Yeah.

2 Q. It's called Dividend Yield Summary.

3 MR. BOUDREAU: If I could be so bold, could
4 you direct to me to what -- I'm not sure I'm following.

5 MR. KRUEGER: It's the updated Direct
6 Testimony.

7 MR. BOUDREAU: Updated. Sorry about that.

8 THE WITNESS: And we're on Dividend Yield?

9 BY MR. KRUEGER:

10 Q. Yes. And that's set up like sheet 4 of the
11 Direct Testimony which we've been talking about.

12 A. Yes.

13 Q. Except now you only have copies from group
14 one.

15 A. Yes.

16 Q. Why did you eliminate the companies from group
17 two?

18 A. The group two companies were no longer
19 reported by Value Line.

20 Q. Okay. And then the next page, sheet -- which
21 is actually the fifth and last sheet of that updated LWL-4 is
22 the compound growth rates summary. Correct?

23 A. Yes.

24 Q. Which is also set up like the corresponding
25 pages in your Direct Testimony?

1 A. Yes.

2 Q. And, again, you've eliminated the group two
3 companies for the same reason?

4 A. No longer reported.

5 Q. Okay. So now you're relying on the data from
6 four companies?

7 A. Yes.

8 Q. Just as Mr. Barnes is?

9 A. Yes.

10 Q. And, in fact, your four companies are the same
11 as his except that -- except that you have, I believe,
12 Southwest Water and he has Middle Six?

13 A. Yes.

14 Q. Okay. Now, in your updated Direct Testimony,
15 the numbers on dividend yield are very similar to the ones you
16 came up with on your Direct Testimony except a little lower.
17 Correct?

18 A. Yes.

19 Q. The range there is 2.5 percent to
20 5.75 percent, but it's a result of the same kind of analysis
21 just with newer information?

22 A. That is correct.

23 Q. And also for the compound growth rate summary,
24 the numbers are similar but a slightly lower range again?

25 A. That's correct.

1 Q. 5.5 percent to 9.5 percent and then that's
2 based just because there's been a change and updated
3 information?

4 A. Yes.

5 Q. And so then from that you add those two
6 together and come up with 11.25 percent to 12.00 percent for
7 your range in the same way that you did in Direct. And your
8 single point estimate is 12.00 percent instead of 12.5?

9 A. Yes.

10 MR. KRUEGER: Okay. Thank you. That's all
11 the questions I have.

12 JUDGE PRIDGIN: Mr. Krueger, thank you.

13 Any Bench questions? Commissioner Murray?

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. I don't have many, but in terms of the growth
16 rate that you used, how did you arrive at your growth rate?

17 A. I examined historical and forecast growth in a
18 number of measures from the four of which were what I
19 considered book measures, earnings per share, cash flow,
20 dividends per share, as well as growth in price per share
21 being a market measure.

22 And it's shown in -- on -- if we have the
23 numbers, the fifth sheet -- the fifth sheet of the update
24 LWL-4 is -- is those analysis. The numbers that are shown on
25 lines 1 through 5 and so forth are based on a growth from the

1 1990 through 1996 period to 2001 to 2005, the various periods
2 that are shown in the heading.

3 Q. And you indicate somewhere that in the
4 development of ROE that Mr. Barnes relies on a Nixus book and
5 market measures?

6 A. Correct.

7 Q. Whereas, you have developed a combination of
8 market measures and a combination of book measures and you've
9 come up with a range or a value for each calculation; is that
10 right?

11 A. Yes.

12 Q. And your value under one is 11.25 and with the
13 other combination is 12 percent?

14 A. Where I've eliminated the inconsistency, yes.

15 Q. There's a huge difference between your cal--
16 your values and Staff's, do you agree?

17 A. Yes. Though there's some very sided
18 similarities.

19 Q. But a range of 8.06 to 9.06 and a range of
20 11.25 to 12.0 is a great difference in ranges. Would you
21 agree?

22 A. Yes.

23 Q. And do you attribute Staff's low numbers to
24 Mr. Barnes' mixing of apples and oranges primarily?

25 A. Yes. I believe so.

1 Q. There's not really much of a difference in the
2 comparables that you both used; is that right?

3 A. No. We used the same -- basically the same
4 data set.

5 Q. So it's just basically the way that he applies
6 the numbers?

7 A. Yes.

8 COMMISSIONER MURRAY: Okay. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank
10 you.

11 Commissioner Appling?

12 COMMISSIONER APPLING: Judge, I don't think I
13 have any questions, though it was the same two pages that I
14 turned to and I think Commissioner Murray kind of cleared that
15 up.

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. I was really concerned about how you came to
18 the numbers that you did versus Mr. Barnes, the numbers that
19 he had. I think I'm pretty clear on it, but if you want to
20 just leave a little train smoke as you leave this afternoon
21 and explain it to me again, that may be helpful.

22 A. Okay.

23 Q. How you get to that? Those are pretty high
24 numbers in the water world.

25 A. If you -- if you -- if you look at sheet 3,

1 the third sheet back, you'll notice that my -- my low-end
2 range, the 8 percent, my dividend yield component of
3 2.5 percent, which is dividend yield -- in other words,
4 dividend divided by market price and I have a 5.5 percent
5 growth rate.

6 Those two values are comparable to what
7 Mr. Barnes has got. He has a range that I believe is a little
8 tad higher on growth. The growth -- the 5.5 percent growth
9 rate is primarily a book measure, it's dividends per share,
10 it's earnings per share, it's cash flow, book measures. So I
11 have -- I've got a -- a market measure of the dividend yield,
12 the dividends divided by market price and then a growth rate
13 that's based on a book measure. I consider there to be some
14 inconsistencies.

15 Likewise, if I look at the dividend yield
16 based on book of 5.75 percent and a growth rate of 9.5 percent
17 based on market price, growth and market price, I come up with
18 a high yield. But if I combine the 2.5 percent dividend yield
19 that's based on a market measure with the 9.5 percent growth
20 rate that is based on market price, which is a market measure,
21 I have 12 percent.

22 If I combine the 5.75 percent dividend yield
23 that's based on a book measure with a 5.50 percent growth rate
24 that's based on book measures, I come up with a 11.5 percent,
25 in this case, lower value.

1 And I set -- set that -- based on that, I set
2 my single-point estimate given consideration of the higher
3 risk. So the number -- the numbers -- the numbers that I show
4 in my -- in my low-range are very comparable to what
5 Mr. Barnes has got. It's only when I eliminate what I
6 consider to be inconsistencies that then I come up with the
7 higher values.

8 COMMISSIONER APPLING: Okay. Thank you.

9 JUDGE PRIDGIN: Commissioner Appling, thank
10 you. And I don't have any questions.

11 Any recross, Ms. Baker?

12 MS. BAKER: No.

13 JUDGE PRIDGIN: All right. Mr. Krueger?

14 MR. KRUEGER: No questions.

15 JUDGE PRIDGIN: All right. Redirect?

16 MR. BOUDREAU: Yes. Thank you. Just a few.

17 REDIRECT EXAMINATION BY MR. BOUDREAU:

18 Q. Mr. Loss, are you familiar with the term

19 "concentration of credit risk" as used by the SCC?

20 A. Generally, yes.

21 Q. Do you know whether the SCC requires

22 disclosure of any customer that represents more than

23 10 percent of sales as it believes that this is a risk factor

24 in the --

25 A. I don't -- I don't -- I don't know what the

1 number is. I understand there's a disclosure requirement, but
2 I don't know whether it's 10 percent or 50 percent.

3 Q. Okay. But you're aware that there's a
4 disclosure requirement as to concentration of sales in a
5 particular customer, you just don't know what the level is?

6 A. Right.

7 MR. BOUDREAU: Okay. I have no further
8 questions. Thank you.

9 JUDGE PRIDGIN: All right. Mr. Loss, thank
10 you very much. You may step down.

11 And this looks to be a pretty convenient time
12 to take a break. I'm showing the clock back there being about
13 seven or so until 3:00. Let's try to resume about 10 after
14 3:00 and we will pick up with Mr. Barnes on capital structure
15 and return on equity. Thank you. We're off the record.

16 (A recess was taken.)

17 JUDGE PRIDGIN: We're back on the record. Is
18 there anything counsel needs to bring up before Mr. Barnes is
19 sworn and stands cross on capital structure and return on
20 equity?

21 All right. Hearing nothing, Mr. Barnes, if
22 you'll raise your right hand to be sworn, please.

23 (Witness sworn.)

24 JUDGE PRIDGIN: Thank you very much, sir.
25 Please have a seat. Mr. Krueger, when you're ready, sir.

1 MR. KRUEGER: Thank you, your Honor.

2 MATTHEW J. BARNES testified as follows:

3 DIRECT EXAMINATION BY MR. KRUEGER:

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

6 A. Matthew J. Barnes.

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

8 A. I'm employed by the Missouri Public Service
9 Commission as a utility regulatory auditor three in the
10 financial analysis department.

11 Q. Did you prepare and cause to be filed an
12 exhibit that's been marked as Exhibit No. 11, Direct Testimony
13 of Matthew J. Barnes?

14 A. Yes.

15 Q. Do you have any corrections or changes to make
16 to that testimony?

17 A. Not to my knowledge, no.

18 Q. Okay. Are all the answers given therein true
19 and correct?

20 A. Yes.

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

23 A. Yes.

24 Q. Did you also prepare and cause to be pre-filed
25 in this case a document marked as Exhibit 12, Rebuttal

1 Testimony of Matthew J. Barnes?

2 A. Yes.

3 Q. Do you have any corrections or changes to make
4 to that testimony?

5 A. No. Not to my knowledge.

6 Q. Are all the answers given there true and
7 correct?

8 A. Yes.

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

11 A. Yes.

12 Q. Did you also prepare and cause to be pre-filed
13 in this case a document entitled -- document identified as
14 Exhibit 13 and entitled Surrebuttal Testimony of Matthew J.
15 Barnes?

16 A. Yes.

17 Q. Is all the information therein true and
18 correct?

19 A. Yes.

20 Q. Do you have -- did I ask if you have any
21 corrections or changes?

22 A. I don't have any corrections, no.

23 Q. Okay. And if I asked you these same questions
24 today, would your answers be the same?

25 A. Yes.

1 MR. KRUEGER: Your Honor, I would offer
2 Exhibits 11, 12 and 13 and tender the witness for
3 cross-examination.

4 JUDGE PRIDGIN: Mr. Krueger, thank you.
5 Exhibits 11, 12 and 13 have been offered. Any
6 objection?

7 All right. Hearing no objection, Exhibits 11,
8 12 and 13 are admitted.

9 (Staff Exhibit Nos. 11, 12 and 13 were
10 received into evidence.)

11 JUDGE PRIDGIN: Cross-examination, Ms. Baker?

12 MS. BAKER: Yes.

13 CROSS-EXAMINATION BY MS. BAKER:

14 Q. Algonquin used their parent company, Algonquin
15 Power, in their calculations, but Algonquin Power is not a
16 comparable company to Algonquin Missouri, is it?

17 A. I don't believe it is, no.

18 Q. In your testimony, you stated that Algonquin
19 Power isn't organized as a typically publicly traded water
20 utility corporation, is it? Is that true?

21 A. Yes.

22 Q. Are Staff's calculations of return on equity
23 performed using the same procedures that have been approved by
24 this Commission in other water and sewer cases?

25 A. Yes.

1 Q. Do you believe that Staff's return on equity
2 calculations are fair and equitable to the ratepayers?

3 A. Yes, I do.

4 MS. BAKER: No further questions.

5 JUDGE PRIDGIN: Ms. Baker, thank you.

6 Mr. Boudreau?

7 MR. BOUDREAU: Yes, thank you. Just a few
8 questions.

9 CROSS-EXAMINATION BY MR. BOUDREAU:

10 Q. Mr. Barnes, I noticed from your testimony that
11 you have an MBA with an emphasis in accounting; is that
12 correct?

13 A. Yes, it is.

14 Q. You don't have a degree then in financial
15 analysis, per se?

16 A. No, I do not.

17 Q. Did you take some coursework that involved
18 financial analysis?

19 A. I had a few classes, yes.

20 Q. Okay. Have you published any articles or
21 books on the topic of cost of capital or rate of return?

22 A. No, I have not.

23 Q. Okay. I was looking at some of the testimony.
24 I see there's at least two cases where you filed rate of
25 return testimony. One is the recent KCPL rate case and

1 another was, I think, 2002 BPS Company rate case, telephone
2 company; is that correct?

3 A. Yes.

4 Q. You also mention a couple of cases, I think
5 one of them was Alltel and Sprint. That wasn't rate of return
6 testimony, per se, was it?

7 A. No. Those were spin-off cases.

8 Q. Okay. Did I miss any cases wherein you did --
9 other than the ones we've mentioned, where you filed rate of
10 return testimony?

11 A. I did file rate of return testimony in the
12 Atmos Energy Corporation case that's still pending before the
13 Commission.

14 Q. The current gas rate case?

15 A. Yes.

16 Q. Okay. Thank you. Let me touch first on a
17 topic of capital structure. My first question to you is, in
18 your view, is a 42-to-58 debt to equity capital structure for
19 a US water or sewer utility a reasonable capital structure for
20 rate-making purposes?

21 A. I believe that it is, yes.

22 Q. Is Staff's recommended hypothetical capital
23 structure in this case, and I believe it's 52-to-48 debt to
24 equity, is that a standard or default ratio for a regulated
25 Missouri utility? And I was just kind of wondering what the

1 source of your recommendation is?

2 A. From a capital structure, you want --

3 Q. Yes.

4 A. -- the source of that?

5 Q. Yes.

6 A. I -- what I did is -- to develop the debt and
7 equity portion of the capital structure, I looked at my
8 comparable groups and used their capital structure and used
9 the average of that.

10 Q. Okay. I believe on page 6 of your Surrebuttal
11 Testimony you mention with respect to the issue of the
12 company's suggestion that the Commission look to its parent
13 company's capital structure, that Missouri-American Water
14 Company in its last rate case did not recommend the use of its
15 parents' capital structure. Do you see that?

16 A. Is that on line -- page 6, you said?

17 Q. I think it's page 6.

18 A. Yes.

19 Q. Okay. I think it started at line 11.

20 A. Yes.

21 Q. Would you agree with me that Algonquin Water
22 Resources has no source of capital beyond equity infusions
23 from its parent at this time?

24 A. No, I wouldn't agree with that. I believe
25 they do have access to capital --

1 Q. Okay.

2 A. -- through --

3 Q. Let me rephrase the question. Are they
4 currently capitalized exclusively through an equity infusion
5 from its parent company?

6 A. Yes.

7 Q. Okay. Now, with respect to Missouri-American
8 Water Company, that is a subsidiary of American Waterworks, is
9 it not?

10 A. Yes, it is.

11 Q. And Missouri-American Water Company does have
12 its own debt issues and its own equity in its own capital
13 structure, does it not?

14 A. I believe so, yes.

15 Q. I want to kind of circle back around to this
16 idea of the equity infusion from the company's parent in this
17 case and I want to work a little bit through a short
18 hypothetical. I want you to assume with me that Algonquin has
19 made the decision to invest a million dollars in a new plant.

20 A. Okay.

21 Q. Are you familiar with the concept of the plant
22 needing to be fully operational and used in service before
23 being included in rates?

24 A. Yes. A little bit, yes.

25 Q. Okay. And I probably won't dive a whole lot

1 deeper into this. And my point being is, would you agree with
2 me that there is some regulatory lag associated with a utility
3 company in this state building a new plant and then getting
4 that new investment recognized in rates?

5 A. Yes.

6 Q. And that delay can be up to 11 months?

7 A. Yes.

8 Q. And would you also assume with me that with
9 this additional million dollar investment in plant, then
10 Algonquin decided to finance that the same way it's currently
11 financed, which is an equity infusion from its parent?

12 A. Okay.

13 Q. Would you agree with me that it's unlikely in
14 this state with this Commission that the company would be
15 entitled or authorized to earn a return on that million dollar
16 investment based on it being a return on common equity? In
17 other words, do you think it's likely in a rate case with an
18 additional million dollar investment that it would be viewed
19 as just complete -- just common equity for purposes of
20 determining a rate of return?

21 A. I'm not for sure if I'm following your
22 question.

23 Q. Okay. Let me -- let me come at this from a
24 different angle. In this case as we've talked about, it's --
25 the company currently is funded with an equity infusion from

1 its parent.

2 A. Right.

3 Q. But you've recommended a hypothetical capital
4 structure of I think 52 percent debt to 48 percent equity;
5 isn't that correct?

6 A. Yes.

7 Q. So, in other words, your recommendation to the
8 Commission in this case is not that the company be allowed to
9 earn a return on its plant in service as if it were just
10 common equity investment and there were no debt. You're
11 imputing some debt; isn't that correct?

12 A. Hypothetically, yes.

13 Q. Yes. And my point is, that that general
14 principle would probably apply were it to infuse another
15 million dollars in equity capital into Algonquin. Would you
16 go that far with me?

17 A. Yes.

18 Q. Okay.

19 A. I think so.

20 Q. Okay. Would you also agree with me that
21 Algonquin's parent company could take that same million
22 dollars and invest it elsewhere in the capital markets?

23 A. Yes, they could.

24 Q. And it could be invested perhaps totally in
25 equity securities with an expectation it would earn a return

1 on that investment as equity?

2 A. If that's what the company chooses to do, they
3 could, yes.

4 Q. Okay. Thank you. Let me try this out on you.
5 That being the case, would you agree with me that that could
6 discourage additional investment in this company?

7 A. I don't know if I would agree with that. That
8 would be up to the management's decision based on what they
9 feel they should be able to invest into.

10 Q. Okay.

11 A. Just because they're a water company doesn't
12 mean that they may not want to invest in it.

13 Q. Okay. But as an investor -- let's say it's
14 your decision, you've got a million dollars and you can put a
15 million dollars of it into this water company or you can take
16 a million dollars of it and put it into GE. What would you be
17 inclined to do?

18 A. I may -- I may be inclined to do a little bit
19 of both.

20 Q. I want to turn to the topic of return on
21 equity for a few questions. I think on page -- let me get my
22 bearings here.

23 I think on page 8 of your Surrebuttal
24 Testimony, you mention, I believe, Professor Moran's
25 recommendation of the 9.55 ROE for a company having an equity

1 ratio of 37.5 percent?

2 A. Yes.

3 Q. And I think that was Nova Scotia Power
4 Company; is that correct?

5 A. Yes.

6 Q. And I think you testified elsewhere that
7 that's an electric utility; isn't that correct?

8 A. Yes, it is.

9 Q. Are you aware of the most recent rate case
10 decision for the Empire District Electric Company? It's
11 ER-2006-0315.

12 A. I was not assigned in that case, but I'm
13 generally familiar with it.

14 Q. Have you looked at the decision?

15 A. No, I have not. Not the entire decision.

16 Q. Have you looked at the decision as it relates
17 to cost of capital and return on equity?

18 A. I -- yes, I briefly did, yes.

19 Q. Okay. Do you recall whether or not Empire has
20 a common equity ratio of approximately 50 percent or at least
21 it was reported that way in that -- at the time of that case?
22 Do you have a recollection of that?

23 A. It -- it sounds right. I don't -- I don't
24 know right off the top of my head.

25 Q. Do you remember what the Commission authorized

1 in terms of a return on common equity in the Empire case? Was
2 it 10.9 percent?

3 A. That sounds right, yes.

4 Q. Now, in this case you've recommended a range
5 of 8.06 to 9.06; isn't that correct?

6 A. Yes.

7 Q. Do you recall whether in the Empire Report and
8 Order in the 0135 case whether the Commission stated that an
9 ROE of 9.5 percent assumes that investment in Empire involves
10 very little risk?

11 A. I don't recall that right now.

12 Q. But that report speaks for itself. I mean, if
13 they said it, they said it; is that correct?

14 A. Yes.

15 Q. Okay. Now, as to the 10.9 percent authorized
16 by the Commission in that case, that represents an approximate
17 200 basis point spread between -- in comparison to your low --
18 the low end of your recommended range of 8.06; isn't that
19 correct?

20 A. Yes.

21 Q. Now, you said -- I think your Direct Testimony
22 said that you were a witness in the Kansas City Power & Light
23 Company rate case?

24 A. Yes.

25 Q. And that was somewhat contemporaneous with the

1 Empire rate case?

2 A. Yes.

3 Q. And you testified on rate of return in that
4 case; is that correct?

5 A. Yes, I did.

6 Q. So I take it you're a little bit more familiar
7 with the Report and Order in that case?

8 A. I -- I can try to remember what -- what the
9 Commission said, yes.

10 Q. Well, I take it you reviewed it at least with
11 respect to the topic with which you had some responsibility --

12 A. Yes.

13 Q. -- is that correct?

14 Now, do you recall whether or not KCPL in that
15 case was stated as having an equity ratio of approximately
16 54 percent?

17 A. That sounds about right.

18 Q. And Commission authorized a return on common
19 equity of what in that case?

20 A. 11.25.

21 Q. Okay. You were a witness on the topic of
22 return on equity in that case, were you not?

23 A. Yes, I was.

24 Q. Just out of curiosity, what was the range you
25 recommended in that case, do you recall?

1 A. I'd have to go back and look at it. I don't
2 recall off the top of my head. It was -- it was in the
3 9 percent -- upper 9 percent.

4 Q. Okay. Now, let's go back to the actual -- the
5 11.25 the Commission ultimately authorized. That, in
6 comparison to the low end of your recommended range in this
7 case, is about a 300 basis point spread; isn't that correct?

8 A. Yes.

9 Q. Now, the decisions in both of those cases, the
10 Empire case and the KCP&L case, those issued on the
11 28th of December of 2006; isn't that right?

12 A. Yes, that sounds right.

13 Q. And you filed your Direct Testimony in this
14 case in the beginning of December of 2006?

15 A. Yes.

16 Q. And you filed your Rebuttal I believe on the
17 28th, which was, as it turns out, the same date that those two
18 decisions issued?

19 A. That sounds correct, yes.

20 Q. And you then filed your Surrebuttal, I
21 believe, a little bit later, I think it was the 12th of
22 January?

23 A. That sounds right, yes.

24 Q. Now, would your recommended ROE in this case
25 have been any different had you had an opportunity to take

1 into account the Empire and KCPL decisions before filing your
2 Direct Testimony?

3 A. As compared to the Report and Order that the
4 Commission issued?

5 Q. Yes.

6 A. I don't think it would be much different, no.

7 Q. Okay. Let's talk a little bit more about
8 Empire. Would you agree with me that Empire is a company that
9 has approximately 215,000 customers in four states?

10 A. Yes.

11 Q. KCPL has about, what, 500,000 customers in two
12 states?

13 A. That sounds right, yes.

14 Q. Let's talk about Algonquin. Now, would you
15 agree with me it has fewer than 1,000 customers?

16 A. Yes.

17 Q. Would you agree with me that Silver Leaf
18 Resorts or Silver Leaf -- let me just leave it at that, Silver
19 Leaf, is its biggest customer by far representing about
20 75 percent of the revenues that it earns?

21 A. I would agree with that, yes.

22 Q. And Silver Leaf is a resort operator?

23 A. That's my understanding, yes.

24 Q. Would you also agree with me that about
25 77 percent of Algonquin Water Resources' sales come from

1 Silver Leaf and that excludes irrigation revenues?

2 A. Could you repeat that question, please?

3 Q. Would you agree with me that Silver Leaf
4 represents 77 percent of Algonquin Water Resources' sales
5 excluding irrigation?

6 A. Yes, I agree with that.

7 Q. And if you include irrigation, that number
8 jumps up to about 89 percent?

9 A. I'd agree with that.

10 Q. And I guess my final question to you is, given
11 those facts, what makes Algonquin's business 2- to 300 basis
12 points less risky than Empire or KCPL?

13 A. What makes them less risky compared to KCPL?
14 My opinion is they are a small water and sewer company, which
15 a typical small water and sewer company in Missouri is usually
16 operated by the developer of those properties, whether it's
17 condos or time-shares or -- or suburb or whatever. I wouldn't
18 say -- I wouldn't say they are any more or any less risky than
19 KCPL without having any research or evidence --

20 Q. Okay.

21 A. -- in looking at that.

22 Q. Just one follow-up question on that. You
23 mentioned that a lot of the small water and sewer companies
24 sometimes are owned by a developer.

25 A. Uh-huh.

1 Q. That's not the case with Algonquin, is it?

2 A. No, it is not.

3 MR. BOUDREAU: I have no further questions for
4 the witness at this time. Thank you.

5 JUDGE PRIDGIN: Mr. Boudreau, thank you.

6 Bench questions, Commissioner Murray?

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Did you factor in any calculation for risk?

11 A. As far as business risk or --

12 Q. Any risk at all?

13 A. Any risk? I didn't make any adjustments based
14 on any risk factors, no.

15 Q. So you don't think that this is a risky
16 company in terms of comparables? You don't think that the one
17 customer -- for example, concentration on one customer is a
18 risk factor?

19 A. I don't -- I don't believe so without
20 comparing them to -- I don't think they're any more or less
21 risky than my comparable group, no.

22 Q. Okay. And you don't think smallness in size
23 is a risk factor?

24 A. I have not read any research reports or
25 anything that says that they are or I've never seen any

1 evidence that says that they are. So based on my personal
2 experience, I don't -- I don't think so.

3 COMMISSIONER MURRAY: I think that's all my
4 questions. Thank you.

5 JUDGE PRIDGIN: Thank you.

6 Commissioner Appling?

7 QUESTIONS BY COMMISSIONER APPLING:

8 Q. Are you going to come back before us again
9 before this is over with? Will you be back up again on the
10 chair?

11 A. I don't believe I'm scheduled to, sir.

12 Q. So you're hoping not.

13 A. If the Commission asks me to come back, I can.

14 Q. Yeah. How long have you been with the PSC?

15 A. I started in June of 2003.

16 Q. 2003. Okay. You've been here for a few years
17 then, huh?

18 A. Yes, sir.

19 Q. How do you get assigned your cases?

20 A. My supervisor, Ron Bible, has -- he's been out
21 for a while, but actually Bob Schallenberg assigned me to this
22 case when Mr. Bible was out. But normally it comes -- the
23 assignments come from him.

24 Q. Before you file your testimony and your
25 recommendation, do you run that back through your supervisors

1 before you come up and file your testimony?

2 A. In this case, I had my attorney review it and
3 my colleague, David Murray, review it. Bob Schallenberg did
4 not review it at that time.

5 COMMISSIONER APPLING: Okay. Thank you very
6 much.

7 JUDGE PRIDGIN: Commissioner Appling, thank
8 you.

9 Mr. Chairman?

10 QUESTIONS BY MR. CHAIRMAN DAVIS:

11 Q. Mr. Barnes, do you know anything about the
12 Hickory Hills' case?

13 A. I'm not very familiar with that, no, sir.

14 Q. Okay.

15 A. I --

16 Q. Are you familiar that there are a lot of
17 problems with Hickory Hills and that as a result, you know, I
18 think they're in some form of receivership --

19 A. Yes, sir.

20 Q. -- correct?

21 Okay. Are you familiar with the Aqua Missouri
22 case that the Commission just processed?

23 A. Yes.

24 Q. Okay. And I guess they've announced their
25 intentions that they're coming back in for a rate case in

1 approximately March as part of an agreed-to stipulation
2 agreement. Correct?

3 A. Yes, sir.

4 Q. Okay. Are you familiar with Central Jefferson
5 Utilities?

6 A. Yes.

7 Q. Okay.

8 A. I'm a little familiar.

9 Q. Can you tell me what you've heard about
10 Central Jefferson?

11 A. I don't know exactly what the situation is
12 with them. I know I was -- if I remember correctly, it's been
13 a while, but I did make a recommendation to the St. Louis
14 office on ROE on that issue. After that, I don't -- I don't
15 know exactly what -- what happened -- what conspired after
16 that, sir.

17 Q. Are you aware that they've had some
18 environmental problems in the past?

19 A. Just -- just general knowledge, yes.

20 Q. General knowledge, yes. And you're aware that
21 Aqua Missouri has also got at least one property with some
22 capacity problems. Correct?

23 A. That's what I've heard, yes.

24 Q. Okay. Are you familiar with Stoddard County
25 Sewer at all?

1 A. No, sir, I'm not.

2 Q. No. Okay. So it wouldn't surprise you then
3 to learn that Stoddard County might also possibly have
4 capacity problems. Correct?

5 A. Correct. That wouldn't surprise me.

6 Q. Okay. Do you know that the Commission -- how
7 long have you been here now?

8 A. Going on four years, since June of 2003.

9 Q. June of 2003. Are you aware -- are you aware
10 that there was an investor-owned utility up at, I believe,
11 Incline Village?

12 A. I'm not aware of that.

13 Q. You're not aware of that. So you wouldn't
14 know if they had environmental problems or not either?

15 A. No, I wouldn't.

16 Q. Okay. Are you aware that there's another
17 investor-owned utility in St. Louis County that also had
18 environmental problems? I believe they were --

19 A. I believe I've read that in the news, but I'm
20 not familiar with it.

21 Q. Okay. Mr. Barnes, has there been any
22 discussion amongst you, quote, Staff people, here at the
23 Missouri Public Service Commission that there are just small
24 water and sewer companies just hemorrhaging all over this
25 state? Has that ever come up?

1 A. Not -- not in discussions I've had with
2 anybody.

3 Q. No, no. Okay. Okay. Page 12, lines 18
4 through 20 of your Direct Testimony, do you want --

5 A. Yes.

6 Q. -- to go back and re-read those? Can you read
7 those for the record, please?

8 A. What lines were those again?

9 Q. Lines 18 through 20, page 12 of your Direct
10 Testimony.

11 A. Answer, No. Staff did not include any
12 short-term debt in the hypothetical capital structure because
13 as of December 31st, 2005, each company in Staff's comparable
14 group had constructional work in progress, open paren, CWIP,
15 closed paren, that exceeded a short-term debt balance.

16 Q. Okay. So in other states, those utilities
17 have CWIP, but we don't -- well, it's feasibly possible to use
18 CWIP in Missouri, but they're not availing themselves of it.
19 Correct?

20 A. Correct.

21 Q. Okay. Do you think that the availability of
22 CWIP to these utilities in other states makes them less risky
23 than Algonquin?

24 A. I don't know if they're any more or any less
25 risky by the use of CWIP.

1 Q. You don't know. Okay. I believe in your
2 testimony you stated that the Missouri Public Service
3 Commission, the sources that you normally review for I guess
4 capital structure and other issues, don't allow you to analyze
5 the capital markets in Canada; is that correct?

6 A. Yes. That's correct.

7 Q. But there are resources out there that would
8 allow you to do that. Correct?

9 A. If -- if there are, we don't have access to
10 that, but I imagine there are, yes.

11 Q. Okay. But it's technically feasible that you
12 could go out and subscribe to periodicals or journals to do
13 that if you chose to do so. Correct?

14 A. Upon approval from the chain of command, yes,
15 that's -- that could be possible, yes.

16 Q. Okay. Okay. Okay. And I think Mr. Boudreau
17 also asked you some of these questions, but hypothetically
18 speaking, if you didn't work at the Commission and weren't
19 statutorily prohibited from owning an interest in a utility
20 company, if you decided you liked Algonquin Water and you
21 wanted to buy stock in Algonquin Water, what stock would you
22 buy? You wanted to invest in Algonquin Water.

23 A. I would be investing in the -- the -- all of
24 their operations, not just the water operations. I'd be
25 investing in all of Algonquin Power Income Fund.

1 Q. Okay. Okay. To the best of your knowledge,
2 has anyone here at the Missouri Public Service Commission ever
3 proposed an ROE above 9.75 percent?

4 A. To the best of my knowledge since I've been
5 here, I'm not aware if any -- if any Staff member has.

6 Q. Now, I believe Mr. Boudreau asked you this
7 earlier, but you quoted Professor Moran's testimony that the
8 average allowed return for American utilities is 150 basis
9 points more than Canadian utilities and it's based on a common
10 equity ratio of close to 50 percent rather than 40 percent.
11 Right?

12 A. Correct.

13 Q. And you're okay with that?

14 A. I'm comfortable with it. I was merely
15 pointing out for Mr. Loss --

16 Q. Yes or no?

17 A. Yes.

18 Q. Okay.

19 A. I'm comfortable with that.

20 CHAIRMAN DAVIS: Thank you. No further
21 questions, Judge.

22 JUDGE PRIDGIN: Commissioner Appling?

23 FURTHER QUESTIONS BY COMMISSIONER APPLING:

24 Q. Mr. Barnes, let's follow up just a little bit
25 on Commissioner Davis' last question on the 9.75. I'm sure

1 you read and have a pretty good idea across this country.

2 What's the average ROE on most of the utilities that is
3 regulated?

4 A. Generally familiar, yes, sir.

5 Q. What is that?

6 A. For electric or just water?

7 Q. Any one you want to choose.

8 A. I believe the electric's been in the
9 10.5 range.

10 Q. Okay.

11 A. Water companies we -- the Regulatory Research
12 Association does not cover water companies, but I -- I do know
13 that the AUS utility reports in Edward Jones do cover them
14 and -- and they're -- their earned ROEs in the Edward Jones
15 report has been in the 9 percents and the allowed ROEs for the
16 AUS utility reports have been just above 10.

17 Q. Okay. Do you ever question Missouri versus
18 the rest of the country?

19 A. As far as our procedure on how we --

20 Q. Not your procedure --

21 A. -- make a recommendation?

22 Q. -- but the actual bottom line when you come
23 out with a 9.3 or 9.5?

24 A. I believe -- I believe that's still
25 reasonable.

1 Q. Do you think it's reasonable in this state
2 that all of the small water companies are having tremendous
3 problems, or do you -- are you aware of that?

4 A. I'm only aware of a few companies that
5 Mr. Davis asked me about that have problems. I don't know
6 what their authorized ROE is.

7 Q. But don't you think that would be a reasonable
8 thing for everybody in your section to know, wouldn't you?

9 A. If we have the information, yes. If --

10 Q. Somewhere down the line if you were going to
11 make the recommendation and review data, you really ought to
12 know what's going on in the state of Missouri, shouldn't you?

13 A. Yes. I would agree with that. And that's
14 kind of the problem though is we don't have the access even to
15 these small water and sewer companies, as far as financial
16 data, available to us without having to contact each company
17 to -- or look up each company's authorized ROE. But
18 generally, yes, it would -- one would -- should be somewhat
19 familiar with other companies within the state.

20 COMMISSIONER APPLING: Okay. Thank you very
21 much, sir.

22 JUDGE PRIDGIN: Commissioner Appling, thank
23 you.

24 If there are no further Bench questions,
25 recross?

1 MS. BAKER: No.

2 MR. BOUDREAU: None. Thank you.

3 JUDGE PRIDGIN: Thank you.

4 Redirect?

5 MR. KRUEGER: Thank you, your Honor.

6 REDIRECT EXAMINATION BY MR. KRUEGER:

7 Q. Mr. Barnes, do you know if Algonquin has
8 operations in other states?

9 A. I'm aware they have -- they just acquired some
10 property in Texas and Arizona and I believe Illinois.

11 Q. Do you know how --

12 MR. BOUDREAU: Just as a matter of
13 clarification, are we talking about the water company or the
14 parent company? Just for the clarity of the record.

15 MR. KRUEGER: I'm referring to the parent co--
16 I mean, I'm sorry, to the water company.

17 THE WITNESS: I believe the states I just
18 mentioned, I believe they -- they have some water operations
19 in Arizona, my understanding, Texas and Illinois. I could
20 be -- I could be incorrect on that.

21 BY MR. KRUEGER:

22 Q. Okay. Do you know how extensive those
23 operations are?

24 A. No. Not -- not generally. I believe they're
25 still considered -- at least in Arizona, it's still considered

1 a small water and sewer company.

2 Q. You stated that you were not aware that the
3 Staff had ever proposed an ROE greater than 9.75 percent. Do
4 you remember that?

5 A. Yes.

6 Q. And you said that was since you've been here?

7 A. Yes.

8 Q. Do you know about prior to the time that you
9 were here?

10 A. No. Not right off the top of my head.

11 Q. Okay. In your Surrebuttal Testimony you
12 mentioned the testimony of Dr. Moran --

13 A. Yes.

14 Q. -- do you recall that?

15 And correct me if I'm wrong, I believe he was
16 recommending an ROE of 9.55 percent for a company with 37.5
17 percent equity; is that right?

18 A. Yes.

19 Q. What would you -- how would you expect the ROE
20 requirement to change if the equity was greater than
21 37.5 percent?

22 A. Well, if it's greater, theoretically, it's
23 less risky so I would expect the ROE to be -- to be somewhat
24 lower.

25 Q. Other things being equal, you would expect the

1 ROE requirement to be less?

2 A. Yes.

3 Q. Okay. Are you familiar with the
4 recommendations that the Staff of the Public Service
5 Commissions in other states make in cases?

6 A. Specific to water cases or --

7 Q. Yes. Specific to water cases.

8 A. Not -- not -- not that I know of.

9 Q. Okay. Mr. Boudreau talked about the KCPL and
10 Empire cases recently decided by the Commission. You recall
11 that?

12 A. Yes.

13 Q. Do you know if the approach that those -- that
14 the expert witnesses in those cases used to the determination
15 of ROE was similar to the one that Mr. Loss has used in this
16 case?

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

18 Q. Can you tell me in what respects it differs?

19 A. They didn't rely on -- as far as the growth
20 rate and the DCF model, the cash flow per share or the
21 depreciation of the market price of the stock. They did
22 rely -- or they did use book value per share, dividends per
23 share, earnings per share.

24 MR. KRUEGER: Okay. That's all the questions
25 I have.

1 JUDGE PRIDGIN: Mr. Krueger, thank you.

2 Mr. Barnes, thank you very much, sir. You may
3 be excused.

4 THE WITNESS: Thank you.

5 JUDGE PRIDGIN: And we were originally set to
6 adjourn about 4:30 and it's not quite four o'clock. Let me
7 speak to counsel. We've got, it looks like, payroll expense
8 and rate case expense remaining as issues, but I don't know
9 what type of cross-examination you might anticipate on
10 anything. If there's any -- I'm just wondering if there's
11 anything we can reasonably slip in before 4:30. Mr. Cooper?

12 MR. COOPER: I guess I would -- between the
13 two, I think we would have -- from my perspective, we'd have a
14 better chance of finishing payroll if we moved onto payroll.
15 I guess I would also like to give that a try if people think
16 that might be reasonable, in that Mr. Hernandez is from out of
17 town and if we could finish him today, we could cut him loose
18 about a day ahead of when we are going to have to if we have
19 to stretch him in tomorrow. But that being the case, we
20 obviously are here and will do things as you would like to do.

21 JUDGE PRIDGIN: Sure. Mr. Krueger?

22 MR. KRUEGER: I agree with that suggestion on
23 both points. I think it's the shorter issue and it would be
24 more convenient for Mr. Hernandez.

25 JUDGE PRIDGIN: Okay. Ms. Baker, any

1 objections?

2 MS. BAKER: I have no objections.

3 JUDGE PRIDGIN: All right. If Mr. Hernandez
4 is still here and he's still under oath and then we can move
5 rate case expense up to tomorrow morning then. All right.

6 All right. Mr. Hernandez, you're still under
7 oath. If you'd have a seat, please.

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

9 MR. COOPER: Very briefly, your Honor.
10 Algonquin's position on this issue is that payroll expense
11 should be sufficient to provide for the costs associated with
12 a wastewater water utility superintendent, Missouri facility
13 accountant and a Missouri utilities assistant. All three of
14 these positions are filled. They are all filled by persons
15 that are onsite at the resorts here in Missouri performing
16 work for the utilities.

17 The staffing level is largely a result of
18 Silver Leaf's request, which is a very large significant
19 customer to Algonquin and accordingly, again, Algonquin
20 believes that the costs of all three should be included in the
21 cost of service.

22 Thank you, your Honor. And we would tender
23 Mr. Hernandez for cross-examination on the payroll issue.

24 JUDGE PRIDGIN: All right. Mr. Cooper, thank
25 you.

1 Cross-examination, Ms. Baker?

2 MS. BAKER: I have no questions.

3 JUDGE PRIDGIN: All right. Mr. Baker or
4 Mr. Krueger?

5 MR. KRUEGER: Mr. Baker.

6 JUDGE PRIDGIN: Yes, sir.

7 MR. BAKER: Your Honor, I have some cross, but
8 there is a small portion, about seven or eight questions,
9 regarding some information designated as highly confidential.
10 So if it would please the Commission, at the end if we could
11 go in-camera briefly and if I save that to the end then if
12 there's any redirect or Bench questions, then we'll still
13 be -- is that okay?

14 JUDGE PRIDGIN: Yes, sir. That's fine. Just
15 please alert me when we need to go in-camera. Thank you.

16 CHARLES HERNANDEZ testified as follows:

17 CROSS-EXAMINATION BY MR. BAKER:

18 Q. Okay. Mr. Hernandez, three employees are now
19 assigned to Algonquin's Missouri operations. Correct?

20 A. Yes, sir.

21 Q. These three employees are wastewater water
22 utility superintendent, Missouri facility accountant and
23 Missouri utilities assistant?

24 A. Yes, sir.

25 Q. The positions of wastewater water utility

1 superintendent and Missouri utilities assistant have both been
2 added since Algonquin purchased the systems?

3 A. Yes, sir.

4 Q. The Missouri facility accountant's position
5 actually existed before Algonquin acquired the systems?

6 A. Yes, sir.

7 Q. Staff is recommending in this case that
8 100 percent of the Missouri facility accountant's payroll
9 costs be included in rates, is that correct, to the best of
10 your knowledge?

11 A. Yes, sir.

12 Q. And 50 percent of the costs for the onsite
13 representative for operational matters be included in rates?

14 A. Yes, sir.

15 Q. Algonquin fully contracts out its actual
16 utility operations. Correct?

17 A. Yes, sir.

18 Q. And the actual operator for the utility
19 operations is Construction Management Specialists?

20 A. Yes, sir.

21 Q. Resort management had been complaining about
22 lack of communication between your Staff and Silver Leaf --
23 Silver Leaf Resort staff, is that --

24 A. Between my accountant and Silver Leaf, yes.

25 Q. And you said this lack of communication

1 resulted in unplanned water outages?

2 A. Yes, sir.

3 Q. And resort staff, after that, requested onsite
4 management?

5 A. Actually it was resort management. The vice
6 president, the general manager and director of operations,
7 Mike Brown, called me on a Saturday morning and strongly
8 suggested that I put some kind of onsite management, somebody
9 who knew operations and maintenance onsite to control the --
10 the plants.

11 Q. Okay. So the two new positions of wastewater
12 water utilities superintendent and Missouri utility's
13 assistant were then added to address this problem of not
14 having onsite management?

15 A. Yes, sir.

16 Q. Will all water outages and unplanned water
17 outages be stopped by having this onsite management?

18 A. No, sir.

19 Q. The onsite representative for Algonquin on
20 operational matters would now be the newly created wastewater
21 water utilities superintendent?

22 A. What was that again, sir?

23 Q. I'm sorry. The onsite representative for
24 Algonquin on the operational matters would now be the
25 wastewater water utilities superintendent?

1 A. Yes, sir.

2 Q. And from now I'm just going to call him the
3 superintendent --

4 A. -- okay.

5 Q. -- to make it easier.

6 The job description for the wastewater
7 water -- for the superintendent indicates that the
8 superintendent would be assigned to the department of Missouri
9 and Illinois operations?

10 A. Yes, sir.

11 Q. But Algonquin is still asking for all
12 100 percent of his payroll expense be included in rates?

13 A. Yes. Because he hasn't done any work yet for
14 Fox River and in the future maybe 5 percent of his time at the
15 most.

16 Q. Algonquin has enough experience and knowledge
17 about running utility operations. Correct?

18 A. Yes, sir.

19 Q. And Algonquin is able to efficiently and
20 effectively operate the three utility systems in Missouri?

21 A. Yes, sir.

22 Q. You are aware though Silver Leaf only had one
23 onsite employee when they owned and operated the utilities?

24 A. One officially on record, yes, sir.

25 Q. And only 50 percent of that employee's payroll

1 expense was included in rates. Did you know that?

2 A. I have read that somewhere, yes.

3 Q. And yet Silver Leaf was able to effectively
4 manage the property with only that one employee. Would you
5 agree?

6 A. No. They had one employee that was officially
7 listed to the utilities, but they also have engineers, they
8 had other people in other places.

9 Q. Well, would you agree that Silver Leaf managed
10 the utilities efficiently?

11 A. As best as they could.

12 Q. I think you stated in your Surrebuttal that
13 the only feasible alternative to having onsite -- an Algonquin
14 representative onsite would be for you to fly in from Arizona
15 any time there was a problem; is that --

16 A. Yes. I tried using the phone method, but
17 sometimes you need to be there.

18 Q. Would a feasible alternative be for one onsite
19 employee to interface between you and your Staff and resort
20 Staff and the contract operator?

21 A. Someone who has knowledge of operations and
22 maintenance.

23 Q. Okay. And that would help with the unplanned
24 water outages and incidences like that?

25 A. That would help with unplanned water outages,

1 trying to resolve safety issues, preventative maintenance
2 program that I want to start up -- start up. Algonquin's very
3 strong in environmental and safety so whenever we buy
4 something, we try to go in there and resolve those safety
5 issues. And there was quite a few.

6 Q. But that job in itself wouldn't require
7 100 percent of an employee's time, would it?

8 A. Yes, it would.

9 Q. It did not require 100 percent of the previous
10 Silver Leaf employee's time.

11 A. Of the accountant they had over there? From
12 what they say, no.

13 Q. Can I have you take a look at Mr. Vesely's
14 Rebuttal Testimony?

15 MR. BAKER: Your Honor, may I approach the
16 witness?

17 JUDGE PRIDGIN: You may.

18 BY MR. BAKER:

19 Q. This has already been marked and admitted as
20 Exhibit 9 too. Could I have you look at specifically page 10,
21 lines 5 through 7?

22 A. Yes, sir.

23 Q. Here Mr. Vesely states that with the Staff's
24 recommended payroll expense, the payroll that would be
25 included in customer rates would still be \$177,127. Do you

1 agree with that number?

2 A. If that's what they say on the paper, yes,
3 sir.

4 Q. And he also states here that that would be an
5 82 percent increase. Do you have any knowledge to be able to
6 agree with that number?

7 A. Somewhat. I would say it sounds close.

8 Q. Just to be very clear so I understand, every
9 dollar -- and you may not know this and if you don't, just say
10 so. Every dollar that is allocated to payroll expense is then
11 passed on to the customer in their rates?

12 A. I think so, sir.

13 MR. BAKER: My next few questions involve the
14 highly confidential --

15 JUDGE PRIDGIN: If you give me just a moment,
16 we'll go in-camera. Just one moment, please.

17 (Reporter's Note: At this time, an in-camera
18 session was held, which is contained in Volume No. 6, pages
19 442 through 446 of the transcript.)

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1 JUDGE PRIDGIN: All right. Thank you. We are
2 back in public session.

3 Let me see if we have any Bench questions.
4 Commissioner Murray?

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. What is the total dollar amount of this issue,
9 do you know, the difference between the company's position and
10 Staff's position?

11 A. Half of our utility supervisor and all of
12 the --

13 Q. I understand that.

14 A. -- assistant.

15 Q. I'm asking in dollar terms.

16 A. I'm sorry. I honestly don't know right
17 offhand. I would say something, maybe about 70,000 I think.
18 I'm not sure.

19 COMMISSIONER MURRAY: All right. It's in the
20 testimony, I'm sure. Thank you.

21 JUDGE PRIDGIN: Commissioner Murray, thank
22 you.

23 Commissioner Gaw?

24 COMMISSIONER GAW: No. I don't have any
25 questions.

1 JUDGE PRIDGIN: Thank you.

2 Mr. Chairman?

3 CHAIRMAN DAVIS: No questions.

4 JUDGE PRIDGIN: All right. Thank you. Let me
5 see if we have any recross, Ms. Baker?

6 MS. BAKER: None from me.

7 JUDGE PRIDGIN: Mr. Baker?

8 MR. BAKER: No.

9 JUDGE PRIDGIN: Mr. Cooper, redirect?

10 MR. COOPER: Yes, your Honor.

11 REDIRECT EXAMINATION BY MR. COOPER:

12 Q. Mr. Hernandez, you were asked whether the
13 presence of the superintendent would stop the outage problems
14 that you had described. And I believe you said no, it won't
15 stop those outage problems. What will it change? Anything?

16 A. Maybe I misunderstood that question. It will
17 stop the kind of problems I was having without somebody there
18 with authority to make decisions. Water outages are just a
19 course of nature, a pipe loosens up, pipe breaks, water
20 outage. But with Algonquin management there, we could plan
21 and schedule a takedown instead of just shutting -- instead of
22 just shutting everything down, we can plan and schedule it.

23 And I got a manager down there that can price
24 it and get contractors and I know I get what I'm paying for
25 this way. With using a contract operator out there to monitor

1 another contract operator, I sometimes wonder if -- if I'm
2 getting what I pay for.

3 Q. So is it fair to say that you believe that it
4 will at least shorten those outages and perhaps prevent some
5 of those outages?

6 A. I haven't got a complaint since I sent Gary
7 Burkhead down there.

8 Q. You were asked some questions about how Silver
9 Leaf had staffed the utility operation before it sold the
10 operation to Algonquin. And I think you were asked about the
11 one onsite person that had be in place there. Correct?

12 A. Yes, sir.

13 Q. Were there other Silver Leaf employees on the
14 premises that had association with the utility operations
15 during their ownership?

16 A. There was a general manager, maintenance
17 staff, quite a few people actually would help out the
18 utilities in time of need.

19 Q. All right. And did that change when Algonquin
20 purchased the properties?

21 A. Yes, it did. They severed all ties.

22 Q. Okay. To your knowledge, was there also a
23 utility manager and an engineer that were also allocated to
24 the Silver Leaf utility operations?

25 A. Yes, sir. I had a utility manager spend about

1 half their time on Missouri and a couple of engineers from
2 Silver Leaf that would come and go as needed.

3 Q. Mr. Baker referred you to the duties of CMS,
4 the contract operator, and discussed those with you a little
5 bit. Could you tell us what the superintendent does for you
6 beyond what CMS provides to Algonquin?

7 A. Algonquin has its own safety and environmental
8 programs and we go beyond what the -- what usual contractor
9 is. We have goals of no spills. I don't want any wastewater
10 spilled into a lake. Don't want any fines. And we want to
11 make sure that all of our equipment's operating safe.

12 We had some issues with a few unsafe
13 conditions on locations that weren't being taken care of
14 because I had nobody to monitor them from Algonquin. And
15 flying an engineer out there, flying myself out there was just
16 not reasonable. I got 12 -- 12 util-- 12 different locations
17 in four states.

18 MR. COOPER: That's all the questions I have,
19 your Honor.

20 JUDGE PRIDGIN: All right. Mr. Cooper, thank
21 you.

22 Mr. Hernandez, thank you very much, sir.
23 Appreciate it.

24 I need to shut down roughly at 4:30 so that
25 the technical folks can get the webcast going for tonight's

1 local public hearing with Aquila. Would counsel reasonably
2 anticipate either getting Mr. Vesely or Mr. Loss's payroll
3 expense cross-examination done within that time? If so, I'd
4 like to keep going. If not, we can shut down.

5 MR. COOPER: Just discussing this matter
6 quickly with counsel, I don't think any of the counsel have
7 questions for Mr. Loss so unless the Commissioners do, we can
8 check one more off the list.

9 JUDGE PRIDGIN: All right.

10 COMMISSIONER GAW: No, I'm good.

11 JUDGE PRIDGIN: Okay. Do I understand that
12 nobody wishes cross-examination of Mr. Loss on payroll
13 expense? And his pre-filed has been admitted.

14 All right. Then Mr. Vesely?

15 MR. COOPER: I think that what I have for
16 Mr. Vesely could be completed before 4:30 so --

17 JUDGE PRIDGIN: Okay. Mr. Vesely, you're
18 still under oath, sir.

19 Mr. Krueger, Mr. Baker, anything before he
20 stands cross?

21 Okay. Seeing nothing, Ms. Baker, any cross
22 for him?

23 MS. BAKER: No. None from me.

24 JUDGE PRIDGIN: Mr. Cooper.

25 MR. COOPER: Thank you, your Honor.

1 GRAHAM VESELY testified as follows:

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Vesely, have you ever run a water and
4 sewer utility?

5 A. No, sir, I have not.

6 Q. Would you agree with me that Silver Leaf
7 represents somewhere around 75 percent of Algonquin's water
8 and sewer sales?

9 A. That sounds reasonable, yes.

10 Q. Could it be greater than that even?

11 A. I don't know.

12 Q. At any rate, you'd agree with me that Silver
13 Leaf is a very significant customer for Algonquin, wouldn't
14 you?

15 A. Yes, I would.

16 Q. If Silver Leaf asks Algonquin to add
17 personnel, do you think that's something Algonquin should pay
18 some serious attention to?

19 A. It's something they should consider.
20 Obviously Silver Leaf doesn't drive the utility company's
21 decisions. It doesn't make decisions for it.

22 Q. But you'd agree with me that they're a very
23 large customer?

24 A. Yes.

25 Q. And that given that, Algonquin should

1 probably -- if it's going to provide good service to its
2 customer, it should take pretty seriously suggestions it
3 receives from that large customer. Correct?

4 A. Subject to the utility company's judgment
5 though, yes.

6 Q. Now, Silver Leaf obviously used to own these
7 same properties. Correct?

8 A. Yes.

9 Q. And at that time was regulated for at least
10 part of the time they owned those facilities. Correct?

11 A. Yes.

12 Q. Would you believe that Silver Leaf would have
13 at least some idea that payroll expenses at the three resorts
14 that Algonquin may incur could find their way into the rates
15 they're ultimately charged?

16 A. Oh, certainly.

17 MR. COOPER: That's all the questions I have,
18 your Honor.

19 JUDGE PRIDGIN: Mr. Cooper, thank you.

20 Bench questions, Commissioner Murray?

21 COMMISSIONER MURRAY: I have none.

22 JUDGE PRIDGIN: All right. Thank you.

23 Commissioner Gaw, thank you.

24 Mr. Chairman?

25 QUESTIONS BY CHAIRMAN DAVIS:

1 Q. Mr. Vesely, could you state again for me what
2 exactly your position is with regard to Algonquin's payroll
3 expenses?

4 A. Yes, sir. Staff recommends that of the three
5 full-time 100 percent Missouri charged positions for people
6 that are resident in Missouri on Algonquin's payroll, that
7 only 50 percent or close to that, one position and half of
8 another position, are reasonable and necessary for running
9 the -- the operations. And that this already represents --
10 already represents an 82 percent increase over the budgeted
11 payroll expense of Silver Leaf for the year 2005.

12 So Staff has made the large concession in
13 terms of payroll increase, recognizing the different position
14 that Algonquin is in being separate from the utility as
15 opposed to Silver Leaf simply running its own utility
16 previously.

17 Q. You used the term "reasonable and necessary"
18 in your response. Necessary doesn't exactly imply optimal,
19 does it?

20 A. Necessary, I mean as opposed to having --

21 Q. Well --

22 A. -- excess.

23 Q. -- technically, I mean, one person half-time
24 could run the facility. Correct?

25 A. One person half-time?

1 Q. Well, that's what Silver Leaf was doing,
2 wasn't it?

3 A. As far as resident employees, yes.

4 Q. Right. Mr. Vesely, have you ever heard the
5 phrase "you get what you pay for"?

6 A. Yes, I have.

7 CHAIRMAN DAVIS: No further questions, Judge.

8 JUDGE PRIDGIN: All right. Mr. Chairman,
9 thank you.

10 Commissioner Murray?

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Sorry. I forgot I do have one. What is the
13 dollar value of this issue?

14 A. It's approximately 100 -- \$100,000 if the
15 positions that Algonquin is requesting were fully annualized
16 into payroll.

17 COMMISSIONER MURRAY: Okay. Thank you.

18 JUDGE PRIDGIN: All right. Thank you. If
19 there's nothing further -- all right.

20 Recross, Ms. Baker?

21 MS. BAKER: No.

22 JUDGE PRIDGIN: Mr. Cooper?

23 MR. COOPER: Yes, real briefly, your Honor.

24 RECROSS-EXAMINATION BY MR. COOPER:

25 Q. Mr. Vesely, when you say 100,000, does that

1 take into account the stated position of Algonquin that it
2 believes that 95 percent of the superintendent's costs should
3 be assigned to Missouri or would that -- or would your 100,000
4 reflect 100 percent of that superintendent?

5 A. Mine is a rough calculation. I would say that
6 it reflects 100 percent.

7 MR. COOPER: Okay. Thank you, your Honor.

8 JUDGE PRIDGIN: All right. Thank you.

9 Redirect?

10 All right. If there's nothing further,
11 Mr. Vesely, thank you very much. You may step down.

12 And we are bumping up against 4:30. We're, I
13 think, going to have somebody try to connect in for the local
14 public hearing so if there's nothing further from counsel --

15 MR. KRUEGER: Your Honor, I would like to
16 suggest one thing.

17 JUDGE PRIDGIN: Yes, sir.

18 MR. KRUEGER: We had pre-filed the Direct
19 Testimony of Gary R. Bangert as Exhibit No. 24. He wasn't
20 listed on the witness list because he didn't have an issue
21 that appeared to be contested and we'd like to offer that. I
22 think counsel has indicated they don't have any
23 cross-examination questions so unless there's questions from
24 the Bench, I'd like to just have that admitted at this time.

25 JUDGE PRIDGIN: Okay. Is that correct

1 Mr. Cooper, no cross-examination?

2 MR. COOPER: That is accurate, your Honor.

3 JUDGE PRIDGIN: And, Ms. Baker?

4 MS. BAKER: That is correct.

5 JUDGE PRIDGIN: All right. If there are no
6 objections, Exhibit 24 is admitted.

7 (Staff Exhibit No. 24 was received into
8 evidence.)

9 MR. COOPER: One other thing before we go off
10 the record, your Honor. And just to make it clear, I assume
11 that Mr. Hernandez can be excused at this time; is that
12 correct?

13 JUDGE PRIDGIN: Seeing no objection from
14 counsel, yes, sir.

15 MR. COOPER: Thank you.

16 JUDGE PRIDGIN: Thank you. Okay. If there's
17 nothing further from counsel, I would like to resume at 8:30
18 in the morning. And I see rate case expense being the only
19 remaining issue and then we would hopefully get that done
20 tomorrow morning. So if there's nothing further from counsel,
21 all right. We will resume in the morning at 8:30 with rate
22 case expense. Thank you very much. We're off the record.

23 WHEREUPON, the hearing was adjourned until
24 January 25th, 2007 at 8:30 a.m.

25

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1 CERTIFICATE OF REPORTER

2

3 I, Tracy L. Thorpe Taylor, a Certified Shorthand
4 Reporter, within the State of Missouri, do hereby certify that
5 the witness whose testimony appears in the foregoing
6 deposition was duly sworn by me; that the testimony of said
7 witness was taken by me to the best of my ability and
8 thereafter reduced to typewriting under my direction; that I
9 am neither counsel for, related to, nor employed by any of the
10 parties to the action in which this deposition was taken, and
11 further, that I am not a relative or employee of any attorney
12 or counsel employed by the parties thereto, nor financially or
13 otherwise interested in the outcome of the action.

14

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Tracy L. Thorpe Taylor, CSR, CCR

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