

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3 _____
4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 January 24, 2007

7 Jefferson City, Missouri

8 Volume 7
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

21 REPORTED BY:
22 TRACY L. THORPE TAYLOR, CCR
23 MIDWEST LITIGATION SERVICES
24
25

A P P E A R A N C E S

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, Case No. WO-2006-0425. It's
4 January 24th, 2007. The time's about 8:30 in the morning and
5 I see as the sole remaining issue rate case expense. And it
6 looks like we have Mr. Loos, Mr. Boateng, Mr. Featherstone,
7 Mr. Johansen set to take the stand on this issue.

8 Is there anything else counsel needs to bring
9 to my attention before Mr. Loos takes the stand one last time?

10 MR. KRUEGER: Yes, your Honor. In addition to
11 the witnesses that you named, Graham Vesely is going to offer
12 himself for cross-examination on this issue. He did file
13 testimony on that.

14 JUDGE PRIDGIN: All right. Thank you.

15 MR. KRUEGER: So he will probably follow
16 Mr. Featherstone.

17 JUDGE PRIDGIN: All right. Thank you.

18 MR. KRUEGER: And then one other thing I'd
19 like to mention is that during my opening statement, the
20 Chairman asked me for who I meant by Staff. And I told him
21 that I would get a list of the people that had worked on this
22 case and so I wanted to provide that information at this time.

23 In addition to the witnesses, the attorneys on
24 the case were myself and Blane Baker and Shelly Syler. Other
25 professional Staff was Phil Williams, Joan Wandell, Steve

1 Traxler, Mark Oligschlaeger, David Murray, Ron Bible and Bill
2 Nickle and support staff was Suzie Mankin, Ashley Harrison and
3 Toni Charlton. Those are the only people I've been able to
4 identify that charged time to this case.

5 JUDGE PRIDGIN: Mr. Krueger, thank you.

6 Anything else before Mr. Loos takes the stand?

7 MR. COOPER: I'll have a brief opening.

8 JUDGE PRIDGIN: If there's nothing else from
9 counsel, Mr. Cooper, if you wanted to come give that opening
10 and then we'll have Mr. Loos take the stand.

11 MR. COOPER: Good morning. Your Honor, the
12 Commission's previously stated as follows concerning a tax on
13 the recovery of rate case expense: Said, The Commission does
14 not want to put itself in the position of discouraging
15 necessary rate cases by discouraging rate case expense.

16 This is a particularly treacherous area for
17 the Commission to be addressing in that the Commission cannot
18 be viewed as having a dampening effect upon a regulated
19 company's statutory procedural rights to seek out a rate
20 increase when it believes that facts so justify. Disallowing
21 prudently incurred rate case expense can be viewed as
22 violating the company's procedural rates.

23 And that's from a St. Joseph Light & Power
24 case from 1993. Very similar language also in another
25 St. Joseph Light and Power case from 1994.

1 Algonquin has pursued rate recovery pursuant
2 to the one rate setting method that's expressly provided for
3 in the Commission's statutes; that is, the formal rate case
4 procedure.

5 The small rate case procedure, as it appears
6 in the Commission's regulations, depends upon agreement
7 between the Staff and the company in the first instance and
8 with the OPC ultimately. Without agreement, the company is
9 left with no alternative but to then file a formal case.

10 Many of the issues before you were disputed
11 among the parties in the acquisition case and no agreement was
12 reached. There's nothing about the formal rate case process
13 that prohibits agreement amongst the parties and yet those
14 same issues have been knocked around this case without
15 agreement. There's no reason to believe that pursuit of a
16 small company rate case would have done anything but prolong
17 the rate-making process.

18 And at this time we would like to call
19 Mr. Loos to the stand and tender him for cross-examination on
20 the rate case expense issue.

21 JUDGE PRIDGIN: Mr. Cooper, thank you.

22 Mr. Loos, if you'll come forward. Sir, I'll
23 remind you that you're still under oath

24 THE WITNESS: Yes.

25 JUDGE PRIDGIN: Ms. Baker, any cross of this

1 witness?

2 MS. BAKER: Yes.

3 LARRY W. LOOS testified as follows:

4 CROSS-EXAMINATION BY MS. BAKER:

5 Q. Algonquin knew that the Commission had an
6 informal procedure for small system rate increase requests
7 before it filed this formal case in front of the Commission,
8 didn't it?

9 A. Yes.

10 Q. And very little Algonquin-specific data for
11 the test year existed on which to set rates at the time that
12 Algonquin filed this case, didn't it?

13 A. Yes.

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

15 JUDGE PRIDGIN: Ms. Baker, thank you.

16 Mr. Krueger?

17 MR. KRUEGER: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. KRUEGER:

19 Q. Good morning, Mr. Loos.

20 A. Good morning.

21 Q. The company filed this case on May 5, 2006?

22 A. Yes.

23 Q. Based on a test year ending September 30,
24 2005?

25 A. Yes.

1 Q. That test year included 10 1/2 months of
2 Silver Leaf operations?

3 A. Yes.

4 Q. And 1 1/2 months of Algonquin's operations?

5 A. Yes.

6 Q. You had to gather 10 1/2 months of operating
7 data from Silver Leaf?

8 A. Yes.

9 Q. Which was not your client?

10 A. Yes.

11 Q. Were their records in good condition?

12 A. Not -- not particularly, but there were trial
13 balances available that provided information with respect to
14 investment and operating expenses that we deemed would be
15 fairly reasonable.

16 Q. Was it difficult to obtain the -- to get this
17 data?

18 A. I don't believe so. I don't -- the company
19 provided it I think shortly after we began working on the
20 engagement.

21 Q. Was it time consuming?

22 A. Preparation of the case, yes.

23 Q. Expensive?

24 A. Yes.

25 Q. And then you also had to get 1 1/2 months of

1 operating data from Algonquin?

2 A. Yes.

3 Q. Were their records in good condition?

4 A. I think they're about the same for those

5 1 1/2 months. Appling is here.

6 Q. Then you had to merge the information from

7 Silver Leaf and Algonquin?

8 A. Yes.

9 Q. After all of that, you had one year of

10 operating data?

11 A. Yes.

12 Q. But 10 1/2 months of it was from Silver Leaf's

13 operation?

14 A. Yes.

15 Q. And that was for an Algonquin rate case?

16 A. That was the -- the basis of the per books

17 test year, yes.

18 Q. And so that's what you filed in your Direct

19 Testimony?

20 A. I filed proforma test year in my Direct

21 Testimony.

22 Q. You then had to update the original filing to

23 September 30th, 2006?

24 A. At the request of Staff, yes.

25 Q. And by direction of the Commission also?

1 A. Yes.

2 Q. Okay. So then you had to update the test year
3 with a full 12 months of additional data?

4 A. Yes.

5 Q. And that did include a full year of Algonquin
6 operating data?

7 A. Yes.

8 Q. Do you believe it's a good thing to use the
9 test year that includes 12 months of Algonquin's operations?

10 A. Under ideal circumstances, yes.

11 Q. Better than using a test year with just a
12 month and a half of Algonquin data?

13 A. That depends on the circumstances.

14 Q. But it would have been impossible to file your
15 case based on 12 months of Algonquin data when you filed the
16 case on May 5, 2006?

17 A. That's true.

18 Q. And by doing it this way, you had to spend
19 more time collecting and assembling the data and preparing
20 updated schedules than if you had just filed the original case
21 sometime after September 30, 2006?

22 A. Other factors equal, yes.

23 Q. At greater expense to Algonquin?

24 A. Yes.

25 Q. Would you say at significantly greater

1 expense?

2 A. In comparison to the total, I wouldn't
3 characterize it -- necessarily characterize it as -- as
4 significant.

5 Q. Twice as great?

6 A. No.

7 Q. 50 percent greater?

8 A. No.

9 Q. Care to put a number on it?

10 A. The update required -- we worked on the update
11 approximately one month by virtue of -- of filing the update,
12 I believe on or about the end of October based on September 30
13 test year, that would have been at most -- I don't have the
14 monthly hours with me -- it -- at most, 40,000. I believe it
15 would be considerably less than that.

16 Q. 40,000?

17 A. Dollars.

18 Q. Okay. And that was for the update?

19 A. Yes.

20 Q. Okay. What I'm trying to compare is the cost
21 of preparing the case this way where you filed based on the
22 test year ended 2005 and then updated to 2006 versus the cost
23 of preparing it just based on test -- just preparing it one
24 time based on a test year ending September 30, 2006. Can you
25 tell me how much greater your work or your charges were by

1 virtue of that change?

2 A. How much more?

3 Q. Yes.

4 A. It would be less than 40,000, if I understood
5 your question correctly.

6 Q. Okay. You said you charged 40,000 -- about
7 40,000 just to prepare the update?

8 A. That was my estimate, yes.

9 Q. Okay. Well, what I'm interested in is how
10 much did it cost to prepare the original case and the update
11 versus what it would have cost just to prepare the case one
12 time after September 30, 2006?

13 A. The effort that went into the September 30,
14 2005 rate case -- or test year with respect solely to that
15 test year would have been probably on the order of \$40,000 as
16 well.

17 Q. Okay. Thank you. Now, with regard to the
18 1997 small company rate case that Silver Leaf filed, you
19 testified about that in your Rebuttal Testimony?

20 A. Yes.

21 Q. And you described the events in that case?

22 A. Yes.

23 Q. Which was filed on April 4th, 1997?

24 A. I believe that's correct.

25 Q. The testimony is on page 4 of your Rebuttal,

1 if that would help you, lines 12 to 18.

2 A. Okay. Yes.

3 Q. Filed April 4th, 1997?

4 A. Yes.

5 Q. Rates went into effect September 4th, 1998?

6 A. Yes.

7 Q. And the process took about 17 months?

8 A. Correct.

9 Q. Did you read the Surrebuttal Testimony of
10 Graham Vesely in regard to that case?

11 A. Yes.

12 Q. And he mentioned that the case could not be
13 processed because Silver Leaf made the request but Ascension
14 Resort held the certificate at that time. Did you read that?

15 A. Yes.

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

17 A. I have no reason to doubt it.

18 Q. And he said this delayed the case until
19 November 26th, 1997?

20 A. Which I didn't understand why.

21 Q. Okay. But you don't have any doubt that it
22 did?

23 A. I had no doubt that there was a delay that was
24 attributed to that change, but I didn't understand why it
25 would require a delay.

1 Q. Okay. And he said the Staff then processed
2 the request and that Staff and Silver Leaf agreed to an
3 increase on July 16th, 1998?

4 A. Yes.

5 Q. And do you know if that's true?

6 A. That's -- that's my recollection. There was
7 testimony. And, again, I have no reason to doubt it.

8 Q. Okay. Do you know if there were any other
9 reasons for delay in the processing of that case?

10 A. No.

11 Q. That case did end with an agreement that
12 Silver Leaf signed. Correct?

13 A. Yes.

14 Q. Now, with regard to the 2000 small company
15 rate increase case, Silver Leaf filed a second informal case
16 in August of 2000. Correct?

17 A. Yes.

18 Q. And in your Surrebuttal Testimony, page 3, you
19 said, Apparently Silver Leaf's request was never addressed?

20 A. I was unable to locate any record of the
21 disposition of that case.

22 Q. Okay. So you just couldn't find anything.
23 You don't know -- it's not that you know that it wasn't
24 addressed?

25 A. Right. I just couldn't locate anything.

1 Q. Okay. Do you know if the Staff found that
2 Silver Leaf was under-earning at that time?

3 A. No.

4 Q. Do you know if they found they were
5 over-earning?

6 A. No.

7 Q. In any event, Staff did not make an agreement
8 with Silver Leaf to change its rates?

9 A. At least none that I found.

10 Q. Okay. Are you familiar with the procedure for
11 small company rate increase case?

12 A. Only generally.

13 Q. Okay. Have you read the Commission's rule on
14 it?

15 A. I may have at one time, but I don't recall the
16 specifics.

17 Q. Do you know if the rule provides a way for
18 rates to be increased if the Staff does not agree that a rate
19 increase is needed?

20 A. Not specifically.

21 Q. Do you know what the company may do if it
22 can't reach an agreement with the Staff?

23 A. Certainly one option is to file a formal rate
24 case.

25 Q. And did Silver Leaf do so in that case?

1 A. No. Not to my knowledge.

2 Q. You've testified that Staff then opened an
3 earnings investigation in April 2002?

4 A. Yes.

5 Q. Do you know what prompted the Staff to do
6 that?

7 A. No, I don't.

8 Q. Okay. After the Staff opened the earnings
9 investigation, did Silver Leaf request a rate increase?

10 A. They did at the end of 2003.

11 Q. Okay. Did they do it in conjunction with this
12 earnings investigation?

13 A. I don't recall, though they may have.

14 Q. Okay. In the earnings investigation case, the
15 Staff found that Silver Leaf was under-earning?

16 A. Yes.

17 Q. By about \$7,000?

18 A. I don't recall the amount.

19 Q. All right. Do you know if Staff recommended a
20 rate increase?

21 A. No.

22 Q. You don't know?

23 A. I do not know.

24 Q. Okay. Then Silver Leaf subsequently attempted
25 to file small company rate increases in December of 2003 and

1 April 2004?

2 A. I believe it was January 2004.

3 Q. Okay.

4 A. I'm sorry. Excuse me. It is April of 2004.

5 Q. Okay. And both of those were rejected because
6 the filing was deficient?

7 A. That's my understanding, yes.

8 Q. Do you have any reason to believe the filings
9 were not deficient?

10 A. No.

11 Q. Okay. So Silver Leaf has filed several small
12 company rate increase cases?

13 A. Filed, yes.

14 Q. Did it ever file a full formal rate case?

15 A. Not to my knowledge.

16 Q. Is it reasonable to assume that Silver Leaf
17 believed that the costs associated with a formal rate case
18 exceeded the expected benefits?

19 A. I have -- have no knowledge of what Silver
20 Leaf thought in that regard.

21 Q. Okay. Call your attention to your Rebuttal
22 Testimony, page 2, beginning at line 16 and going over to
23 page 3, line 2. I'm not asking you to read it aloud, but just
24 to refer to it.

25 You recommended there that Algonquin be

1 allowed to recover \$225,000 of rate case expense from the
2 ratepayers?

3 A. An estimated amount, yes.

4 Q. Okay. Is the amount going to be changed?

5 A. The -- Algonquin's total costs will exceed the
6 \$225,000.

7 Q. Okay. And your recommendation was that it
8 recover \$9,000 per utility per resort for five years?

9 A. Per year until costs are reimbursed.

10 Q. Okay. Did you mention in your Rebuttal
11 Testimony that it was until costs were reimbursed or was it
12 only to be over a period of five years?

13 A. I may have -- I may have said over a period of
14 five years because that was how the \$9,000 came up -- I came
15 up with \$9,000.

16 Q. Okay. I'm looking at lines 17 and 18. It
17 says, The company originally estimated a total rate case cost
18 of \$225,000 amortized over a period of five years.

19 A. Okay. If you go to the next paragraph, it's
20 clear that my recommendation is until full costs are
21 recovered.

22 Q. Okay. It's not clear to me.

23 So for Timber Creek then, this would be \$9,000
24 per year for water?

25 A. Yes.

1 Q. And on Monday I believe you told me that there
2 are 84 residences at Timber Creek?

3 A. No. There's 85 time-share units.

4 Q. Okay. Do any other people -- are there any
5 other units to which Silver Leaf could charge its water rates?

6 A. Silver Leaf doesn't charge water rates.
7 Algonquin charges water rates and Silver Leaf is the customer.

8 Q. My misstatement. Are there any other units
9 through which Silver Leaf could recover its water rates?

10 A. Again, you said Silver Leaf.

11 Q. I'm sorry.

12 A. Any other customers that -- other
13 accommodations that would form the basis of Silver Leaf's
14 load? There are some RV hook-up places and then there's the
15 other amenities in the resort. There's I think three or five
16 holes of golf, swimming pool, as I recall, those kind of
17 facilities.

18 Q. I understand that Silver Leaf is the only
19 customer there?

20 A. Correct.

21 Q. And would it be your understanding that Silver
22 Leaf would attempt to recover the amount that it has to pay
23 for water service from the people there at the resort?

24 A. There -- people are not necessarily at the
25 resort. There's people that own time intervals and those

1 costs would become a part of their annual maintenance fee.

2 Q. Okay. But they would recover it from the
3 people that use the facilities there?

4 A. They would attempt to recover. Whether or
5 not -- again, whether or not they are able to recover is
6 another story.

7 Q. Okay. And there are 84 time-share units?

8 A. Yes.

9 Q. So --

10 A. Excuse me. Wait. Excuse me. There may be
11 only 72. There's six -- six 12-plexes there, that would be
12 72.

13 Q. Okay. So if Silver Leaf was to recover that
14 \$9,000 per year of water service charges from the people that
15 use those 72 units, they would have to charge more than \$100
16 per unit per year or would have to recover more than \$100 per
17 unit per year. Correct?

18 A. Uh-huh. Which would be slightly over \$2 per
19 time interval.

20 Q. The total bill would be \$9,000 per year?

21 A. Yes.

22 Q. And there are 72 time-shares?

23 A. Time-share units.

24 Q. Okay.

25 A. Each with 52 time intervals.

1 Q. Okay. So by time interval you're talking
2 about one week's use of the time share?

3 A. Yes.

4 Q. So it would be \$2 per week per --

5 A. Yes.

6 Q. -- time share? Okay.

7 A. A little over.

8 Q. And similarly, there would be a charge of
9 \$9,000 per year for sewer service --

10 A. Correct.

11 Q. -- at Timber Creek?

12 And that also would amount to about \$2 per
13 time interval?

14 A. Yes.

15 Q. Okay. And that would be for a period of five
16 years or more?

17 A. Correct.

18 Q. And that's just for rate case expense?

19 A. Correct.

20 Q. How much of your time on this case did you
21 devote to the issue of unrecorded plant? Can you give me a
22 rough estimate of the percentage of the time that was devoted
23 to that?

24 A. Well, including time devoted in Direct,
25 Rebuttal and Surrebuttal Testimony, apart from the original

1 analysis, it might be as high as 100 hours.

2 Q. How many total hours do you have on this case?

3 A. Through the close of hearing I will have 345.

4 Q. So it would be a little less than a third of
5 the time --

6 A. Yes.

7 Q. -- devoted to that? Okay.

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

10 JUDGE PRIDGIN: All right. Mr. Krueger, thank
11 you.

12 I don't believe I have any questions.

13 Redirect?

14 MR. COOPER: Yes, your Honor.

15 REDIRECT EXAMINATION BY MR. COOPER:

16 Q. Mr. Loos, when did Algonquin start to operate
17 these properties?

18 A. August 15th or August 16th, 2005.

19 Q. In your opinion, were they under-earning at
20 that time?

21 A. Yes.

22 Q. You were asked questions about the update in
23 this case. Is it common for rate cases to have an update
24 feature?

25 A. To my understanding, yes, in Missouri.

1 Q. How about a true-up hearing sometimes as well?

2 A. Yes.

3 Q. And that's irrespective of whether ownership
4 has changed recently for the utility. Correct?

5 A. Yes.

6 Q. You were asked some questions about some
7 possible delays in regard to a small company rate case
8 proceeding that had to do with a merger case. Do you remember
9 those?

10 A. Yes.

11 Q. Does the utility still have a right to a just
12 and reasonable rate during the time of a merger case?

13 A. I believe so.

14 Q. If a company is under-earning, what effect
15 does it have on the company during the processing of a rate
16 case?

17 A. Well, it -- in addition to the distraction
18 offered by the rate case, there's a lack of cash flow to
19 offset the costs that the utility's incurring. So as a
20 result, basically in many cases the operating expenses must be
21 financed.

22 Q. Okay. So during the processing of the case,
23 they continue to under-earn, don't they?

24 A. Yes.

25 Q. And once rates are set, are rates set

1 prospectively?

2 A. Yes.

3 Q. So there's no going back to make up those
4 losses that they suffered during the course of the rate case?

5 A. That's correct.

6 MR. COOPER: That's all the questions I have,
7 your Honor.

8 JUDGE PRIDGIN: All right. Mr. Cooper, thank
9 you.

10 I think we have some Bench questions now.

11 Mr. Chairman?

12 QUESTIONS BY CHAIRMAN DAVIS:

13 Q. Is it Mr. Loos?

14 A. Yes.

15 Q. Okay. And you're testifying on rate case
16 expenses. Correct?

17 A. Yes.

18 Q. Have you sent a bill to Mr. Swearengen or
19 Algonquin for your services?

20 A. I've sent a number of bills.

21 Q. Okay. Are any of those bills in evidence
22 here?

23 A. To my knowledge, no.

24 Q. No. Do you know if any of Brydon,
25 Swearengen's bills are in evidence here?

1 A. Again, not to my knowledge.

2 Q. So, I mean, basically all we've got is you
3 guys coming in and saying, We're going to spend \$200,000 or so
4 on this case, pay us?

5 A. As far as the backup -- backup, I think
6 there's data requests that has much of that, but it's not in
7 evidence.

8 Q. Yeah. The data request is not in evidence?

9 A. Right.

10 Q. Can you see why I might find that a little
11 suspicious?

12 A. I can see why you may question it

13 CHAIRMAN DAVIS: No further questions, Judge.

14 JUDGE PRIDGIN: All right. Thank you.

15 Commissioner Appling, any questions?

16 COMMISSIONER APPLING: I don't think so.

17 JUDGE PRIDGIN: All right. Any recross based
18 on that, Ms. Baker?

19 MS. BAKER: No.

20 JUDGE PRIDGIN: Mr. Krueger?

21 MR. KRUEGER: No, your Honor.

22 JUDGE PRIDGIN: Mr. Cooper?

23 FURTHER REDIRECT EXAMINATION BY MR. COOPER:

24 Q. Mr. Loos, is it your understanding that the
25 invoices from Black and Veatch pertaining to this case and the

1 invoices from Brydon, Swearngen and England pertaining to
2 this case have been provided to the Staff in response to -- in
3 a response to Staff Data Request 49 and a supplemental
4 response to Staff Data Request 49?

5 A. Yes.

6 MR. COOPER: Your Honor, I would like to ask
7 that we reserve two exhibit numbers for the late filing of
8 those two data request responses.

9 JUDGE PRIDGIN: Those would be Exhibits 32 and
10 33. You're needing two numbers?

11 MR. COOPER: It doesn't have to be. If you
12 would prefer one number, that's fine.

13 JUDGE PRIDGIN: Let's go ahead and do two.
14 Exhibit No. 32 then would be Data Request 49?

15 MR. COOPER: Yes, your Honor.

16 MR. KRUEGER: Your Honor, I'd object to those
17 exhibits being late filed because it deprives the Staff of an
18 opportunity to review them and evaluate them and question the
19 witnesses about them and I think it is inadmissible.

20 JUDGE PRIDGIN: All right. Thank you. And I
21 don't think they've been offered yet. I'm simply reserving
22 those numbers for identification purposes.

23 MR. COOPER: Now, my response to Mr. Krueger
24 would be these are indeed Staff data request responses so
25 Staff certainly has had the opportunity to review those

1 responses. And, in addition, had they wanted to ask questions
2 about those documents, they certainly could have done so on
3 cross-examination as well.

4 MR. KRUEGER: But I wouldn't ordinarily ask
5 questions on cross-examination about something that hasn't
6 been covered in direct evidence and this hasn't been covered
7 in direct evidence.

8 JUDGE PRIDGIN: And, Mr. Cooper, is that
9 something that you are offering, Exhibits 32 and 33?

10 MR. COOPER: Yes, your Honor.

11 JUDGE PRIDGIN: All right.

12 COMMISSIONER APPLING: Judge, would you
13 clarify for me again exactly what Mr. Cooper is asking for? I
14 missed that.

15 JUDGE PRIDGIN: Yes, sir. And I'll let
16 Mr. Cooper do it because I'm sure he'll do a better job, but
17 he's asking to late file a couple of exhibits. And,
18 Mr. Cooper, if you could explain what those are, please.

19 COMMISSIONER APPLING: Is anybody going to
20 address a followup on the Chairman's question on submitting
21 information on --

22 MR. COOPER: Yes, Commissioner. That's what
23 I'm proposing. The Chairman had asked whether invoices had
24 been put into evidence and the answer is no. However, those
25 invoices have been provided to the Staff in response to their

1 requests and, as a matter of fact, formed the basis for part
2 of Mr. Boateng's testimony. And so I was offering to provide
3 those data requests that have been -- or those invoices to the
4 Commission in evidence.

5 COMMISSIONER APPLING: Judge, thank you. I'm
6 sorry. I'm getting you out of sync.

7 JUDGE PRIDGIN: Not at all. Not at all.

8 All right. And we'll call Data Request No. 49
9 Exhibit 32 for identification purposes, Data Request 49-A,
10 Exhibit 33 for identification purposes. Am I describing that
11 correctly, Mr. Cooper?

12 MR. COOPER: I would say it was the
13 supplemental response to 49 would be Exhibit 33.

14 JUDGE PRIDGIN: 33, excuse me. I'm sorry.
15 Mr. Chairman?

16 CHAIRMAN DAVIS: Your Honor, could I inquire
17 of Mr. Krueger for just a moment?

18 JUDGE PRIDGIN: Absolutely.

19 CHAIRMAN DAVIS: Mr. Krueger, were you aware
20 of these data requests?

21 MR. KRUEGER: I was aware of the data request.

22 CHAIRMAN DAVIS: Okay. Do you think it would
23 be helpful for future reference going forward if Staff data
24 requests had to be made through an attorney as opposed to just
25 Staff sending out data requests willy-nilly?

1 MR. KRUEGER: There has been some discussion
2 about that. I don't think I particularly want to take a
3 position on it today, but it is an issue that I'm thinking
4 about.

5 CHAIRMAN DAVIS: No further questions, Judge.

6 JUDGE PRIDGIN: All right. Thank you. Again,
7 Mr. Cooper, I understand you've offered 32 and 33 into
8 evidence.

9 MR. COOPER: Yes, your Honor

10 JUDGE PRIDGIN: And, Mr. Krueger, any other
11 objections?

12 MR. KRUEGER: No, your Honor.

13 JUDGE PRIDGIN: Ms. Baker, any objections?

14 MS. BAKER: Just a reiteration of
15 Mr. Krueger's. No others.

16 JUDGE PRIDGIN: All right. Thank you. The
17 objections are overruled. Exhibits 32 and 33 are admitted.

18 (Company Exhibit Nos. 32 and 33 were received
19 into evidence.)

20 JUDGE PRIDGIN: And, Mr. Cooper, when can you
21 get those filed?

22 MR. COOPER: Certainly by -- well, it depends
23 on how long we go ago today I suspect, but certainly by
24 tomorrow I can file them if you would like for me to.

25 JUDGE PRIDGIN: Yes, sir. By tomorrow. Thank

1 you.

2 All right. Mr. Loos is still on the stand on
3 this issue and I think we had -- let me make sure we've
4 cleaned up an and don't have any more cross-examination. Any
5 more Bench questions?

6 Okay. Hearing none, recross?

7 MS. BAKER: No.

8 MR. KRUEGER: No.

9 JUDGE PRIDGIN: Redirect?

10 MR. COOPER: No, your Honor.

11 JUDGE PRIDGIN: Mr. Loos, thank you very much.

12 You may step down.

13 And would Mr. Boateng be the next witness?

14 MR. KRUEGER: Yes, your Honor.

15 JUDGE PRIDGIN: All right. If you would come
16 forward to be sworn, please.

17 (Witness sworn.)

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

20 And, Mr. Krueger, when you're ready, sir.

21 MR. KRUEGER: Thank you, your Honor.

22 KOFI AGYENIM BOATENG testified as follows:

23 DIRECT EXAMINATION BY MR. KRUEGER:

24 Q. State your name and address for the record,
25 please.

1 A. Kofi Agyenim Boateng.

2 Q. I'm sorry. Say that again.

3 A. Kofi Agyenim Boateng. Kofi is K-o-f-i,
4 Agyenim is A-g-y-e-n-i-m and Boateng is B-o-a-t-e-n-g.

5 Q. Well, I apologize. I have mispronounced your
6 name for months.

7 By whom are you employed and in what capacity?

8 A. I'm employed by Missouri Public Service
9 Commission as a utility regulatory auditor.

10 Q. Okay. Did you prepare and cause to be
11 pre-filed in this case Exhibit 14, Direct Testimony of Kofi
12 Agyenim Boateng?

13 A. That is fine.

14 Q. And do you have any corrections or changes to
15 make to that document?

16 A. Not that I am aware of.

17 Q. Are all the answers given there true and
18 correct?

19 A. Yes, sir.

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

22 A. That is correct.

23 Q. Did you also prepare and cause to be pre-filed
24 in the case the document identified as Exhibit 15, Rebuttal
25 Testimony of Kofi Agyenim Boateng?

1 A. (Witness nodded head.)

2 Q. And do you have any corrections or changes to
3 make to that document?

4 A. Yes, I do have some changes to make.

5 MR. KRUEGER: Your Honor, Mr. Boateng has
6 prepared an errata sheet that I think may be helpful.

7 JUDGE PRIDGIN: All right. Thank you.

8 BY MR. KRUEGER:

9 Q. Now, would you please describe the corrections
10 or changes to your Rebuttal Testimony?

11 A. Yes. On page 2, line 13, the \$180,000 should
12 be replaced by \$225,000. The 108,000 for water service and
13 \$72,000 for sewer service in parenthesis should be replaced by
14 \$135,000 and 90,000 respectively.

15 On the same page 2, line 15, four-year
16 amortization of this rate case expense should be five-year
17 amortization of this rate case expense.

18 Q. Can you wait just a moment? Okay. Proceed.

19 A. And if you turn to page 3, line 11,
20 23.28 percent should be 29.1 percent. On the same line,
21 18.48 percent should be 23.1 percent.

22 Q. I'm sorry. Did you say 23.1?

23 A. Yes, please.

24 Q. I think on the errata sheet it says 27.23, but
25 it should be 23.1?

1 A. It's 23.1.

2 Q. Okay. The next change?

3 A. If you move down on the same page on line 17,
4 180,000 should be replaced by \$225,000. And four years on the
5 same line should be five years.

6 If you move further down that same page,
7 line 20, those four years should be those five years.

8 Q. Next change?

9 A. On page 4, line 5, four years should be five.
10 On line 15 on the same page, 75.75 percent should be
11 74.8 percent.

12 Q. I don't believe that one is mentioned on your
13 errata sheet, is it?

14 A. It says --

15 JUDGE PRIDGIN: Mr. Krueger, I think I see it
16 on mine.

17 MR. KRUEGER: Oh, is it? I just missed it.
18 I'm sorry.

19 THE WITNESS: And the 86.23 percent should be
20 94.55 percent. And on line 17 on the same page 108,000 over
21 four years in parenthesis should be \$135,000 over five years.

22 On line 18, 87.81 percent should be
23 89.8 percent. On line 19 on the same page 4, \$72,000 over
24 four years in parenthesis should be \$90,000 over five years.
25 On line 20, 100.99 percent should be 109.32 percent. And on

1 page 6, line 12 Algonquin should be Silver Leaf.

2 BY MR. KRUEGER:

3 Q. Okay. Is that all of the changes?

4 A. Yes, sir.

5 Q. With those changes, is all of the information
6 contained in your Rebuttal Testimony true and correct?

7 A. Yes.

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

10 A. That's correct.

11 Q. Did you also prepare and cause to be pre-filed
12 in this case the document that's been marked as Exhibit 16
13 Surrebuttal of Kofi Agyenim Boateng in this case?

14 A. Yes.

15 Q. And do you have any corrections or changes to
16 that document?

17 A. Not that I am aware of.

18 Q. Okay. And is all the information in that
19 document true and correct?

20 A. Yes, sir.

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

23 A. Yes, sir.

24 MR. KRUEGER: Your Honor, I would offer
25 Exhibits 14, 15 and 16 and tender the witness for

1 cross-examination.

2 JUDGE PRIDGIN: Mr. Krueger. Thank you. 14,
3 15 and 16 have been offered. Any objections?

4 Seeing none, Exhibits 14, 15 and 16 are
5 admitted.

6 (Staff Exhibit Nos. 14, 15 and 16 were
7 received into evidence.)

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

9 CROSS-EXAMINATION BY MS. BAKER:

10 Q. In your testimony you state that Staff
11 believes that the informal rate process should have been
12 pursued first before filing a formal rate increase
13 application; isn't that true?

14 A. That is correct.

15 Q. In your testimony you state that filing an
16 informal rate increase application first might have reduced
17 the number of issues to be addressed in the later formal
18 filing should one have been necessary; is that true?

19 A. That is correct.

20 Q. Would you agree that the fewer issues to be
21 addressed in a formal filing might reduce the amount of rate
22 case expense that the ratepayers would be asked to pay?

23 A. That is correct.

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

25 JUDGE PRIDGIN: Ms. Baker. Thank you.

1 Mr. Cooper?

2 MR. COOPER: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. COOPER:

4 Q. Is there anything in the formal rate case
5 process that prohibits the parties from reaching agreement?

6 A. Not that I'm aware of.

7 Q. So the parties in this formal case could have
8 reached agreement on any specific issue or the whole case?

9 A. That is possible.

10 Q. Do you know whether the small company rate
11 case procedure is specifically described in the Commission's
12 statutes?

13 A. Yes. I believe it's in the Commission rules.

14 Q. In the regulations, but not in the statutes,
15 is it?

16 A. I haven't checked that.

17 Q. Okay. Would you turn -- do you have your
18 Rebuttal Testimony before you?

19 A. Yes, I do.

20 Q. Okay. Could you turn to page 6? Are you
21 there?

22 A. Yes, sir.

23 Q. Now, I believe on page 6 on about lines --
24 well, the lines I want to focus you on are 12 to 14, but I
25 think in that section of your testimony you're referring to

1 the small case rate case procedure that was initiated by
2 Silver Leaf in the year 2000. Correct?

3 A. That is correct.

4 Q. And on lines 12 to 14 you say that the Staff's
5 review did not detect an over-earnings situation and did not
6 pursue a rate reduction; thus, the small rate increase case
7 process worked well. Correct?

8 A. That is correct.

9 Q. Now, in fact, the earnings review suggested a
10 net under-earning, didn't it?

11 A. That is correct.

12 Q. Did Silver Leaf ever receive any new rates
13 associated with that under-earning?

14 A. Not that I'm aware of.

15 Q. How well do you think they thought that
16 process worked then?

17 A. I --

18 MR. KRUEGER: Objection. That calls for
19 speculation.

20 MR. COOPER: That's fine. I'll withdraw it.

21 BY MR. COOPER:

22 Q. Also in your Rebuttal Testimony, still on
23 page 6, I think down on -- starting on line 22, you have a
24 sentence that says -- and then actually flows over to page 7,
25 Another alternative that is also available upon agreement

1 between the company, the Staff and the Office of the Public
2 Counsel is for hearings to be held regarding major issues upon
3 which agreement cannot be reached; is that correct?

4 A. That is correct.

5 Q. Now, I take it you say -- you use the words
6 "available upon agreement" because there's no requirement for
7 hearing in the small rate case procedure. Correct?

8 A. That is correct. But it's my understanding
9 and based on the testimony of Mr. Johansen that during the
10 sale case, which is Case No. WO-2005-0206, that there was a
11 discussion between the company and Staff that in their first
12 rate case they can pursue -- use a small company rate case.

13 And it -- in the event that certain issues to
14 be had after that informal case, then agreement will be
15 reached to modify the process so that they can have a chance
16 of filing a formal case without the necessity of having to go
17 back to study whole formal rate case. And I think the same
18 thing happened in the Hickory Hills' case.

19 Q. Well, yeah, I want to talk about that today
20 before we get through this issue. But you would agree with
21 me, wouldn't you, that, again, the regulation -- the
22 Commission's regulation on small company rate cases doesn't
23 provide for a hearing, does it?

24 A. Yes.

25 Q. Okay. So if there were a hearing at some

1 point, it would be some hybrid situation upon which the
2 company would be relying upon the goodness of the Staff or the
3 Office of Public Counsel's heart to allow it to have such a
4 hearing. Correct?

5 A. I think that is correct. And that is essence
6 of the small company rate case.

7 Q. Now, you mentioned the Hickory Hills' process.
8 Do you know how many times there have been small company rate
9 cases that have had a hearing associated with them?

10 A. Since joining the Commission about three and a
11 half years ago, I know of only two, Hickory Hills and Aqua
12 Missouri.

13 Q. So you think that there was an evidentiary
14 hearing in the Aqua Missouri process?

15 A. Well, I believe there was a form of a hearing.

16 Q. But were issues actually tried in that
17 hearing?

18 A. There was a discussion. And as a result of
19 that discussion, an agreement was reached between Staff, OPC
20 and the company.

21 Q. Okay. So when you talk about the company's
22 possibility of having a hearing in a small company rate case,
23 that proceeding that was conducted in the Aqua Missouri
24 proceeding is the sort of thing you have in mind?

25 A. I believe that is a form of the hearing.

1 Because under normal circumstance, the small rate company case
2 will not avail itself to that. But when it moves to the
3 hearing where the Commissions have a chance to hear the case,
4 then it turns a different story.

5 Q. Do you think that the hearing that was held in
6 the Aqua Missouri proceeding could have been appealed to the
7 circuit court?

8 A. I can't answer that.

9 Q. Now, going back to the Hickory Hills' matter,
10 which I think is WR-2006-0250. Does that sound right?

11 A. I don't -- yeah, that's correct.

12 Q. Now, would you agree with me that in the
13 hearing that resulted in that case, Hickory Hills was
14 represented by an attorney?

15 A. I believe that is correct.

16 Q. Okay. Let's turn in your Rebuttal Testimony
17 just back a page to page 5. And on lines 12 through 15 I
18 believe you have a sentence that says, Because of the informal
19 nature of the small company rate increase procedure, which
20 avoids expenditure for legal and consulting services, the
21 procedure results in significant savings for the qualifying
22 water and sewer utility companies and, thus, their customers.

23 Is that an accurate reading?

24 A. That is correct.

25 Q. Okay. But yet we just talked about the

1 Hickory Hills' matter. And you would agree with me that they
2 ended up having to hire counsel, didn't they?

3 A. That is correct.

4 Q. Okay. And then you've also mentioned the Aqua
5 Missouri proceeding. Correct?

6 A. That is correct.

7 Q. And that would be -- I think maybe there's
8 three cases, but at least two of the case number associated
9 with that WR-2007-0020 and SR-2007-0021. Correct?

10 A. I believe that is correct.

11 Q. And that would have been completed some time
12 last fall?

13 A. That is correct.

14 Q. Would you agree with me that Aqua Missouri
15 submitted that small company rate case request on May 17th of
16 2005?

17 A. That may be right.

18 MR. COOPER: Your Honor, may I approach the
19 witness?

20 JUDGE PRIDGIN: You may.

21 THE WITNESS: Thank you.

22 CHAIRMAN DAVIS: Your Honor, can I just ask
23 Mr. Cooper how much longer he's going to be?

24 JUDGE PRIDGIN: Absolutely.

25 CHAIRMAN DAVIS: Not that I'm trying to rush

1 you. It's just I'm going to have to leave and I didn't want
2 to --

3 JUDGE PRIDGIN: Mr. Cooper?

4 MR. COOPER: Certainly I don't mind the
5 question. Let me look and see if I can provide a meaningful
6 answer here, your Honor.

7 CHAIRMAN DAVIS: Okay.

8 MR. COOPER: It could be 15 or 20 minutes,
9 Commissioner. Would you like to go ahead and --

10 CHAIRMAN DAVIS: Could I ask your indulgence,
11 Mr. Cooper, so I could ask Mr. Boateng a couple of questions?
12 It won't take long, I promise.

13 MR. COOPER: Certainly.

14 QUESTIONS BY MR. CHAIRMAN DAVIS:

15 Q. Can I just call you Kofi? Is that okay?

16 A. That's fine.

17 Q. Kofi, have you ever talked with anyone besides
18 a Staff member -- has anyone else besides a Staff member ever
19 given you the impression that the small company rate case
20 procedure works well?

21 A. No.

22 Q. Okay. And is it your position that Algonquin
23 should recover only \$5,000 for rate case expense; is that
24 correct?

25 A. That is the alternative if there --

1 Q. That is -- that is the -- that is the
2 alternative?

3 A. That is correct.

4 Q. Based on the evidence that has been presented
5 here at this hearing, which you've seen, correct --

6 A. Yes.

7 Q. -- do you think there could have ever been a
8 resolution on all of these issues in the small rate case
9 process short of total capitulation by Algonquin?

10 A. I believe that was a possibility that some of
11 the issues might have been settled if the company --

12 Q. Some, but not all. Correct?

13 A. And that would have reduced the costs of the
14 rate case.

15 Q. Now, Kofi, if I don't like your testimony here
16 and if I don't like Mr. Featherstone's testimony or
17 Mr. Vesely's testimony, should I disallow part of your salary?

18 A. I think what the Staff is doing here is to
19 apply the principle of reasonable and prudence, if you look at
20 it. If the company would have the chance of getting the same
21 result by filing the informal case, I think that would have
22 been the best thing for the company to do. All that is said
23 in their testimony is that Silver Leaf perceived
24 dissatisfaction with the small company without -- even though
25 in the reason, that caused the delays. And so I think that

1 Staff position is reasonable.

2 Q. If I deem that Staff's position -- a majority
3 of this Commission deems that Staff's position is not
4 unreasonable, should we reduce your compensation based on the
5 amount of work that you did in this case?

6 A. I don't believe that should apply.

7 Q. You don't believe that it should apply?

8 A. Yes.

9 Q. You wouldn't like that, would you?

10 A. That is correct.

11 CHAIRMAN DAVIS: Okay. No further questions,
12 Judge.

13 JUDGE PRIDGIN: Mr. Chairman, thank you.

14 Mr. Cooper, let me let you resume your
15 cross-examination, if you're ready.

16 MR. COOPER: Thank you, your Honor.

17 CROSS-EXAMINATION (CONT'D) BY MR. COOPER:

18 Q. I believe before we broke for the
19 Commissioner's questions, I'd handed you a document. Do you
20 have that document in front of you?

21 A. Yes, sir.

22 Q. Do you recognize that document?

23 A. Yes, sir.

24 Q. What is it?

25 A. It's the order approving Unanimous Stipulation

1 and Agreement and approving tariff.

2 Q. And that's Case No. WR-2007-0020. Correct?

3 A. That is correct.

4 Q. And as we discussed previously, that's one of
5 the cases -- one of the small company cases that Aqua Missouri
6 filed that you referred to earlier today. Correct?

7 A. That's correct.

8 Q. Okay. And I believe before I had handed this
9 to you, we were talking about some of the significant dates in
10 that case. If you look down at the second line in the second
11 full paragraph, do you see that the Commission's order
12 reflects that on May 17 of 2005, Aqua Missouri initiated a
13 small company rate case increase proceeding?

14 A. That is correct.

15 Q. Would you agree with me that in that
16 proceeding, Aqua Missouri's new rates were not effective until
17 about October of 2006?

18 A. That may be correct.

19 Q. That ends up being 17 months or so. Would you
20 agree with that?

21 A. I assume that is correct.

22 Q. Okay. Would you agree with me that that Aqua
23 Missouri case was initiated by Aqua American's in-house
24 counsel, an attorney, Ms. Kathy Pape?

25 A. I know the company filed a letter and not --

1 and it has been offered in Direct Testimony or that kind.

2 MR. COOPER: May I approach the witness, your
3 Honor?

4 JUDGE PRIDGIN: You may.

5 BY MR. COOPER:

6 Q. Now, I've just handed you a document. Is that
7 the letter you were referring to?

8 A. That is correct.

9 Q. Okay. Can you turn to the second page of that
10 letter?

11 A. Yes.

12 Q. Who signed that letter?

13 A. I can see Kathy L. Pape.

14 Q. Okay. And what is her title?

15 A. Vice president, treasurer and rate counsel.

16 Q. Counsel. Okay. Are you wear that Ms. Pape
17 also filed several other items in that small company rate
18 case?

19 A. That may be correct if --

20 Q. Are you aware that Aqua Missouri eventually
21 hired local counsel, Mr. Marc Ellinger, to represent the
22 company in several proceedings before that case was completed?

23 A. I believe that occurred only during the
24 hearing.

25 Q. During the hearing process you referred to

1 earlier?

2 A. That is correct.

3 Q. Okay. If those things are true, do you still
4 think a small company rate case proceeding avoids completely
5 expenditures for legal services?

6 A. We are not completely discounting the fact
7 that small companies should have the services of professionals
8 in managing their business.

9 Q. So you do believe that they should have
10 professional assistance in the small company rate case
11 procedure?

12 A. What I mean is not for rate case procedure,
13 but what I mean is for processing their case.

14 Q. Processing their case. So you do --

15 A. Processing their -- doing their business by
16 not filing for a rate case.

17 Q. Okay. So during the small company rate case
18 proceeding, even there you think it's reasonable for them to
19 have consultants and attorneys that would assist them with
20 that?

21 A. Well, I -- I believe the company knows best.
22 And if they decide that consultants and others may help them
23 to build a case. But then what we are saying is that if they
24 file informal, the Staff of the Commission will go in and
25 determine the revenue requirement. And so most of the work

1 that will be done by the consultants will be done by the
2 Commission Staff at no cost to the company.

3 JUDGE PRIDGIN: Mr. Cooper, was that answer
4 responsive?

5 MR. COOPER: I'm not sure. But I can work
6 with that, I think.

7 BY MR. COOPER:

8 Q. Do you think that the company would be willing
9 to just depend on the Staff's review of its rate elements or
10 do you think they might want to have their own look at some of
11 those numbers as well?

12 A. I believe joining the Commission, as I said
13 about two and a half years, that has been the case.

14 Q. What has been the case?

15 A. That the Staff goes in, review the company's
16 books and records and come out with a revenue requirement
17 needed for the company.

18 Q. Is it usually the case that the company
19 desires someone working for it to review those numbers and to
20 take a look at what the Staff has come up with?

21 A. Well, the company may have a chance if they
22 decide to.

23 Q. And it's also possible that they won't agree
24 with the Staff. Correct?

25 A. And I would say that in almost all the cases

1 there is agreement on this part, but it -- after Staff's
2 findings or have it's ordered, our revenue requirements are
3 presented to the company. And as a result of that discussion,
4 some of these numbers changes. So I believe it's not always
5 the case that everything will be settled on the first hand.

6 Q. Okay.

7 JUDGE PRIDGIN: Was that answer responsive,
8 Mr. Cooper?

9 MR. COOPER: I don't think so.

10 JUDGE PRIDGIN: Could you ask the question
11 again, please?

12 MR. COOPER: I'm not sure I can.

13 JUDGE PRIDGIN: Okay. Can we read it back?

14 THE COURT REPORTER: "Question: And it's also
15 possible that they won't agree with the Staff. Correct?"

16 JUDGE PRIDGIN: So the question if you could
17 ask that again, Mr. Cooper.

18 BY MR. COOPER:

19 Q. Let's try this again. Is it possible that
20 after the Staff's review of the company's books and records
21 and the Staff comes up with their assessment of those books
22 and records, that the company will not be in agreement with
23 the Staff?

24 A. Yeah. There is a possibility that there will
25 be a disagreement.

1 Q. Thank you. Now, in your Surrebuttal Testimony
2 on page 11, if you could turn to that.

3 A. Yes, sir.

4 Q. You quote there on line 7 a total rate case
5 expense number. Correct?

6 A. That is correct.

7 Q. And that is an expense number through some
8 point in time. Correct?

9 A. That is correct.

10 Q. And that number that you have calculated is
11 based upon your review of the company's -- or of the invoices
12 of my firm and Mr. Loos's firm that were provided in response
13 to Staff Data Request 49. Correct?

14 A. That is correct.

15 Q. Okay.

16 MR. COOPER: Your Honor, I'd like to mark an
17 exhibit at this time, if I could.

18 JUDGE PRIDGIN: You may.

19 MR. COOPER: Let me get my list out here so I
20 don't throw myself off too badly here. Are we up to
21 Exhibit 34, your Honor?

22 JUDGE PRIDGIN: Yes. That's what my records
23 show. Does anybody show anything different? Okay. 34.

24 MR. COOPER: This would be Staff response to
25 Data Request 64.

1 (Company Exhibit No. 34 was marked for
2 identification.)

3 BY MR. COOPER:

4 Q. Do you have the document before you that's
5 been marked as Exhibit 34?

6 A. No. You didn't give it to me.

7 Q. Now do you have before you the document that's
8 been marked as Exhibit 34 for identification?

9 A. That is correct.

10 Q. Do you recognize that?

11 A. Yes.

12 Q. And would you agree with me that that is a
13 Staff response to a data request that was propounded by the
14 company?

15 A. That is correct.

16 Q. Okay. And the company had asked for each
17 Staff witness and Staff counsel to provide time sheets or a
18 schedule showing -- and I'm going to paraphrase here -- the
19 total number of hours spent working on this case. Correct?

20 A. That is correct.

21 Q. And that's what the Staff provided in this
22 document. Correct?

23 A. That is correct.

24 Q. Only through a certain point in time.

25 Correct? Only through primarily the month of December?

1 A. That is correct.

2 Q. And because the Staff doesn't keep time this
3 way, it does not include any time for Staff counsel. Correct?
4 It's only members of the Staff other than Staff counsel?

5 A. I don't know about that.

6 Q. Well, let's look at the third para-- well, the
7 third page in. Can you turn to that for me? Okay. And the
8 third paragraph there says, The attorneys who worked on the
9 case are Keith Krueger, Shelly Syler and Blane Baker. However
10 they do not keep records of their time by case number and they
11 are not able to accurately estimate the time they have devoted
12 to this case. Correct?

13 A. That is what is here.

14 Q. Okay. So we don't have any attorney time
15 included in this. Correct?

16 A. That is correct.

17 Q. Okay. Now, I suppose we can add this up, but
18 would you agree with me that there's somewhere in excess of
19 1,800 hours reflected in these reports?

20 A. I -- I don't have any reason to doubt that.

21 Q. And whatever the number is, the total number,
22 we would expect that to be even higher now that we have -- we
23 would have January time as well that's not reflected in these
24 reports. Correct?

25 A. That may be correct.

1 Q. Okay. And that would be considerably higher
2 that be the 345 hours that Mr. Loos said he -- his firm had
3 spent on this case. Correct. Would you agree with that?

4 A. That may be correct.

5 Q. Okay. Do you think that the Staff would ever
6 recommend that a small company would file formal rate case
7 instead of pursuing a small company rate case where there are
8 plant issues to be addressed?

9 A. I believe the circumstance would determine
10 whether there is a need for filing a formal rate case after a
11 small company rate case procedure.

12 Q. Okay. So you would agree with me that in some
13 instances, that would be a good process to follow. Correct?

14 A. Yeah. The point where the parties are unable
15 to reach an agreement.

16 Q. Okay. What if it's before there's been a
17 disagreement? For instance, are you familiar with Commission
18 Case No. GO-2005-0120, a case concerning Missouri Gas Utility,
19 Inc., where the Staff recommended a formal case because of
20 plant issues that were in dispute -- or not necessarily in
21 dispute, plant issues that needed to be determined?

22 A. I'm not aware of that.

23 MR. COOPER: Just one moment, your Honor.

24 BY MR. COOPER:

25 Q. I need to go back and correct a mistake that I

1 made. I asked you a question and had you compare that
2 1,800 hours to the 345-hour figure that Mr. Loos had spoken
3 about earlier today. Correct? And I believe I've been
4 corrected. The 345 hours reflected Mr. Loos's time only and
5 not the total Black and Veatch time. Correct?

6 A. That may be correct.

7 Q. Okay. But Staff's hours still considerably
8 exceed the total Black and Veatch time. Correct? Or did you
9 take time to add up the Black and Veatch hours?

10 A. Well, it is -- I have not done the
11 calculation.

12 Q. Okay. Thank you.

13 MR. COOPER: At this time at this time I'd
14 like to offer Exhibit 34, your Honor.

15 JUDGE PRIDGIN: Okay. 34 has been offered.
16 Any objection?

17 MR. KRUEGER: No objection.

18 MS. BAKER: No.

19 JUDGE PRIDGIN: Hearing none, Exhibit 34 is
20 admitted.

21 (Company Exhibit No. 34 was received into
22 evidence.)

23 MR. COOPER: That's all the questions I have
24 at this time, your Honor.

25 JUDGE PRIDGIN: All right. Mr. Cooper, thank

1 you.

2 Let me see if we have any Bench questions.

3 Commissioner Appling?

4 QUESTIONS BY COMMISSIONER APPLING:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. Let me get my speaker on here so you can hear
8 me. How are you doing this morning?

9 A. I'm doing good.

10 Q. I want to just follow up on a couple things.
11 And I'm not trying to -- I'm just trying to get my arms around
12 it so that I can understand it better here. In your testimony
13 on your -- I think on your Direct Testimony you -- and the
14 Chair was asking you a few questions about that this morning.

15 On page 10 that you're saying the Commission
16 believed that \$5,000 is enough money to be recovered by the
17 company for having a full-fledged rate case. Mr. Loos
18 testified yesterday I believe or maybe the day before that
19 that the company didn't feel that they could get a complete
20 satisfaction from the Staff here as far as the rate case or
21 they didn't think they could settle all the issues in this and
22 this is the reason he asked for the full rate case.

23 Was that your understanding of why they went
24 to the full rate case instead of the small company, or did you
25 have any understanding about that at all?

1 A. I believe Staff's position in this case. And
2 I think the 5,000 is what Staff consider a reasonable amount
3 to be included in rates.

4 And on the question of the company's filing
5 their formal case, their decision to file a formal case was
6 based on the fact that -- based on the perceived
7 dissatisfaction by Silver Leaf.

8 And reading through Mr. Loos's testimony and
9 even his testimony this morning, I could not deduce why, you
10 know, that based on speculation you decide even having a first
11 feel of what a small rate case procedure is all about and just
12 moving ahead with a formal rate case that's overburden
13 ratepayers.

14 And that we compared a rate case expense with
15 other companies over that has been filed recently. And the
16 companies that I reviewed are KCPL in Case No. ER-2006-0314
17 and Aquila rate case, ER-2007-0004.

18 And if you compare their projected rate case
19 expense with the -- the revenue requirement, if I use the
20 normalized five years that Algonquin proposes, every customer
21 of Algonquin will be paying a monthly bill of \$3.79 compared
22 to 11 cents for a customer at KCPL, Aquila will be 7 cents.

23 And so we thought it to have been a reasonable
24 thing for the company to have filed a fo-- informal rate case
25 to lim-- to lower in their rate case as -- all that may result

1 as a result of this rate request. And so that is Staff's
2 basis and reason for determining that 5,000 will be a
3 reasonable amount to be included in their cost of service.

4 Q. Okay. The only reason I ask this question,
5 Kofi, is that you and I have been at this Commission about the
6 same amount of time. We've been here about two and a half
7 years, I think. We came on board pretty close at the same
8 time. But the small water companies in this state of Missouri
9 has caused the Staff and this Commission some concerns. Some
10 of them is hemorrhaging, meaning that they have some small
11 problems.

12 So I'm wondering whether your -- when you talk
13 about these cases, are you considering some ways to fix these
14 problems as far as small water companies? And are you looking
15 at the total picture here as far as small water companies are
16 concerned? Is that discussion taking place within your area
17 of operation here in this office?

18 A. I think that is correct. And if you look at
19 Staff's recommendations in the area of these small rate cases,
20 you can see the recommendations that are made by Staff to
21 improve the operation efficiency of the small companies.

22 While it's true I have not been here long
23 enough to know most of the problem, but what I can see is that
24 most often, the small companies don't keep proper books and
25 records. And then when you don't do that, it become difficult

1 to know whether you are making a lot of money or you are
2 losing.

3 And some of these companies use the same
4 checkbook -- the owner may have a personal checkbook for the
5 company and themselves. So when somebody pays him or her a
6 check for rate -- for water rates, the person may use the same
7 money to go to Wal-Mart or maybe other grocery shop and buy
8 whatever he needs without thinking about the fact that there
9 will come a time that he or she may not have enough money in
10 the coiffeurs to maintain the system. And so I think that is
11 one of the problems facing these small companies.

12 Q. Well, in the case of this company here, at one
13 time they was not regulated in the beginning and then they're
14 switching to regulation here lately, I believe. Correct me,
15 Staff, if I'm wrong. But I'm concerned that that -- that can
16 easily be done, going down the wrong road on these small water
17 companies.

18 And I understand exactly what you're saying
19 and I don't have a problem with what you're saying because I
20 asked Mr. Loos the same question, why didn't he take the low
21 road as far as expenses. But his explanation was that I don't
22 feel like I can get to the end of the road by going the small
23 company route.

24 And I feel it's my responsibility as a
25 Commission person that's going to have to make the final

1 decision on this case and other cases that's coming up that we
2 teach each other as we go down the road on these companies.

3 Not that I'm trying to make the Staff look
4 bad, nor am I trying to help anybody. I'm trying to look for
5 a balance between what we are doing here and making sure that
6 the customer who is paying for the water get a chance to get
7 fair rates as we provide a fair evaluation of these small
8 companies and those places where we need to drill down deep
9 and make sure that we do what is necessary to get these
10 companies balanced so the customers, the citizens of this
11 state in which you and I are working for and the rest of the
12 people in this room are working for, to make sure they get
13 there.

14 And I'm not lecturing you this morning. don't
15 get the feeling I am. I'm just kind of slap-happy this
16 morning. That's why I'm talking a little bit. Okay?

17 COMMISSIONER APPLING: But, Judge, I think
18 that's my final question.

19 But as you go down the road in the future, we
20 need to look for a true balance here. Okay? Thank you very
21 much, sir.

22 THE WITNESS: Thank you, Commissioner.

23 JUDGE PRIDGIN: Commissioner Gaw?

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Good morning.

1 A. Good morning, sir.

2 Q. I heard you a little bit ago talking about the
3 impact on consumers of this request and I want a little more
4 detail from you. The amount of rate case expense that's being
5 requested by the company is how much in total?

6 A. \$225,000.

7 Q. All right. And Staff's position is that they
8 should recover 5,000; is that correct?

9 A. That is correct.

10 Q. And that's based upon what Staff believes the
11 expenses of the company would have been if there had been a
12 small company rate case filed instead of a full rate case as
13 was filed in this case?

14 A. that is correct.

15 Q. And how much is the difference in the amount
16 that it will cost customers in the two positions? Can you
17 tell me?

18 A. Yes. Staff's position would be 42 cents per
19 customer per month, and the company's proposed rate case will
20 be \$3.79. So the difference will be \$3.37.

21 Q. Was there any initial filing of a small
22 company case in this matter?

23 A. I do not believe the company made an attempt
24 to discuss with Staff when they were filing this formal rate
25 case. And the Staff only got to know from reading the

1 testimony and talking to other Staff members. The company did
2 not make any attempt, just relying on the perceived
3 dissatisfaction of Silver Leaf to file the formal rate case.

4 Q. Could you repeat that last thing again? I
5 didn't quite understand it.

6 A. Sir, what I said was that the company's reason
7 for just filing this case was based on the fact that Silver
8 Leaf was not satisfied with the small company rate case
9 procedure just by looking at the length of time it took them
10 to either get a settlement or just to dispose of the case.

11 Q. And how do you know that?

12 A. That is based on the testimony given by
13 Mr. Loos.

14 Q. I see. Okay. There isn't anything from a
15 legal perspective that would have prevented the company from
16 filing a small company case in this matter; is that correct?

17 A. That is correct

18 COMMISSIONER GAW: That's all I have. Thank
19 you.

20 THE WITNESS: Thank you, Commissioner.

21 JUDGE PRIDGIN: Commissioner Gaw, thank you.

22 Any recross based on Bench questions?

23 MR. COOPER: Yes, your Honor.

24 JUDGE PRIDGIN: I'm sorry, Ms. Baker.

25 MS. BAKER: Not from me.

1 JUDGE PRIDGIN: Mr. Cooper?

2 RE CROSS-EXAMINATION BY MR. COOPER:

3 Q. You had referenced KCPL and Aquila rate cases,
4 correct, in response to Commissioner Appling's questions?

5 A. That is correct.

6 Q. And that Aquila case you referenced, the 0004,
7 that case is still in the early stages, isn't it?

8 A. That is correct.

9 Q. Only recently did Staff even file its Direct
10 Testimony. Correct?

11 A. That is correct. But all these numbers are
12 projected rate case expense, not actual. So --

13 Q. But as to Aquila's case, you don't know what
14 it will eventually be, do you?

15 A. But for my proposal, my analysis, these are
16 projected numbers.

17 Q. Now, you would agree with me that there are
18 economies of scale in trying a rate case just as there are
19 economies of scale associated with operating a utility company
20 itself. Correct?

21 A. That is correct.

22 Q. Many of the steps are the same no matter how
23 many customers you have?

24 A. That is correct.

25 Q. Would you also agree with me that if a company

1 is determined to be under-earning, it continues to under-earn
2 during the processing of that rate case?

3 A. That may be correct.

4 Q. You also mentioned small companies and not
5 keeping proper books and records. When you made that
6 statement, were you referring to Algonquin?

7 A. I'm not -- I wasn't referring to Algonquin. I
8 was referring in general to small rate case companies that
9 I've had chance to work with.

10 Q. But not the company that's before the
11 Commission in this case?

12 A. That is correct.

13 Q. Okay. Now, you also made mention of people
14 taking utility money and spending it at Wal-Mart on personal
15 items. Were you referring to Algonquin in that statement?

16 A. No.

17 Q. Okay. Thank you. Now, in answer to questions
18 from Commissioner Gaw, you indicated that \$5,000 would be
19 about the right amount of fees I assume for both consultants
20 and attorneys for the company to have gone through a small
21 company rate case proceeding. Correct?

22 A. That is correct.

23 Q. Did you look at the expenses actually incurred
24 by Aqua Missouri in going through their small company rate
25 case proceeding and coming up with that \$5,000 estimate?

1 A. What I did is I -- I wasn't basing this on
2 Aqua Missouri case. And you mention economy of scale. You
3 mean like the big companies have an economy of scale?

4 Q. Well, no, no. Let's just start with my
5 question which I think was, did you look at the Aqua Missouri
6 expenses that they incurred in their small company rate case
7 proceeding in coming up with your \$5,000 estimate?

8 A. No, I did not.

9 Q. Okay. Let's go a step further then. Let's
10 say your \$5,000 was correct and the company filed a small
11 company rate case proceeding and at the end of the day, an
12 agreement was not reached amongst the parties. I think we
13 discussed earlier that the company's choice at that point
14 would be to file a formal case. Correct?

15 A. That is correct.

16 Q. And at that time they would certainly incur
17 additional consulting and attorney's fees. Correct?

18 A. That may be correct.

19 Q. So your \$5,000 estimate assumes even if it
20 were correct in terms of amount, it assumes that the company
21 could have received rate relief through that small company
22 proceeding, that they would have been able to agree with the
23 Staff and the OPC and no company -- and no formal case would
24 have ever been necessary. Correct?

25 A. That is correct

1 MR. COOPER: That's all the questions I have
2 at this time.

3 JUDGE PRIDGIN: Mr. Cooper, thank you.
4 Redirect?

5 MR. KRUEGER: Thank you, your Honor.

6 REDIRECT EXAMINATION BY MR. KRUEGER:

7 Q. We talked this morning about several small
8 company rate cases filed by Silver Leaf. Do you know if
9 Algonquin has ever filed a small company rate case?

10 A. Not that I'm aware of.

11 Q. Okay. Mr. Cooper asked some questions where
12 you compared the amount of Staff time to the amount of time
13 that Mr. Loos had devoted to his case and then corrected that
14 to say that it involved Black and Veatch -- that that did not
15 count all Black and Veatch personnel time. Did you hear that
16 testimony?

17 A. Yes, sir.

18 Q. Do you know if there were other people besides
19 Mr. Loos and other Black and Veatch personnel that worked on
20 this case for Algonquin?

21 A. Yes. By reviewing the company's invoice, I
22 saw there were other names that, of course, were also charged
23 to the rate case expense.

24 Q. For example, Mr. Hernandez appeared here to
25 testify, did he not?

1 A. Well, I saw some names. And I can't just tell
2 all those -- whose name were listed in the invoices.

3 Q. Okay. These are Algonquin employees?

4 A. Please can you restate your question, please?

5 Q. Do you know if Algonquin employees also worked
6 on this case in addition to Mr. Loos and the people at Black
7 and Veatch?

8 A. Yes.

9 Q. And do you have any accounting of the amount
10 of hours that they spent on it?

11 A. I don't have that.

12 Q. So is it possible for you to compare the
13 amount of time that the company and its consultants spent on
14 this case with the amount of time that Staff has devoted to
15 this case?

16 A. Well, if you have the information, I will be
17 able to compare it.

18 Q. But do you have the information?

19 A. I have not. And if the information available,
20 I haven't done the comparison.

21 Q. Okay. Now, in your Surrebuttal Testimony at
22 the very end you mention a number that was given in response
23 to a data request. That number is highly confidential so I
24 don't want to ask you about the specific number.

25 MR. COOPER: Excuse me. Keith, just for the

1 Commission and for your information, I believe that the
2 company doesn't view that total number as highly confidential
3 and, in fact, I think perhaps that was in my statement of
4 position. So if that helps you, I provide you that.

5 MR. KRUEGER: Okay. I wasn't going to go
6 there in my question. I just wanted to make sure he didn't go
7 there in his answer.

8 BY MR. KRUEGER:

9 Q. With regard to the number that is shown there
10 in your Surrebuttal Testimony, page 11, lines 6 and 7, did the
11 Staff review that figure to determine whether it was
12 reasonable?

13 A. Well, I looked at it. All that I saw in some
14 of the invoices just indicate the number of hours. I've not
15 been able to determine what those hours represent so I would
16 not be able to make that determination whether it was
17 reasonable or not.

18 Q. Okay. Thank you. You were asked some
19 questions about testimony you included in your Rebuttal
20 Testimony, page 6, lines 12 to 14. Now, this pertains to the
21 over-earning case that the Staff -- over-earning investigation
22 that the Staff initiated. Correct?

23 A. That is correct.

24 Q. And as a result of that, the Staff concluded
25 that the company was under-earning at the time?

1 A. That is correct.

2 Q. And do you know if Silver Leaf made any
3 attempt to file a rate case at that time?

4 A. No, they did not.

5 Q. Do you know if they were informed of the
6 opportunity to do so?

7 A. It's my understanding that the company was
8 informed.

9 Q. Do you know if they were encouraged to do so?

10 A. Discussing this with Staff members who worked
11 on the case, I believe the Staff did.

12 Q. But they did not file one at that time?

13 A. That is correct.

14 Q. Do you know what is required -- what a company
15 must do in order to initiate a small company rate case?

16 A. I believe all that they need to do is
17 determine that there is a need for a rate increase and come to
18 the Commission and the Commission bas-- just write a letter.
19 And I believe the Water and Sewer Department has a template
20 that advise the companies how to, in case they need any
21 assistance.

22 And so all that they need to do is file a
23 letter with the Commission and the Commission and Staff will
24 go in to make its audit and investigation and come out with
25 the revenue requirement needed.

1 Q. Do you know why the small company rate case
2 procedure was established?

3 A. Yes. I believe the essence of the rate --
4 small company rate case is to lessen the burden on ratepayers
5 as a result of -- since the rate will not involve attorney
6 fees and the consultants.

7 Q. Does the small company rate case procedure
8 require the participation of attorneys or consultants?

9 A. Not that I know of.

10 Q. Does it permit it?

11 A. I do not think so.

12 Q. Could a company that is involved in a small
13 rate case procedure consult with attorneys about what is going
14 on?

15 A. I believe there may be that possibility.

16 Q. Okay. If the company -- as a result of the
17 company -- I'm sorry.

18 As a result of the Staff's audit, if the Staff
19 comes to a conclusion about how much the over-earning or
20 under-earning of the company is, is the company free to
21 dispute the Staff's -- the results of the Staff's audits?

22 A. That is correct.

23 Q. And to explain their view to the company -- I
24 mean to the Staff?

25 A. That is correct.

1 Q. And to try to persuade the Staff of reasons
2 why the Staff is in error?

3 A. That is correct.

4 Q. To negotiate an amount for a possible rate
5 increase?

6 A. That is correct.

7 Q. Do you know if that sometimes occurs?

8 A. Yes.

9 Q. Chairman Davis asked you some questions about
10 what should happen if the Commission decides that it's
11 dissatisfied with the work that you have done on this case and
12 the other Staff personnel. Do you remember those questions?

13 A. Yes, I do.

14 Q. He asked whether your pay should be
15 eliminated?

16 A. Yes, sir.

17 Q. Is the Staff proposing to remove the costs of
18 Algonquin employees?

19 A. That is -- no.

20 Q. The Staff's request pertains only to
21 consultants' fees of Mr. Loos and Black and Veatch?

22 A. That is correct.

23 Q. And of the legal fees for Brydon, Swearngen
24 and England?

25 A. That is correct.

1 Q. Okay. I think just one last question about
2 the earnings investigation where the Staff found that the
3 company was under-earning. Do you remember the questions I
4 asked you about that?

5 A. Yes.

6 Q. And you said that Silver Leaf did not
7 request -- did not initiate a small company case at that time?

8 A. That is correct.

9 Q. Do you know the reason why they did not?

10 A. I do not.

11 MR. KRUEGER: Okay. I think that's all the
12 questions I have. Thank you.

13 JUDGE PRIDGIN: Mr. Krueger, thank you.

14 If there are no further Bench questions --

15 COMMISSIONER GAW: I don't have questions for
16 the witness, but I do for the counsel if I could.

17 JUDGE PRIDGIN: Certainly.

18 COMMISSIONER GAW: Would you all refresh my
19 memory about the legal question here on rate case expense and
20 whether there's any clear law as to whether or not once it's
21 established what is reasonable as rate case expense, whether
22 that is always passed along to the ratepayers or whether
23 that's sometimes split and divided between company benefit and
24 ratepayer benefit? Does anyone have any analysis of that? I
25 haven't looked at that for a while.

1 MR. COOPER: Yeah, Commissioner. The cases
2 that I have come across -- and I don't -- I don't want to
3 represent that someone else might not come up with something
4 else, but cases that I have come across have seemed to
5 indicate that the Commission has by and large felt that if
6 rate case expense is reasonable and prudent, the company
7 should receive that in rates.

8 And a failure to do so raises some other legal
9 questions because the formal rate case is -- the right to file
10 a formal rate case is something that's provided for by the
11 Missouri statutes. In fact, it is the one method that's
12 provided by the Missouri statutes for a regulated utility to
13 change its rates.

14 And in my opening, I quoted one of those
15 sections from a prior St. Joseph Light & Power Company case.
16 There will be some other similar ones that I'll provide in my
17 brief in this case.

18 COMMISSIONER GAW: Okay. Staff and Public
19 Counsel?

20 MR. KRUEGER: I haven't done any research
21 specific to that issue in preparation for this case, but I
22 believe that basically Mr. Cooper's statement is correct that
23 if it's a prudently incurred expense, that it would be
24 properly included. And I may address the issue -- the issue
25 in Staff's brief as well.

1 COMMISSIONER GAW: Okay. OPC?

2 MS. BAKER: Well, certainly the rate case
3 expense goes directly to the ratepayer. The ratepayer pays
4 those expenses. And in this particular case, they're asking
5 for about 225,000 to go to the ratepayer. So the ratepayer
6 will be burden -- will be bearing the burden of the rate case
7 expense and the choice that Algonquin made to move into -- or
8 to move directly into the formal rate case.

9 COMMISSIONER GAW: I'm asking for OPC's
10 position in regard to the legal issue though about whether or
11 not -- what the Commission's discretion is and what we're
12 bound to from a legal standpoint. If they incur \$250,000
13 worth of rate expenses or whatever the figure is, does the
14 rule -- is the rule whether it's reasonable and prudent or is
15 there something beyond that?

16 MS. BAKER: I mean my understanding is, yes,
17 that it is the reasonable and prudent. And --

18 COMMISSIONER GAW: And Public Counsel's
19 position is what in this case?

20 MS. BAKER: In this case? We follow the
21 Staff's recommendation that no rate expense be passed on to
22 the ratepayers.

23 COMMISSIONER GAW: Zero?

24 MS. BAKER: Yes.

25 COMMISSIONER GAW: Is that Staff's position?

1 MR. KRUEGER: Yes, it is, your Honor.

2 COMMISSIONER GAW: And the rationale for that
3 is what?

4 MR. KRUEGER: Because it was not a prudently
5 incurred expense. The company could have pursued the small
6 company rate case procedure and the case was prematurely
7 filed.

8 COMMISSIONER GAW: What was this discussion of
9 \$5,000 that we heard earlier?

10 MR. KRUEGER: The Staff stated that if any
11 rate case expense should be allowed -- if the company should
12 be allowed to recover any rate case expense, that is an
13 alternative position, that they could be allowed to recover
14 \$5,000.

15 COMMISSIONER GAW: Okay. Well, while you're
16 looking at your briefs is there any -- if there's some
17 indication as to whether there's some other test on this, I'll
18 be interested in it. I'm sure that you've probably already
19 outlined the parameters, but it just strikes me that there's
20 a -- there's an obligation in order to deal with this from the
21 company's standpoint in getting additional revenue, but
22 there's also a benefit to the company.

23 And I'm not sure how -- whether or not there's
24 any division of that benefit when you're looking at allocating
25 the costs. So if there's not any law on it, that's fine, but

1 I'm curious as to whether there is. Thank you.

2 JUDGE PRIDGIN: All right. Commissioner Gaw,
3 thank you.

4 Mr. Chairman, did you have anything?

5 CHAIRMAN DAVIS: Mr. Krueger, could you please
6 provide me with a list of the last five or six small company
7 rate cases, just a list and the length of time that it took
8 those cases to be processed?

9 MR. KRUEGER: I have prepared such a document,
10 Mr. Chairman. I think I maybe have an updated version here.

11 CHAIRMAN DAVIS: Is it my turn to still ask
12 questions?

13 JUDGE PRIDGIN: If you wish, certainly.

14 CHAIRMAN DAVIS: Okay. Mr. Cooper --

15 MR. COOPER: Yes, sir.

16 CHAIRMAN DAVIS: -- your rate case expense
17 again is how much -- how much is the company seeking to
18 recover?

19 MR. COOPER: Company is seeking 225,000
20 amortized over a five-year period.

21 CHAIRMAN DAVIS: And how many customers total
22 does Algonquin have?

23 MR. COOPER: Bear with me just for a second.
24 At the time the case was filed, and that's a -- this is a bit
25 of a different question for this company than some because of

1 the impact of Silver Leaf on the operation. But at that time
2 I think we showed connections, which may be similar to what
3 you're asking for, of 722 on the water side and 242 on the
4 sewer side.

5 CHAIRMAN DAVIS: So less than 1,000 customers?

6 MR. COOPER: Correct. Yeah, approximately --
7 let's see. Let me see if I can get back to the page I had
8 here. This is, by the way, Schedule LWL-0, item 3, which is a
9 part of Mr. Loos's Direct Testimony.

10 Just slightly under 50 percent of those would
11 have been Silver Leaf connections. And as we talked about
12 before, when you start converting to dollars, Silver Leaf's at
13 least 75 percent of the water and sewer sales, so --

14 CHAIRMAN DAVIS: So rough math is that if your
15 request is granted, then customers are looking at paying
16 roughly what, between 2 and 3 dollars per month for the next
17 five years just to cover the rate case expense in this case;
18 is that correct?

19 MR. COOPER: That's roughly correct, your
20 Honor. And there's no doubt that it's expensive to try rate
21 cases. And that as I said earlier, there are economies of
22 scale present in trying rate cases.

23 And I guess from my standpoint, I think that's
24 something that probably all parties, my client included, but
25 all parties, have to take into account as we go through these

1 processes.

2 CHAIRMAN DAVIS: And for the next few months
3 until this case is decided, we still have one large customer
4 who's not paying anything. Correct?

5 MR. COOPER: That's correct. And -- for
6 irrigation. They are paying something, but that irrigation
7 rate is something that has been --

8 CHAIRMAN DAVIS: They are paying something or
9 they aren't?

10 MR. COOPER: They are. Not for irrigation and
11 I think that's what you're referring to.

12 CHAIRMAN DAVIS: Right.

13 MR. COOPER: They have previously not paid
14 anything and continued to not pay anything -- well, in the
15 winter they're probably not irrigating a lot anyway, but not
16 paying anything for irrigation. They are paying for the other
17 water and sewer usage at the rate that's in the tariff
18 currently.

19 CHAIRMAN DAVIS: And is there a risk of --
20 what is the effective date? In April, is that correct,
21 Mr. Cooper?

22 MR. COOPER: I believe that's correct, yes,
23 your Honor. That's the operation of law date.

24 CHAIRMAN DAVIS: The operation of law date. I
25 mean, is there a certain risk that, you know -- obviously I

1 would assume that Silver Leaf is aware of this case and that
2 they know at some point they're going to have to pay a water
3 bill and if the water bill isn't due -- if they don't start
4 paying until April 2nd, I mean, do we have a risk that in
5 February and March they're just going to turn the waterspout
6 on and let it run as much as they can get it watered for the
7 next couple of months?

8 MR. COOPER: As a person that doesn't have a
9 very green thumb, I'm not sure whether that would do them any
10 good or not, Commissioner. I don't know.

11 CHAIRMAN DAVIS: So you don't play golf? You
12 don't know when the golf season starts in Missouri?

13 MR. COOPER: My golf season is usually in
14 August when someone takes me out to play once.

15 CHAIRMAN DAVIS: Okay. Mr. Krueger,
16 Mr. Johansen, do you want to add anything on that question?

17 MR. KRUEGER: Mr. Johansen just mentioned to
18 me that the way that this irrigation system is operated is out
19 of a lake and so the water could be -- the lake could be
20 filled and then they irrigate out of that. So it is possible
21 that the water could go into the lake at no charge prior to
22 the effective date of the tariffs and then be pumped out all
23 summer.

24 CHAIRMAN DAVIS: Okay. No further questions,
25 Judge.

1 JUDGE PRIDGIN: All right. Thank you. If
2 there's not anything else from the Bench --

3 COMMISSIONER APPLING: Just one quick
4 question, Mr. Krueger. Help clarify me on this handout that
5 you've got. How many of these was small companies that never
6 made it to a decision by the Commission? We can just do the
7 first two pages. That will give me some feel for --

8 MR. KRUEGER: Well, there's a column there
9 about the fifth one over, Resolution of Request, which shows I
10 think the disposition of them. In some cases the requests
11 were rejected. I didn't prepare this. Mr. Johansen did and
12 he'll be prepared to testify about it later and, in fact, I'll
13 probably offer it as an exhibit. And he might be the best
14 person to answer questions about it.

15 But some of the cases were rejected, some
16 increases were granted, some still pending as indicated there
17 in the fifth column.

18 COMMISSIONER APPLING: That's fine. Thank
19 you.

20 JUDGE PRIDGIN: If there's nothing further
21 from the Bench, all right, I believe this witness can be
22 excused. And I show the clock at the back of the wall to be
23 10:25. Let's take a break and we will reconvene at 10:40.
24 Thank you very much. We're off the record.

25 (A recess was taken.)

1 JUDGE PRIDGIN: We're back on. And
2 Mr. Featherstone is due to take the stand, be cross-examined
3 on rate case expense. Anything from counsel before he begins?
4 MR. KRUEGER: No, your Honor.
5 JUDGE PRIDGIN: Hearing nothing,
6 Mr. Featherstone, you're still under oath.
7 And any cross-examination from counsel,
8 Ms. Baker?
9 MS. BAKER: No. None from me.
10 JUDGE PRIDGIN: Mr. Cooper?
11 MR. COOPER: No, your Honor.
12 JUDGE PRIDGIN: Thank you.
13 See if we have any questions from the Bench.
14 Commissioner Appling?
15 COMMISSIONER APPLING: I don't think so. I
16 think I'll wait for Mr. Johansen.
17 JUDGE PRIDGIN: Very good. I have no
18 questions.
19 If there's nothing further, Mr. Featherstone,
20 thank you very much.
21 All right. Did counsel wish to have
22 Mr. Vesely on and then Mr. Johansen?
23 MR. KRUEGER: Yes, your Honor.
24 JUDGE PRIDGIN: Mr. Vesely, if you would come
25 forward to be sworn, please. Excuse me. You've been sworn.

1 If you would come forward. All right. Mr. Vesely, you're
2 still under oath.

3 Anything from counsel before he stands cross?

4 MR. KRUEGER: No, your Honor.

5 JUDGE PRIDGIN: Ms. Baker, any cross?

6 MS. BAKER: No. Oh --

7 JUDGE PRIDGIN: Mr. Cooper?

8 MR. COOPER: Just kind of a little clean-up
9 item here.

10 GRAHAM VESELY testified as follows:

11 CROSS-EXAMINATION BY MR. COOPER:

12 Q. I believe that during his redirect of
13 Mr. Boateng, Mr. Krueger asked whether the Staff was proposing
14 to remove costs of Algonquin employees. Did you hear that?

15 A. Yes, I did.

16 Q. Okay. You agree with me we tried a issue
17 yesterday, payroll expense, where the Staff is proposing to
18 disallow costs of Algonquin employees just not related to rate
19 case expense. Correct?

20 A. Yes. Just as in the case of rate case
21 expense, the Staff does have a disallowance recommendation
22 related to payroll.

23 Q. Okay. Now, in your Surrebuttal Testimony I
24 believe you indicate that 17 months is not a typical time for
25 a small company rate case; is that correct?

1 A. That's fully my experience, yes.

2 Q. Okay. If it's your company's small company
3 rate case that goes 17 or 18 months or longer and you miss out
4 on a year and a half of new rates, do you think it's very
5 comforting to know that your case wasn't typical?

6 A. Well, I think an understanding of the process
7 is required, but you cannot expect to receive typical results
8 if you don't file under typical circumstances. And I detailed
9 some of the reasons why that case took 17 months and was not a
10 typical case and how subsequent filings were turned around in
11 much less time.

12 Q. Now, did that discussion include the Aqua
13 Missouri case as well?

14 A. No, I don't mention that in my testimony.

15 Q. Are you familiar with any formal rate cases
16 that have gone 17 or 18 months?

17 A. Formal rate cases? My understanding of those
18 in general is that there's an 11-month calendar.

19 Q. Yeah. And because the statute sets that
20 11-month calendar. Correct?

21 A. I understand that, yes, that's a very fixed
22 deadline.

23 Q. Now, I believe you also state in your
24 Surrebuttal that the seven-month duration of the 2000 small
25 company case Silver Leaf submitted was an example of a more

1 typical turn-around time; is that correct?

2 A. That's correct in my experience.

3 Q. Okay. If you get through that seven-month
4 period and the company and Staff do not agree, you'd agree
5 with me, wouldn't you, that the company's option then is to
6 file a formal case or walk away completely?

7 A. Well, if you mean -- by "file a formal case,"
8 if you mean request a hearing, yes, it is. As was done in the
9 Hickory Hills' case is my understanding.

10 Q. Okay. Do you have the Commission's regulation
11 there with you?

12 A. No, I don't.

13 Q. Okay. Are you familiar with it?

14 A. As far as how to -- what happens in the event
15 there's no settlement in an informal case?

16 Q. Yeah.

17 A. No. I'm just going by my understanding of
18 what took place in the Hickory Hills' case.

19 Q. Let me --

20 MR. COOPER: May I approach the witness, your
21 Honor?

22 JUDGE PRIDGIN: You may. And I don't mind you
23 showing him the regulation, but I guess I'm going to be a
24 little hesitant in asking him just to read from the reg and go
25 into legal matters when that's something you can cover in the

1 brief on what the Commission's rules are.

2 MR. COOPER: Yeah. And I assume we can cite
3 freely from the regulation in our brief obviously.

4 JUDGE PRIDGIN: Absolutely.

5 MR. COOPER: And we'll do that.

6 BY MR. COOPER:

7 Q. If I were to hand you the regulation,
8 Mr. Vesely, could you point to me the right to hearing in that
9 small company rate case regulations?

10 A. I might be able to. I might not.

11 I see something -- paragraph G says, If no
12 agreement can be reached between the Commission Staff and the
13 company, the company may initiate a standard rate case.
14 That's what you're referring to?

15 Q. You see the right to hearing in there
16 anywhere?

17 A. The right to hearing, no, but I --

18 Q. Okay. Is that a surprise to you?

19 A. Is it a surprise to me?

20 Q. Did you think there was a right to hearing in
21 the Commission's regulation?

22 A. It was my understanding that it's been done so
23 it's an acceptable procedure.

24 Q. It's been done once in the Hickory Hills'
25 case?

1 A. Yes. Certainly recently, yes.

2 Q. Okay. Are you familiar with what type of
3 hearing that was?

4 A. It was a hearing beyond what takes place
5 during the strictly informal part of a case, so it is an
6 additional tool that's available to the company.

7 Q. And as the Staff witness stated earlier today,
8 it's something that may happen by agreement of the Staff and
9 the Public Counsel. Correct? It's not something that's
10 provided for by statute or regulation?

11 A. I -- I can't disagree with you there. I don't
12 know.

13 Q. And, to your knowledge, even at that you know
14 of one example. Correct?

15 A. I thought Mr. Boateng cited a second example.

16 Q. Well, he mentioned the Aqua Missouri case.

17 A. Yes.

18 Q. Would you like to -- do you want to support
19 his testimony that that somehow was a full evidentiary
20 hearing?

21 A. No. Except that it was an additional recourse
22 that was made available to the company without resetting the
23 11-month clock.

24 Q. Really? What recourse did the company have in
25 that proceeding?

1 A. The ability to be heard in addition to what
2 had taken place so far under the small case process. That's
3 my strictly limited understanding.

4 Q. So you don't know what they were heard on or
5 what issues might have been considered in that hearing?

6 A. What issues? They would have been issues -- I
7 assume they were not agreed upon previously.

8 Q. Really? Okay. Now, you did read from the
9 regulation and you indicated that if the company and the Staff
10 don't agree, that according to the regulation, the company's
11 alternative is to file a formal case. Correct?

12 A. Yes.

13 Q. Okay. And a formal case, as you and I
14 discussed a few minutes ago, has a timeline of 11 months
15 according to statute. Correct?

16 A. Correct.

17 Q. And so if we go back to your statement that a
18 small company case is seven months in length typically and the
19 company then has to file a formal case which could last
20 11 months, we're back up into our 18-month period, aren't we,
21 if the company has to go through both those processes?

22 A. You're speaking --

23 Q. I'm just really adding seven months and eleven
24 months.

25 A. Are we talking about unresolved portions of a

1 filing as opposed to 100 percent of the original filing?

2 Q. The question has to do -- if we go through
3 seven months of what you describe as a typical proceeding and
4 the company and the Staff are not able to reach agreement, the
5 company exercises its options as provided for by the
6 regulation to file a formal case, the case runs another
7 11 months pursuant to statute, aren't we at that point
8 18 months down the road at least?

9 A. Eighteen months under -- under the scenario
10 that it took seven months, which is not necessary that it will
11 take that long, but if it took seven months plus eleven,
12 that's eighteen, yes.

13 Q. Now, the company can't file a formal notice on
14 a day's notice, can it?

15 A. A formal case in a day's notice?

16 Q. It would take some time to prepare the
17 tariffs, to prepare the Direct Testimony --

18 A. Yes.

19 Q. -- to prepare the minimum filing requirements.
20 Correct?

21 A. Yes.

22 Q. So that could add some time to the process as
23 well. Correct?

24 A. Yes.

25 Q. Okay. Now, would you agree with me that an

1 agreement between the Staff and the company is not the end of
2 the small company rate case procedure?

3 A. That's true.

4 Q. That even if you reach agreement, there's a
5 tariff filed and then the Office of Public Counsel can request
6 local public hearings?

7 A. Yes.

8 Q. And the Commission may take some time to
9 consider the issues as well at that point; is that correct?

10 A. Yes. This is all a normal part of the
11 process.

12 Q. And how long can that part of the process
13 take?

14 A. I really couldn't tell you. I mean, it could
15 be certainly a number of weeks.

16 Q. Okay. Now, weeks --

17 A. Four weeks.

18 Q. Has anybody been able to set up a local public
19 hearing in a matter of weeks that you're familiar with?

20 A. I really don't set up those public hearings,
21 so I don't know how much in advance that has to be set up.

22 Q. Now, we've talked about before in this hearing
23 you were involved in the acquisition case, weren't you?

24 A. Yes, I was.

25 Q. Did it surprise you that Algonquin filed a

1 formal case based upon the information that had been filed in
2 the acquisition case?

3 A. Yes, actually. I was surprised.

4 Q. Do you still have Exhibit 31 with you or do
5 you need a copy of that?

6 A. Which exhibit is that?

7 Q. That would be the Connor testimony from the
8 acquisition case.

9 A. I don't have a copy of that, no.

10 Q. Do you have that before you now?

11 A. I do, yes.

12 Q. Okay. Could you turn to page 4? Are you
13 there?

14 A. Yes.

15 Q. Okay. And if you'd look at line 3, would you
16 agree with me that there's a question that says, Where could
17 these issues be addressed? And then an answer following on
18 line 4 that says, The most appropriate place to make these
19 types of determinations would be in a formal rate case,
20 something that Algonquin has agreed to initiate after its
21 acquisition of the properties in question.

22 A. I see that there, yes.

23 Q. Okay. Would you agree with me that the
24 testimony in the acquisition case revealed disputes between
25 the parties as to plant issues?

1 A. The sale case?

2 Q. Yes.

3 A. Plant issues, yes.

4 Q. Okay. And those same plant issues are being

5 tried in this case, aren't they?

6 A. Yes. Some of them.

7 Q. Okay. And the parties didn't reach agreement

8 as to those issues in the acquisition case, did they, or they

9 wouldn't have been issues here?

10 A. That's right.

11 Q. Okay. And the parties haven't reached

12 agreement on all those issues in this case, have they?

13 A. Yeah. To a large extent, yes.

14 Q. To a large extent they have not reached

15 agreement on those plant issues. Correct?

16 A. Right.

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

18 your Honor.

19 JUDGE PRIDGIN: Mr. Cooper, thank you.

20 Time for Bench questions. Commissioner

21 Appling?

22 COMMISSIONER APPLING: No questions, Judge.

23 JUDGE PRIDGIN: Thank you.

24 Mr. Chairman?

25 CHAIRMAN DAVIS: No questions.

1 JUDGE PRIDGIN: All right. Thank you. If
2 there's nothing further, recross?

3 MR. KRUEGER: Thank you, your Honor.

4 RE CROSS-EXAMINATION BY MR. KRUEGER:

5 Q. Mr. Cooper asked you some questions about the
6 1997 rate case --

7 A. Yes.

8 Q. -- which took 17 months from the time that it
9 was filed until the rates changed. Correct?

10 A. Yes.

11 Q. Why was that delayed?

12 A. Why did it take 17 months? Even though I was
13 not part of that rate case, I researched thoroughly what took
14 place during that because I had to for the small case that
15 took place after that, which I was a part of.

16 So in my testimony I explained that it was
17 realized half -- by the Staff once it began the audit of that
18 case, that the company actually had gone through a merger, a
19 combination -- business combination and this had not been run
20 through or run by the Commission yet. So the Staff believed
21 it was absolutely necessary to obtain Commission's approval of
22 this change in business form of the company. And I detail
23 that in my testimony beginning page 4 through page 5.

24 Q. Which testimony is that? Is that the Rebuttal
25 or --

1 A. It is my Surrebuttal Testimony.

2 Q. Do you know if that small company rate
3 increase case could have proceeded while the merger case was
4 pending?

5 A. I would assume not. I would -- again, I was
6 not the Staff that informed the company upon discovery of the
7 merger that the -- that the company needed to -- to submit to
8 the Commission for approval of the merger before continuing,
9 but I assume that's what was done.

10 Q. At the conclusion of the sale case, I believe
11 Mr. Cooper referred to it as the acquisition case -- you
12 participated in that case. Correct?

13 A. I did, yes.

14 Q. Now, at the conclusion of that case, did the
15 Staff discuss with Algonquin the possibility of filing a small
16 company rate case?

17 A. That was more my understanding, yes.

18 Q. Did you participate in those discussions?

19 A. I-- I participated in the entire case, yes.

20 Q. Do you know what was proposed during those
21 discussions, what Staff proposed during those discussions?

22 A. The future that I remember more relating to
23 the filing of a rate case was that the company would -- would
24 wait perhaps some period of time. But I certainly was
25 surprised when they -- when a formal case was filed.

1 Q. Do you know if there was any discussion of
2 doing something less than a full formal case to resolve some
3 of the issues?

4 A. I believe that the -- the -- one of the
5 critical issues to the company was obtaining a rate for
6 irrigation, if my memory serves me, because it was realized
7 that there was -- there would be unpaid water being provided
8 to Silver Leaf since there was no rate for that water.
9 That -- that matter could be remedied promptly. And no one
10 was in disagreement that that kind of relief needed to be
11 provided promptly. That -- that's my recollection.

12 Q. So you're saying that was an issue that could
13 have been resolved outside the full formal rate case?

14 A. Oh, from what I understand, there's been full
15 agreement on all parties that that kind of relief needed to be
16 provided quickly.

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

19 QUESTIONS BY CHAIRMAN DAVIS:

20 Q. Mr. Vesely, are there any other issues that
21 you think could have or should have settled?

22 A. Well, we believe that the contributed plant
23 issue -- the company's taking the position that's
24 contradicting what -- what the previous company had taken,
25 essentially recognizing contributed plant; whereas, the

1 acquiring company now is claiming that there's been no
2 recognition of contributed plant, whereas, the -- the previous
3 owner clearly reflected contributed plant on its Annual
4 Reports filed to this Commission and in that correspondence
5 from 1998, I believe, that I file as an attachment to my
6 testimony. That was -- that's a very large plant issue in
7 this case.

8 Q. Okay. But isn't that more of an
9 irreconcilable difference that the company has with you than
10 one that could have, should have or would have settled?

11 A. I'm not -- I'm not sure what you're --

12 Q. Okay. So let me ask you this way, Mr. Vesely.
13 In your opinion, was there any way to settle that issue short
14 of Staff's position?

15 A. Well, there were no discussions whatsoever so
16 it's difficult. Before filing the formal case, there was no
17 attempt to discuss this on the company's part so we don't
18 know.

19 Q. Okay.

20 A. There simply was no attempt made, outside of
21 the formal rate case that was filed, to discuss that issue.

22 Q. Is there anything in the statutes or rules
23 that require people to have to make an attempt?

24 A. Well, I mean, that's -- that attempt --

25 Q. Have you ever been involved in an earnings

1 complaint here?

2 A. Yes, I have.

3 Q. Does Staff ever call people up before earnings
4 complaints and say, hey, let's get together and talk about
5 this and work things out before we file our complaint?

6 A. I've only been involved in a small case, so
7 I'm not sure. On a small case, yes, I mean, certainly you
8 would proceed informally before you would do anything --

9 Q. But it's entirely possible that in some cases
10 they may not? They may proceed just straight to filing.
11 Correct?

12 A. It's possible, yes.

13 Q. It's possible?

14 A. Yeah.

15 Q. And certainly would you agree with me that
16 it's possible that if Staff wanted to settle some issues if
17 they thought there were some issues that could be settled,
18 that all of the parties are in this room present and that
19 settlement could be reached somewhere outside of my purview
20 but it's still technically feasible to do even right now,
21 isn't it?

22 A. I suppose.

23 Q. You need to look over at your counsel?

24 A. I'm not sure how much you can settle at this
25 point. That's what I'm saying. I'm not sure.

1 Q. Wait. You're not sure. I mean, are the
2 numbers changing or is it just an issue of personality,
3 Mr. Vesely?

4 A. I'm just not familiar with changing anything
5 at this point in a formal case when everything seems to be
6 said and done. And I've just not heard anyone's suggestions
7 on anyone's part to change anything.

8 But all of these discussions did not take
9 place in an informal setting first where they might -- where
10 they might have. That's why we're in favor of giving the
11 small case process every opportunity to work and to -- and
12 to -- really to reduce litigation. Because the cost of
13 litigation has such a disproportionate impact on the
14 relatively small number of customers on these systems.

15 Q. Right. Did you review Kofi's testimony?

16 A. Yes, I have.

17 Q. Okay. That \$5,000 figure, how was that number
18 derived?

19 A. My discussion is that was -- that was
20 essentially a nominal expense so as to provide some
21 alternative.

22 Q. So there's no basis in fact for that or
23 anything else?

24 A. It's -- it's by taking a look at the fact that
25 in a small case since no attorney is required necessarily, no

1 outside consultants are necessarily required, that, therefore,
2 that those kind of expenses are indeed zero in many small
3 cases. So the \$5,000 was a concession.

4 Q. So let me just see if I get this straight. If
5 you're a small water company, you just bring in your books,
6 turn them over to the Staff, they'll look through them, maybe
7 send you some more data requests or something like that and
8 you'll come back with a recommendation and tell them what you
9 think that they're entitled to. Is that a fair statement of
10 how the small case process works?

11 A. Well, that's a very abbreviated description.
12 I've -- I've done several of these small cases personally
13 where I'd interface with the company on the company's premises
14 at their convenience and we have lots of face-to-face
15 discussions --

16 Q. Right.

17 A. -- in an open manner. We don't exchange data
18 requests, which -- and wait 20 days for the response.

19 Q. Right.

20 A. We don't file testimony against one another.

21 Q. Right.

22 A. So the --

23 Q. Obviously Algonquin, being an investor-owned
24 company, is somewhat more sophisticated than your average
25 small company rate case -- or rate case -- I don't know if

1 you'd call them claimant or plaintiff or whatever, but is that
2 fair to say?

3 A. The parent company is certainly larger than
4 most of the --

5 Q. Right.

6 A. -- small companies we deal with.

7 Q. Okay. Do you find that most of the small
8 companies that you have dealt with in the past lack a certain
9 level of sophistication?

10 A. With regard to rate-making, certainly, which
11 is why the Staff steps in and attempts to act as an honest
12 broker for the company in representing its -- its -- its
13 position with -- with respect to rate-making by doing an audit
14 and inquiring as to the company what their expenses are, what
15 their revenues, what their investment and simply determining
16 what -- how the company stands in terms of earnings being
17 acceptable or being too low or already -- already high enough.

18 And we do issue quite a few rate increases as
19 a result of the small case process. I've certainly done so
20 personally.

21 Q. Right. But usually when they come in for a
22 small rate case process or whatever, I mean, those cases
23 normally -- aren't that frequently and normally, you know, all
24 the parties agree that there is a significant level of
25 under-earning going on in a lot of those cases. Is that fair

1 to say?

2 A. Well, it's certainly fair to say we find
3 plenty of cases where the rate increase is -- a rate increase
4 is justified because they were under-earning, yes. And, in
5 fact --

6 Q. Do you think --

7 A. Yeah.

8 Q. Mr. Vesely, do you think anyone else out there
9 in the entire wide world would view Staff as an honest broker?

10 A. Yes, I think so.

11 Q. Name them.

12 A. I think the public.

13 Q. You think anybody that's had dealings with
14 this Commission would say that?

15 A. I -- I would certainly assume so, yes.

16 CHAIRMAN DAVIS: Okay. No further questions,
17 your Honor.

18 JUDGE PRIDGIN: Mr. Chairman, thank you.

19 Further Bench questions? Recross?

20 MR. COOPER: Yes, your Honor.

21 RE-CROSS-EXAMINATION BY MR. COOPER:

22 Q. Mr. Vesely, you talked about the irrigation
23 rate and the possibility of just doing that by itself. Does
24 the amount of the irrigation rate -- let me back up.

25 The amount that the irrigation rate ends up

1 being has an impact upon the rate design of all other customer
2 rates, doesn't it?

3 A. It would, yes.

4 Q. Okay. And have you ever heard the
5 Commission -- times that the Commission has rejected the
6 adjustment of a single rate based upon the idea that it would
7 be single-issue rate-making?

8 A. I'm certainly aware that single-issue
9 rate-making could be a problem, yes.

10 Q. Okay.

11 MR. COOPER: Thank you. That's all I have,
12 your Honor.

13 JUDGE PRIDGIN: Mr. Cooper, thank you.
14 Redirect?

15 MR. KRUEGER: Thank you, your Honor.

16 REDIRECT EXAMINATION BY MR. KRUEGER:

17 Q. Chairman Davis asked you a couple questions
18 about the level of sophistication, I believe, of Algonquin.
19 Do you know how many states Algonquin operates in?

20 A. Not exactly, but several states. Certainly
21 Arizona, Texas, Illinois and Missouri.

22 Q. Do you know of any others?

23 A. I do not.

24 Q. Do you know how many customers they have
25 overall?

1 A. Only that it's in the thousands.

2 Q. Okay. I'm going to ask you a hypothetical
3 question. And if you would assume, please, that the parties
4 could make an agreement today on the terms of a settlement, do
5 you know if they could still submit that to the Commission for
6 approval?

7 A. No, I really don't.

8 Q. Okay. You don't know?

9 A. I don't know.

10 Q. You don't know if there's any legal impediment
11 to it?

12 A. That's right.

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

15 JUDGE PRIDGIN: Mr. Krueger, thank you.

16 Mr. Vesely, thank you very much, sir. You may
17 step down.

18 If I'm not mistaken, that would leave only
19 Mr. Johansen. He would be the final witness.

20 MR. KRUEGER: Yes.

21 JUDGE PRIDGIN: All right. And you're under
22 oath.

23 THE WITNESS: Correct.

24 JUDGE PRIDGIN: So is there anything we need
25 to clear up before he's tendered for cross?

1 MR. KRUEGER: Your Honor, I would like to have
2 that document marked as an exhibit that I've previously
3 distributed in response to Chairman Davis's request.

4 JUDGE PRIDGIN: Is that something that
5 Mr. Johansen put together?

6 MR. KRUEGER: Yes, it is.

7 JUDGE PRIDGIN: All right. That's going to be
8 Exhibit 35. And, Mr. Johansen, if I could get you to briefly
9 describe what Exhibit 35 is.

10 (Staff Exhibit No. 35 was marked for
11 identification.)

12 THE WITNESS: Certainly. Basically what this
13 document does, it is a summary of all the small company rate
14 increase requests that have been submitted in fiscal years
15 2004, 2005, 2006 and fiscal year 2007 to date.

16 And it shows when they were submitted, when
17 they were completed, what the resolution was, when rate
18 increases went into effect, if they did -- if there were rate
19 changes. It also shows the amount originally requested and
20 the amount of increase that was granted.

21 JUDGE PRIDGIN: Okay. Thank you. I'm sorry.
22 Mr. Krueger, did you offer that or had you planned to?

23 MR. KRUEGER: I do. I would at this time
24 offer Exhibit 35, your Honor.

25 JUDGE PRIDGIN: All right. Any objections?

1 Okay. Hearing none, Exhibit No. 35 is
2 admitted.

3 (Staff Exhibit No. 35 was received into
4 evidence.)

5 JUDGE PRIDGIN: Mr. Krueger, anything else
6 before Mr. Johansen stands cross?

7 MR. KRUEGER: No. I'll tender him for
8 cross-examination.

9 JUDGE PRIDGIN: Ms. Baker, any cross?

10 MS. BAKER: Yes.

11 DALE JOHANSEN testified as follows:

12 CROSS-EXAMINATION BY MS. BAKER:

13 Q. In your testimony you described a possible
14 alternate procedure to go along with the small rate case
15 procedure; isn't that correct?

16 A. Yes.

17 Q. Is it possible that a company could come to
18 the Commission, resolve some of its issues, gain the benefit
19 of a rate increase based on those resolved issues and yet seek
20 a formal case later on the remaining issues that it had?

21 A. Certainly. And that has been done in the
22 past.

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

24 JUDGE PRIDGIN: Ms. Baker, thank you.

25 Mr. Cooper?

1 CROSS-EXAMINATION BY MR. COOPER:

2 Q. If a company did that, would it still have
3 rate case expense in that follow-up formal case?

4 A. In the following case, it would, yes.

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

6 JUDGE PRIDGIN: Mr. Cooper, thank you.

7 Bench questions, Commissioner Appling?

8 QUESTIONS BY COMMISSIONER APPLING:

9 Q. Dale --

10 A. Yes, sir.

11 Q. -- how you doing?

12 A. Good.

13 Q. Clear up for me whether there was a request,
14 no request, any request, anything talked about as far as a
15 small rate case before we ended up here in this room?

16 A. Okay.

17 Q. Okay.

18 A. There were some discussions at the time of
19 what has been referred to as either the sale case or the
20 acquisition case when Algonquin was in the process of
21 purchasing the assets from Silver Leaf resorts. There were
22 some general discussions at that time about how Algonquin
23 would proceed with a rate increase request subsequent to that
24 transfer of assets being approved by the Commission.

25 One of the -- as I mentioned in my testimony,

1 one of the -- one of the things that we talked about was the
2 possibility that Algonquin would submit their initial rate
3 increase request under the small company procedure but with
4 the understanding basically that the plant issues -- what were
5 generally referred to as the plant issues would likely go to
6 hearing.

7 So there were discussions regarding that.
8 And -- and I admit that would be I think what I've termed in
9 my testimony as an alternative approach to the normal small
10 company procedure, but it certainly was discussed.

11 Q. Because Algonquin asked for a quarter million
12 dollars for this case, that doesn't mean that this Commission
13 or the Staff would recommend that. We could recommend a lot
14 less than that. Right?

15 A. I certainly think that that is an issue as --
16 as any of these issues are that's at the discretion of the
17 Commission based on the record presented to you.

18 Q. Okay. I have one more question and I kind of
19 lost my train of thought there, but -- there was one other
20 question that I had for you, but I can't recall it now.

21 Based on the information that Algonquin brung
22 forward when they purchased this company and did not have all
23 their records, have you experienced these kind of things
24 before?

25 A. Well, I think generally it's -- it's not at

1 all unusual for us to see problems with record keeping, if you
2 will, just in general. I think in this particular situation,
3 it's -- it's a bit different in that you have an acquiring
4 company initially coming in with their request being based on
5 the predecessor's -- substantially based on the predecessor's
6 operating records and operating expenses.

7 So I think in -- in this situation, it's a
8 little different in that regard. I would say generally
9 speaking, it is not at all unusual for -- for us to see
10 record-keeping problems.

11 Q. And that's kind of a pattern with -- across
12 this state with small businesses, not only in water, but in
13 any other businesses too, just based on your knowledge of
14 small businesses' --

15 A. That's correct.

16 Q. -- record-keeping?

17 So there's no big surprises at the fact that
18 there's probably no file left from the company which Algonquin
19 bought this from. So we have to use some kind of procedure to
20 get these guys back on balance and get them so that they can
21 start serving the public.

22 A. Well, that's -- that's true. And that's --
23 quite honestly, that's one of the benefits of the small
24 company rate case procedure in that one of the things that the
25 Staff does quite often with our small companies is help them

1 put their books into the proper form at the point in time that
2 we're doing our rate audits and certainly assisting them
3 with -- with advise -- advice on how to maintain those records
4 on a going-forward basis.

5 And I think one of the successes of that
6 process is that once we have dealt with a small company and
7 basically got their books put in order, if you will, that we
8 see a lot less problems going forward with them. They tend --
9 to generally at least, they tend to keep those books and
10 records in better shape once we've been in there and helped
11 them get them to where they need to be to start with.

12 Q. Mr. Loos testified a couple days ago or
13 yesterday one, I've forgot exactly what day it was, that the
14 reason they filed for this formal rate case is because they
15 just didn't feel that they would get a fair shake from Staff
16 on the majority of the issues. What do you say to that?

17 A. I think there were -- there were issues
18 that -- quite honestly, that we have heard that likely would
19 have settled otherwise, could have settled otherwise.

20 I think from Mr. Loos' perspective, that, you
21 know, based on what he saw and not knowing a lot about why he
22 was -- why he was seeing what he saw, I could certainly see
23 how he could reach that conclusion. But I think if you look
24 at the information that -- that's behind the fact that one
25 small company case took, you know, 17 months I think is

1 what -- is the time frame that's been discussed, is that there
2 are definite reasons why that happened and that those reasons
3 no longer exist.

4 And so while on the face of it it -- it might
5 be something that -- that an outsider, if you will, would
6 reach a conclusion as a reason for doing things differently,
7 that's really not the case.

8 Q. I think the Staff is recommending a 9-point
9 something for ROE and the company is asking for 12. Do you
10 still feel that the Staff recommendation is a fair
11 recommendation in this case?

12 A. I do, yes.

13 COMMISSIONER APPLING: Okay. Thank you very
14 much, sir.

15 Judge, I think those are all the questions I
16 have.

17 JUDGE PRIDGIN: Commissioner Appling, thank
18 you. I have no questions.

19 Recross? Ms. Baker, no recross?

20 MR. BAKER: No.

21 JUDGE PRIDGIN: Mr. Cooper?

22 MR. COOPER: If you'd give me just a moment.

23 RE CROSS-EXAMINATION BY MR. COOPER:

24 Q. Mr. Johansen, you discussed to some extent, I
25 think, the settlement -- or the settlement conversations that

1 took place in the acquisition case. Correct?

2 A. Yes, that's true.

3 Q. And when we talk about any discussions that --
4 or discussions that took place in that acquisition case
5 related to a future rate case and how that might be
6 structured, wouldn't it be fair to say that certainly most, if
7 not all, of those were in combination with any combination of
8 any number of settlement items that were being discussed
9 amongst the parties at that time?

10 A. That's true. And, quite honestly, that's one
11 of the reasons I didn't go into a lot of detail about that
12 because I felt a little uncomfortable about getting too far
13 into settlement discussions.

14 Q. Now, you also made a reference to, you know,
15 Staff, I think the word you used was understanding, concerning
16 a hearing coming out of the small company rate case
17 proceeding. No matter what the Staff's understanding, can it
18 control what the Commission ultimately does in that regard?

19 A. No. It would -- that reference would
20 basically be an option that would be presented. And it would
21 certainly be up to the -- the Commission's discretion as to
22 whether or not they thought that was a reasonable approach and
23 one that they would accept.

24 Q. And would you agree with me that the one
25 instance that has been referenced in this case was a Hickory

1 Hills' case, correct, where that might have taken place?

2 A. Actually, that's -- for the Hickory Hills'
3 situation, that is not what actually happened. What actually
4 happened there is that the company and the Staff did, in fact,
5 reach an agreement. That agreement was executed, the company
6 filed tariffs based upon that agreement.

7 Subsequent to that tariff filing, the Office
8 of the Public Counsel requested that those tariffs be
9 suspended and requested that the Commission hold evidentiary
10 hearings on certain issues related to the agreement. So it --
11 it was not the alternative procedure, if you will, that I
12 discussed in my Surrebuttal Testimony or that we've been
13 discussing.

14 Q. And it really became essentially a formal case
15 then. Correct?

16 A. It -- it -- well, all small company cases that
17 result in tariff filings become formal cases. The Hickory
18 Hills' situation is one where there were subsequently not only
19 local public hearings held, which is an option when there is
20 only a company/Staff agreement that results in the formal case
21 filing, but in the Hickory Hills' situation, the Public
22 Counsel did request and the Commission granted that request
23 for evidentiary hearings on a limited number of issues. All
24 of the issues related to that case, in essence, were not
25 heard. There were certain issues that were heard.

1 Q. Right. And that would be, to some extent,
2 similar to this case? Not all the issues that could have been
3 tried were tried in this case, were they?

4 A. I think that's probably correct, yes.

5 Q. And it would be true in any rate case?

6 A. Yeah. There's very -- very seldom does every
7 single line item, you know, go to hearing, that's true.

8 Q. Now, you're familiar, I assume, with that Aqua
9 Missouri case as well that's been discussed? And really -- I
10 say case. There's more than one case grouped together there.

11 A. Yes.

12 Q. Did you participate in that?

13 A. Yes, I did.

14 Q. Okay.

15 A. I'm very familiar -- I'm familiar with that
16 case. I'm familiar with the details of every small company
17 case that comes before us.

18 Q. Is the hearing that was conducted in that
19 case, was it an evidentiary hearing on rate case issues or was
20 it ultimately a hearing that considered a Stipulation and
21 Agreement that had been signed between parties?

22 A. Ultimately, it was the latter. It was -- it
23 was initially contemplated -- after the local public hearings
24 were held, we were certainly, I think, most likely heading to
25 an evidentiary hearing at least on some issues, but prior to

1 the time that it got to that point, there was a Stipulation
2 and Agreement that was executed and there was an on-the-record
3 presentation regarding that stipulation in lieu of evidentiary
4 hearings like we're having now.

5 Q. And I think maybe that points out something
6 that we've talked about here, but certain amount of this small
7 company rate case procedure is really beyond the Staff's
8 control, isn't it, in terms of the time it takes? Now you all
9 have discussed earlier that responsiveness of the company
10 figures into the time. Correct?

11 A. Yes.

12 Q. But even if the Staff and the company reach
13 agreement, there are parts of that process that can stretch it
14 out beyond the company or Staff's control. Correct?

15 A. That's correct. And in -- in the context of
16 the small company procedure, what the rule contemplates is
17 that there will be an agreement reached at least between the
18 company and the Staff within 150 days from the time that that
19 rate increase request is submitted.

20 Assuming that happens and there are -- there's
21 an agreement reached between the company and the Staff for an
22 increase, the company files tariffs to implement that
23 increase. At that point in time is when Office of Public
24 Counsel, for example, has the opportunity to request a local
25 public hearing. If such a request is made, it is -- I don't

1 know of any instance where it has not been granted; that is,
2 that request is made, it is granted.

3 Sort of a -- a different situation that
4 occurred in the Hickory Hills' situation was that Public
5 Counsel not only requested a local public hearing, but beyond
6 that, they requested an evidentiary hearing on certain issues.

7 And, in essence, what you have when there is a
8 company/Staff agreement that results in the tariff filing
9 being made, which is when the formal case, if you will, is
10 docketed or opened, that is, in essence, a Non-unanimous --
11 it's similar to a Non-unanimous Stipulation and Agreement.

12 And what you have then is the opportunity for
13 Public Counsel, who is normally the only other party, if you
14 will, to those cases, to, in essence, object to what is a
15 Non-unanimous Stipulation and request a hearing on it.

16 Q. And if I recall Mr. Fischer's case correctly,
17 when they do that, all issues are in play. Right? It's not
18 really a hearing just on the Stipulation and Agreement. It's
19 a hearing on the issues themselves. Correct? And perhaps you
20 don't -- I ask that question. You can tell me whether you
21 feel competent to answer that question.

22 JUDGE PRIDGIN: And if you don't know, you can
23 simply say so.

24 THE WITNESS: No, no. I think the -- let me
25 put it in the context of the Hickory Hills' case again because

1 that's the one that I think is most pertinent. In that
2 situation, the objection was raised by Public Counsel, they
3 requested the evidentiary hearing. There were issues that
4 were not at issue, if you will, in the evidentiary hearing
5 that Public Counsel requested. The request certainly could
6 have been for a hearing on more issues than what we ended up
7 hearing.

8 So it -- and I think the way the rule is
9 written it's if an objection is filed to a Non-unanimous
10 Stipulation, there is initially an assumption that all issues
11 will be heard. But depending upon how the objection is filed
12 or in this situation how Public Counsel couches their request
13 for a hearing, it does not necessarily result in all issues
14 being heard, but it certainly can.

15 JUDGE PRIDGIN: If I could interject, I mean,
16 I know we're trying rate case expense and there's a lot of
17 disagreement as to, you know, what should be allowed. I mean,
18 the Commission is certainly cognizant of its own rules and can
19 read its own rules and if we can pull away from simply going
20 through and reciting the Commission's own small company water
21 procedure and move on to something else, I would appreciate
22 it.

23 MR. COOPER: Yes. Your Honor.

24 BY MR. COOPER:

25 Q. While we're on Hickory Hills, that's one of

1 the cases that's listed on Exhibit 35 that you prepared and
2 was offered here a few minutes ago?

3 A. Yes, it is.

4 Q. And if I look at that and we just talked about
5 the long process that they went through and I think that a
6 Staff witness earlier today acknowledged that before that
7 process was finished, that Hickory Hills hired an attorney to
8 represent it in the hearing that we've just been talking
9 about; is that correct?

10 A. They did, yes.

11 Q. Okay. And the end result of that was, looking
12 at your list, a \$2,415 increase for water and an \$840 decrease
13 for sewer. Correct?

14 A. That's correct.

15 Q. Okay. You had talked about the processing
16 time on the Silver Leaf small company rate case that started
17 in 1997. Correct?

18 A. Yes.

19 Q. And had explained that there was this merger
20 issue that became obvious to the Staff after that small case
21 had been filed. Correct?

22 A. Yes.

23 Q. Why weren't those cases processed
24 concurrently?

25 A. Well, I think basically the issue there was

1 whether the applicant, if you will, who had submitted the
2 small company rate increase was, in fact, the same legal
3 entity who owned and operated the facilities.

4 And I think there definitely was some things
5 that were going on at the same time, if you will, but until
6 such time that the issue of the merger was resolved, the Staff
7 did not feel that it was appropriate to wind up, if you will,
8 the small company procedure simply because the applicant was
9 different than who it should have been.

10 Q. But whoever the -- whoever the owner was at
11 that time, there were utility properties that were in place
12 and providing service to the public. Correct?

13 A. Oh, yes. That's true. That's true.

14 Q. And would have been due just and reasonable
15 rates, whatever those might have been. Correct?

16 A. Correct.

17 Q. Now in 2000, Silver Leaf initiated another
18 small company rate case. Correct?

19 A. Yes.

20 Q. And for whatever reason, that remained open
21 for some time period and ultimately in I believe 2002 the
22 Staff asked to open an earnings investigation. Correct?

23 A. That is correct, yes.

24 Q. And Staff, in that pleading, recited the
25 existence of that small company case from 2002 as one of the

1 reasons it wanted to open the earnings investigation case.

2 Correct?

3 A. The results of our audit from the small
4 company rate case procedure prompted us to file our motions to
5 open the investigation docket, yes.

6 Q. And ultimately there was some net
7 under-earning that was determined to exist by the Staff as a
8 result of that process. Correct?

9 A. As a result of -- of changes in operations,
10 changes in plant in service that -- that we -- that occurred
11 during the time of our investigation in the WO and the SO
12 cases, we did, in fact, determine that there was a net
13 under-earning I believe of about \$7,000.

14 Q. And as we've talked about before, ultimately
15 there was no rate change though for the company on the heels
16 of that earnings investigation. Correct?

17 A. There was not, because the company did not
18 request one.

19 Q. Well, did they not request one or did they not
20 properly request one?

21 A. They did not request one. There is no record
22 from 2003 -- and I also looked -- even though that Exhibit 35
23 goes to FY 2004, I went back and looked, as a result of
24 Mr. Loos's testimony this morning, to see if, in fact, there
25 was a submission by Silver Leaf in the 2002/2003 time frame

1 and there was not.

2 Q. Now, when you say "a submission," you're
3 talking about a submission that would have been logged in to
4 the Commission's system. Correct?

5 A. Yes. As every small company rate case request
6 is.

7 Q. What if the Commission gets a letter,
8 determines it doesn't meet the requirements of the regulation
9 and rejects the letter before it's ever submitted? It
10 wouldn't show up in EFIS, would it?

11 A. Well, no, that's actually not correct. The
12 letters that come in go to the Commission's Data Center. They
13 log those in as a request.

14 Part of our initial review of the letter, as
15 the Water and Sewer Department who is responsible for
16 coordinating all these requests, is to review the letter to
17 see if it meets the requirements. If it does not meet the
18 requirements, the request that has been logged in is
19 subsequently closed, but there is still a record that the
20 request was submitted.

21 Q. If it's submitted to the Records Department?
22 At that time would those letters have gone to the secretary of
23 the Commission or the Water and Sewer Department?

24 A. Secretary of the Commission always.

25 Q. Okay. What if they didn't?

1 A. Then it was not a submission.

2 Q. It wouldn't have been deemed a submission?

3 A. Well, it wasn't a submission. It's not that
4 we didn't deem it one. It did not happen.

5 Q. If they sent it to the wrong place?

6 A. If they send it to somewhere other than where
7 they are instructed to send it, it's not a submission -- it
8 simply is not a submission.

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

11 JUDGE PRIDGIN: Mr. Cooper, thank you.

12 Redirect?

13 MR. KRUEGER: Thank you, your Honor.

14 REDIRECT EXAMINATION BY MR. KRUEGER:

15 Q. Mr. Johansen, in your position as manager of
16 the Water and Sewer Department, have you had the opportunity
17 to talk with small companies about the small company rate
18 increase process?

19 A. Yes.

20 Q. Have you been able to determine whether
21 they're generally satisfied with this process?

22 A. I think excepting with a very, very few
23 exceptions, they are.

24 Q. Have you been able to form an opinion as to
25 whether they regard Staff as an honest broker?

1 A. I believe they do. And I think that's -- that
2 is one of the things that, you know, possibly is inherent in
3 the procedure itself is -- you know, is that the Staff is
4 taking an honest look at the company's operating expenses,
5 their investments and is working with the company to come up
6 with what we can agree on is a reasonable increase to be
7 implemented.

8 And I think if you look at Exhibit 35, many of
9 the cases -- or many of the, excuse me, small company requests
10 that are submitted are settled, if you will, at an increase
11 that is very similar to what the companies request to start
12 with. So I think that in and of itself is evidence that the
13 Staff is a fair broker on these.

14 Q. Do you see any need to improve the process for
15 small company rate increase cases?

16 A. Well, I certainly think there are things that
17 could be done, there are certainly things that have been
18 discussed with the Commission, with the office Public Counsel.

19 We actually had -- as a couple of years ago,
20 as part of the Commission's case efficiency roundtable
21 process, we actually had a small company rate case working
22 group that suggested changes to the small company rate case
23 procedure with which we have reached agreement with Public
24 Counsel on how the process could be changed to improve it, how
25 it could be changed to specifically allow for either an

1 arbitration process on issues that can't be resolved or allow
2 Public Counsel, for example, or even the company and Staff to
3 request what I'll call limited scope evidentiary hearings. So
4 there's been a lot of work done on that. There are
5 certainly -- there's basically agreement on how those changes
6 could be made.

7 Q. You mentioned the small company rate case
8 working group. When was that created?

9 A. I believe it was sometime in 2004 when we
10 initiated our work.

11 Q. And who was included in that working group?

12 A. There were several representatives, owners
13 from small companies. There were several attorneys that have
14 represented small companies in various cases here at the
15 Commission, Mr. England from Brydon, Swearengen and England,
16 for example, was a part of that working group, Jeremiah
17 Finnegan who represents Timber Creek Sewer Company on various
18 matters here was a part of that group as well as three owners
19 of small companies and the Staff and Public Counsel.

20 Q. And did that working group reach any kind of
21 consensus on changes that ought to be made?

22 A. Yes, it did.

23 Q. And I think you mentioned an arbitration
24 process. Would that arbitration process pertain to all issues
25 in a case or limited scope issues?

1 A. Basically what we ended up with would have
2 been a process where the company/Staff agreement or the
3 company/Staff/Public Counsel agreement could identify issues
4 that -- significant issues that there's not an agreement on
5 that would go to an arbitrator for decision.

6 And one of the reasons we did that is that the
7 arbitration process can be carried out without the parties
8 being represented by counsel. And, again, in what is the --
9 certainly the spirit of the small company rate case procedure,
10 which is to -- one of which is to hold down the cost of the
11 process for the companies and, thus, their customers, that's
12 one of the reasons that that proposal was -- was discussed and
13 was agreed upon.

14 Q. And what is the status of that proposal at the
15 present time?

16 JUDGE PRIDGIN: And I'm sorry. Before
17 Mr. Johansen answers, I guess I'm going to wonder how
18 relevant, you know, potential changes to the small sewer and
19 water rate cases are to the rate case issue in this case, and
20 I guess I'm going to think about limiting any more discussion
21 about it because I think -- maybe I'm missing something, but
22 I'm not sure of the relevance of this topic I guess is my
23 point.

24 MR. KRUEGER: I think that's my last question
25 on the issue.

1 JUDGE PRIDGIN: All right. That's fine.

2 THE WITNESS: There was a proposed rule
3 promulgated, filed with the Secretary of State in 2005. That
4 rule -- the final discussions with the Commission regarding
5 that rule were held in December of 2005. We ended up
6 withdrawing that proposed rule.

7 The last discussion with the Commission
8 regarding the proposed rule and -- and other changes that have
9 been agreed upon between the Staff and Public Counsel and at
10 the suggestion of -- of Commissioner Gaw, in particular, was
11 last discussed with the Commission I believe in March of 2006.

12 BY MR. KRUEGER:

13 Q. Okay. Thank you. Now I'd like to just
14 briefly discuss the Hickory Hills' case. Did the Commission
15 adopt Staff's position in that case?

16 A. It did not.

17 Q. What aspects of the Staff's case did the
18 Commission accept or reject?

19 A. The three main issues I believe that were
20 heard were -- was payroll expense -- actually probably the two
21 main issues, if you sort of roll them up together, was payroll
22 expense and mileage expense related to the owner's
23 participation in the operation and maintenance of the case.
24 And, in essence, the Commission adopted Public Counsel's
25 position on both of those issues.

1 MR. KRUEGER: Okay. Your Honor, I would ask
2 the Commission to take administrative notice of the Report and
3 Order that was issued in the Hickory Hills' case,
4 Case No. WR-2006-0250 and SR-2006-0249.

5 JUDGE PRIDGIN: That will be done. Thank you.

6 MR. KRUEGER: And that's all the questions I
7 have.

8 JUDGE PRIDGIN: All right. Thank you.

9 If there's nothing further from the Bench --
10 Commissioner Appling?

11 COMMISSIONER APPLING: I just wanted to make
12 one other comment concerning honest brokers, Hickory Hill and
13 whether we do have a system that need to be tweaked a little
14 bit to Dale and to Mr. Krueger.

15 I just don't want you to walk away from here
16 today thinking that you have an iron-clad system that works.
17 I personally think that it takes too much time in these cases
18 and Hickory Hill is probably one of those cases where it
19 should have been very easy to solve that case and get that
20 back on track.

21 Even though I have told Mr. Claude personally
22 that he probably might have never should have been in the
23 business of small water cases, but one of the things that he
24 did say at the end and he wrote this Commission a letter and
25 said that -- and I don't recall whether it was Staff, but he

1 really did say Public -- OPC made his life a living hell. And
2 those are not the kind of comments that I think we ought to be
3 receiving here initially or any time concerning a case that we
4 have tried.

5 In the two cases that I have been deeply
6 involved here, it's almost a cause for these guys to go out of
7 business. Maybe they shouldn't have been in the business in
8 the beginning and I'm not arguing that and I'm not weighing
9 that, but I'm just saying that we don't have a policy or
10 procedure here that doesn't need some tweaking.

11 I am genuinely concerned about the time it
12 takes for us to get from the beginning to the end on a small
13 water case. But I'll take up the rest of that with you
14 individually in your office some place else at a later time,
15 but thank you very much for your time.

16 JUDGE PRIDGIN: All right. Thank you.

17 You weren't asked any questions. I'm sorry.

18 THE WITNESS: I would -- I would like to make
19 one clarification on Exhibit 35 that I failed to mention
20 earlier --

21 JUDGE PRIDGIN: All right. You may do that.

22 THE WITNESS: -- when you asked me about it
23 what it shows and everything.

24 JUDGE PRIDGIN: Yes, sir.

25 THE WITNESS: There are certain entries on

1 Exhibit 35 that are highlighted in gray. Those are the
2 instances in which the overall process took in excess of
3 11 months.

4 JUDGE PRIDGIN: Okay.

5 THE WITNESS: That was a specific question
6 that Chairman Davis had earlier and I failed to point out,
7 when I was explaining the exhibit, why those entries were
8 highlighted. Those are the only instances where we have
9 actually gone past 11 months in the overall process.

10 JUDGE PRIDGIN: Okay. And thank you for
11 pointing that out. All right. Mr. Johansen, thank you very
12 much.

13 THE WITNESS: Thank you.

14 JUDGE PRIDGIN: All right. Madam court
15 reporter, is February 5th still a reasonable date?

16 THE COURT REPORTER: Yes.

17 JUDGE PRIDGIN: It looks like February 5th
18 will be the date the transcripts will end and I want briefs
19 in -- one round of briefs by February 20th.

20 MR. KRUEGER: Your Honor, I do have one other
21 matter.

22 JUDGE PRIDGIN: Yes, sir.

23 MR. KRUEGER: We had pre-filed and marked an
24 Exhibit No. 28, the Staff's EMS runs. That was the original
25 EMS run and some of the data in that is no longer accurate.

1 We have showed -- we have shown a revised copy of it to the
2 company, I believe we've shown the most current version of it
3 and I think that -- we have not?

4 MR. COOPER: Maybe we -- can we go off the
5 record for just a few --

6 JUDGE PRIDGIN: If you need to speak for a
7 minute, we can go off for --

8 MR. COOPER: Just long enough -- I think the
9 conversation we need to have doesn't need to be on the record.

10 JUDGE PRIDGIN: Let me simply mute the
11 microphone. You may speak away from the microphones and it
12 won't be on the record. It will just save me a little time.

13 Okay. We are -- I'm sorry. So we're on the
14 record, but I simply muted the microphone. And I'm sorry,
15 Mr. Krueger.

16 MR. KRUEGER: Okay. I guess we have not --
17 the Staff has not shown the latest EMS run to the company
18 because we still need to update to reflect information based
19 on changes that Mr. Merceil made to his testimony in regard to
20 fire flows.

21 And so the company and the Staff at least are
22 in agreement that this could be submitted as a late-filed
23 exhibit. I think the changes to the last version that they
24 have seen are not extensive, but we do want them to have an
25 opportunity to see the latest version and the best way to do

1 that I think is file a late-filed exhibit.

2 MS. BAKER: That's fine.

3 MR. KRUEGER: I didn't discuss with Public
4 Counsel.

5 JUDGE PRIDGIN: Ms. Baker, you do not object?

6 MS. BAKER: I do not object.

7 JUDGE PRIDGIN: Showing no objection,
8 Mr. Krueger, do you know when that will be filed?

9 MR. KRUEGER: Not yet. I'll find out.

10 JUDGE PRIDGIN: All right. Thank you.

11 MR. KRUEGER: Your Honor, we would be able to
12 file that late-filed exhibit by the end of the day tomorrow.

13 JUDGE PRIDGIN: Okay.

14 MR. KRUEGER: And then we would also want to
15 file a mod-- or amended reconciliation to reflect the changes
16 that result from the late-filed exhibit and we would file that
17 by the end of the day on Friday.

18 JUDGE PRIDGIN: That's perfectly fine. And
19 with that, Mr. Krueger, if you would also file a pleading
20 explaining why it's late filed and whether you believe that
21 parties object, because we're doing this kind of outside of
22 the scope of the hearing, to make sure that they either don't
23 object -- if they do object, I mean, they have certain due
24 process rights about the exhibit, but I need something in the
25 record to show that either the parties don't object and the

1 Commission may rely on it or if the parties do object, how the
2 Commission can proceed from there.

3 MR. KRUEGER: I will do that. Thank you.

4 JUDGE PRIDGIN: Mr. Cooper?

5 MR. COOPER: Just one more house-cleaning
6 matter. I believe the exhibits that I'll be filing by
7 tomorrow will have some aspects that are highly confidential.
8 Just want you to be aware of that. I don't know whether you
9 need to make any certain notation as to that, but just so
10 that's clear.

11 JUDGE PRIDGIN: I did issue a protective order
12 at the beginning of the case, as I recall.

13 MR. COOPER: There is a protective order in
14 place.

15 JUDGE PRIDGIN: So that's fine. Okay. If
16 there's nothing further from counsel --

17 MR. KRUEGER: Nothing further, your Honor.

18 JUDGE PRIDGIN: Nothing, Ms. Baker?

19 MS. BAKER: Nothing further.

20 JUDGE PRIDGIN: Mr. Cooper?

21 MR. COOPER: Nothing. Thank you very much.

22 JUDGE PRIDGIN: The evidence is closed except
23 for the late-filed exhibits that will be coming in. Briefs
24 are due February 20th.

25 Thank you very much. We're off the record,

1 we're adjourned.

2 WHEREUPON, the hearing was adjourned.

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CERTIFICATE OF REPORTER

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I, Tracy L. Thorpe Taylor, a Certified Shorthand

Reporter, within the State of Missouri, do hereby certify that

the witness whose testimony appears in the foregoing

deposition was duly sworn by me; that the testimony of said

witness was taken by me to the best of my ability and

thereafter reduced to typewriting under my direction; that I

am neither counsel for, related to, nor employed by any of the

parties to the action in which this deposition was taken, and

further, that I am not a relative or employee of any attorney

or counsel employed by the parties thereto, nor financially or

otherwise interested in the outcome of the action.

Tracy L. Thorpe Taylor, CSR, CCR