

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

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8 Volume 10

9

10

In the Matter of Aquila, Inc. d/b/a)Case No.
11 Aquila Networks - L&P and Aquila)ER-2004-0034
Networks - MPS, to Implement a General)
12 Rate Increase in Electricity.)

13

In the Matter of the Request of)Case No.
14 Aquila, Inc., d/b/a Aquila Networks)HR-2004-0024
- L&P, to Implement a General Rate)
15 Increase in Steam Rates.)

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BEFORE:

KENNARD L. JONES,
 REGULATORY LAW JUDGE.
19 STEVE GAW, Chair
 COMMISSIONERS.

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REPORTED BY:
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1 we've done.

2 MR. SWEARENGEN: The company would agree with
3 that. I think that's a good idea, so long as Mr. Conrad
4 doesn't get credit for it.

5 MS. WOODS: We'll stipulate to that.

6 JUDGE JONES: Okay. I suppose that's what
7 we'll do then.

8 MR. MICHEEL: Your Honor, with respect to our
9 testimony, I would just note that we're going to be skipping
10 some numbers because now that merger savings is out of the
11 case that we had complete testimonies with respect to merger
12 savings, so the numbers will be skipped.

13 JUDGE JONES: Okay. Well, I think first
14 before we start -- before we move on any testimony, I do
15 have this motion before me that I should probably move on.
16 It's Staff's motion, the motion for leave to file
17 Supplemental Surrebuttal Testimony. I see strange faces in
18 the gallery. What's that mean?

19 MR. WILLIAMS: It just means that if you're
20 going to take any oral argument on it, the attorney that was
21 involved for Staff's not currently in the hearing room.

22 JUDGE JONES: I don't believe I need to take
23 any oral argument on it. I'll restate how I see the facts
24 as they are. There's Direct Testimony filed by Aquila.
25 Staff, in its Direct, effectively rebutted that testimony.

1 On the same issue, Staff filed Rebuttal Testimony -- or I
2 should say -- yeah, Staff filed Rebuttal Testimony. Aquila
3 did not, in its Rebuttal Testimony, rebut Staff's Direct but
4 did so in its Surrebuttal Testimony.

5 As I read the rules, that's fair game. I
6 realize Staff may in some ways see some unfairness in that;
7 however, I should point out that the way the rules are set
8 out, Staff is able to rebut Direct Testimony in its Direct.
9 So with that in mind, motion for leave to file Supplemental
10 Surrebuttal filed by Staff is denied.

11 And let's see. I believe -- are we starting
12 off with a witness today? I don't see anyone here.

13 MR. MEYER: I believe we're starting with the
14 AAOs. Our witness will be available at a moment's notice.
15 I wasn't sure if that was where we were beginning or if we
16 were starting with exhibits.

17 MR. SWEARENGEN: Excuse me, Judge. Are we off
18 the record?

19 JUDGE JONES: No.

20 MR. SWEARENGEN: Could we go off? Do you want
21 to leave it on the record?

22 JUDGE JONES: Yeah.

23 MR. SWEARENGEN: We have all these exhibits
24 that we have agreed to assign different numbers to. Do we
25 need to provide copies of those to the reporter?

1 JUDGE JONES: Yes. Let's do that while we
2 wait on the witness.

3 MR. SWEARENGEN: Thank you.

4 (Exhibits were re-marked for identification.)

5 (Witness sworn.)

6 JUDGE JONES: Before you question her,
7 Mr. Cooper, because Ms. Miller's testimony came midstream of
8 the changes we had last week and the actual exhibit number
9 of her exhibit has now changed to some extent, maybe Staff
10 should just re-offer that particular exhibit number just for
11 purposes of clarity.

12 MR. MEYER: In the intervening time since
13 we've last been here, Ms. Miller has prepared testimony
14 that's been premarked as Exhibits 1010, 1011, and 1012 which
15 differs from her previously filed and admitted testimony
16 only insofar as certain matters have now been redacted.
17 Staff would, therefore, offer that testimony, 1010, 1011 and
18 1012.

19 JUDGE JONES: I note Exhibits 1010, 1011 and
20 1012 are admitted into the record.

21 (Exhibit Nos. 1010, 1011 and 1012 were
22 received into evidence.)

23 JUDGE JONES: Now, Mr. Cooper, you may cross
24 now.

25 TRISHA MILLER testified as follows:

1 CROSS-EXAMINATION BY MR. COOPER:

2 Q. I believe I guess last Tuesday when you were
3 on the stand, Mr. Micheel had asked you about some Staff
4 accounting schedules. Do you remember that still?

5 A. Yes.

6 Q. Okay. Could you tell us what Staff accounting
7 schedules from a rate case are?

8 A. I'll vaguely try to describe it. It usually
9 shows the adjustments that Staff has made to a case or what
10 is included in a rate case. And that -- as they -- as the
11 rate case proceeds, they change.

12 Q. Would you agree with me that it reflects
13 Staff's initial position in a rate case?

14 A. The filing -- the filed schedule?

15 Q. The filing of the Staff accounting schedules.

16 A. Yes. I would suppose so.

17 Q. In your experience, is that something the
18 Staff does in every rate case, files its Staff accounting
19 schedules?

20 A. Yes.

21 Q. And I think this was also a part of your
22 testimony last week, but a part of those Staff accounting
23 schedules is a schedule that attempts to address the
24 company's rate base. Correct?

25 A. Yes.

1 Q. And that's generally found on Schedule 2 of
2 the Staff accounting schedules. Correct?

3 A. I'm not for sure.

4 Q. Now, would you agree with me that the last
5 Missouri Public Service Commission rate case for the MPS
6 service territory was Case No. ER-2001-672?

7 A. Yes.

8 MR. COOPER: Your Honor, may I hand the
9 witness a document?

10 JUDGE JONES: Yes, you may.

11 BY MR. COOPER:

12 Q. Do you recognize the document that I have
13 handed you?

14 A. Yes.

15 Q. What is that document?

16 A. It's an accounting schedule from the
17 ER-2001-672 Staff accounting schedules.

18 Q. And, if you would, could you turn to
19 Accounting Schedule 2 that I believe is marked there with
20 the yellow note?

21 A. Okay.

22 Q. Do you see that?

23 A. Uh-huh.

24 Q. Is that Accounting Schedule No. 2?

25 A. Yes.

1 Q. Okay. And does that purport to calculate rate
2 base in Case ER-01-672?

3 A. Yes.

4 Q. Now, looking down that page, could you look at
5 the section for me that purports to add to net plant in
6 service? Do you see that section?

7 A. Yes.

8 Q. Do you see any additions that have been made
9 associated with Accounting Authority Orders?

10 A. Yes.

11 Q. Okay. What are those?

12 A. The AAO deferral Sibley rebuild in western
13 Cole, '90 on line 11, and on line 12 there is an AAO
14 deferral, Sibley rebuild in western Cole, '93.

15 Q. Now, below that I believe there's a section
16 that says, Subtract from net plant. Do you see that?

17 A. Yes.

18 Q. Do you see any deferred income taxes
19 associated with Accounting Authority Orders that are
20 subtracted from net plant?

21 A. I believe not. All's I see is on line 19 the
22 deferred income taxes depreciation, on line 20, deferred
23 income taxes UCUCorp's plant, and on line 21, unamortized
24 investment tax credit.

25 Q. Okay.

1 MR. COOPER: Your Honor, may I collect my
2 document?

3 JUDGE JONES: Yes, you may.

4 BY MR. COOPER:

5 Q. Now, let's focus for a minute on the ice storm
6 Accounting Authority Order that's the subject of this case.
7 That Accounting Authority Order was granted to Aquila by the
8 Commission in Case No. EU-2002-1053. Correct?

9 A. Yes.

10 Q. Okay. And are you familiar with that order?

11 A. Yes.

12 Q. Do you have that order with you today?

13 A. No, I do not.

14 Q. Okay. If I may, I'd like to hand you a copy
15 of the Commission's order in that case.

16 Now, just by way of background, I want to
17 refresh the Commission's memory as to the circumstances that
18 led to that Accounting Authority Order. Would you look with
19 me on the first page of that Accounting Authority Order?
20 And I believe I have highlighted a sentence there -- a
21 couple of sentences just for ease of operation here.

22 But would you agree with me that the
23 Commission's order states as part of a factual background
24 that, Beginning on January 30, 2002, Aquila's Missouri
25 Public Service territory experienced the effect of an ice

1 storm of historical proportions that resulted in almost half
2 of the customers in Aquila's Missouri Public Service
3 territory having their electric service interrupted due to
4 downed power lines?

5 A. Yes.

6 Q. Okay. And then later on that same page does
7 the Commission's order also state that, At the height of the
8 disruption, approximately 40 percent of -- and this is not
9 an exact quote, I believe they're referring to MPS -- of
10 MPS's customers in the area were without service?

11 A. Yes.

12 Q. Is an act of God generally found to be an
13 extraordinary event for purposes of an Accounting Authority
14 Order?

15 A. Yes.

16 Q. And would you agree with me that an ice storm
17 of this magnitude was clearly an act of God and, therefore,
18 an extraordinary event for purposes of Accounting Authority
19 Orders?

20 A. Yes.

21 Q. And, in fact, in that Commission case there
22 really wasn't any disagreement among any of the parties as
23 to whether the ice storm itself was an extraordinary event.
24 Correct?

25 A. Yes. Correct. All parties I believe agreed.

1 Q. Now, I believe when you were on the stand last
2 week, Mr. Micheel asked you about a case that carries two
3 case numbers, it was EO-91-358 and EO-91-360. Do you
4 remember that?

5 A. Yes.

6 Q. Do you remember what the date was of that
7 case, what date that case was issued by the Commission?

8 A. I believe it was in '91. I don't know the
9 exact date -- or '90. I'm not for sure.

10 Q. Now, I believe you provided explanation in
11 your Surrebuttal Testimony that AAOs are applications made
12 by a utility to account for specific events or items in a
13 manner that differs from the Federal Energy Regulatory
14 Commission's, FERC, prescribed Uniform System of Accounts in
15 some manner.

16 Do you remember that, or do I need to point
17 that out in your testimony to refresh your memory?

18 A. Actually, I'm looking at it right now. I
19 found it. It's on page 2.

20 Q. Okay. Lines 1 through 3?

21 A. Yes.

22 Q. Now, by that statement you're not trying to
23 indicate that AAOs are inconsistent with the Uniform System
24 of Accounts, are you?

25 A. No.

1 Q. And your answer would be no because the
2 Uniform System of Accounts actually contemplates the
3 possibility of an Accounting Authority Order in the
4 situation of an extraordinary event or at least treatment of
5 costs in the case of an extraordinary event. Correct?

6 A. That's correct. Because it allows an account
7 for which such event should be accounted for.

8 Q. Now, the disagreement between the Staff and
9 the company in regard to really I think the whole AAO issue
10 is your recommendation that the amounts deferred pursuant to
11 the ice storm AAO should not receive rate base treatment.
12 Correct?

13 A. Correct.

14 Q. The unamortized balance you would not add back
15 to rate base. Correct?

16 A. The unamortized balance should not receive a
17 return on, but there should be a return of the investment.

18 Q. Okay. And while we're talking about that,
19 tell me what you mean by return on.

20 A. Return on would mean that the unamortized AAO
21 balance as of September 30, 2003 for the ice storm should
22 not be included in the rate base calculation -- in this rate
23 base.

24 Q. Okay. And you refer to "return of," which I
25 do believe you do recommend for the deferred costs under the

1 ice storm AAO. What do you mean by that term "return of"?

2 A. Return of is allowing, as in this case, an
3 amortization of the unamortized balance of the ice storm in
4 rate ba-- I mean, excuse me, in rate recovery over a
5 five-year period to be included in rates -- or to allow the
6 recovery in rates.

7 Q. Now, also in your Surrebuttal Testimony I
8 believe you have a statement that says, The Commission
9 generally reserves rate-making questions concerning costs
10 deferred through AAO applications for subsequent rate
11 proceedings.

12 Do you remember that?

13 A. Yes.

14 Q. Okay. Is that what the Commission did in
15 regard to the ice storm AAO?

16 A. I can't find it in this exact order, but that
17 is usually --

18 Q. Well, why don't you look at, let's see, 1E of
19 the ordered paragraphs there?

20 A. The Commission makes no findings or advances,
21 yes. Yes, that's correct.

22 Q. Okay. So in 1E the Commission does reserve
23 for the next rate case the rate-making treatment of those
24 deferred items. Correct?

25 A. Yes.

1 Q. And now we're in that next rate case, aren't
2 we?

3 A. Yes.

4 Q. So would you agree with me that the Commission
5 has the discretion in this case to provide for rate base
6 treatment of the unamortized balance if it wants to do that?

7 A. Yes. However, it's been past Commission
8 decisions not to allow rate base treatment for AAOs of this
9 type.

10 Q. Of this type. But the Commission has provided
11 in some cases and, in fact, the Commission Staff has
12 provided for in some cases rate base treatment of
13 unamortized balances of AAOs. Correct?

14 A. Yes. AAOs usually that were involved with
15 capitalized projects.

16 Q. Yeah. And an example of two of those were the
17 two that we identified in the ER-2001-672 accounting
18 schedules a few minutes ago. Correct?

19 A. Yes.

20 Q. Okay. Was Aquila able to defer all its ice
21 storm costs associated -- well, let me back up.

22 You focused on the AAOs having to do with
23 capital-related expenses. Correct?

24 A. Yes.

25 Q. Under the Commission's Accounting Authority

1 Order in ER-2002-1053, was the company allowed to defer in
2 this case its expenses associated with capital related to
3 the ice storm?

4 A. No. It was only allowed to defer costs that
5 were determined to be incremental expenses associated with
6 the ice storm.

7 Q. So that's at least one type of cost that never
8 made it in to the deferred amounts under this ice storm AAO.
9 Correct?

10 A. The capitalized costs or the incremental
11 expenses?

12 Q. The expenses associated with capital such as
13 depreciation, carrying costs, the company was never able to
14 defer those costs under the AAO that it was granted related
15 to the ice storm. Correct?

16 A. Depreciation as new assets that were placed in
17 service --

18 Q. Right.

19 A. -- due to the ice storm?

20 Q. The depreciation would have started as soon as
21 those new assets, those new items were deemed to be in
22 service. Was the company allowed under this AAO to defer
23 that depreciation?

24 A. No. However, under normal rate circumstances
25 the replacing -- the asset that was replaced due to

1 depreciation was still recognized in rates.

2 Q. How was it recognized in rates?

3 A. Well, if there was a new asset placed in
4 service that incurred depreciation due to the ice storm, I'm
5 assuming that it was replacing an asset that had been
6 damaged due to the ice storm and, therefore, that asset from
7 the prior rate case would already be receiving depreciation
8 through rate recovery.

9 Q. Some amount of depreciation. Correct?

10 A. Yes.

11 Q. Not necessarily the same amount of
12 depreciation?

13 A. No. I -- I'm not for sure if it -- it's a --
14 I didn't look -- no, I don't know.

15 Q. Now, the ice storm began, as we talked about
16 earlier, on January 30th of 2002. Correct?

17 A. Yes.

18 Q. And the AAO was later issued on June 27th of
19 2002 effective July 7, 2002. Correct?

20 A. Yes.

21 Q. But Aquila was directed to begin amortizing
22 the deferred costs as of February 1, 2002. Correct?

23 A. Yes.

24 Q. And I think, as you mentioned before, Aquila
25 was directed to amortize those deferred costs over a

1 five-year period; is that correct?

2 A. Yes.

3 Q. Now, in your Surrebuttal Testimony, I believe
4 this is on page 5, you make a reference to, let's see --
5 lines 1 through 3 is where I am -- make a reference to the
6 amortization of the deferral that began in February 2002 as
7 being several months prior to the operation of law date in
8 MPS's current case, Case No. ER-2004-0034.

9 Do you see that?

10 A. Yes.

11 Q. Would you agree with me that the several
12 months you refer to would be approximately 28 months or over
13 two years?

14 A. Yes. That would be correct.

15 Q. And as of today, would you agree with me that
16 approximately 40 percent of the deferred costs have already
17 been amortized by Aquila?

18 A. Yes.

19 Q. Now, would you also agree with me that as to a
20 certain amount of the ice storm expenses, the company will
21 never receive either a return of or a return on those
22 expenses?

23 A. No. That is unknown as to whether there will
24 be recovery of the expenses due to -- I don't know when
25 Aquila will be filing the next rate case nor do I know how

1 long the rates will be reflected in -- excuse me, how long
2 the amortization will be reflected in rates.

3 Q. Okay. Let's start with the return on portion
4 then, because it sounds like maybe we have agreement on
5 that. Would you agree with me that as to a certain portion
6 of the ice storm-related expenses, Aquila will never receive
7 a return on those expenses under the Staff's proposal?

8 A. That's correct. They would never receive a
9 return on --

10 Q. Okay.

11 A. -- for those investments. However, they would
12 receive the recovery of the expenses that normally would not
13 be reflected in rates due to them being extraordinary unless
14 it was through an AAO application.

15 Q. Okay. So some amount of the expenses -- and I
16 think this is where we differed before on your answer. Some
17 amount of the expenses Staff is proposing that Aquila
18 receive a return of. Correct?

19 A. I'm sorry. What are you -- what are you
20 referring to when you say some of the expenses?

21 Q. Well --

22 A. Return of?

23 Q. Yeah. I think that in response to one of my
24 earlier questions you answered that approximately 40 percent
25 of the deferred costs have already been amortized by the

1 company. Correct?

2 A. Correct.

3 Q. Okay. And the Staff's proposal in this case
4 reflects a return of one-fifth of all the deferred costs.
5 Correct?

6 A. Correct. But that's also one-fifth of
7 recovery to be reflected in rates at a yearly period.

8 Q. Right. One-fifth on an annual basis?

9 A. Yes.

10 Q. Okay. And I believe that you tried to respond
11 to me earlier that you didn't know whether the company would
12 receive a return of the entire amount deferred. Correct?

13 A. Nor do I know if they'll recover over the
14 amount.

15 Q. Right.

16 A. Correct.

17 Q. But the basis of that statement is the fact
18 that you don't know when Aquila will be in for its next rate
19 case. Correct?

20 A. Correct.

21 Q. It's the unknown --

22 A. Yes.

23 Q. -- that you refer to?

24 And, in fact, depending upon the timing of
25 Aquila's next rate case, it might only receive recovery

1 of -- or it might receive recovery of something less than
2 all its deferred costs. Correct?

3 A. As much as it would receive recovery over --

4 Q. Okay.

5 A. -- of those expenses.

6 Q. So it's a complete unknown on what would
7 happen on the back side of this AAO as far as you're
8 concerned. Correct?

9 A. Yes.

10 Q. Okay. But it's Staff's intent that the
11 company not receive recovery of those amounts that have
12 already been amortized. Correct?

13 A. No. Our intent is to allow rec-- or to try to
14 allow recovery of those expenses, but not to guarantee
15 recovery of those expenses.

16 Q. Why would the amortization then -- why would
17 Staff have an interest in starting the amortization in
18 February of 2002? Why would not -- if that were the Staff's
19 intent, why would the Staff not want the amortization to
20 only start as of the next rate case?

21 A. As stated in the Report and Order, it says
22 that Staff reasoned that the earlier start date for the
23 beginning of the amortization period would avoid an
24 unnecessary delay and ensure timely recognition of costs of
25 the ice storm in Aquila's financial statements.

1 And I also believe it's stated in this Report
2 and Order that Aquila asks for an amortization date prior to
3 June 30th, 2002 to allow it to be reflected in their
4 financial statements.

5 Q. But let's go back to my earlier question. If
6 we started the amortization in February of 2002, how can it
7 be the Staff's intent that the company receive a return of
8 all its ice storm expenses?

9 A. As I stated earlier, it's not our intent to
10 guarantee a recovery of all the expenses but to allow the
11 opportunity to return of all the expenses.

12 Q. Now, in your Surrebuttal Testimony, I think
13 it's page 3, line 17 -- well, let me back up here.

14 Surrebuttal Testimony, page 4, lines 13
15 through 15 you state that, Extraordinary expenses associated
16 with acts of God by their very nature should be shared
17 between shareholders and ratepayers.

18 What's the nature of acts of God that calls
19 for sharing?

20 A. That they're ext-- excuse me, that they're
21 extraordinary, unusual and infrequent and --

22 Q. Wouldn't all costs deferred pursuant to an
23 Accounting Authority Order be just exactly that? Isn't that
24 the standard for granting an Accounting Authority Order?

25 A. Yes. However, with acts of God, it's neither

1 something that can be planned nor is known nor has any
2 control over by the company or the ratepayers. And,
3 therefore, the Commission has found in the past that there
4 should be a sharing between the ratepayer and the company
5 for such extraordinary expenses.

6 Q. But wouldn't that be true, again, of any
7 extraordinary situation that granted -- that resulted in a
8 grant of an Accounting Authority Order?

9 A. Again, as I stated, this is an act of God
10 which is neither planned nor known to occur by either the
11 company or the ratepayers.

12 Q. Now, on page 3 of your Surrebuttal Testimony
13 you take issue with the statement made by Aquila Witness
14 Williams and you respond that, Mr. Williams' statement
15 reveals his philosophy that the company should be able to
16 recover all of its expenses and that, in essence, the
17 shareholder should be shielded from the entire risk of
18 owning an electric transmission and distribution system that
19 from time to time is subjected to winter elements and other
20 forces of nature.

21 Do you see that?

22 A. Yes.

23 Q. Now, as we spoke about before, this ice storm
24 was an extraordinary event. Correct?

25 A. Yes.

1 Q. It wasn't just your run-of-the-mill winter
2 weather that you might find everywhere. Correct?

3 A. Correct.

4 Q. And under Aquila's proposal in this case, will
5 Aquila's shareholders be shielded from the entire risk of
6 the subject ice storm?

7 A. No. As stated also in my testimony that
8 Aquila shareholders will be sharing in the risk associated
9 with such natural acts of God by not receiving a return on
10 the unamortized balance associated with the AAO ice storm,
11 but they will receive a return of those incremental expenses
12 that were associated with the ice storm.

13 Q. But let's focus for a second on Aquila's
14 proposal. It's Aquila's proposal, isn't it, that it receive
15 rate base treatment of the unamortized balance of these
16 deferrals. Correct?

17 A. Yes.

18 Q. So they want rate base treatment of something
19 less than all the deferrals. Correct?

20 A. Yes.

21 Q. Because some of those deferrals have already
22 been amortized as we discussed previously. Correct?

23 A. Yes.

24 Q. So under Aquila's proposal in this case, will
25 Aquila's shareholders be shielded from the entire risk of

1 the subject ice storm?

2 A. They have the possibility to, yes.

3 Q. And that, again, just refers to the fact that
4 you don't know what will happen in the future?

5 A. Correct.

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

8 JUDGE JONES: Okay. I have no questions.

9 Is there redirect from Staff?

10 MR. MEYER: Very briefly, your Honor.

11 JUDGE JONES: Go right ahead.

12 REDIRECT EXAMINATION BY MR. MEYER:

13 Q. Good morning.

14 A. Good morning.

15 Q. Very briefly, Ms. Miller. And as a point of
16 clarification, did any part of your scope of audit work in
17 this case involve deferred taxes specific to AAOs?

18 A. No.

19 Q. Are you aware of what Staff witness will be
20 addressing that issue?

21 A. Staff Witness Steve Traxler will.

22 Q. And he will be testifying later on in this
23 process?

24 A. Yes.

25 Q. And also just to clarify, at this time does

1 Staff have any further adjustments to make to the ice storm
2 deferred costs that were previously contained in schedules
3 already submitted?

4 A. No.

5 Q. And, therefore, you believe that they're all
6 included at this time?

7 A. Yes.

8 Q. Do you believe there's any need to do any
9 further differentiation between normal, over time related
10 ice damage and the extraordinary costs associated with the
11 damage from this particular ice storm we've been discussing?

12 A. No.

13 Q. The distinction that Staff is making between
14 the Sibley AAOs and the ice storm AAO that has been the
15 subject of a lot of discussion here, would you agree that
16 that is a principle distinction?

17 A. Yes.

18 Q. And that's based on policy of Staff; is that
19 correct?

20 A. Yes.

21 Q. Would you like to clarify or explain those
22 principles or that policy?

23 A. The Staff and the Commission have allowed
24 capital asset costs associated with AAOs to be recovered in
25 rate base; however, AAOs of extraordinary nature are allowed

1 recovery of and disallowed recovery on the unamortized
2 balance.

3 Q. Is there a distinction among these events of
4 extraordinary nature that you just mentioned?

5 A. I'm sorry?

6 Q. Is there a distinction among the types of
7 extraordinary events that you just mentioned?

8 A. Yes. Extraordinary events such as are planned
9 and occur such as major capital expenditures versus natural
10 acts of God, occurrences that are unknown and unusual.

11 Q. So that's the distinction that Staff is making
12 here --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes.

16 Q. Do you have any concerns about suggesting that
17 limiting Aquila's recovery to return of its shareholders
18 outlay and not return -- not permitting a return on that
19 outlay would encourage the company to contain costs in
20 emergency situations to the detriment of its ratepayers?

21 A. No. Based on rate-making principles, the AAO
22 treatment for extraordinary events due to acts of God
23 occurred because under normal rate-making principles these
24 costs, especially since that occurred in the test year,
25 would have been thrown out during normal -- by determining

1 that they were extraordinary, unusual, infrequent and would
2 have been normalized out.

3 Therefore, the Commission saw a need to -- for
4 the company to recover these costs of -- that occurred due
5 to extraordinary events and further allow the companies to
6 come in for -- through the AAO process and allow them an
7 application to -- to be approved on the return of.

8 Now, there's only been one case where a
9 company asked for a return on, and that was referenced in my
10 testimony, the St. Louis County Water, I believe it was
11 WR-95-145. And the Commission disallowed the recovery on
12 saying that there needed to be a sharing between the
13 ratepayers and the shareholders for such events.

14 Q. If the Commission allows a five-year
15 amortization of the ice storm costs in this case and then
16 the company waits to file its next MPS rate case for five
17 years, would MPS totally recover in rates its return of the
18 deferred ice storm costs?

19 A. It would recover of the incremental expenses
20 associated with the ice storm, yes.

21 Q. That's the recovery of that we've been
22 discussing?

23 A. Yes, that's correct.

24 Q. And the decision to bring a rate case is
25 something that is contained within the company; is that

1 correct?

2 A. Yes.

3 Q. Mr. Cooper asked you if it's Staff's intent to
4 allow recovery of all deferred ice storm costs. Does the
5 Staff control when a utility chooses to file for rate
6 relief?

7 A. No.

8 Q. I believe that's the question I had just asked
9 before, is it not?

10 A. Yes.

11 MR. MEYER: I have nothing further. Thank
12 you.

13 JUDGE JONES: Thank you.

14 Ms. Miller, you may step down. The
15 Commissioners may have questions for you later, so be
16 available.

17 THE WITNESS: Okay.

18 JUDGE JONES: At this time, OPC, Office of
19 Public Counsel, has a witness to bring forward.

20 MR. MICHEEL: Yes, your Honor. We would call
21 Ted Robertson. And, your Honor, Mr. Robertson's Direct
22 Testimony has been marked for purposes of identification as
23 Exhibit 1013, his Rebuttal Testimony has been marked for
24 purposes of identification as 1014, and his Surrebuttal
25 Testimony has been marked for purposes of identification as

1 1015.

2 And I'm assuming, your Honor, we still have
3 the rule where I'm going to waive the regular items and just
4 request, after he's sworn of course, to move those into --
5 ask that those be admitted into evidence.

6 JUDGE JONES: Your assumption's correct. And
7 Exhibits 1013, 1014 and 1015 are admitted into the record.

8 (Exhibit Nos. 1013, 1014 and 1015 were
9 received into evidence.)

10 (Witness sworn.)

11 JUDGE JONES: You may proceed.

12 TED ROBERTSON testified as follows:

13 DIRECT EXAMINATION BY MR. MICHEEL:

14 Q. Mr. Robertson, have you caused to be filed
15 your Direct, your Rebuttal and your Surrebuttal Testimony in
16 this case?

17 A. I have.

18 MR. MICHEEL: With that, your Honor, I would
19 tender Mr. Robertson for cross-examination.

20 JUDGE JONES: Thank you.

21 Will there be cross from Missouri Department
22 of Natural Resources?

23 MS. WOODS: No, your Honor.

24 JUDGE JONES: Thank you.

25 City of Kansas City, Missouri I don't see here

1 so I'll assume there will be no cross. Sedalia Industrial
2 Energy Users' Association and AG Processing?

3 MR. CONRAD: No questions.

4 JUDGE JONES: Federal Executive Agencies?

5 MR. PAULSON: No questions, your Honor.

6 JUDGE JONES: Staff of the Commission?

7 MR. MEYER: Yes, your Honor.

8 CROSS-EXAMINATION BY MR. MEYER:

9 Q. Good morning.

10 A. Good morning.

11 Q. Very briefly, Mr. Robertson, in your testimony
12 I believe in your Surrebuttal Testimony on page 19 you had
13 made a reference to Cases EO-90-114 and EO-91-358; is that
14 correct?

15 A. What page again?

16 Q. I think it's page 19.

17 A. Are you referencing line 16 and 17?

18 Q. I believe so.

19 A. Yes.

20 Q. Okay. Are you familiar with those decisions?

21 A. I am.

22 MR. MEYER: Okay. May I approach the witness?

23 JUDGE JONES: Yes, you may.

24 BY MR. MEYER:

25 Q. Sir, I've handed you a copy of the

1 Commission's decision from Case EO-90-114, which appears to
2 have been consolidated with ER-90-101 as referenced in your
3 testimony. Does that appear to be a copy of that?

4 A. That's correct.

5 Q. On the bottom of the page that I had turned
6 to, and I apologize for not having that page number, the
7 last paragraph in that appears to be language by the
8 Commission that addresses this. Would you read that
9 paragraph, please?

10 MR. MICHEEL: Could you at least tell me what
11 page -- would you ask him what page number it is? He can --

12 THE WITNESS: Page 31.

13 BY MR. MEYER:

14 Q. It's the last paragraph on page 31.

15 A. And your question again?

16 Q. Could you read that last paragraph on page 31?

17 A. The entire paragraph?

18 Q. Correct. I believe it's about four sentences.

19 A. The Commission determines that these costs
20 should be amortized over 20 years, which is the approximate
21 extended life of the plant. The Commission finds that this
22 approach matches the payments of the costs by ratepayers for
23 the rebuilding with their enjoyment of its benefits.

24 The Commission further determines that the
25 unamortized costs should be reflected in rate base. This is

1 the usual practice when capital costs are amortized. The
2 cases cited by Staff, slash, Public Counsel deal with
3 extraordinary maintenance costs and, therefore, are not
4 applicable.

5 Q. And when the Commission references costs, to
6 your knowledge, would that be the costs of that Sibley AAOs
7 that we've been discussing in this case?

8 A. It's my understanding the costs they're
9 referencing are the costs that they allowed to be deferred.

10 Q. And, to your knowledge, has the Commission
11 modified the decision that you've just read from subsequent
12 to that decision?

13 A. The Commission has modified the way it treats
14 rate base treatment of AAO costs in MGE Case 98-140. Is
15 that your question?

16 Q. I actually was -- my question was, has the
17 Commission modified its decision in that case subsequent to
18 that case specifically regarding the Sibley AAO treatment?

19 A. Has the Sibley AAO--

20 Q. Has the Commission --

21 A. -- been modified?

22 Q. Right. Has the Commission modified its
23 decision respecting treatment of the Sibley AAOs?

24 A. Well, there have been a number of cases since
25 then. I don't know of any case -- MPS case where the

1 Commission has stated that that's changed, no. Not an MPS
2 case, but --

3 Q. That was my question.

4 A. -- prior -- other cases, yes.

5 Q. That was my question.

6 MR. MEYER: Thank you, sir. That's all I
7 have.

8 JUDGE JONES: Now we'll have cross from
9 Aquila.

10 MR. COOPER: No questions.

11 JUDGE JONES: Okay. Mr. Robertson, I do have
12 a couple of questions.

13 QUESTIONS BY JUDGE JONES:

14 Q. I just want to be clear that on the Sibley
15 plant, the western plant and the ice storm, these are three
16 AAOs that came out from the Commission. And OPC is
17 saying -- maybe I should back up and ask, what is the total
18 cost as far as each of these items?

19 A. I've got a little cheat sheet --

20 Q. That's fine.

21 A. -- since I have a hard time remembering
22 numbers.

23 Q. I understand that.

24 A. Let me help you out, if I'm understanding what
25 you're wanting. This is not revenue requirement. Revenue

1 requirement flows through the calculation, but these are the
2 dollars that they're putting into the case, which revenue
3 requirement will come from. And I can give you an estimate
4 on that even.

5 But for the 1990 Sibley and western Cole AAO,
6 the company has included in rate base -- company and Staff,
7 \$1,391,872. Okay. In addition, they've included an annual
8 amortization of approximately \$193,572 for that AAO.

9 Q. And in OPC's opinion?

10 A. In our opinion, we've agreed with the company
11 and Staff that the annual amortization should be allowed,
12 but that the rate base treatment -- inclusion in rate base
13 should not be allowed. So what we're saying is the
14 1,391,872 should not be in addition to rate base.

15 Q. Okay. Is that the same position you've taken
16 with regard to the ice storm in 2002?

17 A. The ice storm is quite similar and there are
18 some unique differences associated with it, but that is the
19 same position. We recommended that the amortization for the
20 ice storm be allowed but not rate base treatment of the
21 unamortized balance.

22 Now, you asked about the other Sibley AAO
23 also, the 1991 Sibley western Cole AAO. The company has
24 included \$1,421,181 in rate base and then they've got annual
25 amortization and expense of approximately \$146,556. And our

1 position with that is the same. We recommend allowing the
2 annual amortization but not putting the balance --
3 unamortized balance in rate base.

4 The last part of this issue for us is the
5 deferred tax offset associated with the AAOs. Our
6 recommendation there is even if you don't allow unamortized
7 balance in rate base, you still should put the deferred
8 taxes associated with those AAOs as an offset to rate base
9 because those costs, we believe, flow with the expense, the
10 annual amortization, not whether or not you put the
11 unamortized balance in rate base.

12 And that amount that the company calculated in
13 its original filing and that it modified in its subsequent
14 filing, we accepted that amount, and that's \$3,190,470 that
15 would be used as offset. The company in its original filing
16 agreed with this and in the updated filing through
17 September 30th they changed the number a little bit for the
18 updated period and that's the result.

19 JUDGE JONES: Okay. Is there any recross?
20 Redirect?

21 MR. MICHEEL: Yes. I have some redirect.

22 REDIRECT EXAMINATION BY MR. MICHEEL:

23 Q. Mr. Robertson, Mr. Meyer asked you about the
24 Commission's decision in EO-90-114. Do you recall that
25 question?

1 A. I do.

2 Q. And as part of your response, you indicated
3 that -- well, let me ask you this. Are you aware of any --
4 after EO-90-114, any litigated MPS rate cases?

5 A. The only litigated case for MPS Electric after
6 the 90-101 case I believe was 97-394; is that correct? Just
7 bear with me for a moment. Yes, that's correct, ER-97-394.

8 Q. And do you know how the Commission treated the
9 AAO issue in that case?

10 A. In that case Staff's filing included rate base
11 treatment for the balances and they also included an offset
12 for the deferred income taxes associated with the AAO. It's
13 my understanding that that's the way it was treated.

14 And the reason for that -- one of the reasons
15 for that is the company in that filing -- and that case
16 resulted into a complaint case which flowed out, which was,
17 I believe, 98-126.

18 And the company in their filing did not even
19 include the amounts in rate base as unamortized balances or
20 include an annual amortization because part of their
21 argument was they were transitioning to becoming a
22 competitive industry -- electric competitive industry and
23 that those costs were sort of stranded costs and they wanted
24 an early amortization, they called it a transition cost. So
25 there was just -- this issue in that case got a little bit

1 more mixed up.

2 Q. So at least with respect to the litigated MPS
3 cases, there's been different treatments of these AAOs. Is
4 that your understanding?

5 A. Staff -- Staff has been somewhat inconsistent
6 in their treatment of -- the rate base treatment of the AAOs
7 and -- and deferred taxes associated with those AAOs, yes.

8 Q. You also indicated in response to Mr. Meyer's
9 question that the Commission has treated the deferrals
10 differently in a subsequent litigated case. Is that your
11 understanding?

12 A. It's my understanding they've actually -- even
13 though I've only got one case in testimony, they've done it
14 in two cases. The case I referenced in testimony was
15 Missouri Gas Energy, GR-98-140. And I believe they also
16 provided the same treatment in a St. Louis County Water
17 case, and I believe that was -- I think it was WR-2000-244.
18 Let me check. Subject to check, I believe that's the case,
19 but St. Louis Water County case.

20 Q. Can you tell me what that treatment was?

21 A. The Commission allowed the companies, both MGE
22 and St. Louis County Water, to receive a return of the costs
23 that they had deferred; in other words, they got an annual
24 amortization built into expense, but they did not allow them
25 to receive rate base treatment of the unamortized deferred

1 costs.

2 Q. And those costs that were related in the
3 Missouri Gas Energy case, in the St. Louis County Water
4 case, would you term those as construction costs or
5 maintenance type expenses?

6 A. Well, let me finish this other question and
7 then I'll -- because you asked me how they treated the costs
8 in those cases. The deferred income tax associated with the
9 AAO, in the Missouri Gas case they treated that as offset.
10 And I don't recall specifically for the St. Louis County
11 Water case.

12 In the Missouri Gas Energy case, as far as the
13 deferred income taxes being used as an offset, Staff
14 witnesses filed testimony agreeing that that's the way it
15 should be done.

16 Now, as far as this next question you've
17 asked --

18 Q. The question was, in the Missouri Gas Energy
19 case and the St. Louis County Water case that you reference,
20 were those costs construction type costs or maintenance type
21 costs?

22 A. The costs that were deferred in most of those
23 cases are a carrying charge and depreciation. Some of the
24 costs are allowed sometimes. For example, the Sibley AAO,
25 the first one, they were allowed to defer some property

1 taxes.

2 But I consider depreciation expense to be
3 similar to other maintenance expenses. It's an expense that
4 runs through the income statement. And the carrying charge,
5 I don't consider that to be an investment or capitalizable
6 charge. I consider that to be the return that the
7 Commission is allowing on the incremental plant that they've
8 put in. It's a surrogate return as if they -- the
9 synchronization of the plant and rates occurred.

10 Q. Since the GR-98-140 case and the St. Louis
11 County Water case, are you aware that the Commission has
12 changed the treatment in any other case?

13 A. I know of no litigated case where the
14 Commission has changed their position that they had first
15 adopted in the Missouri Gas Energy case regarding not
16 allowing rate base treatment of the unamortized deferred
17 balances.

18 MR. MICHEEL: That's all I have, your Honor.

19 JUDGE JONES: Okay. Thank you.

20 It looks like we're finished with Amortization
21 Accounting Authority Orders. Next we'll be moving on to the
22 Aries issue. Why don't we take a short 10-minute break,
23 gather ourselves and come back.

24 (A recess was taken.)

25 JUDGE JONES: Okay. We're back on the record

1 with Case No. ER-2004-0034, and now we're moving on to
2 Staff's witness, Michael Proctor.

3 MR. WILLIAMS: Staff calls Michael Proctor.

4 (Witness sworn.)

5 MICHAEL PROCTOR testified as follows:

6 DIRECT EXAMINATION BY MR. WILLIAMS:

7 Q. Mr. Proctor, did you prepare Surrebuttal
8 Testimony that was pre-filed on February 13th and then
9 review that testimony and modify it for purposes of removing
10 any matters that would pertain to Aquila Networks L&P that
11 were unnecessary in processing a rate case limited to Aquila
12 Networks-MPS and make another pre-filing on February 27th,
13 2004?

14 A. I did.

15 Q. And that has been marked as Exhibit No. 1135
16 for identification. Do you have any changes to that
17 testimony?

18 A. Yes, I do. On page 4 at line 6, the sentence
19 that starts, My Rebuttal Testimony, should read, My
20 Surrebuttal Testimony.

21 Q. And is the only testimony you filed
22 Surrebuttal?

23 A. That's correct.

24 MR. SWEARENGEN: Excuse me. Where was that
25 change, Dr. Proctor?

1 THE WITNESS: Page 4, line 6.

2 MR. SWEARENGEN: My page 4, line 6 indicates a
3 question.

4 MR. MICHEEL: So does mine.

5 MR. CONRAD: So does mine.

6 BY MR. WILLIAMS:

7 Q. It's where it says, My Rebuttal Testimony?

8 A. Yes.

9 JUDGE JONES: Maybe I can help out. Start
10 with the paragraph, Mr. Empson cites.

11 MR. MICHEEL: I see it on page 4, line 1 of
12 the testimony that I have.

13 MR. WILLIAMS: Are you looking at 135 or 1135?

14 MR. SWEARENGEN: I've probably got the old
15 one.

16 MR. WILLIAMS: It would be the second
17 paragraph of the answer following the question under the
18 section that indicates it's Surrebuttal response to
19 Mr. Empson.

20 JUDGE JONES: Okay. I found it.

21 MR. WILLIAMS: Staff offers Exhibit No. 1135.

22 JUDGE JONES: Exhibit 1135 is admitted into
23 the record.

24 (Exhibit No. 1135 was received into evidence.)

25 MR. WILLIAMS: Tender the witness for

1 examination.

2 JUDGE JONES: We'll have cross-examination
3 from Missouri Department of Natural Resources. Any cross?

4 MS. WOODS: No, your Honor.

5 JUDGE JONES: Sedalia Industrial Energy Users'
6 Association?

7 MR. CONRAD: No questions, your Honor.

8 JUDGE JONES: AG Processing?

9 MR. CONRAD: No questions.

10 JUDGE JONES: Federal Executive Agencies?

11 MR. PAULSON: No questions, your Honor.

12 JUDGE JONES: The Office of Public Counsel?

13 MR. MICHEEL: No questions, your Honor.

14 JUDGE JONES: Aquila?

15 MR. SWEARENGEN: Yes, your Honor. We have a
16 few questions.

17 CROSS-EXAMINATION BY MR. SWEARENGEN:

18 Q. Good morning, Dr. Proctor. How are you today?

19 A. Good morning.

20 Q. Let me make sure I understand. You filed just
21 one piece of prepared testimony in this proceeding; is that
22 correct?

23 A. That's correct.

24 Q. And that's Surrebuttal Testimony?

25 A. That's correct.

1 Q. And it concerns generally the topic of what
2 we're calling the Aries purchased power agreement; is that
3 correct?

4 A. That's true.

5 Q. And you filed this testimony in February of
6 this year; is that correct?

7 A. I initially filed it February 13th and then
8 the redacted revision -- I don't think there were any
9 redactions, but on February 27th.

10 Q. Okay. Thank you.

11 You recall that I took your deposition in
12 connection with this case I believe on January 9, 2004?

13 A. That's correct.

14 Q. Now, I'm looking at the original piece of your
15 Surrebuttal Testimony, which was provided to me, so I may
16 get off on the page and line numbers and if I do, if you'd
17 just bear with me and try to help me out with respect to
18 that.

19 A. Sure.

20 Q. In your testimony, at least in the version
21 that I have, starting I believe on page 10 you begin a
22 discussion of a memorandum which you authored, which was
23 dated April 5, 1999. And maybe you need to take a look at
24 the piece of testimony that you have to make sure that I'm
25 on the right page.

1 A. That's -- there's a question that starts at
2 page 31, Mr. DeBacker characterizes your memorandum. Is
3 that where you're at?

4 Q. That's what I'm talking about.

5 A. Yes.

6 Q. And that's on page 10 of my version of your
7 Surrebuttal.

8 A. Page 10 here as well, yes.

9 Q. Thank you.

10 MR. SWEARENGEN: Could I have an exhibit
11 marked, your Honor?

12 JUDGE JONES: Yes, you may.

13 MR. SWEARENGEN: Thank you. What number is
14 that going to be?

15 JUDGE JONES: I believe it will be 155, but
16 I'm not sure.

17 (Exhibit No. 155 was marked for
18 identification.)

19 MR. SWEARENGEN: May I proceed?

20 JUDGE JONES: Yes, you may.

21 MR. SWEARENGEN: Thank you.

22 BY MR. SWEARENGEN:

23 Q. Dr. Proctor, if you would take a look at the
24 document which is marked for purposes of identification in
25 this case as Exhibit 155, are you familiar with that

1 document?

2 A. Yes, I am.

3 Q. And looking at that document, can you, first
4 of all, describe the subject or purpose of that document?

5 A. The purpose is a recommendation that this --
6 support by the Staff regarding findings Section 32(k) of the
7 Public Utility Holding Company Act. And that had to do with
8 a power supply agreement with an affiliate. And company had
9 asked for approval from the Commission under Section 32(k)
10 for that power supply agreement and this memorandum was
11 written in support of that.

12 Q. Let me ask you this, Dr. Proctor. This, in
13 fact, is a memorandum from you to the Missouri Public
14 Service Commission official case file in Case No. EM-99-369;
15 is that true?

16 A. That's true.

17 Q. And do you recall what initiated Case
18 No. EM-99-369?

19 A. The company filed with the Commission for
20 approval under Section 32(k) of the Public Utility Holding
21 Act.

22 Q. Now, looking at the first page of that under
23 the heading Subject, you refer to a proposed power sales
24 agreement. That agreement, I understand, is sometimes
25 referred to in this case as the Aries purchased power

1 agreement. Is that your understanding?

2 A. That's my understanding, yes.

3 Q. Would you agree that in order for UtiliCorp,
4 through its Missouri Public Service division, to have
5 entered into that contract, the Aries purchased power
6 agreement, the Missouri Public Service Commission was
7 required under law to make certain determinations with
8 respect to that agreement?

9 A. That's correct.

10 Q. Can you tell us, just in summary, your
11 understanding of what those determinations were or are?

12 A. Yeah. Had to make four determinations. First
13 was that will benefit customers. And our interpretation --
14 or my interpretation of that in the memo is that there was a
15 need for that capacity to serve customers.

16 Does not violate any state law. That was more
17 of a legal concern, whether any state laws had been passed
18 that would prevent company from entering into a power supply
19 agreement with an affiliate, and none had.

20 Probably the one that was of greatest concern
21 to me in the review is the didn't provide any unfair
22 competitive advantage. And that was a review of the RFP
23 process, the way that the various bids were analyzed and was
24 that all done fairly, did everyone have a fair possibility
25 of winning the bid for the power supply agreement.

1 And the fourth was that it would be in the
2 public interest. And our determination in the memo was that
3 we don't do any rate-making at this point. We will review
4 this contract for rate-making in the future and, therefore,
5 we will assure that it will be in the public interest.

6 Q. Thank you.

7 Looking at the first page of the memorandum it
8 says it's from you, Michael R. Proctor, chief regulatory
9 economist. That was your position at that time with the
10 Commission?

11 A. That's correct.

12 Q. And is that still your position?

13 A. That is my position, yes.

14 Q. And then it also -- the document is signed by
15 Wes Henderson, director, utility operations; and Steven
16 Dottheim, general counsel's office. Is that correct?

17 A. That's correct.

18 Q. If you'd turn to page 2 of that memorandum,
19 Exhibit 155, please, there am I correct in understanding
20 that you, through the memorandum, walked through the four
21 elements that you just summarized a minute ago?

22 A. Yes.

23 Q. Okay. On page 2, the first numbered item, The
24 PSA, the power supply agreement, will benefit customers, and
25 that discussion begins on -- excuse me, will benefit

1 consumers; is that correct?

2 A. That's correct.

3 Q. And that discussion begins there on page 2 and
4 continues on through page 3 and ends over at the top of
5 page 4; is that correct?

6 A. That's correct.

7 Q. And then on page 4 is the second item that the
8 memorandum addresses and that's the fact that in the opinion
9 of the Staff, the PSA does not violate any applicable state
10 law; is that correct?

11 A. That's correct.

12 Q. And that would explain why Mr. Dottheim's
13 signature is on this memorandum, do you believe?

14 A. In part, it would. In part, the -- the
15 directors review this and general counsel always reviews
16 memos that are submitted. So even if it didn't have a legal
17 aspect to it, the general counsel would review and sign on
18 these types of memos.

19 Q. Then also on page 4 you discuss the third
20 item, The PSA did not provide MEPPH any unfair competitive
21 advantage by virtue of its affiliation with UtiliCorp; is
22 that correct?

23 A. That's correct.

24 Q. And that discussion goes on throughout the
25 rest of page 4, page 5, page 6, and a little over half of

1 page 7; is that true?

2 A. That's true.

3 Q. And, for the record, what is your
4 understanding of what is meant by MEPPH?

5 A. I don't know if I can remember all of it, but
6 it's the Merchant Energy Partners Pleasant Hill I think is
7 what -- that was the name of the affiliate within UtiliCorp
8 that was -- that had entered into the contract.

9 Q. Then on page 7, about two-thirds of the way
10 down the page, you begin your discussion of the fourth item.
11 And it is entitled, The PSA is in the public interest; is
12 that correct?

13 A. That's correct.

14 Q. And if you could just read into the record,
15 please, the first two sentences of that?

16 A. The public interest is met when electricity is
17 provided to end-use consumers at the lowest expected cost
18 consistent with reasonable levels of risk associated with
19 cost varying from its expected level. In today's
20 environment of competitive wholesale power, properly
21 implemented competitive bidding and/or negotiation for
22 purchased power is a process by which least-cost acquisition
23 of sources can be obtained.

24 Q. Thank you.

25 Now, if you would turn to the last page of the

1 memorandum, page 10, am I correct in understanding that at
2 the bottom of page 10 you indicate those individuals to whom
3 copies of this memorandum were provided?

4 A. That's correct.

5 Q. Let me ask you this question, Dr. Proctor.
6 Does the term "affiliate abuse" appear anywhere in this
7 memorandum, to your knowledge?

8 A. I don't -- I don't recall that term appearing
9 in this document.

10 Q. If you turn back to page 10 of your
11 Surrebuttal Testimony where you discuss this memorandum, I
12 think it's on page 10 that you indicate that by authoring
13 the memorandum, the Staff was not recommending Commission
14 pre-approval of the Aries purchased power agreement for
15 rate-making purposes; is that correct?

16 A. That's correct.

17 Q. And that's your testimony here today; is that
18 correct?

19 A. That's my testimony here today.

20 Q. And would it be your testimony that any such
21 rate-making determinations should be reserved for a
22 subsequent rate case? Would that have been your position at
23 the time?

24 A. That was the Staff's position at the time,
25 yes.

1 Q. At the time the memorandum was entered into
2 back in April of 1999?

3 A. That's correct.

4 Q. And that's the Staff's position today as we
5 are in this rate case litigating this issue; is that true?

6 A. That's my understanding, yes.

7 Q. Now, I'm looking at page 11 of your
8 Surrebuttal Testimony. On my copy on line 13 there's a
9 question, What future review for purposes of rate-making did
10 you anticipate at the time you submitted your
11 recommendation? And then you go ahead and provide your
12 answer.

13 Am I correct there that you, again, make the
14 point that the memorandum was not intended to state that the
15 Aries contract was necessarily the most cost effective
16 supply option for Missouri Public Service at the time?

17 A. Yes. What the -- I would say further that the
18 mem-- we -- we did not review that aspect of the -- of the
19 contract at that time and that the company in its pleading
20 understood that we were not making a predetermination about
21 rate-making.

22 Q. You think that could be determined from the
23 company's pleading. Is that your --

24 A. Yes.

25 Q. Okay. Then over on my copy of your

1 Surrebuttal at page 12 you indicate that two other Staff
2 witnesses in this case, Mark Oligschlaeger and Cary
3 Featherstone, will testify with respect to the prudence of
4 the agreement; is that true?

5 A. That's correct.

6 Q. And you're not offering any prepared testimony
7 as to the prudence of the Aries agreement for rate-making
8 purposes in this case; is that correct?

9 A. No, I'm not.

10 Q. Going back to the first part of your
11 Surrebuttal Testimony where you talk about your Commission
12 work experience, I think you indicate in your answer that, I
13 have worked in the areas of load forecasting, resource
14 planning and transmission pricing; is that correct?

15 A. That's correct.

16 Q. Could you elaborate a little bit on what you
17 mean by the use of the term "resource planning"?

18 A. Yes. Resource planning specifically deals
19 with what options a company is going to consider and
20 evaluate to meet the needs of their -- future needs of their
21 customers.

22 Q. And if I could interrupt you there in your
23 answer, if you could focus on electric utilities -- and I
24 think probably you were going to do that anyway, but --

25 A. Correct.

1 Q. -- let's focus the answer on resource planning
2 as it relates to electric utilities.

3 A. Right. The Electric Resource Planning Rule
4 that was written in 1993 particularly focuses on the process
5 by which these various alternatives are evaluated. Resource
6 planning deals intentionally, since it's looking to the
7 future, with uncertainties. And so part of resource
8 planning is an evaluation of those various uncertainties in
9 the future.

10 And the objective of all that is to look for a
11 ro-- robust plan, a plan that will do a good job under
12 various sets of future uncertainties.

13 Q. Could you briefly describe how that process
14 has worked here in the past with respect to the Commission's
15 interaction with utility companies, with electric utility
16 companies?

17 A. In the recent past or -- I'm trying to get --

18 Q. Why don't we go back --

19 A. There was a whole filing -- excuse me.

20 Q. Why don't we go back and talk -- you mentioned
21 the Commission rule and I think you mentioned a year. What
22 was that year?

23 A. 1993 the rule was passed.

24 Q. Once the rule was passed, how did this process
25 you describe work? Just summarize that, if you would,

1 please.

2 A. Well, very quickly, each utility had to do a
3 filing every three years. And at that time we had five
4 separate utilities and so that involved a filing about
5 every -- if my memory serves me correctly, about every seven
6 months. And in that filing, there were certain requirements
7 of the rule that had to be met by the filing. The Staff,
8 the Public Counsel and Intervenors would review those
9 filings and submit a written report to the Commission
10 whether or not they believed that the rules had been met.

11 And -- and we had gone through almost two
12 complete cycles when the companies filed with the Commission
13 and asked for -- for the rules to be thrown out, done away
14 with. And out of that -- because of the changing nature of
15 competition and the need to make resource decisions on a
16 much quicker basis than what would be anticipated by that
17 set of rules.

18 And so we sat down and negotiated with all
19 five of the electric companies a way to have meetings twice
20 a year to go over their resource plans. They wouldn't have
21 to do a filing, they would meet with the Staff. We would
22 review those. We wanted to continue a dialogue, a
23 communication on what the company's plans were.

24 There was also -- they were going to follow
25 the -- what had been indicated in the rules. If they were

1 going to acquire a resource, if they actually had entered
2 into a contract or they, you know, were beginning to build a
3 plant, they would submit a letter to the Commission -- let
4 me back up -- I think to the manager of the energy
5 department indicating that -- that they were doing that,
6 they were acquiring this particular resource.

7 And so we changed from a more formal written
8 type of -- to a less formal, where there were presentations
9 twice a year.

10 Q. If I could interrupt you at that point, about
11 when did that occur? Do you recall what year was that? You
12 mentioned --

13 A. My recollection is it was around '97, '98. It
14 depended -- I think we negotiated them over a period of
15 time, but it was in that time frame.

16 Q. So similar agreements were negotiated with
17 each of the electric utilities that are subject to this
18 Commission's jurisdiction and you --

19 A. That's --

20 Q. -- got out of the formal process that you just
21 talked about and doing more a informal process; is that
22 correct?

23 A. That's true.

24 Q. Now, let's discuss, if you can with me, the
25 informal process and how that works. Have you been involved

1 in that?

2 A. Yes.

3 Q. Have you been involved in it with respect to
4 UtiliCorp, now Aquila?

5 A. Yes.

6 Q. Okay. Have you participated in these twice
7 annual meetings that you mentioned earlier involving Aquila?

8 A. Yes, I have.

9 Q. Okay. Can you give us an example of how those
10 meetings unfold? Does the company usually come in and make
11 a presentation --

12 A. Yes.

13 Q. -- to the Staff concerning its resource
14 planning?

15 A. Yeah. We meet twice a year. The company puts
16 together a presentation. We'll go through that
17 presentation, the Staff will say if -- if they want
18 additional information, will request additional information
19 at the time of the meeting to get more details on -- on what
20 is occurring.

21 About once a year utilities tend to revise
22 their load forecast, so -- so we only go through --
23 typically only go through the load forecasting part of it
24 once a year. We also have presentations on what the
25 company's anticipating doing in terms of a request for

1 proposals for power.

2 But the real focus of the meetings is what are
3 the company's future needs and what are they planning and
4 why do -- studies that indicate why they believe this is the
5 best course of action for the company.

6 Q. Now, you have described this process in
7 general terms.

8 A. Uh-huh.

9 Q. Would the statements that you just made with
10 respect to that apply specifically to UtiliCorp United,
11 Inc., now Aquila, with respect to its presentations?

12 A. Yes.

13 Q. Now, who else participates in these meetings
14 besides the Company and the Staff, do you recall?

15 A. The Office of Public Counsel participates, the
16 Department of Natural Resources will participate. I think
17 that's it.

18 Q. And I think you indicated this. Does the
19 company frequently at these meetings hand out materials --

20 A. Yes.

21 Q. -- to assist in connection with its
22 presentation?

23 A. Yes, they do.

24 Q. And would I be correct in saying that there's
25 some give or take or questions are asked at that point in

1 time by the other parties?

2 A. That's correct.

3 Q. And to the extent those questions aren't
4 answered immediately, sometimes follow-up information is
5 provided; is that true?

6 A. That's correct. If the information isn't
7 readily available, we'll request to have that information
8 provided to us at a later date.

9 Q. In your opinion, do these meetings facilitate
10 a better understanding of the situation that any particular
11 utility might find itself in with respect to resource
12 planning?

13 A. Well, I think these meetings are absolutely
14 necessary. I think they're a form of communication that --
15 that makes the Staff aware of what the company's doing and
16 what their plans are and -- and changes that have occurred
17 from -- from what -- what they were -- what their plans were
18 previous to that, so they're beneficial.

19 Q. When you say that, you would make that
20 statement generally but also apply specifically to
21 UtiliCorp/Aquila?

22 A. Yes.

23 Q. Has the Staff or the Public Counsel or any
24 other participant in any of these informal meetings ever
25 voiced concerns about what the company might be doing to the

1 company?

2 A. Aquila specific or --

3 Q. Well --

4 A. -- any?

5 Yes, we have.

6 Q. Aquila specific? Just make sure I understand.

7 You have generally and you're trying to decide whether you
8 have specifically with respect to Aquila; is that correct?

9 A. Yeah. Typically we will raise an issue about
10 a specific resource that's being considered. Why wasn't
11 this other resource considered, for example? And we have
12 done that with Aquila. Sometimes it may deal with the
13 timing of -- of resources. Not just the need, but the
14 timing.

15 Q. And I don't want you to get into any highly
16 confidential information.

17 A. Right.

18 Q. That's not my intent.

19 A. And I'm trying to avoid it.

20 Q. Thank you.

21 A. So those kinds of issues have occurred, I
22 would say, with all -- all four of our utilities, Aquila,
23 Kansas City Power & Light, AmerenUE and Empire District
24 Electric.

25 Q. Have you personally participated in resource

1 planning meetings of the type you just described with
2 respect to all four of those electric utilities over the
3 last several years?

4 A. Yes, I have.

5 Q. To your knowledge, has a Commissioner or
6 Commissioners ever sat in on those meetings?

7 A. No. Commissioners do -- have not sat in on
8 those meetings.

9 Q. Do you know whether or not any Commissioner or
10 Commissioners ever ask to be involved in that process?

11 A. Not to my knowledge.

12 Q. I want to take you back to January when I took
13 your deposition in this case --

14 A. Yes.

15 Q. -- in connection with this issue. And we
16 talked about the -- or I asked you some questions about the
17 prudency issue and you indicated that -- and if you need to
18 look at your deposition to refresh your memory, I'll be glad
19 to give you a copy of it, but you said, With any prudency
20 issue, there are two aspects of it. One is a prudent
21 decision at the time, and then there's always the second
22 part of that, which is actually the implementation that
23 occurs.

24 Do you recall --

25 A. I recall that, yes.

1 Q. -- making that statement?

2 A. Uh-huh.

3 Q. Now, focusing for a minute on a purchased
4 power agreement like the Aries purchased power agreement,
5 with respect to implementing that, assuming that the
6 contract is implemented in accordance with its terms, would
7 you agree that the company could not be accused of being
8 imprudent with respect to implementation?

9 A. Not necessarily. And this -- this is
10 difficult. Potentially -- potentially the problem might be
11 in the terms of the contract itself that relate to
12 implementation. So I'm -- I'm a little reluctant to say no.

13 Q. And that's fine.

14 A. But -- but -- but I think -- but your -- if
15 your question is if all of the terms and conditions of the
16 contract are found to be prudent, does that mean that the
17 implementation would be prudent --

18 Q. Let me try to ask the question this way. The
19 Staff in this case is not claiming, is it, that the Company
20 was somehow imprudent in the manner the contract was
21 implemented? Isn't the prudence issue, as far as the
22 Staff's concerned in this case, really focused on the first
23 part of your prudence definition; and that is, was it a
24 prudent decision at the time it was made, the contract was
25 entered into?

1 A. I haven't -- I really don't know the answer to
2 that question. I have not reviewed the testimony of
3 Mr. Oligschlaeger or Mr. Featherstone, so I really don't
4 know the answer to that question.

5 Q. Do you know whether or not there's any
6 evidence in this proceeding at all that would suggest that
7 the contract -- that the implementation of the contract was
8 somehow imprudent?

9 A. I don't know.

10 Q. Okay. Thank you.

11 You indicated in your deposition back in
12 January that -- I think you said for one to conclude that it
13 was a prudent decision at the time the contract was entered
14 into, the real issue is did the company pick the least-cost
15 alternative. Would that still be your testimony?

16 A. Yes.

17 Q. And in connection with that, I think you also
18 said that the company would have to look at the other bids
19 for purchased power and would also have to look at a
20 decision to purchase rather than to build. Do you recall
21 making those statements in your deposition?

22 A. Yes. I agree with those statements. I may
23 not recall making them, but I agree with them.

24 Q. But you would agree with them here today?

25 A. Yes.

1 Q. Thank you.

2 Let me ask you this, Dr. Proctor. Could a
3 reasonable person have concluded at the time that the Aries
4 contract was entered into that it was the least-cost
5 alternative?

6 A. I think with the substantial amount of review
7 at that time, you could make that conclusion on that issue.

8 Q. Did you see any evidence at that time that it
9 wasn't the least-cost alternative?

10 A. No. If we had seen evidence -- clear evidence
11 that it wasn't the least-cost alternative, we would have
12 sent up a flag and we wouldn't have recommended it.

13 Q. Have you seen any evidence since that time
14 that demonstrates it wasn't the least-cost alternative?

15 A. I haven't reviewed any evidence since that
16 time.

17 Q. Okay. Back to your Surrebuttal, at the start
18 of your Surrebuttal Testimony on pages 1 and 2, you talk
19 about your work experience with the Commission. And I think
20 you've already told us your history and background with
21 resource planning.

22 Let me ask you this. Would it be fair to say
23 that during the period that the Commission had the resource
24 planning rule in place and then subsequently the more
25 informal arrangement, that you were the primary Staff

1 contact person for that process?

2 A. That's correct.

3 Q. And I think you indicated that you were
4 involved, were you not, in the negotiations -- and I think
5 you said the 1997, 1998 period -- that led to these various
6 agreements with the electric utilities to modify the rule on
7 integrated resource planning?

8 A. That's correct.

9 Q. And all the companies entered into these
10 agreements which were approved by the Commission; is that
11 true?

12 A. That's true.

13 Q. Including UtiliCorp/Aquila?

14 A. That's correct.

15 Q. Do you know whether or not the Commission
16 Staff has ever made a filing with the Commission indicating
17 that one of the electric utilities subject to its
18 jurisdiction was not in compliance with the terms of these
19 joint agreements?

20 A. I can't recall the Staff making such a filing
21 with the Commission.

22 Q. Has the Staff ever sought to have one of these
23 joint agreements modified in any regard? Do you have any
24 knowledge of that?

25 A. I have no knowledge of that.

1 Q. And I assume if I asked you if the Staff ever
2 made a filing with the Commission requesting that the terms
3 and conditions of the joint agreement with UtiliCorp be
4 modified, your answer would be no?

5 A. That's correct. My answer would be no.

6 Q. Now, back in the 1997, '98 time period,
7 St. Joseph Light & Power Company was also an electric
8 utility subject to the Commission's jurisdiction. Is that
9 not true?

10 A. That's correct.

11 Q. And am I correct in understanding that there
12 would have been one of these agreements entered into with
13 St. Joseph Light & Power Company?

14 A. There was, yes.

15 Q. You state on page 10, I believe it is, of your
16 Surrebuttal Testimony that the Staff would never have signed
17 a joint agreement in which Missouri Public Service or any
18 utility was told to pick one type of resource over another;
19 is that true?

20 A. That's true.

21 MR. SWEARENGEN: Could I have another exhibit
22 marked, your Honor?

23 JUDGE JONES: Yes, you may.

24 MR. SWEARENGEN: Thank you.

25 (Exhibit No. 156 was marked for

1 identification.)

2 MR. SWEARENGEN: May I proceed?

3 JUDGE JONES: Yes, you may.

4 BY MR. SWEARENGEN:

5 Q. Dr. Proctor, I have handed you what the
6 reporter has marked for purposes of identification as
7 Exhibit 156. Have you had a chance to look at that
8 document?

9 A. Yes.

10 Q. And can you tell us what that is, please?

11 A. Yes. That was the agreement on -- with
12 UtiliCorp concerning the resource planning rules and an
13 alternative procedure to deal with that and giving a waiver
14 to the company from those rules -- from having to make the
15 formal filings.

16 Q. And am I correct that this is an agreement
17 that was entered into among the Commission Staff, the
18 Company and the Office of Public Counsel?

19 A. That's correct.

20 Q. And would I be correct in assuming that this
21 joint agreement was subsequently approved by the Missouri
22 Public Service Commission?

23 A. That's correct.

24 Q. If you could turn to page 5 of that agreement,
25 if you would, please, there is a heading B, Changes in the

1 Electric Industry?

2 A. Yes.

3 Q. If you would, about halfway down that
4 paragraph there is a sentence that begins, While competitive
5 bidding.

6 Do you see that?

7 A. Yes, I do.

8 Q. Could you read, starting with that sentence,
9 the rest of that paragraph into the record, please?

10 A. Sure. While competitive bidding for
11 supply-side resources was being considered by some utilities
12 in Missouri, the resulting short-term purchased power
13 agreements were generally seen as a method for filling in
14 reserve requirements on a year-to-year basis and delaying
15 construction of new generation plant.

16 In the context of emerging competition for
17 retail customers, MPS is now focusing on shorter term
18 planning horizons and looking to short-term purchases
19 acquired through competitive bids as the preferred method
20 for meeting resource requirements.

21 Q. Thank you.

22 Now, what is the date of this agreement? Can
23 you tell by looking at it? I'm looking on the back page
24 where there's a certificate of service. It indicates --

25 A. April of '98.

1 Q. April of 1998?

2 A. Yes.

3 Q. And since that time Aquila would have been
4 involved in these twice-a-year IRP informal meetings that
5 you discussed earlier?

6 A. That's correct.

7 Q. To the best of your knowledge, has the Staff
8 ever indicated to Aquila during one of these meetings or
9 after one of these meetings or at any time that the Staff
10 thought Aquila was not taking the correct path to provide
11 its customers with the lowest and most reliable resources
12 possible?

13 A. Trying to recall all of those meetings that
14 we've had with Aquila subsequent to signing this agreement.
15 And there have been issues from -- from time to time on
16 timing of resources that were being acquired by Aquila.
17 More recently, some specific issues about the type of plant,
18 things along that line. But I don't think there has been a
19 disagreement between Staff and Aquila concerning the need
20 for additional resources in the future.

21 Since this was signed in -- and now I'm really
22 having to push my recollection, but I believe that the
23 contract on the Aries power supply agreement filled in much
24 of the need through the early 2000's. I would have to go
25 back to specific documents. And so since that -- since that

1 contract, I think most of our focus has been -- excuse me,
2 has been on beyond -- the resource needs beyond that
3 contract date.

4 Q. When you say "beyond that contract date," are
5 you referring to the termination of the contract?

6 A. Termination of the contract.

7 Q. Which would be when?

8 A. It was a five-year contract. I don't -- my --

9 Q. Some time --

10 A. 2005, 2006.

11 Q. Thank you. Some time beyond where we are
12 today?

13 A. Yeah. And we -- we have -- Aquila has
14 continued -- I remember early on continued to pursue RFPs
15 for power and evaluating those. And there have -- there
16 have been some issues -- there have been some issues with
17 transmission on -- on various contracts and what -- what was
18 the cheapest contract, some discussion of issues about
19 building versus entering into another power supply contract.

20 Q. Okay. Thank you.

21 Referring you back again to the joint
22 agreement, Exhibit 156, and specifically page 5 and the
23 paragraph B that I referenced earlier, back in April of
24 1998, in any event, the Staff was aware and signed the joint
25 agreement that acknowledged that in the context of emerging

1 competition for retail customers, MPS is now focusing on
2 shorter term planning horizons and looking to short-term
3 purchases --

4 A. Uh-huh.

5 Q. -- acquired through competitive bids as the
6 preferred method for meeting resource requirements.

7 Correct?

8 A. That's correct.

9 MR. SWEARENGEN: That's all I have. Thank you
10 very much, Dr. Proctor.

11 I would move into evidence Exhibits 155 and
12 156.

13 JUDGE JONES: Any objections to Exhibits 155
14 and 156?

15 MR. WILLIAMS: Staff has no objection.

16 MR. MICHEEL: No.

17 MR. CONRAD: No objection.

18 MR. PAULSON: It looks to me like page 3
19 didn't get completely copied on 155, at least the copy I
20 have.

21 JUDGE JONES: The copy that I have begins
22 with, For the summer of 1999, and ends with, In the long
23 term.

24 MR. MICHEEL: He's talking about the lines
25 going out, your Honor. If you look at the first thing it

1 says 1,047 MKW with -- and then a word is missing.

2 MR. SWEARENGEN: I can supply a corrected
3 copy.

4 JUDGE JONES: Well, the copy that you have,
5 Mr. Swearngen, is it readable at those points?

6 MR. SWEARENGEN: I have one that is, yes.

7 JUDGE JONES: Why don't you just go down the
8 line and tell us what those last words are?

9 MR. SWEARENGEN: Make sure I've got it.
10 Well, actually the one I have is -- it's on
11 page 3?

12 JUDGE JONES: Yes, sir.

13 MR. SWEARENGEN: I've got a bad copy too. I
14 don't know where my good one went. Maybe I gave it to the
15 reporter. Hold on a second.

16 All my copies on page 3 have the same problem.

17 JUDGE JONES: Okay. We'll correct that
18 perhaps after lunch today.

19 Is there any redirect from Staff?

20 MR. WILLIAMS: Staff has some redirect. I
21 didn't know if the Commission had any questions.

22 JUDGE JONES: Go right ahead.

23 REDIRECT EXAMINATION BY MR. WILLIAMS:

24 Q. Good morning, Mr. Proctor.

25 A. Good morning.

1 Q. Mr. Swearengen asked you some questions
2 regarding prudence. Were your responses to those questions
3 in the context of the Public Utility Holding Company Act
4 analysis that you did in your memorandum, which I believe
5 has been marked as Exhibit 155?

6 A. Well, that provides a general context for it.
7 We did not review prudence in that. That was not the intent
8 of that document, to review prudence.

9 Q. I guess what I'm really asking is, were there
10 any limitations on how you were in your deposition referring
11 to prudence whenever you indicated that it was at the time
12 and how it was implemented, or is that a general concept?

13 A. Well, my recollection of the discussion that I
14 just had and at the time of the deposition was that
15 prudence -- the discussion about prudence dealt with, you
16 know, these two aspects, the decision on prudence and
17 implementation of prudence.

18 And we -- we were reviewing neither of those
19 at the -- at the time. We basically said in the document
20 that what we had reviewed was whether or not this was a fair
21 process. Okay? And when it got to public interest, our
22 statement was we -- we hadn't reviewed the prudence decision
23 at this point, that would be done later and, therefore, we
24 can assure that the public interest would be protected.

25 Q. What was your analysis of the public interest

1 for purposes of the Public Utility Holding Company Act
2 analysis you were doing?

3 A. Our -- our -- our conclusion -- and it would
4 be our conclusion that any of these decisions were --
5 because we don't do pre-approval, is that the public
6 interest will be protected because we do -- the Staff does
7 review these before they ever go into rates.

8 Q. So you're talking about what public interest
9 there would be in a rate-making context?

10 A. That's correct.

11 Q. Were there any limitations that were imposed
12 on Staff whenever it was making its analysis for purpose of
13 the Public Utility Holding Company Act analysis?

14 A. You mean like time limitations or any kind of
15 limitations?

16 Q. That one came to mind, in particular.

17 A. We were trying to respond in a timely fashion
18 to the Company's request. I don't know if I'd view that as
19 a limitation or a restriction. We were not attempting to
20 review in detail. And, again, I don't know if that's a
21 limitation or restriction, but we were not trying to review
22 the prudence at the time.

23 Q. Let me put it this way, perhaps. Did you
24 conduct the same in-depth review for purposes of doing your
25 analysis for the Public Utility Holding Company Act that you

1 would do in a rate case?

2 A. No.

3 Q. Was it necessary to conduct a review that was
4 that detailed?

5 A. No.

6 Q. And is the Public Utility Holding Company Act
7 state law or some other law?

8 A. It's federal law. But the federal law states
9 that if you have a transaction that involves an affiliate,
10 before the FERC, the Federal Energy Regulatory Commission,
11 will approve that transaction, it has to be approved by the
12 state jurisdictional authority.

13 Q. And your memorandum that's been marked as
14 Exhibit 155 --

15 A. Uh-huh.

16 Q. -- it looks like it was date -- filed and
17 dated April 5th of 1999. Is that based on the information
18 you knew at the time that memorandum was prepared and filed?

19 A. That's correct.

20 Q. I want to turn your attention to the resource
21 planning meetings. What does Staff view its role at those
22 meetings in terms of the purpose?

23 A. First of all, it is to become informed about
24 the utility's resource plans. And that's -- that's --
25 that's its -- I would say its primary goal in those

1 meetings, to get information about what the utilities are
2 planning to add in terms of new generation capacity, what
3 their needs are, when those needs are coming up, whether
4 there are any problems with those. But generally to become
5 informed about that and what changes might have occurred
6 since the previous plan.

7 Q. Why does Staff want to get that information?

8 A. Why does it want to be informed?

9 Q. Yes.

10 A. Because it doesn't want to be ignorant. I
11 mean, you know -- you mean is there -- is there ultimately a
12 rate-making aspect to it? Is that what you're asking? I'm
13 not sure what you're asking.

14 Q. I'm thinking in terms of perhaps what
15 resources the company may have for serving consumers. Is
16 that a driver for why Staff's gathering that type of
17 information?

18 A. Well, I think the Staff views its role to be
19 in-- to be informed about what the utility companies are
20 doing and planning to do to meet the needs of their
21 customers. I think that's just -- I don't think we can sit
22 back and say, Oh, well, that's their responsibility so -- so
23 we don't need to review it, we don't need to be informed
24 about what's going on here. I think we do have a
25 responsibility to do that.

1 Q. Does Staff view its role as managing how the
2 Company's accomplished meeting their resource needs?

3 A. No.

4 Q. Has the Staff ever directed a company at a
5 resource planning meeting how it should meet its load needs?

6 A. That's not -- the Staff -- if the Staff
7 believes that the company hasn't evaluated a resource that
8 it should have evaluated, we will state that in these
9 meetings. We do not say, Hey, we think you need to build
10 this plant on this date, that type of thing.

11 But part of the -- part of the whole concept
12 of process is to make sure all the options are being
13 evaluated. So if an option is not being evaluated, the
14 Staff will point that out. That was also the purpose of
15 resource planning rules. There's a -- there's a difference
16 between evaluation and chosen to.

17 Q. Would you explain what that difference is?

18 A. Yeah. The company may evaluate four or five
19 options and say, We believe this is the minimum cost option
20 and so this is the resource that we're going to acquire.
21 Okay.

22 The Staff does not review that in terms of was
23 it the minimum cost option out of the four or five that were
24 being considered. I mean, we look at that, but we're more
25 concerned that all of the options are being evaluated by the

1 company. Later down the road when the company has made that
2 decision and wants to bring that into rates, we would review
3 whether or not indeed it was the least-cost option.

4 MR. WILLIAMS: No further questions.

5 JUDGE JONES: Thank you, Dr. Proctor. You may
6 step down.

7 MR. WILLIAMS: Judge, Dr. Proctor has some
8 constraints on his availability. I don't know if you wanted
9 to have on the record what those constraints are or if he
10 might be excused as a witness. That's, in part, why we're
11 taking him up here today.

12 JUDGE JONES: Are you saying he won't be able
13 to be available?

14 MR. WILLIAMS: I know he's unavailable
15 tomorrow and the day after.

16 JUDGE JONES: Might you be available later on
17 this week?

18 THE WITNESS: Yes. Would be available
19 Thursday or Friday if needed.

20 JUDGE JONES: That will be fine.

21 MR. WILLIAMS: Judge?

22 JUDGE JONES: Yes.

23 MR. WILLIAMS: I would request, if possible,
24 we be given some advance notice because Dr. Proctor normally
25 is in St. Louis, if that's possible.

1 JUDGE JONES: We may be able to take care of
2 any questions for Dr. Proctor at this time. Commissioner
3 Gaw, do you have questions for Dr. Proctor?

4 CHAIR GAW: I need some time. So if you're
5 going on to something else, it would probably be better.

6 MR. WILLIAMS: He will be here all day today
7 if it's necessary.

8 JUDGE JONES: I realize it's quarter to the
9 hour, but because we've gotten quite a late start in this
10 case, we're going to go ahead and move on.

11 MR. MICHEEL: Your Honor, the Office of the
12 Public Counsel would call James R. Dittmer to the stand with
13 respect to I think three issues, corporate restructuring,
14 the 20 West Ninth Street Building, and severance costs.

15 (Witness sworn.)

16 JUDGE JONES: You may proceed, counsel.

17 JAMES DITTMER testified as follows:

18 DIRECT EXAMINATION BY MR. MICHEEL:

19 Q. Mr. Dittmer, have you caused to be filed your
20 Direct Testimony, which has been marked for purposes of
21 identification as Exhibit 1049, and your Surrebuttal
22 Testimony, which has been marked for purposes of
23 identification as Exhibit 1051?

24 A. I have.

25 MR. MICHEEL: With that, your Honor, I would

1 offer Exhibits 1049 and 1051 and tender Mr. Dittmer for
2 cross-examination on all of his issues.

3 JUDGE JONES: Exhibits 1049 and 1051 are
4 admitted into the record.

5 (Exhibit Nos. 1049 and 1051 were received into
6 evidence.)

7 JUDGE JONES: Will there be cross from the
8 Missouri Department of Natural Resources?

9 MS. WOODS: No, thank you, your Honor.

10 JUDGE JONES: Will there be cross-examination
11 from Sedalia Industrial Energy Users' Association?

12 MR. CONRAD: No, your Honor.

13 JUDGE JONES: Federal Executive Agencies?

14 MR. PAULSON: No, your Honor.

15 JUDGE JONES: Staff of the Commission?

16 MR. DOTTHEIM: No questions.

17 JUDGE JONES: Are there any questions from
18 Aquila?

19 MR. SWEARENGEN: Yes, your Honor.

20 JUDGE JONES: You may proceed.

21 MR. MICHEEL: Your Honor, I would just note
22 for the record that Mr. Dittmer's Exhibit 1051 had both HC
23 and NP versions. And so I would move for admission of both
24 the HC and NP versions. I neglected to do that.

25 JUDGE JONES: They're both admitted.

1 You may proceed, Mr. Swearengen.

2 MR. SWEARENGEN: Thank you, Judge.

3 CROSS-EXAMINATION BY MR. SWEARENGEN:

4 Q. Good morning, Mr. Dittmer. How are you?

5 A. Good morning. Fine.

6 Q. Mr. Conrad pointed out the other day that I
7 was the oldest lawyer in the hearing room and might have
8 trouble figuring out what was going on, and I think he's
9 right. I'm trying to figure out, first of all, your Direct
10 Testimony in this case is exhibit number what?

11 A. 1049, I'm told.

12 Q. Okay. And does that have anything to do with
13 the issues that we're going to litigate this morning?

14 A. Yes. There are some issues in there.

15 Q. And your Rebuttal Testimony, what number is
16 that, please?

17 A. That's 1051.

18 MR. MICHEEL: He didn't file any Rebuttal
19 Testimony, your Honor. The Rebuttal Testimony dealt solely
20 with the issue of merger savings, which it's my
21 understanding that that's no longer an issue in this case so
22 we did not refile it.

23 MR. SWEARENGEN: Okay. That's fine. Thank
24 you.

25 BY MR. SWEARENGEN:

1 Q. And then your Surrebuttal Testimony is
2 Exhibit 1051; is that correct?

3 A. Correct.

4 Q. Thank you.

5 I think you indicated in your Direct Testimony
6 that you're employed by Utilitech, Inc.; is that true?

7 A. That's correct.

8 Q. Is that a Missouri corporation?

9 A. It is.

10 Q. And who are the shareholders? Can you tell
11 us?

12 A. Sure. Michael Brosch and Steven Carver.

13 Q. Are you a shareholder?

14 A. No.

15 Q. Okay. What is your position with that
16 corporation?

17 A. I am just an employee.

18 Q. Okay.

19 JUDGE JONES: I have to interrupt you for a
20 moment. Mr. Dittmer, you may speak closer to the
21 microphone. I'm not sure your voice is projecting.

22 THE WITNESS: Sorry.

23 BY MR. SWEARENGEN:

24 Q. Do you have Exhibit 1049 in front of you --

25 A. I do.

- 1 Q. -- your Direct Testimony?
- 2 A. I do.
- 3 Q. On page 6 I believe you indicate that you and
4 other members of your firm have been involved in previous
5 Missouri Public Service electric rate cases; is that true?
- 6 A. Yes.
- 7 Q. And for the record, when you say Missouri
8 Public Service, you're referring to the predecessor of
9 Aquila and UtiliCorp?
- 10 A. Correct.
- 11 Q. Is it true that your experience with
12 UtiliCorp/Missouri Public Service goes back more than
13 20 years?
- 14 A. Yes.
- 15 Q. When did that experience start, do you recall?
- 16 A. I think 1976 or '7.
- 17 Q. And is that when you were employed by the
18 Missouri Public Service Commission?
- 19 A. That is correct.
- 20 Q. And since that time you've been engaged by the
21 Public Counsel or perhaps others to do work on
22 Aquila/UtiliCorp rate cases?
- 23 A. The Staff of the Commission or the Public
24 Counsel, correct.
- 25 Q. Is your experience with

1 Aquila/UtiliCorp/Missouri Public Service limited to Missouri
2 or have you done any work involving Aquila's regulatory
3 operations in other states?

4 A. In Nebraska and Iowa.

5 Q. You have done work with respect to their
6 operations in Nebraska and Iowa?

7 A. Yes.

8 Q. And can you describe -- let's take Iowa, for
9 example. What type of operations does Aquila have there?

10 A. They have a gas distribution system in Iowa.

11 Q. And what kind of cases have you participated
12 in in Iowa involving Aquila's gas properties?

13 A. One gas distribution rate case in Iowa.

14 Q. And when was that?

15 A. Mostly, if not exclusively, in calendar year
16 2002.

17 Q. And what was the extent of your participation
18 in that case? First of all, who did you represent or who
19 did you work for in that proceeding?

20 A. The Office of the Consumer Advocate is I
21 believe what they go by in Iowa.

22 Q. And what was your charge or your
23 responsibility in that case?

24 A. I believe I was primarily to look at Aquila
25 corporate costs.

1 Q. Did you have any other assignments or
2 responsibilities in connection with that?

3 A. Not that I'm recalling. I know that was the
4 majority and I think it was probably all that I looked at.

5 Q. Were you the only one in your firm that worked
6 in that case or on that case on behalf of your employer?

7 A. I was.

8 Q. You mentioned the state of Nebraska?

9 A. Yes.

10 Q. And what work have you done involving Aquila
11 or UtiliCorp in that state?

12 A. I worked for I believe it was Rate Area 1. At
13 that time I think -- I know the law has changed in Nebraska
14 in the last year or two, but I worked on a Peoples Natural
15 Gas rate case in Rate Area 1, which is basically the suburbs
16 of Omaha. They had a home rule type structure in Nebraska
17 at that time.

18 Q. Who was your client in that proceeding?

19 A. Those -- it's a collection of Omaha municipal
20 suburbs -- or suburbs of Omaha.

21 Q. And what were you hired to do in that case for
22 your client?

23 A. In that case, all rate elements and it was --
24 it's a small jurisdiction and, you know, negotiated
25 everything in that case.

1 Q. So did you do a full cost of service revenue
2 requirement determination?

3 A. I believe I did, yes.

4 Q. And in connection with that, did you audit the
5 books and records of Aquila?

6 A. Somewhat limited. I mean, the impact to the
7 municipals is pretty small so it's a small budget. We tried
8 to look at -- at least a view of some of the bigger issues
9 in the case. I mean, I'm just -- we didn't have the
10 resources to dig deep, but we looked at the bigger dollar
11 items in the case.

12 Q. And when you say you looked at them, how did
13 you look at them?

14 A. Overall reasonableness, what I thought was
15 reasonable.

16 Q. And what materials did you review in making
17 that determination, do you recall?

18 A. Well, this was in 1995. I would have, you
19 know, asked the standard revenue requirement data request.
20 And as I said, I -- that case I had to try and do it all. I
21 actually tried to look at rate design and cost of capital,
22 but, you know, it was -- most of the case was settled.

23 Q. Turning to this case for a minute, what -- if
24 you can tell us the scope of your assigned responsibilities
25 in this proceeding on behalf of the Office of Public

1 Counsel.

2 A. I was primarily to look at Aquila's corporate
3 cost.

4 Q. If you take a look at your Direct Testimony,
5 Mr. Dittmer, do you have that in front of you?

6 A. Yes, I do.

7 Q. Could you turn to page 14, please?

8 A. I'm there.

9 Q. Is that where you begin to discuss in your
10 Direct Testimony the issue involving corporate overhead
11 costs?

12 A. Specifically corporate overhead costs, yes.

13 Q. Then if you turn over to page 15 of your
14 Direct Testimony, am I correct that there you list eight ESF
15 departments where you propose to eliminate 50 percent of the
16 cost for rate-making purposes?

17 A. That is correct. 50 percent of the calculable
18 costs.

19 Q. Thank you.

20 A. Not 50 percent of the total costs.

21 Q. Thank you. And for the record what is meant
22 by the letters ESF?

23 A. Enterprise Support Function. I know I put it
24 in there someplace.

25 Q. Enterprise Support Function?

1 A. Yeah. I believe that's correct.

2 MR. MICHEEL: If it will speed -- if it will
3 speed things along, it's at page 9, definition of -- his
4 Direct Testimony focusing on lines 14 and 15.

5 BY MR. SWEARENGEN:

6 Q. Is that a term that you have coined,
7 Enterprise Support Function, or is that an
8 Aquila/UtiliCorp --

9 A. It's Aquila's terminology.

10 Q. Turning back to page 15 where you list those
11 eight ESF departments, you have a column entitled ESF
12 Department Description and you start out with the general
13 counsel. And then you list seven other departments; is that
14 true?

15 A. That's true.

16 Q. Does there exist a detailed description of
17 each of those departments, to your knowledge?

18 A. I don't know how you're defining "detailed."
19 There is a description that I begin -- or give for each of
20 those departments beginning on page 17 spilling into 18.

21 Q. Now, is this your description of the
22 department or is this a description that was furnished to
23 you by Aquila?

24 A. That's furnished by Aquila. It's out of their
25 Cost Allocation Manual.

1 Q. Focusing for a minute on the general counsel's
2 department, do you know how many people are employed in that
3 department?

4 A. No. I wouldn't have that -- from memory I
5 wouldn't know.

6 Q. Do you have any idea at all sitting here this
7 morning?

8 A. I know we have it in detail, but I don't know
9 from memory, no.

10 Q. Are there separate job descriptions for each
11 member of Aquila's general counsel department?

12 A. I don't know specifically. In other cases
13 I've asked for job descriptions. Sometimes they exist and
14 sometimes they do not.

15 Q. With respect to Aquila's general counsel
16 department, do you know whether or not job descriptions
17 exist for each of the employees who are in that department?

18 A. No.

19 Q. So with respect to the general counsel's
20 department, you don't know how many employees are there; is
21 that true? You just said that.

22 A. That's true. Not without looking into the
23 records, no.

24 Q. And you don't know with respect to those
25 employees what the specific job descriptions for any of them

1 might be; is that true?

2 A. No. I'm looking at the overall description of
3 the -- of the department.

4 Q. So with respect to that department, can I
5 conclude that you did not look at each individual in that
6 department to determine if 50 percent of that person's costs
7 should be eliminated; is that true?

8 A. No. There -- there -- there is not the detail
9 to do that. We don't -- you don't employ positive time
10 sheet reporting to look at what each individual is doing.

11 Q. Well, I think you just said you didn't know
12 with respect to the general counsel's office how many people
13 were employed; is that true?

14 A. That is correct, yes.

15 Q. And you said you didn't know whether or not
16 there were job descriptions for those individuals; is that
17 true?

18 A. That is correct.

19 Q. And so, consequently, you didn't look at any
20 individual job descriptions for that department; is that
21 true?

22 A. Not in this case, no.

23 Q. Okay. And if I ask you the same questions for
24 the other ESF departments that are listed on page 15, would
25 your answers be the same?

1 A. That is correct.

2 MR. SWEARENGEN: That's all I have. Thank you
3 very much.

4 JUDGE JONES: Thank you. We have 15 minutes
5 left here for redirect.

6 MR. SWEARENGEN: We've got -- excuse me. We
7 have two other issues that this witness is up for that I'm
8 not responsible for, so --

9 JUDGE JONES: That's true.

10 MR. SWEARENGEN: -- we're going to have a
11 little tag team match here this morning.

12 CROSS-EXAMINATION BY MR. COOPER:

13 Q. Good morning.

14 A. Good morning.

15 Q. Maybe not. Maybe afternoon.

16 I want to talk to you for a few minutes,
17 Mr. Dittmer, about your elimination of costs associated with
18 the 20 West Ninth headquarters building. Now, in reading
19 your Direct Testimony, it appears to me that your initial
20 elimination of cost did not focus on any sort of reasonable
21 square footage per employee; is that correct?

22 A. No. I took the company's current cubicle
23 spaces and -- and my adjustment was based on unused cubicle
24 spaces not the size of the spaces.

25 Q. So stated in other words, you compared the

1 design capacity versus the number of employees utilizing the
2 facility. Correct?

3 A. That's correct.

4 Q. Now, is it your understanding that 20 West
5 Ninth was -- that headquarters building was designed for
6 approximately 152 square foot per employee?

7 A. Well, Mr. Empson's Rebuttal I think brings out
8 that point.

9 Q. Okay. Do you have any information to the
10 contrary?

11 A. No. No. I relied on -- no.

12 Q. Do you happen to have a calculator with you?

13 A. I do not.

14 Q. Okay. Let me provide you one. I want to do a
15 little bit of math here. And would you agree with me that
16 the headquarters buildings was designed for 847 employees?

17 A. That is -- yes.

18 Q. Okay. Could you multiply that 847 employees
19 by the 152 square feet per employee for me?

20 A. 128,744.

21 Q. Okay. And I believe in your testimony you
22 state that at the time you did your review, the building was
23 being utilized by 544 employees. Correct?

24 A. Whatever that -- that sounds about right.

25 Q. Why don't you look and make sure that that's

1 the right number?

2 A. Yes. That is correct.

3 Q. Okay. Why don't you divide the 128,744 square
4 feet by 544 employees?

5 A. 236.66.

6 Q. Square feet per employee?

7 A. Yes.

8 Q. Now, your testimony identifies that you work
9 for Utilitech. Correct?

10 A. Correct.

11 Q. And Utilitech has two principals, one
12 full-time employee and one part-time employee; is that
13 correct?

14 A. That's correct.

15 Q. How many square feet of office space does
16 Utilitech occupy?

17 A. I think it's around 1,600. That includes
18 storage space also, a lot of storage space.

19 Q. Would you be surprised to learn that the
20 Commission Staff currently occupies approximately 525.86
21 square feet per employee in its Independence office?

22 A. I wouldn't be surprised or not surprised. I
23 mean, I don't know. It could be.

24 Q. Would you be surprised to learn that the Staff
25 will occupy approximately 571.29 square feet per employee

1 when it moves into its new space in Kansas City?

2 A. Well, you're throwing these things out. I
3 don't know that I'm -- I mean, how is the space used? Is it
4 conference space? Is it storage space? Is it cafeteria
5 space or coffee room space?

6 I mean, this figure that you first -- that we
7 first calculated for the company I think is just pure office
8 space. There's other space in that building also. The
9 other thing is this building the company's building is
10 supposed to be state-of-the-art. They were supposed to be
11 the most efficient at the time.

12 So I don't know -- I don't know if you're
13 giving me the same parameters when you throw these things
14 out, these figures that I've never, ever seen before.

15 Q. If we look at your Direct Testimony, your
16 Direct Testimony, as you told me before, was just based upon
17 a comparison of design capacity versus the number of
18 employees. Correct?

19 A. The design capacity?

20 Q. The number of employees for which the building
21 was designed for, which was the 847, correct, and you
22 compared that to the 544 employees that were utilizing that
23 space. Correct?

24 A. Yes.

25 Q. And that's how you derived your proposed --

1 A. Right. Originally. And I did put in an
2 allowance for vacancies pursuant to Mr. Empson's Rebuttal,
3 but yes.

4 Q. Which was the 8 percent --

5 A. Right.

6 Q. -- found in your later testimony --

7 A. Correct.

8 Q. -- correct?

9 A. Correct.

10 MR. COOPER: That's all the questions I have,
11 your Honor.

12 JUDGE JONES: Thank you.

13 Does Aquila have questions with regard to
14 severance?

15 MR. SWEARENGEN: We do. And the man who has
16 those questions should be walking through the door
17 momentarily, or we could break for lunch if you'd like to do
18 that. We sent word back that the hearing was going to
19 adjourn at noon.

20 JUDGE JONES: Here he is now.

21 MR. SWEARENGEN: Wonderful.

22 MR. BOUDREAU: Excuse me. I don't need a
23 seat. I can stand right up.

24 Thank you.

25 CROSS-EXAMINATION BY MR. BOUDREAU:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Just barely.

4 I just have a few questions for you, sir, on
5 the issue of severance costs. My understanding is that what
6 the company's proposed is a three-year amortization of about
7 \$2.7 million for MPS; is that correct?

8 A. That's my understanding also.

9 Q. And the adjustment on the reconciliation
10 identifies this as a proposed negative adjustment to the
11 company's revenue requirement request of about 1.28
12 million -- no, I'm sorry, 855,000 per year?

13 A. It's probably a third of the 2.7.

14 Q. Okay. Well, I'm just looking at the
15 reconciliation. Do you have a copy of that for MPS?

16 A. I do not.

17 Q. Do you have any reason to believe that the
18 \$855,000 figure -- it's rounded off, it's closer to
19 \$856,000, is incorrect?

20 A. No. I think -- Steve Traxler of the Staff
21 went over those with me. And if my numbers are a little bit
22 different, I would acquiesce to the Staff calculation.

23 Q. Obviously the reconciliation will speak for
24 itself; is that correct?

25 A. I believe so.

1 Q. Okay. Do you dispute that severance costs the
2 company is seeking to recover occurred during the test year?

3 A. I do not dispute that.

4 Q. And I think you've also indicated in your
5 testimony that the payroll cost savings derived from the
6 downsizing -- or the company's downsizing are reflected by
7 the company in its adjusted test year cost of service?

8 A. Yes. I believe it is.

9 Q. Okay. You have a number of reasons why you've
10 recommended a disallowance of this adjustment. And one of
11 those I believe is that the expense is a nonrecurring
12 expense in nature; is that correct?

13 A. That's correct.

14 Q. Would you agree with me, sir, that the fact an
15 expense is nonrecurring isn't necessarily a basis for not
16 recognizing it as an adjustment in rates?

17 A. Well, generally -- there's always exceptions,
18 but generally if an expense or revenue is nonrecurring, the
19 analyst and the regulator will remove it --

20 Q. I understand that's --

21 A. -- from the cost of service.

22 Q. Excuse me. I understand that's the general
23 rule of thumb. But as a practical matter, there's been a
24 number of occasions where the Commission has recognized
25 nonrecurring costs by amortizing that cost over a period of

1 years?

2 A. There -- there has been, but I don't know if
3 they would recognize it when there were savings immediately
4 following the cost occurrence that -- wherein, the company
5 was allowed to recover.

6 Q. I understand that's another basis for your
7 recommended disallowance. I'm just talking about the issue
8 of nonrecurring is not necessarily a disqualifying event for
9 rate-making purposes, is it?

10 A. Not totally, but it's still -- generally the
11 rule is if it's nonrecurring, it's left out of the cost of
12 service.

13 Q. I understand that.

14 Now, let's get to the second topic and you've
15 already touched upon it, which is the regulatory -- I think
16 you assert there's a certain regulatory lag element in that
17 payroll expense that's been collected by the company during
18 the period of time between the severance and the time the
19 rates go into effect that the company's been recovering
20 certain payroll expenses in rates?

21 A. They -- they've experienced savings that have
22 not yet been reflected in rates.

23 Q. Okay. And in my understanding is that your
24 view is that that ought to be an element that the Commission
25 looks at in terms of a basis for disallowing the severance

1 costs?

2 A. Correct. Yes.

3 Q. Okay. Now, my understanding is that the
4 MPS -- let me rephrase this.

5 The last rate case for Missouri Public Service
6 division was about 2001; is that correct?

7 A. Yes.

8 Q. And that was a stipulated case?

9 A. That's correct.

10 Q. Was the payroll expense identified as a
11 specific cost of service in the stipulation in that case?

12 A. No. But I believe the Staff witness addressed
13 how there were no issues on payroll --

14 Q. Yes.

15 A. -- in that case.

16 Q. Okay. As to your proposal that these payroll
17 savings be taken into account in terms of disallowing the
18 severance adjustment, did you quantify the amount of the
19 payroll savings that you assert that the company has
20 experienced?

21 A. No. But I think it's a mathematical -- I've
22 convinced myself it's a mathematical certainty that they
23 would have recovered through savings more than the original
24 severance costs. Unless you had a bunch of 80-year-old men
25 or women who were making 500,000 a year, it's mathematically

1 impossible that they won't have recovered the severance
2 costs through -- through payroll savings.

3 Q. So it's not really based on any quantitative
4 analysis. It's just based on some sort of qualitative
5 evaluation on your part?

6 A. No. I think it's based on a quantitative
7 analysis. If you, for instance, assume you had a
8 65-year-old man or woman, sorry, making 100,000 a year, been
9 with the company for 40 years, all that that person would
10 get would be 85 weeks. They've -- the company's -- 85 weeks
11 of pay. And that's an extreme example, I believe.

12 So there's no way, in my mind, that the
13 company has not recovered every penny of the severance cost.
14 So it's not a qualitative, it's a quantitative analysis.

15 Q. But you haven't actually done that analysis
16 for each of the employees that's been severed by the
17 company, have you?

18 A. No.

19 Q. You're just --

20 A. I'm -- I am -- I was making an assumption that
21 there are not a whole lot of people over the age of 65
22 making more than, say, 200,000 or 300,000 a year that were
23 laid off. And there may be a few of those. But I also
24 believe that there were many, many more who have less than
25 40 years of experience, making less than 100,000 a year --

1 Q. Okay.

2 A. -- and -- and closer to age 40. All of those
3 were the three criteria, so --

4 Q. But you haven't actually done the analysis for
5 the people who actually retired to quantify the amount of
6 this asserted payroll savings --

7 A. No.

8 Q. -- that you've identified?

9 A. And I don't have to to draw the conclusion
10 that I am. I mean, it's a mathematical certainty in my mind
11 that they have definitely recovered all the severance costs.

12 Q. Have you looked at any other items other than
13 your asserted payroll savings to decide whether or not
14 regulatory lag has been a net positive or a net negative for
15 the company during this period of time?

16 A. Well, what period? I mean --

17 Q. During whatever period you've identified, sir.

18 A. I know that regulatory lag has helped the
19 company and it's hurt the company. There have been periods
20 of over-earnings and there have been periods of
21 under-earnings.

22 And where on balance the company is at, I'm
23 not sure. When you read their testimony, it suggests that
24 they think they are way behind the curve at the moment. But
25 as I said, we've been in -- we've been following Aquila for

1 20-some years and there's been some periods of great excess
2 of earnings, so they loved it during that period of time.

3 Q. But all you've looked at and all you've talked
4 about in your testimony is asserted payroll savings. You
5 haven't looked at any other items that cut the other way in
6 terms of regulatory lag?

7 A. No. But this is an issue related to payroll
8 so, no, my analysis is limited to the payroll.

9 JUDGE JONES: Excuse me. I'm going to have to
10 stop you at this time. Do you have very many more
11 questions? I don't want to cut your cross short, but if you
12 have more questions, we can continue after lunch.

13 MR. BOUDREAU: I don't believe I have that
14 much more.

15 JUDGE JONES: How much more do you have?

16 MR. BOUDREAU: I have probably 10 to 12
17 questions to ask. A lot of it depends on the sort of
18 answers I get, but I think it will go fairly quickly. I
19 mean, I can come back. It's your call.

20 JUDGE JONES: I'll give you five minutes and
21 if it's not over, we'll break and go to lunch.

22 MR. BOUDREAU: Very good.

23 BY MR. BOUDREAU:

24 Q. So to wrap up what we just talked about, all
25 you looked at was payroll with regards to this issue?

1 A. With -- regarding this issue, yes.

2 Q. The last item I think that you've touched on
3 in your prepared testimony with respect to severance costs
4 is the difficulty in quantifying the amount that the
5 company's proposing to adjust; is that correct? I'm looking
6 at page 9 of your Direct Testimony -- excuse me, yes,
7 page 9, second full paragraph --

8 A. Well --

9 Q. -- possible to quantify.

10 A. Yeah. I mean, I don't think there's any issue
11 about what -- the severance costs were incurred during the
12 test year, but quantifying how much was related to the
13 decentralization process versus the layoffs that occurred
14 due to the corporate downsizing.

15 Q. Right. And your testimony seems to look at
16 two business divisions, the Enterprise Support Function
17 which is the ESF for short, and IntraBusiness Units, IBU; is
18 that correct?

19 A. Yes.

20 Q. And let me ask you this. With respect to the
21 IBU department, those are activities that are allocated by
22 the company as between regulated lines of business; isn't
23 that correct?

24 A. Yes.

25 Q. Did you quantify the severances under the ESF

1 and IBU departments which were allocated and those that were
2 directly assigned to MPS?

3 A. No.

4 Q. Okay. Some of those costs, in fact, were --
5 particularly with the IBU -- directly assigned to MPS; isn't
6 that correct?

7 A. I'm sure they were, yes.

8 Q. Did you quantify the amount of time spent in
9 ESF -- did you quantify the amount of time spent in ESF
10 support of unregulated business operations?

11 A. No. I mean, I -- I mean, I took -- I
12 eliminated all test year severance costs.

13 Q. I realize that. And I'm asking you whether
14 you quantified them before you recommended a disallowance of
15 them?

16 A. Well, they were already quantified by the
17 company.

18 Q. Okay. So you don't dispute -- let me rephrase
19 that.

20 So I take it that you would disagree with me
21 if I were to suggest that if there's a disallowance, that
22 that disallowance should be strictly proportional to the
23 time spent on non-utility activities?

24 A. Well, I only kicked out the severance cost
25 that was allocated to utility activities and more

1 specifically allocated or directly assigned to Missouri
2 Public Service. So, I mean, that's all I kicked out. I
3 didn't try and kick out severance costs that didn't hit
4 MPS's books.

5 Q. But I believe that you've agreed with me that
6 some of the severance costs were associated with individuals
7 whose time was directly assigned to MPS.

8 A. Yes.

9 Q. Okay. And I guess --

10 A. And that's the only severance cost I kicked
11 out. If it was directly assigned to MPS, I would kick out
12 only the directly assigned piece. If it was allocated to
13 MPS, I only kicked out the allocated piece.

14 Q. Okay. I understand.

15 MR. BOUDREAU: I don't believe I have any
16 further questions for this witness. Thank you.

17 JUDGE JONES: Okay. We'll break for lunch at
18 this time and come back with questions from the Commission
19 or redirect from Public Counsel. We'll reconvene at 1:30.

20 (A recess was taken.)

21 JUDGE JONES: We're back on the record at 1:30
22 this afternoon on the Aquila rate case, ER-2004-0034.
23 Before we went to lunch, Mr. James Dittmer was on the stand,
24 as he still is, and I believe we finished with
25 cross-examination.

1 Does the Office of Public Counsel have --
2 well, actually I think I have a few questions.

3 QUESTIONS BY JUDGE JONES:

4 Q. Corporate restructuring. Mr. Dittmer, are
5 you, in your testimony, saying that there are certain costs
6 associated with that restructuring that should not be
7 included in the case?

8 A. That's correct. My position basically is
9 there are a few -- a select few high-level ESF departments
10 whose resources are being dedicated, devoted to the winding
11 down of certain of the non-utility businesses or the selling
12 of certain non-utility businesses or the refinancing of
13 existing businesses caused by the downfall of the trading --
14 trading group.

15 Q. So these three issues, corporate
16 restructuring, the 20th West Ninth Street building, and
17 severance are all interrelated in some way?

18 A. I would agree. Certainly -- certainly the
19 20 West Ninth and the corporate restructuring and to some
20 extent the severance, although there are certain elements of
21 severance costs arguments that have nothing to do with the
22 unwinding of the non-reg business.

23 Q. Do all of the severance costs have something
24 to do with 20th West Ninth Street?

25 A. No. No. The -- the downsizing of the

1 corporate employees has caused excess capacity at 20 West
2 Ninth. In that respect, there's some linkage. That's where
3 a good portion of the employees who were terminated used to
4 work. And if you walk through the building, it's just row
5 after row of empty office cubicles at this point.

6 Q. And what part of severance doesn't have to do
7 with 20 West Ninth Street building?

8 A. Well, there were -- there were employees let
9 go who did not work at 20 West Ninth. It could have been at
10 Raytown, it could have been at the various divisions.

11 Q. Well, I know the building -- you have reasons
12 for saying that costs associated with that building should
13 not be included as a result of persons being let go from
14 that facility. Do you apply that same rationale to other
15 facilities where people have been let go?

16 A. This -- in this case it's the only facility
17 that I'm aware of that is that vacant because of the
18 downsizing. I'm not aware -- Raytown, for instance, one of
19 their other larger corporate, you know, office buildings is
20 full at this point in time. So there is no vacancy out
21 there that I'm aware of.

22 Q. Are you aware of any other building then where
23 employees have been severed?

24 A. I'm sure there are some other -- there are
25 some other buildings that have had severed employees.

1 Q. Why are you sure?

2 A. Just because the cut-back was not limited to
3 just corporate. I mean, that was a good chunk of it, but it
4 was company-wide.

5 Q. I guess what I'm getting to is, there are
6 vacant spots at 20 West Ninth Street building as a result of
7 severance. And if all of the severance didn't occur there,
8 then it must have occurred somewhere else also. Are you
9 wanting to eliminate the open spaces from those other spaces
10 where people were laid off?

11 A. If I were aware of significant excess
12 capacity, I would probably formulate an adjustment.
13 Corporate headquarters is the only place that I'm aware of
14 that's a significant vacancy and that's the only place I'm
15 posting an adjustment.

16 There could be some modest excess capacity
17 other places, but I haven't tried to quantify that nor have
18 I viewed the -- toured the facilities like I was able to do
19 with the corporate. Corporate was real visible, living in
20 Kansas City, all -- you know, the number of employees who
21 were let go from the downtown office.

22 JUDGE JONES: Okay. I don't have any other
23 questions.

24 Is there any other recross from Aquila, in
25 particular?

1 Okay. Redirect from Public Counsel?

2 MR. MICHEEL: Yes.

3 REDIRECT EXAMINATION BY MR. MICHEEL:

4 Q. Mr. Dittmer, Judge Jones was just asking you
5 about space that may be at other buildings at Aquila. Was
6 the scope of your engagement with the Office of Public
7 Counsel really to look at just the corporate level functions
8 of Aquila?

9 A. Clearly that was where our proposal to the
10 office was directed. You asked for corporate review and
11 that's where we focused our analysis. Sometimes you spill
12 into some other area, but no, that's where we were asked to
13 look and that's where we did look.

14 Q. So even though there may be other layoffs in
15 other -- certainly there were other layoffs at other
16 buildings, that wasn't the scope of your assignment from the
17 Office of the Public Counsel. Is that your understanding?

18 A. That would be true.

19 Q. Okay. In response to Mr. Swearngen's
20 cross-examination, you indicated that your firm, Utilitech,
21 had worked on previous MPS rate cases. Do you recall those
22 questions?

23 A. Yes.

24 Q. And do you know if any of those rate cases
25 were litigated rate cases?

1 A. Certainly. The '97 case I was personally
2 involved in. And I know that my colleagues were involved in
3 cases prior to '97, but --

4 Q. And was the issue of the scope of corporate
5 overhead costs at issue in 1997?

6 A. Very much so, yes.

7 Q. And do you know whether or not this Commission
8 in that case accepted your adjustment with respect to those
9 proposed costs?

10 A. Yes. My recollection is they -- they adopted,
11 if not 100 percent of my recommendation, the vast, vast
12 majority of the recommendation, which in large part mirrored
13 the recommendation I'm making in this case.

14 Q. And in your review of the information from
15 this case, did you see any difference in the way Aquila was
16 operating at the corporate level?

17 A. Well, the departments remain largely the same.
18 In the '97 case my testimony said that they were largely
19 involved in mergers and acquisitions and business -- or
20 value cycle investing and so forth.

21 And -- and it's my -- my position that they're
22 certainly not buying or acquiring anything right now, but
23 they are still on the selling side, the divesting side of
24 that same cycle at this point in time.

25 Q. Mr. Swarengen asked you if you'd reviewed

1 specific job descriptions for specific jobs. Do you recall
2 that question?

3 A. Yes.

4 Q. In order to do your adjustment, was it
5 necessary to review those specific job descriptions?

6 A. Well, it certainly is an audit tool that could
7 have been undertaken, but even if you had job descriptions,
8 without positive time sheet reporting, actually being able
9 to see what employees with a given job definition are doing,
10 it would still be difficult to verify what was going on.

11 Q. And when you say "positive time sheet
12 reporting," does that mean that each individual should keep
13 track of their time and the various projects they're working
14 on, be it MPS specific or corporate specific or --

15 A. And even beyond.

16 MR. SWEARENGEN: Objection, your Honor. He's
17 leading the witness. It's a leading question.

18 JUDGE JONES: Do you want to restate that?

19 BY MR. MICHEEL:

20 Q. What do you mean by "positive time sheet
21 reporting"?

22 A. I'm referring to a system wherein you can
23 actually see a narrative description of what is being
24 undertaken. That might entail writing who the project was
25 taken -- was taking -- which entity, which division or which

1 subsidiary it's taking place for, but also envisions seeing
2 just what do these people do at the top levels.

3 I've never advocated that every person in
4 the -- in Aquila's corporate structure needed to have
5 positive time sheet reporting, but certainly the departments
6 that are known or thought to be working on a number of
7 corporate-wide activities, I would -- I would request that
8 those people be required to actually write down what they
9 spend their time on much the way most utilities require an
10 outside law firm to write down -- jot down just briefly what
11 they do for every hour that they're billing them.

12 Q. And did you ask the company if they were doing
13 positive time sheet reporting?

14 A. Well, I know what their -- their time sheet
15 reporting consists of, and that is simply putting hours down
16 to either home departments or activities. And I know that
17 they do not have -- they're not required to actually write
18 down what they spend their time on.

19 Q. With respect to the 20 West Ninth headquarters
20 building, could you tell me, is that a fairly new rehabbed
21 building or is that an old building?

22 A. An old building completely gutted and rehabbed
23 to, as the company touts, state-of-the-art design in 1997.

24 Q. And was that designed specifically by Aquila
25 for Aquila's use as a corporate headquarters --

1 A. Yes.

2 Q. -- if you know?

3 A. They bought the building and designed it to
4 meet their needs.

5 Q. And so those needs would include the cubicle
6 space that they designed it for and other items. Is that
7 your understanding?

8 A. That's correct. It was specifically for
9 Aquila.

10 Q. And do you know if it was Aquila and their
11 architects who ultimately decided the cubicle size and the
12 number of cubes to be placed in that building?

13 A. Yes. I mean, Aquila told the architects what
14 they wanted and -- and they went with the high-density
15 layout.

16 Q. Okay. I want to talk to you a little bit
17 about the severance costs. Mr. Boudreau asked you if all
18 the severance costs were in the test year. Do you recall
19 that question?

20 A. Yes.

21 Q. Does it matter that all the costs were in the
22 test year for purposes of your adjustment?

23 A. Well, I would submit if they occurred before
24 the test year or during the test year or possibly even after
25 the test year, if they are nonrecurring, they -- they should

1 be disallowed regardless of what period that they're -- that
2 they're incurred.

3 Q. In response to Mr. Boudreau's questions, you
4 indicated that generally nonrecurring costs will not be
5 included in rates. Do you recall those questions?

6 A. I do.

7 Q. Have you seen in your review of company
8 witnesses -- any company witnesses' testimonies where a
9 company witness may share your view with respect to
10 nonrecurring costs?

11 A. Yes. The company's policy witness, Mr. Keith
12 Stamm, stated in Rebuttal Testimony on page 2 that, One of
13 the objectives of rate setting should be to establish rates
14 that are reflective, to the extent possible, of costs that
15 will actually be incurred when rates are in effect. This is
16 a well-established regulatory precept and one founded on a
17 principle of fairness and balance between the interest of
18 customers and investors.

19 Q. And is that the same precept that your
20 requested adjustment is based upon?

21 A. Yes. It's the same -- same policy, same
22 principle.

23 Q. In response to a few questions from
24 Mr. Boudreau, you indicated that quantifying the savings
25 versus the costs was a mathematical certainty, that the

1 savings outweighed the cost. Do you recall those questions?

2 A. Yes.

3 Q. And have you provided an example of what you
4 mean in your testimony?

5 A. Well, I provide one -- you know, what I would
6 consider to be closer to the norm and even that -- the norm
7 in terms of the average pay and average years of experience
8 and average age all determine severance payments that were
9 made.

10 And I use the example of a -- of a -- I think
11 it's a 50-year-old with 25 years experience making 70,000.
12 And in that case that individual would get 42 weeks of pay
13 or well less than a year and the company got to retain
14 savings from the layoffs for about a two-year period.

15 If you go to -- I think what I briefly alluded
16 in the more extreme example, you've got a 65-year-old who is
17 making 200,000 a year and would have been with the company
18 for 40 years. That individual would be entitled to 85 weeks
19 of pay, still less than the two years that the company got
20 to retain the savings in this case.

21 Is it possible there are -- there were anybody
22 terminated over 65? I guess it's possible. I don't know of
23 any employees over 65. Are there employees who made over
24 200,000? Probably a few, but that -- that would be well
25 above the average. And I don't have the statistics, but I'm

1 just certain -- 40 years with Aquila would be an extremely
2 long time.

3 You'd have to have an extreme set of very
4 elderly, very high-paid employees who had been with the
5 company right out of college to even come close to the two
6 years. So that's why I say it's a mathematical certainty
7 that the company has recovered all of their -- their
8 severance costs through -- through payroll savings.

9 Q. Mr. Boudreau asked you with respect to your
10 adjustment about the ESF and IBU units and the allocations
11 with respect to your adjustments. Do you recall those
12 questions?

13 A. Yes.

14 Q. And it seemed to me that there was some
15 confusion. Could you just explain for me where you got the
16 number -- the number that you're recommending be adjusted
17 and what specific costs are included in that number?

18 A. Those are company provided numbers of what hit
19 MPS's books and records during the test year. I didn't
20 derive that. I didn't try and reach outside of the MPS
21 division to pick up severance costs that may have been
22 incurred, say, with a trading group or one of the -- one of
23 the IPP units. It's only what hit the books. And that
24 would have been a combination of direct and allocable costs.
25 So I didn't, you know, pick up more or less than what hit

1 the books, only what hit the books.

2 Q. So would my understanding be correct that the
3 ESF and IBU unit costs that you're recommending be
4 disallowed were the allocable costs by Aquila to MPS in this
5 proceeding?

6 A. Allocable plus direct assigned.

7 MR. MICHEEL: That's all I have, your Honor.
8 With this, I'd ask that this witness be excused.

9 JUDGE JONES: Thank you, Mr. Dittmer. And,
10 yes, you may be excused.

11 THE WITNESS: Thank you.

12 JUDGE JONES: At this time I should note for
13 the record that before lunch there was an exhibit offered by
14 Aquila, Exhibit 155, and on page 3 of that exhibit there
15 were -- at the end of each line the lettering and numbers
16 were illegible. The court has been -- the Commission has
17 been supplied with a replacement page No. 3.

18 Okay. Now, we'll move on to Manufactured Gas
19 Plant Remediation Costs. First witness is from Aquila.

20 MR. COOPER: Aquila would call Mr. Denny
21 Williams.

22 JUDGE JONES: Please step to the witness
23 stand, Mr. Williams.

24 (Witness sworn.)

25 JUDGE JONES: You may be seated.

1 MR. COOPER: Your Honor, Mr. Williams
2 previously has appeared in this hearing and I believe his
3 exhibits were -- or his testimony were Exhibits 7 and 8,
4 which have previously been admitted into evidence. We also
5 have, I guess, redacted versions of his testimony if the
6 Commission would like us to offer those as well.

7 JUDGE JONES: Yes.

8 MR. COOPER: That being the case, we would
9 offer Exhibits 1007 and 1008, which are the Rebuttal
10 Testimony of Dennis R. Williams and the Surrebuttal
11 Testimony of Dennis R. Williams. And we would tender
12 Mr. Williams for cross-examination on the manufactured gas
13 remediation cost issue.

14 JUDGE JONES: Thank you. Exhibits 1007 and
15 1008 are admitted into the record.

16 (Exhibit Nos. 1007 and 1008 were received into
17 evidence.)

18 JUDGE JONES: And first up for
19 cross-examination will be Missouri -- I don't see City of
20 Kansas City, Missouri or Missouri Department of Natural
21 Resources present nor Sedalia Industrial Energy Users'
22 Association or AG Processing or Federal Executive Agencies.

23 So we'll move on to the Office of Public
24 Counsel for cross-examination.

25 MR. MICHEEL: Thank you, your Honor.

1 JUDGE JONES: You may proceed.

2 MR. MICHEEL: Thank you.

3 CROSS-EXAMINATION BY MR. MICHEEL:

4 Q. Mr. Williams, at page 12, lines 5 and 6 of
5 your Surrebuttal Testimony you indicate your belief that
6 Mr. Robertson believes that MGP costs should only be charged
7 to existing MPS customers; is that correct?

8 A. What was the cite again? I'm sorry.

9 Q. I'm focused on page 12 of your Surrebuttal
10 Testimony at lines 5 and 6.

11 A. That's correct.

12 Q. You would agree with me that Mr. Robertson in
13 the MPS gas case does not recommend that customers be
14 responsible for those MGP gas costs; is that correct?

15 A. I'm not familiar with the gas case.

16 Q. So you don't know what Mr. Robertson's
17 recommendation with respect to the manufactured gas plant in
18 the gas case; is that correct?

19 A. I don't, that's correct.

20 Q. At page 12, line 14 you say that Aquila has a
21 corporate and legal responsibility to clean up the MGP sites
22 in its service territory; is that correct?

23 A. Yes, it is.

24 Q. When you say "a corporate responsibility," you
25 mean Aquila, Inc.; is that correct?

1 A. I do.

2 Q. Is it correct with respect to these costs that
3 the company is allocat-- or requesting be recovered here
4 that all of the costs are only being allocated either to the
5 Aquila Networks-MPS or some other Missouri jurisdictional
6 operation of Aquila?

7 A. That is correct. We have a number of
8 manufactured gas plant sites in other states. Michigan and
9 Iowa, in particular, are large manufactured gas plant sites
10 with significant cost. And they have not been allocated to
11 Missouri nor are the sites that are in Missouri allocated to
12 any of the other states.

13 Q. But you would agree with me, would you not,
14 that those sites are still corporate costs that are -- that
15 Aquila, Inc., is responsible for; isn't that correct?

16 A. I would agree with that, yes.

17 Q. And you haven't allocated any of the costs to
18 the remaining nonregulated operations of Aquila, Inc.; isn't
19 that correct?

20 A. I -- I'm not totally familiar with the
21 allocation process. I -- I'm not aware that we have
22 allocated any to the nonregulated sectors of the business.

23 Q. And to be consistent with your claim that it's
24 a corporate and -- responsibility of the corporate entity,
25 those allocations should be made, should they not?

1 A. The allocations to other states or the
2 allocations to nonregulated entities?

3 Q. Both.

4 A. Well, let's take them one at a time. If -- a
5 way of doing it would be certainly to take the total
6 corporate liability and the costs incurred and, in total,
7 allocate those costs to the seven states. If we did that, I
8 think Missouri would end up with a significantly higher cost
9 in its -- in its rates.

10 As far as the nonregulated, that's certainly
11 an option that should be considered as well. And I'm just
12 not aware right now of the allocation process, whether any
13 costs are allocated to nonregulated or not.

14 Q. Is there somebody that is testifying on behalf
15 of Aquila with respect to jurisdictional allocations that I
16 can ask that question?

17 A. Bev Agut will be testifying to jurisdictional
18 allocations and she would be the best witness to ask that
19 to.

20 Q. Would you agree with me that Mr. Robertson has
21 essentially zeroed out any allocation of manufactured gas
22 plant site costs to the electric portion of MPS?

23 A. That is the impact of his adjustment, yes.

24 Q. Would you agree with me that environmental
25 liability goes with the land?

1 A. Yes, it does. Under both RCRA and certainly
2 CERCLA -- I can tell you're going to ask me what those mean,
3 so I'll just -- under especially the Comprehensive
4 Environmental Response Compensation and Liability Act of
5 1987, commonly referred to CERCLA, the liability of
6 manufactured gas plant sites does attach to the land and
7 ownership of the land.

8 Q. And you also had another acronym in there,
9 RCRA?

10 A. RCRA was an earlier environmental law that
11 stands for Resource Conservation and Recovery Act. It was
12 passed in 1976 by Congress.

13 Q. Is it still in effect?

14 A. That I do not know. It certainly -- CERCLA is
15 more comprehensive than RCRA was.

16 Q. Let me ask you this. What do you mean when
17 you say it runs with the land or goes with the land?

18 A. Any ownership -- an owner of the land, if he
19 has taken title to land or at any part or any portion of
20 time in the past has owned land on which a manufactured gas
21 plant site has rested, he has some responsibility under
22 CERCLA to -- to remediate that land.

23 Now, I do have some references that CERCLA
24 explains that a little bit better but it gets into legal
25 matters, and I want to assure you I'm not an attorney so I'd

1 prefer not to opine on the legal nature of that.

2 Q. I wouldn't ask you to opine on anything that's
3 outside your scope of expertise, Mr. Williams.

4 A. Thank you.

5 Q. Would you agree with me that land is more
6 valuable without an environmental liability?

7 A. I would agree that when land is put up for
8 sale, if there is an environmental liability associated with
9 it, that is usually taken into consideration by the
10 prospective purchaser and that prospective purchaser will
11 either try to in some manner mitigate that liability that
12 he's willing to accept or will ask for compensation for the
13 additional liability he is accepting by perhaps lowering the
14 price he is willing to pay for the land.

15 Q. So you would agree with me, all things
16 remaining equal, that an environmental liability such as
17 manufactured gas plant claim outstanding has the effect of
18 lowering the value of the land; is that correct?

19 A. I would -- I would agree with that.

20 Q. Would you agree with me that land is more
21 marketable without an environmental liability? In other
22 words, there are more purchasers willing to purchase the
23 land without environmental issues entangling that land?

24 A. On the surface, that seems reasonable,
25 although I don't have any specific knowledge that that would

1 be the case.

2 Q. But you don't disagree with that?

3 A. I don't disagree.

4 Q. Would you agree with me that if Aquila sells
5 the land that it currently owns, that it is allowed to keep
6 any gain it receives from sale of that land under normal
7 regulatory practices?

8 A. I -- I think that certainly is dependent upon
9 the state. And if you're referring to Missouri, I think
10 that could even be argued.

11 Q. Let's talk about Missouri. Is it your
12 understanding in Missouri that the gain and sale of land
13 inures only to the shareholders or does it inure partially
14 to the shareholders and partially to the ratepayers?

15 A. It's my understanding in Missouri that each
16 transaction would stand on its own and be considered for
17 rate-making purposes in the context of a rate case.

18 Q. Are you personally aware -- how long have you
19 been dealing with regulation in Missouri?

20 A. I originally -- my first association with
21 regulation in Missouri dates back to approximately 1975.

22 Q. And with respect to all your years -- many
23 years of experience with the Missouri regulatory process,
24 are you aware of any situation in which the gain from the
25 sale of company property was shared between the shareholders

1 and the ratepayers?

2 A. Just so I don't leave a wrong impression, I
3 have not been continually involved with Missouri regulation
4 from 1975 to date, so I haven't made any kind of exhaustive
5 study. I'm certain I'm not aware of all orders during that
6 period of time, but I am not aware of any orders that would
7 assign the gain on property solely to the -- to the
8 customer.

9 Q. Are you aware of any orders, just that you're
10 familiar with, that shares the gain between customers and
11 shareholders?

12 A. I am -- I'm not aware one way or the other.

13 Q. Are you aware of any orders that would give
14 the gain on the sale of property 100 percent to
15 shareholders?

16 A. Again, I -- I'm just not familiar with the
17 subject matter.

18 Q. So sitting there today, you don't know what
19 Missouri policy is with respect to gain on the sale of
20 utility property. Is that your testimony?

21 A. My testimony is it varies, I believe, and it
22 is to be determined in a rate case.

23 Q. Now, you just said that -- let me unpack that
24 because you just said it varies. And I asked you for the
25 cases that you're aware of as to where it varies, in other

1 words, between sharing it with shareholders and ratepayers
2 or assigning it all to shareholders or assigning it all to
3 ratepayers. And my question to you is, what cases are you
4 aware of that makes you make that statement?

5 A. Okay. I stopped my -- my original statement
6 in mid-sentence. And when I was talking about varies, my
7 intent had been to say that it varies on a case-by-case
8 basis. I thought better of that and my correct answer is
9 that it is considered in rate cases on a state -- or on a
10 case-by-case basis.

11 Q. And upon what basis have you come to the
12 understanding that it's determined in rate cases on a
13 case-by-case basis?

14 A. Just my overall knowledge of the way the
15 rate-making process works in Missouri.

16 Q. So you haven't reviewed any cases or anything
17 like that?

18 A. I have not.

19 Q. Would you agree with me that there's been no
20 manufactured gas plant activity on the sites in question for
21 over 50 years?

22 A. That is correct.

23 Q. Would you agree with me that when this
24 Commission sets this company's return on equity, that there
25 is a risk premium in every case for unknown events for risks

1 built into that return on equity?

2 A. There -- there is a risk premium I'm aware
3 that's included in return on equity. I believe there's some
4 testimony in our -- our expert witness, Don Murry, in this
5 case that talks a little bit about the risk factor and what
6 that entails. I am certainly not an expert in that area.

7 Q. And that's for unknown risks like the fact
8 that, for example, the federal government may pass laws like
9 CERCLA or RCRA or something like that; isn't that correct?

10 A. That would be better directed to Mr. Murry.

11 Q. So you don't have an understanding about that
12 risk premium? You know it exists, but you don't know what
13 it's for?

14 A. I know in general it exists. I don't know the
15 specifics of what it's for.

16 Q. And what's your position with the company?

17 A. My position is vice president, electric
18 regulation.

19 Q. And does that mean that you're in charge of
20 all the electric operations for Aquila with respect to
21 regulatory issues?

22 A. That's quite recent, but yes.

23 Q. And in that capacity you have no understanding
24 about what the risk premium is in rate cases. Is that your
25 testimony?

1 A. My testimony is that is a better question
2 asked to our expert witness in that area, Mr. Murry.

3 Q. Well, whether it's a better question or not, I
4 would like you to respond to it if you know. And if you
5 don't know, as the vice president of regulatory affairs for
6 all the electric territories for Aquila, you just tell me, I
7 don't know.

8 A. I will restate, I have general awareness of
9 what business risk is and that it is included in return on
10 equity, but the specifics and how that is to be treated for
11 rate-making purposes I don't know.

12 Q. And what is your general understanding of
13 business risk?

14 A. My general understanding is that business risk
15 is there to compensate the company for risk of doing
16 business. And the interpretation of what that is is better
17 asked of our expert witness, Mr. Murry.

18 Q. Let me ask you this. Do you think that
19 environmental problems are a risk of the company doing
20 business?

21 A. Environmental problems of the company are a
22 risk of doing business. I do not know if those would be
23 considered business risk of the type that would be included
24 in the risk premium factor included in our determination.

25 Q. Do you think that Aquila understands that

1 environmental risks are part of the risks of -- general
2 risks of doing business as a regulated utility?

3 A. I believe that Aquila knows that it has
4 inherited a number of manufactured gas plant sites. I
5 believe that Aquila knows that it has responsibilities under
6 CERCLA to either remediate or control those sites. As to
7 how that risk corresponds to the determination of risk
8 premium and the development of ROE, I do not have knowledge.

9 Q. Now, you indicate in your Surrebuttal
10 Testimony that in MPS Case No. ER-93-37 the Staff position
11 was to have both electric and gas customers pay for the
12 clean-up of MPS sites; is that correct?

13 A. That is correct.

14 Q. And that was based on the Direct Testimony of
15 Staff Witness Shirley J. Norman; is that correct?

16 A. That also is correct.

17 MR. MICHEEL: I need to get an exhibit marked,
18 your Honor, and I believe it would be Exhibit 157.

19 (Exhibit No. 157 was marked for
20 identification.)

21 BY MR. MICHEEL:

22 Q. Mr. Williams, I've handed you what's been
23 marked for purposes of identification as Exhibit 157. Do
24 you have a copy of that, sir?

25 A. I do.

1 Q. And does that appear to be the portion of the
2 Direct Testimony of Shirley J. Norman in ER-93-37 with
3 respect to manufactured gas plant?

4 A. That testimony is contained in the document
5 you handed me.

6 Q. And is that the testimony that you referred to
7 at page 13 of your Surrebuttal Testimony?

8 A. It is.

9 Q. And is it correct that that testimony sets out
10 the MPSC Staff's position in that case?

11 A. Yes, it does.

12 Q. If you could, sir, turn to page 13 of that
13 case -- or that testimony, I'm sorry, and I'm focusing there
14 on line 18. Is it correct that the Staff in that case
15 proposed no recovery at all of costs for sites not owned by
16 the company?

17 A. Could you repeat your question and citation,
18 please?

19 Q. Yes, sir. On page 13 of the testimony, I
20 guess I'm focusing on line 18 there, is it correct that the
21 Staff requested no recovery at all for sites not owned by
22 the company?

23 A. Well, line 18 is referring to contract amounts
24 being re-examined.

25 Q. I'm sorry. Line 8.

1 A. I'm sorry.

2 Q. My mistake. Lines 8 through 10 there, As
3 previously discussed, we do not believe that current
4 ratepayers should be charged with any costs related to sites
5 no longer owned by MPS.

6 Do you see that, sir?

7 A. I do.

8 Q. And was that Ms. Norman's position there in
9 that case?

10 A. That was Ms. Norman's position, yes.

11 Q. Then moving down to line 18 -- I apologize, I
12 got the 8's mix up -- is it correct there that the Staff
13 proposed to amortize the costs over four years; is that
14 correct?

15 A. Yes. At line 19 there's a discussion of
16 amortization over four years.

17 Q. And is it correct that they also recommended
18 that there be no rate base recovery of costs for sites owned
19 by the company? And I'm looking at lines 20 through 21
20 there, sir.

21 A. Ms. Norman did not include any of the
22 unrecovered balance in rate base.

23 Q. And is it correct also that in that case the
24 Staff recommended that ratepayers share in gains and
25 property sold by the company in the future?

1 A. I think the method she set out she explained
2 was a method to share.

3 MR. MICHEEL: With that, your Honor, I would
4 move the admission of Exhibit 157 into evidence.

5 JUDGE JONES: Is there any objection to
6 Exhibit 157?

7 MR. COOPER: I have no objection, your Honor.
8 I might see if maybe we can work with Mr. Micheel to come up
9 with a version later in the proceeding that has all the
10 words, I guess, in it. I'm having difficulty reading, I
11 think, some of the lines.

12 MR. MICHEEL: I will work with you, Mr. Cooper
13 on that. And it the best I could do off of the microfiche,
14 but I'll see what we can do.

15 JUDGE JONES: Okay. Exhibit 157 is admitted
16 into the record.

17 (Exhibit No. 157 was received into evidence.)

18 BY MR. MICHEEL:

19 Q. Is it correct, Mr. Williams, in this case that
20 no party has requested any rate base treatment for any MGP
21 cost -- when I say MGP, I mean manufactured gas plant
22 costs -- actually incurred or deferred?

23 A. I'm not aware of any party that has taken that
24 position.

25 Q. Referring back to Exhibit 157, Ms. Norman has

1 a schedule there, 1-2. Could you turn to that?

2 A. I'm there.

3 Q. And does this schedule indicate all of the
4 manufactured gas plant sites with respect to the company
5 that you're aware of, sir?

6 A. There are some minor differences, but I think
7 they're just errors in her testimony. But I agree there are
8 nine sites and, in general, she has the towns correct, but,
9 for example, she has Tenth and Grant streets at the site in
10 Trenton. That really should be Tenth and Grand.

11 Q. Well, let me ask you this --

12 A. In general, those appear to be -- be the nine
13 sites of which --

14 Q. It's not Ms. Norman that has it wrong. It was
15 a Mr. Brad Lewis who apparently worked for UtiliCorp United,
16 because that's a UtiliCorp United response to PSC Data
17 Request 152, isn't it?

18 A. That is correct.

19 Q. So if incorrect information was given there,
20 it was given by MPS; is that correct?

21 A. That also would be correct. In general, these
22 nine sites are correct -- are the nine sites of which I'm
23 aware. I just wanted to make sure for the record we were
24 identifying them correctly.

25 Q. That's fine with me.

1 Now, you just talked about that there are nine
2 sites where the company is a PRP; is that correct?

3 A. That is correct.

4 Q. And just so we get the acronym right, PRP
5 stands for what?

6 A. I was hoping you could help me with that.
7 I've heard the acronym, but it's -- but I don't know what it
8 stands for.

9 Q. Possible Responsible Party?

10 A. I'll accept that.

11 Q. Okay. And you testified earlier that there
12 are nine sites with respect to MPS with respect to
13 manufactured gas plants; is that correct?

14 A. That's correct.

15 Q. Is it correct in this proceeding that there
16 are only costs in the test year related to four of those
17 sites?

18 A. That is also correct.

19 Q. And those sites are the Clinton site, the
20 Lexington site, and that's the one at Tenth and Highland,
21 the Nevada site and the Sedalia site; is that correct?

22 A. Let me verify that. Just a second, please.

23 Yes. That's correct.

24 Q. And essentially the company took each cost and
25 booked 85 percent of those costs related to the remediation

1 at those sites to MPS electric operations and 15 percent to
2 MPS gas operations; is that correct?

3 A. That is also correct.

4 Q. Okay. Is it also correct, Mr. Williams, that
5 most of the costs that are in the test year for manufactured
6 gas plant were incurred related to the Lexington Highland
7 Street site, is that correct, or Highland Avenue, excuse me,
8 Tenth Street and Highland Avenue.

9 A. I don't have that knowledge. And I do have
10 quite a bit of cost information with me, but I would have to
11 take a considerable amount of time adding up individual
12 dollar amounts to verify that.

13 Q. So you don't know if that's the highest cost?

14 A. I do not know.

15 Q. You have the information to find that out?

16 A. I do.

17 Q. Could you confirm that for me?

18 A. At a later date? I could do it right now, but
19 it will take about 10 minutes. Or I could --

20 Q. I'll let you off the hook this time.

21 Where's that information found?

22 A. It was in a -- the detail information is in a
23 data response that was provided to the Office of Public
24 Counsel.

25 Q. And what data response was that, sir?

1 A. The one I have in front of me is the response
2 to OPC 1029.

3 Q. Is it correct, sir, that the remediation with
4 respect to the Clinton and Sedalia sites is essentially
5 completed?

6 A. I do not know the answer to that.

7 MR. MICHEEL: Let me get an exhibit marked,
8 your Honor. This will be Exhibit 158. And I would identify
9 it as a June 29th, 2000 letter regarding Lexington Highland
10 MGP.

11 (Exhibit No. 158 was marked for
12 identification.)

13 BY MR. MICHEEL:

14 Q. Mr. Williams, I've handed you what's been
15 marked for purposes of identification as Exhibit 158. Have
16 you had time to review that?

17 A. I have.

18 Q. And does that indicate that it's a letter to
19 Mr. Don Lininger from the Superfund Division of the EPA from
20 Edward B. Clement, Jr., senior environmental engineer, from
21 at that time I guess UtiliCorp United regarding the
22 Lexington Highland Street site?

23 A. Yes, that's correct.

24 Q. And does that indicate that at the time of the
25 letter, June 29th, 2000, that Aquila or UCU, UtiliCorp

1 United, Inc., did not own that site?

2 A. It does indicate that UtiliCorp is making an
3 offer to purchase the property, so I would assume that
4 indicates that we did not own the property.

5 Q. Do you know when the company first sold the
6 Lexington Highland site?

7 A. I do not.

8 MR. MICHEEL: I would move the admission of
9 Exhibit 158, your Honor.

10 MR. COOPER: I would object, your Honor. I
11 don't believe there's been any foundation for the admission
12 of this letter. I don't believe Mr. Williams has testified
13 to having any knowledge of this letter.

14 MR. MICHEEL: I thought I laid proper
15 foundation, your Honor, but if he wants more foundation,
16 I'll be happy to do it.

17 JUDGE JONES: I would like more. It's not by
18 him or to him.

19 BY MR. MICHEEL:

20 Q. Mr. Williams, are you aware that the Office of
21 Public Counsel received this letter in response to a data
22 request?

23 A. The letter is not in my book. I thought I had
24 the responses to data requests on this subject in this book,
25 but there -- there could have been others. This -- this

1 could have been an attachment, but I'm not aware at this
2 point.

3 Q. If I told you it was part of a response to
4 Staff Data Request 24, would that refresh your recollection?

5 A. No.

6 MR. MICHEEL: One moment, your Honor.

7 May I approach the witness, your Honor?

8 JUDGE JONES: Yes, you may.

9 BY MR. MICHEEL:

10 Q. Mr. Williams, let me hand you a copy of Staff
11 Request 024 in GR-2004-0072 and ask you to look at that.

12 A. I have it. And now I understand why I don't
13 have it in my book.

14 Q. And are you aware that the parties have an
15 agreement to be able to utilize data requests from both the
16 electric and gas case in each case to avoid duplicative data
17 requests?

18 A. I am aware of that.

19 Q. And does that appear to be the data request
20 response asking for all correspondence regarding
21 manufactured gas plant?

22 A. Yes. This appears to be a data request
23 provided in GR-2004-0072, which was issued by the Staff of
24 the Public Service Commission requesting copies of all
25 correspondence with the EPA and other regulatory agencies

1 dealing with manufactured gas plant sites.

2 Q. And do you have any reason to doubt that the
3 letter that I am discussing here is a letter that would be
4 responsive to that data request? I mean, there were a lot
5 of letters in there. I've just excerpted this particular
6 letter.

7 A. I have no reason to doubt it. I've never seen
8 it, but I have no reason to doubt it.

9 Q. And up at the top of the item that I've marked
10 as Exhibit 158, there's a fax mark that says Aquila Merchant
11 Services. Do you see that?

12 A. Yes. I see that.

13 Q. And there's also a fac/catalog, Lexington
14 Highland Manufactured Gas Plant. Do you see that?

15 A. I do.

16 Q. Does that lead you to believe that this is a
17 document that was in the possession of Aquila, Inc.?

18 A. It leads me to believe that it was sent over a
19 fax machine that was probably located in Omaha and under
20 the -- probably owned by Aquila.

21 MR. MICHEEL: And, your Honor, if counsel
22 wants, I would provide all of the letters, but these are the
23 relevant ones. I mean, there are a lot more and I could do
24 that as a late filed, but I think now I've laid a proper
25 foundation that this is indeed a response to an Aquila data

1 request and this was a document that was kept and maintained
2 by Aquila, so I'd move the admission of the exhibit again,
3 your Honor.

4 JUDGE JONES: Mr. Cooper?

5 MR. COOPER: Your Honor, I think that we would
6 be probably within our rights to ask for the complete data
7 request response to be made an exhibit. Based upon
8 Mr. Micheel's representation of the voluminous nature of
9 this, I guess I'm seeking some sort of kind of middle ground
10 on the subject.

11 And I'm wondering if perhaps the company could
12 have the opportunity to take another look at that response
13 and see if it believes that are other letters that would be
14 relevant; and if not, we could just leave it with this
15 single letter that Mr. Micheel wants to allow in the record.

16 JUDGE JONES: Do you have intention to submit
17 to the Commission other letters from --

18 MR. MICHEEL: I have one more letter from this
19 stack, yes, regarding this particular property that will
20 indicate that our good friends at Aquila purchased this
21 property subsequently.

22 JUDGE JONES: How many letters are there in
23 total?

24 MR. MICHEEL: It's on a CD-ROM, your Honor.
25 There are a large number of letters. If it satisfies

1 Mr. Cooper, I would be willing to do what he wants. If you
2 want me to provide a copy of the CD-ROM to the Commission
3 for a total exhibit, I'd be happy to do that. I'm trying to
4 cut down on the amount of paper.

5 JUDGE JONES: Mr. Cooper, I take it your
6 concern is whether or not you'll get surprises later on
7 about him wanting to submit letters from the data request as
8 opposed to just this one. Is that what your concern is?

9 MR. COOPER: Well, and I want to make sure
10 that the one or two that get pulled out are representative
11 and would not be better explained, I guess, by other letters
12 that are also in that response given by the company.

13 But I think if I understand Mr. Micheel's
14 statements, it sounds as if he would be willing to allow us
15 the opportunity to look through that response before we
16 would necessarily close the door on this issue. And if he
17 is willing to do that and the Commission is willing to do
18 that as well, that will take care of my concerns.

19 JUDGE JONES: All right. That's fine. As to
20 the objection, it seems we all know that this letter is a
21 result of a data request.

22 MR. COOPER: I think we know that it is one
23 letter amongst, perhaps the way it's been represented,
24 hundreds of letters that were a response to that data
25 request.

1 JUDGE JONES: If, upon your review then, you
2 see some other letters that may touch upon the issues he
3 speaks to, then you'll have an opportunity to present that?

4 MR. COOPER: That would be my hope, yes.

5 JUDGE JONES: With that, Exhibit 158 is
6 admitted into the record.

7 (Exhibit No. 158 was received into evidence.)

8 MR. MICHEEL: I need to get another exhibit
9 marked, your Honor. It's another letter from that. And it
10 is a January 18th, 2001 letter again to Don Lininger,
11 L-i-n-i-n-g-e-r, of the Superfund Division of the EPA, from
12 Edward B. Clement, Jr., senior environmental engineer. And
13 I believe, your Honor, that is going to be Exhibit 159.

14 JUDGE JONES: Yes, it is.

15 (Exhibit No. 159 was marked for
16 identification.)

17 BY MR. MICHEEL:

18 Q. Mr. Williams, I've handed you what's been
19 marked for purposes of identification as Exhibit 159. Do
20 you have that in front of you, sir?

21 A. I do.

22 Q. And does that indicate at the top that the
23 file category is Lexington Highland MGE plant file No. 50.3?

24 A. Lexington Highland MGP, yes.

25 Q. And is that the same file number that is

1 attached to Exhibit 158, sir?

2 A. It is.

3 Q. And is that an internal filing mechanism
4 utilized at Aquila to keep things straight, so to speak?

5 A. It's not one within which I'm familiar, but it
6 appears to be one that was used in this case perhaps by the
7 environmental group.

8 Q. And does that indicate that it's from the same
9 file, sir?

10 A. It appears to be, yes. It has the same file
11 number.

12 Q. And do you understand that that's in response
13 to Staff Data -- we received this letter in response to
14 Staff Data Request No. 24 in the gas case?

15 A. That is my understanding.

16 Q. Does that indicate that UtiliCorp United has
17 completed its purchase of the former Lexington MGP property
18 in late December 2000?

19 A. Yes, it does. And if I may, after reading the
20 other letter that you asked me to, I feel obliged to modify
21 an answer I gave you earlier because this indicates there
22 are -- there is at least one instance where, involving MGP
23 sites, there are at times events which lead to paying above
24 market value or higher costs so that the land value is
25 actually increased because of the existence of an MGP site.

1 So I just wanted to modify that earlier answer.

2 Q. Okay. So now your testimony is that MGP sites
3 can increase the value of land; is that correct?

4 A. I would -- I -- I think in -- in very limited
5 circumstances. I think what was happening here was so that
6 Aquila could maintain the remediation program and be
7 responsible for it and control it and control its litigation
8 expenses, that they were willing to pay above the fair
9 market value for that land in order to bring it in under the
10 Aquila control.

11 Q. So Exhibit 159, which you've taken a look at,
12 indicates that at some point Aquila decided to purchase the
13 Lexington manufactured gas plant site at Highland; is that
14 correct?

15 A. That is correct.

16 Q. So there was a time when it was not owned by
17 the company; is that correct?

18 A. That is the implication, yes.

19 Q. Okay. And so the company thought it best at
20 some point to purchase that site back; is that correct?

21 A. That is correct.

22 Q. And that's what Exhibit 159 indicates; isn't
23 that correct?

24 A. Yes. This indicates that UtiliCorp, now
25 Aquila, did purchase the former Lexington MGP property.

1 Q. Would you agree with me, Mr. Williams, that
2 the Staff did not file testimony on this issue?

3 A. They did not file testimony on this issue in
4 this proceeding.

5 Q. Would you agree with me that the costs with
6 respect to the 85 percent of manufactured gas costs that
7 Aquila has assigned to the MPS division are contained in
8 Staff's case?

9 A. Yes, I would. That's approximately \$50,000 in
10 the test year.

11 Q. So is it your belief that Staff isn't
12 contesting recovery of those costs; is that correct?

13 A. I -- I do not believe they are contesting
14 recovery of those costs.

15 Q. So Staff has taken yet a different position
16 from another case; is that correct?

17 A. I'm not -- I'm not really aware that they've
18 taken any position in this case.

19 Q. Well, they're including it in rates; is that
20 correct?

21 A. That is correct.

22 Q. Which would mean -- when the Staff doesn't
23 challenge anything, that means they accept the company's
24 proposed treatment of the issue; isn't that correct?

25 A. It means they did not make it an issue in this

1 case.

2 Q. And you don't know when the company first sold
3 the Lexington site that's at Highland Street, do you?

4 A. No, I don't have that information.

5 Q. Would you agree with me that the Nevada site
6 requires no further action other than voluntary deed
7 restriction?

8 A. I do have attached to the Data Request 24,
9 which you left with me, a letter attached to that, which is
10 apparently a third letter included in that response, which
11 indicates that this letter was providing information
12 regarding the filing of the voluntary deed restriction.

13 I haven't read that in detail and I don't know
14 whether -- at times, gas remediation is -- is containment.
15 We -- the company agrees with either the state and/or the
16 EPA that there's no need for any remediation, just
17 containment and over time that -- that can change. So
18 whether or not this voluntary deed restriction satisfies the
19 government restrictions for all time, I would doubt.

20 Q. If you would, sir, take a look at Schedule 1-2
21 attached to Exhibit 157. That's the Shirley Norman
22 testimony.

23 A. All right.

24 Q. And I'm looking at it and it's got the nine
25 sites listed there; is that correct?

1 A. Yes.

2 Q. And would you agree with me that the latest
3 site that is currently a manufactured gas plant site for MPS
4 was providing service to customers was 1948?

5 A. I would doubt if it actually was providing
6 service to MPS customers in 1948. I'm not aware if it was.
7 In many cases these were actually predecessor companies to
8 MPS. But it does indicate that of the nine sites, the last
9 coal gasification that was used in commercial application
10 was 1948.

11 Q. And when you say "coal gasification," that is
12 where coal is turned into a gaseous state to be used as gas;
13 is that correct?

14 A. Generally coal or coke are both considered
15 coal gasification.

16 Q. And that's for the LDC service, is that
17 correct, not the electric service?

18 A. Certainly the -- the use of coal gas, its
19 initial application was for street lighting. And then later
20 applications were for local distribution companies for gas
21 appliances.

22 Q. Nonetheless, none of it was utilized to
23 provide electric service; isn't that correct?

24 A. That's certainly correct.

25 Q. Just bear with me here one moment, sir.

1 MR. MICHEEL: Thank you for your time,
2 Mr. Williams

3 JUDGE JONES: Is there any cross-examination
4 from the Staff Commission?

5 MR. FREY: No, your Honor.

6 JUDGE JONES: Redirect from Aquila?

7 MR. COOPER: I take it there are no questions
8 from the Bench.

9 REDIRECT EXAMINATION BY MR. COOPER:

10 Q. Mr. Williams, Mr. Micheel started by pointing
11 you to a portion of your testimony that refers to Aquila's
12 corporate and legal responsibility. Do you remember that?

13 A. I do.

14 Q. Could you explain for us why it is you believe
15 that the gas -- manufactured gas plant remediation costs are
16 a corporate and legal responsibility of Aquila?

17 A. Well, as Mr. Micheel and I had a brief
18 discussion, the liability goes with the land. The land on
19 which these former manufactured gas plant sites are located
20 are owned by Aquila.

21 In many cases the land on which the
22 manufactured gas plant sites rest are currently utilized for
23 both electric and gas operations, so there's really a
24 two-fold reason there. One, it's a corporate liability, not
25 just a gas liability; and two, the land use is for both

1 electric and gas operations.

2 Q. Now, I believe Mr. Micheel also asked you as
3 to whether these costs were allocated to other states. Do
4 you remember that?

5 A. I do.

6 Q. And I think you responded as a part of that
7 that other states have similar costs; is that correct?

8 A. Sim-- similar type costs. Although in other
9 states the amount of costs are significantly higher, for
10 example, Michigan and especially Iowa. And it's -- it's
11 dependent upon how much remediation is ordered, it -- it
12 depends on the topography of the land, how much the coal tar
13 might be getting into the water supply.

14 In cases -- in certain instances we've had to
15 remediate the land by actually removing a good portion of
16 the dirt and fill in the site and bringing in new -- new
17 fill. We've been fortunate in Missouri to get by with
18 mainly just containment, so that the costs in Missouri are a
19 lot lower than they are in other states.

20 Q. Do you have an opinion as to what remediation
21 costs would look like if all Aquila's remediation costs were
22 allocated corporation-wide?

23 A. What they would like to the Missouri --

24 Q. To the Missouri piece.

25 A. To the Missouri piece? They would be much

1 higher than what we have in this case, certainly. Tens of
2 times higher at least.

3 Q. Now, you were asked about allocations to
4 regulated or nonregulated operations. What is the nature of
5 the sites that we're discussing here in Missouri, the nine
6 sites?

7 A. They are -- do you mean their original use or
8 their current use?

9 Q. Well, I'm -- that kind of leads into another
10 question. Let me tie a couple things together.

11 You were asked a question as to when the
12 latest time or the latest date on which there was
13 manufactured gas plant on these sites. And I guess my real
14 question is, are the sites currently involved in providing
15 service to MPS customers?

16 A. In -- in six cases, they are -- they are owned
17 and utilized by the current -- current MPS operations.

18 Q. Do you have an example of one or two of those
19 sites as to what type of -- what type of operations are
20 located there?

21 A. Well, certainly in my -- in my Surrebuttal
22 Testimony I believe I listed four examples. The four
23 examples I listed were at page 13 of my Surrebuttal
24 Testimony where I talked about the Clinton site used for
25 pole storage. Now, that would be electric pole storage. We

1 don't have poles on the gas side. There's a substation in
2 Nevada, a warehouse in Sedalia, and a former power plant is
3 located at the site in Trenton. I believe that two other
4 sites are probably parking lots for office space.

5 Q. For MPS facilities?

6 A. That's correct, yes.

7 Q. Now, Mr. Micheel asked you whether these
8 obligations run with the land. Does that mean that Aquila
9 has responsibility for clean-up costs even if it sells the
10 land?

11 A. That's correct. They still attach to the --
12 to the -- to the string of ownership with the land. So it's
13 my understanding at least that you -- you can't get out of
14 total responsibility for the clean-up just by having sold
15 the land.

16 Q. And you also had some questions as to whether
17 land would be more valuable without this liability, correct,
18 from Mr. Micheel?

19 A. That's right.

20 Q. Do you believe that Aquila's responsibilities
21 as to these pieces of land under CERCLA will end in the
22 foreseeable future?

23 A. I don't see CERCLA ending in the foreseeable
24 future, so I don't see our responsibilities under CERCLA
25 ending in the foreseeable future.

1 Q. Do you believe that there will be a day when
2 these pieces of property carry no environmental taint?

3 A. Unless they were fully remediated, I think
4 they will always carry with them some taint. And even in
5 that instance, I know the site in Michigan that was fully
6 remediated, there's still monitoring that's required even of
7 that site.

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

10 JUDGE JONES: Thank you.

11 It's 10 minutes till 3:00. I was intending on
12 stopping at three o'clock and we could move on to
13 jurisdictional allocations. I think it best we stop at a
14 stopping point and reconvene at 3:00 and then move on to
15 that issue. With that then, we'll go off the record.

16 (Off the record.)

17 JUDGE JONES: Mr. Micheel, you may proceed.

18 MR. MICHEEL: Yes, your Honor. Office of the
19 Public Counsel would call Mr. Ted Robertson on the issue of
20 manufactured gas plant.

21 JUDGE JONES: Mr. Robertson, you still remain
22 under oath.

23 TED ROBERTSON testified as follows:

24 DIRECT EXAMINATION BY MR. MICHEEL:

25 Q. Mr. Robertson, do you have any corrections to

1 your manufactured gas plant testimony that you need to make,
2 sir?

3 A. I do have one correction to my Rebuttal
4 Testimony. I believe the exhibit number is 1014; is that
5 correct?

6 Q. Yes. Could you tell us the page and line and
7 let us know slowly what that correction is, sir?

8 A. On page 7, line 2, eliminate the words after
9 the "and." Eliminate "has no ownership interest in."

10 Q. Do you have any other corrections, sir?

11 A. That's all.

12 MR. MICHEEL: With that correction, your
13 Honor, I would tender Mr. Robertson for cross-examination on
14 this issue.

15 JUDGE JONES: Any objection?

16 Oh, we've already admitted this. Right?

17 MR. MICHEEL: Yes.

18 JUDGE JONES: No one has a problem with the
19 correction?

20 MR. FREY: Your Honor, just for purpose of
21 clarification, was that "has no ownership interest in"?

22 JUDGE JONES: Correct.

23 MR. FREY: Thank you.

24 JUDGE JONES: Do we have any cross-examination
25 from Staff?

1 MR. FREY: No, your Honor.

2 JUDGE JONES: Any cross-examination from
3 Aquila?

4 MR. COOPER: No, your Honor.

5 JUDGE JONES: I don't have any questions.

6 Okay. Moving right along to Jurisdictional
7 Allocations Odessa. Aquila, you may call your first
8 witness.

9 MR. BOUDREAU: Yes, thank you. Would like to
10 call -- recall I suppose, Mr. Denny Williams to the stand,
11 please.

12 JUDGE JONES: And, Mr. Williams, you remain
13 under oath.

14 THE WITNESS: Thank you.

15 MR. BOUDREAU: My understanding is that
16 Mr. Williams has previously been sworn and his testimony's
17 been offered and received into the record, so I don't have
18 any foundational questions.

19 I would at this point though defer to Staff
20 counsel who has one thing to bring to the attention of the
21 Bench, if that would be agreeable. And after that, I'll
22 just tender Mr. Williams for cross-examination on the issue
23 of jurisdictional allocations.

24 JUDGE JONES: That will be fine.

25 MR. FRANSON: Thank you, Mr. Boudreau.

1 Your Honor, I had brought up the situation of
2 Staff witness Phil Williams. And if it is all right with
3 the Commission, it is my understanding the other parties
4 have agreed that we will make him available on this issue
5 and any other issues where the parties may have questions
6 and any questions from the Commission.

7 JUDGE JONES: You're saying you will make him
8 available?

9 MR. FRANSON: Yes. For reasons that have been
10 stated previously, he is not available today.

11 JUDGE JONES: So you'll make him available
12 later on?

13 MR. FRANSON: Wednesday, yes, if that is all
14 right with you.

15 JUDGE JONES: That will be fine.

16 MR. FRANSON: Thank you, your Honor.

17 JUDGE JONES: Is there any cross-examination
18 from Missouri Department of Natural Resources of
19 Mr. Williams?

20 MS. WOODS: No, your Honor. Thank you.

21 JUDGE JONES: From the Federal Executive
22 Agencies?

23 MR. PAULSON: No your Honor. Thank you.

24 JUDGE JONES: And Public Counsel?

25 MR. MICHEEL: Not on this issue.

1 JUDGE JONES: Does Staff have questions?

2 MR. FREY: Just a very few, your Honor. Thank
3 you.

4 CROSS-EXAMINATIONS BY MR. FREY:

5 Q. Mr. Williams, the test year in this case is
6 the calendar year 2002, is it not?

7 A. That's correct.

8 Q. And the update period would be the nine months
9 ending September 30th, 2003?

10 A. We updated for known and measurable changes
11 through September 30th of '03.

12 Q. And at the outset, did Staff and Aquila pretty
13 much agree on the test year?

14 A. We did agree on the test year. We agreed that
15 there would be no true-up and we agreed that we would update
16 the known and measurable items through September 30th.

17 Q. Okay. But initially, as I recall, the Staff
18 had proposed June 30th for the update period; is that
19 correct?

20 A. That is correct.

21 Q. And it was Aquila who proposed September 30th.
22 Correct?

23 A. You know, I can't really recall whether it
24 was -- we initially proposed September 30th. I know it --
25 it was at least as late as September 30th that we proposed.

1 Q. Okay. In any event, Aquila was ultimately
2 satisfied, agreeable with the September 30th update period,
3 is that correct, ending September 30th?

4 A. We agreed, yes, with the September 30th as
5 being the appropriate date to update our known and
6 measurable items.

7 Q. And Aquila was opposed to the Staff's proposal
8 of a June 30th update period. Correct?

9 A. Yes. It's my belief that we should certainly
10 do everything we can to try to match the -- or normalize the
11 test year to the time when rates will go into effect. So
12 the later, the better as far as that philosophy goes.

13 Q. Okay. But in addition to that rationale,
14 isn't it also true that a primary reason Aquila requested a
15 more extended update period than the Staff is that the
16 company was concerned about the possibility it was going to
17 lose a major customer?

18 A. We were. We -- we had been hearing that there
19 was the likelihood of the loss of a major customer, an
20 airline.

21 Q. And is it fair to say you were hoping that if
22 Aquila, in fact, lost that customer, it would occur within
23 that update period?

24 A. We thought that it certainly would be -- if it
25 occurred, we thought it would be known and measurable by

1 September 30th, yes.

2 Q. And if that occurred, was it your expectation
3 the Staff would recognize the loss of that customer in
4 preparing its case; in other words, if you lost that
5 customer?

6 A. Yes. Staff had some concern that they
7 expressed that -- that typically a customer of that size you
8 may lose over time, they may scale back and that we might
9 not really know by September 30th the extent to which they
10 were going to leave the system, which was one reason why we
11 were interested in delaying the known and measurable period
12 as long as possible.

13 Q. Okay. And as things turned out, did Aquila
14 actually end up losing that customer?

15 A. No. That customer announced some time prior
16 to September 30th that they were going to remain -- that
17 they were not going to leave the Kansas City or the MPS
18 service territory.

19 Q. So the answer is no?

20 A. I've lost the question.

21 Q. The company retains that customer?

22 A. That customer is still -- is served by MPS,
23 yes.

24 MR. FREY: Okay. Thank you, Mr. Williams.

25 That's all I have, your Honor.

1 JUDGE JONES: Thank you.

2 QUESTIONS BY JUDGE JONES:

3 Q. Let's see. Well, looking at your testimony,
4 it seems like that facts surrounding it have changed. Is
5 that what you're saying now?

6 A. No. I -- if you're talking about that
7 particular customer --

8 Q. Yes.

9 A. -- no. The customer that --

10 Q. Well, I'm looking at City of Odessa.

11 A. The City of Odessa is different than the
12 airline that we were concerned about. The City of Odessa
13 gave us notice that they were going to leave the system.
14 They gave us notice by March of 2003. We -- they -- they
15 were required to give a year's notice. They have done that
16 and they will be off the system April 1st of 2004. So they
17 will definitely not be served by MPS at the time rates go
18 into effect.

19 JUDGE JONES: Okay. Thank you.

20 Is there any recross?

21 Seeing none, is there any redirect from
22 Aquila?

23 MR. BOUDREAU: I don't believe I have any.

24 Thank you, sir.

25 JUDGE JONES: Thank you. You may step down,

1 Mr. Williams.

2 On the same issue it says Aquila has a second
3 witness.

4 MR. BOUDREAU: Yes. I believe that's the
5 case. I'd like to call Company Witness Bev Agut to the
6 stand, please. Just give me a moment, please.

7 JUDGE JONES: In the meantime, Ms. Agut, will
8 you please raise your right hand.

9 MR. BOUDREAU: Thank you.

10 (Witness sworn.)

11 BEVERLEE AGUT testified as follows:

12 DIRECT EXAMINATION BY MR. BOUDREAU:

13 Q. Would you please state your name for the
14 record, please?

15 A. It's Beverlee Agut, B-e-v-e-r-l-e-e.

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

17 A. I'm employed by Aquila, Inc., as a senior
18 manager networks financial management.

19 Q. Are you the same Beverlee Agut that has caused
20 to be prepared -- or filed prepared Direct and Rebuttal
21 Testimony which have previously been marked as
22 identification as Exhibits 1017 and 1018 respectively?

23 A. I am.

24 Q. Do you have any corrections that you'd like to
25 make to your testimony at this time?

1 A. I have two minor corrections. In my Direct
2 Testimony, page 6, line 12 should read LAS, as in Sam.

3 Q. Page 6, line 12 --

4 A. Uh-huh.

5 Q. -- LAS? Where does that appear, please?

6 A. Instead of LAK, it should read LAS.

7 Q. Okay. Thank you.

8 A. And in my Rebuttal Testimony, page 2, line 2
9 the word "keeps" should be eliminated, deleted.

10 Q. Do you have any other corrections to make to
11 your testimony at this time?

12 A. I do not.

13 Q. All right. If I were to ask you the same
14 questions today, would your answers that appear in your
15 Direct and Rebuttal Testimony be substantially the same?

16 A. Yes, they would.

17 Q. And are the answers you've given true and
18 correct to the best of your information, knowledge and
19 belief?

20 A. Yes, they are.

21 MR. BOUDREAU: With that, I would offer into
22 the record Exhibits 1017, 1018 and tender Ms. Agut for
23 cross-examination.

24 JUDGE JONES: Exhibits 1017 and 1018 are
25 admitted into the record.

1 (Exhibit Nos. 1017 and 1018 were received into
2 evidence.)

3 MR. BOUDREAU: Thank you. Tender Ms. Agut for
4 cross-examination.

5 JUDGE JONES: Any questions from the City of
6 Kansas City, Missouri? Oh, they aren't present.

7 The Department of Natural Resources?

8 MS. WOODS: No, your Honor. Thank you.

9 JUDGE JONES: FDA?

10 MR. PAULSON: No, your Honor.

11 JUDGE JONES: Sedalia Industrial Energy Users'
12 Association?

13 MR. CONRAD: No, your Honor.

14 JUDGE JONES: The Office of Public Counsel?

15 MR. MICHEEL: Yes, indeed, your Honor.

16 JUDGE JONES: Go right ahead.

17 CROSS-EXAMINATION BY MR. MICHEEL:

18 Q. Ms. Agut, were you here during my
19 cross-examination of Mr. Williams?

20 A. I was.

21 Q. And did he indicate that you're the individual
22 I'm supposed to talk to about jurisdictional allocations?

23 A. He did.

24 Q. Did you thank him for that?

25 A. I certainly did.

1 Q. Could you tell me whether or not Aquila has
2 allocated any of the costs with respect to the manufactured
3 gas plant remediation to any of its nonregulated operations?

4 A. I believe it has not.

5 Q. Has it allocated any of those costs to any
6 other state jurisdictions other than Missouri?

7 A. The Missouri costs were direct charged to the
8 Missouri operations.

9 MR. MICHEEL: Thank you very much.

10 JUDGE JONES: Will there be cross-examination
11 from Staff?

12 MR. FREY: No, your Honor.

13 JUDGE JONES: Is there any redirect from
14 Aquila?

15 MR. BOUDREAU: None, thank you.

16 JUDGE JONES: Ms. Agut, you may step down.

17 Remaining under this issue, we'll move on to
18 Staff's witnesses.

19 MR. FREY: Thank you, your Honor. Staff calls
20 Alan Bax on the issue of jurisdictional allocation.

21 JUDGE JONES: Thank you.

22 (Witness sworn.)

23 ALAN BAX testified as follows:

24 DIRECT EXAMINATION BY MR. FREY:

25 Q. State your name for the record, please, sir.

1 A. Alan J. Bax.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. Employed by the Missouri Public Service
5 Commission as a utility engineering specialist three.

6 Q. And are you the same Alan J. Bax who prepared
7 and caused to be filed in this proceeding what have been
8 marked for purposes of identification I believe as Exhibits
9 1070 and 1071; is that correct? Do I have the right
10 numbers?

11 JUDGE JONES: That's correct.

12 MR. FREY: Thank you.

13 BY MR. FREY:

14 Q. Which have been marked as Exhibits 1070 and
15 1071, Alan Bax Direct and Alan Bax Surrebuttal Testimony,
16 respectively?

17 A. Yes.

18 Q. And if you were to be asked the same questions
19 as are contained in those documents, would your answers be
20 substantially the same today?

21 A. Yes.

22 Q. And are those answers true and accurate to the
23 best of your knowledge, information and belief?

24 A. Yes.

25 MR. FREY: With that, your Honor I would offer

1 Exhibits 1070 and 1071 into the record and would tender the
2 witness for cross-examination.

3 JUDGE JONES: Thank you. Exhibits 1070 and
4 1071 are admitted into the record.

5 (Exhibit Nos. 1070 and 1071 were received into
6 evidence.)

7 JUDGE JONES: Are there any questions from
8 Missouri Department of Natural Resources?

9 MS. WOODS: No, your Honor.

10 JUDGE JONES: Sedalia Industrial Energy Users'
11 Association?

12 MR. CONRAD: No, your Honor.

13 JUDGE JONES: Federal Executive Agencies?

14 MR. PAULSON: No, your Honor.

15 JUDGE JONES: Public Counsel?

16 MR. MICHEEL: No, your Honor.

17 JUDGE JONES: Any cross from Aquila?

18 MR. BOUDREAU: Yes, please. Just a few.

19 JUDGE JONES: Go right ahead.

20 MR. BOUDREAU: Thank you.

21 CROSS-EXAMINATION BY MR. BOUDREAU:

22 Q. I just have a few questions, Mr. Bax, and
23 they're related to the issue of the inclusion of the City of
24 Odessa as a wholesale customer of MPS for calculating the
25 demand factor.

1 A. Sure.

2 Q. The first question I have is, do you agree
3 that the amount of the adjustment that appears on the
4 reconciliation for MPS on this issue is about \$1.283
5 million, approximately?

6 A. I'm not familiar with the \$1.283 million.

7 Q. So you don't have an opinion or a view about
8 what the financial effect of your recommendation is?

9 A. I'm only aware of the Staff data request which
10 mentioned approximately up to one and a half million
11 dollars.

12 Q. Okay. But you'd agree with me a
13 reconciliation has been filed in this case and the
14 reconciliation will reflect the amount -- or the financial
15 impact of the amount of the Staff's proposed adjustment?

16 A. Well, according to the DR request, yes.

17 Q. Okay. Well, I'll move on with that.

18 Do you agree that the event -- and by "the
19 event," I mean the City of Odessa terminating its status as
20 a wholesale customer of Aquila -- will occur before the new
21 rates in this case go into effect?

22 A. If -- if indeed it is removed as a wholesale
23 customer, yes.

24 Q. You say "if" as if it's a question. In your
25 mind is it a question about whether or not the City of

1 Odessa will continue to be a wholesale customer of Aquila
2 beyond April of 2004?

3 A. It has not yet occurred and --

4 Q. Okay. Well, I understand that it has not yet
5 occurred. Is it your view that that is going to happen?

6 A. In all likelihood, yes.

7 Q. Well, let me ask you this. Is there any
8 circumstance of which you're aware that would cause you to
9 believe that that's not going to happen?

10 A. No.

11 Q. So would you agree with me, sir, that the fact
12 that the City of Odessa will no longer be a wholesale
13 customer of MPS is a known and measurable quantity?

14 A. A known and measurable quantity is one that
15 has been defined as standard set practice as actually having
16 occurred. And the City of Odessa was an MPS customer
17 throughout the test year and update period.

18 Q. Okay. Is it known that the City of Odessa
19 will no longer be a wholesale customer of Aquila after
20 April 1st of 2004? The reason I ask you, sir, is you use
21 the term yourself in your Surrebuttal Testimony. You use
22 the term "known and measurable" and I'm exploring here
23 whether, in fact, there's a debate about whether or not this
24 is known and measurable. I had assumed that all parties
25 were in agreement that this was a known and measurable

1 event. And that's what I'm asking you.

2 Let me direct your attention to page 2 of your
3 Surrebuttal Testimony, line 19. So I guess my question is,
4 is this event a known and measurable event?

5 A. I have -- I have mentioned that the -- you
6 should look at Staff Witness Eaves' testimony.

7 Q. Okay. Let me ask you, were you here when your
8 counsel was asking questions of Company Witness Denny
9 Williams just a minute ago about this particular issue,
10 about the City of Odessa?

11 A. Yes, I was.

12 Q. Okay. And do you recall that the question was
13 asked whether or not the City of Odessa would be a customer
14 of MPS after April 1? Do you recall that exchange?

15 A. Yes.

16 MR. FREY: Your Honor, I'm going to object to
17 that question because I think it's a mischaracterization of
18 the question. We were referring, I believe, to the
19 company's -- a large customer of the company that was
20 prospectively going to leave. I don't believe I mentioned
21 Odessa at all.

22 JUDGE JONES: In your examination of
23 Mr. Williams are you saying that you've asked generally if
24 there was a large customer that was going to leave?

25 MR. FREY: Correct. And I was not referring

1 to Odessa. And as I recall from Mr. Williams' responses, he
2 wasn't either.

3 JUDGE JONES: Mr. Boudreau, I believe they
4 were speaking of an airline or airport or something.

5 MR. FREY: That's correct, your Honor.

6 BY MR. BOUDREAU:

7 Q. Okay. Let me start over again.

8 Do you know whether the City of Odessa has
9 notified Aquila that it will no longer be a wholesale
10 customer of MPS at some time in the future?

11 A. That's the way I understand it.

12 Q. Okay. Do you have any knowledge about what
13 that date is?

14 A. As I understand it, it was that Odessa will no
15 longer be a customer as of April 2004.

16 Q. Do you have any reason to believe that that's
17 not the case?

18 A. No.

19 Q. And as I indicated earlier, there's been a
20 reconciliation filed in this case concerning the MPS
21 electric operations; isn't that correct? Do you know?

22 MR. BOUDREAU: Your Honor, may I approach the
23 witness?

24 JUDGE JONES: Yes, you may.

25 MR. BOUDREAU: Thank you.

1 BY MR. BOUDREAU:

2 Q. Mr. Bax, I've handed you a document to take a
3 look at. Have you had an opportunity to look that over?

4 A. Yes.

5 Q. Do you have any familiarity at all with that
6 document? Have you seen that document before?

7 A. No, I have not.

8 Q. Okay. So if I were to tell you that that were
9 a copy of the reconciliation that was filed in this case
10 that itemizes the revenue impacts, the various issues in
11 dispute, you wouldn't know whether that's the document or
12 not?

13 A. No, I would not.

14 Q. Okay. Let me approach the issue this way. My
15 understanding is that the company's position in this case is
16 that the fact that the City of Odessa has terminated its --
17 or will be terminating its status as a wholesale customer of
18 MPS is a known and measurable item which will occur prior to
19 the date that the new rates go into effect and that they
20 should not be included in calculating the demand factor. Is
21 that your understanding?

22 A. In reading the Rebuttal Testimony of Denny
23 Williams, yes.

24 Q. Okay. Let me try it for Staff. My
25 understanding is that Staff's position is that this is a

1 known and measurable item which will not occur either in the
2 test year or within the update period and should not be
3 included in the calculation of the demand factor. Is that a
4 fair statement?

5 A. The -- the elimination, if you will, that
6 Odessa will no longer be a customer in April 2004, which
7 was -- which is outside of the test year and update period
8 agreed to by the parties and ordered by the Commission in
9 this case and, thus, the demands were included in my --

10 Q. So the Staff's position is that the demand --
11 that the City of Odessa should be included in the
12 calculation of the demand factor because it happens outside
13 the -- I'm sorry, beyond the update period; is that correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 Now, in making this recommendation, have you
17 looked into how the Commission has handled this particular
18 topic in the past?

19 MR. FREY: I'm going to ask, your Honor, if I
20 could, for clarification as to what topic we're talking
21 about, jurisdictional allocations, known and measurable?
22 Maybe if Mr. Boudreau could clarify that.

23 JUDGE JONES: Can you clarify?

24 MR. BOUDREAU: I can.

25 BY MR. BOUDREAU:

1 Q. My understanding is that the issue here, the
2 difference between the company and the Staff, is that the
3 date upon which the City of Odessa will no longer be a
4 wholesale customer of MPS is as of April, which is after the
5 update period, but prior to the date the new rates will go
6 into effect and that's the difference in view of the parties
7 about whether or not this should be included. Is that your
8 understanding?

9 A. Yes.

10 Q. Okay. So my question to you is, in terms of
11 determining whether a known and measurable item that happens
12 after the test year or the updated test year but before the
13 rates go into effect, have you looked into how the
14 Commission has dealt with that issue in the past in making
15 your recommendation?

16 A. Yes.

17 Q. Okay. And what did you determine by looking
18 at how the Commission has previously decided this issue?
19 Did you decide that the -- let me put it this way. Has the
20 Commission previously adopted your view of this topic, the
21 Staff's view, or the company's view of this topic?

22 A. I might direct you to the Rebuttal Testimony
23 of Denny Eaves as I have -- as I did in my Surrebuttal
24 Testimony to page 5.

25 Q. Well, I'm asking you whether you looked into

1 this topic. I know you're referring me to another Staff
2 witness, but I'm asking whether -- I'm asking you. You're
3 the witness on this issue. And so I'm asking you whether
4 you looked into how the Commission has previously handled
5 this particular sort of timing issue in the past.

6 A. It has -- it has been standard -- it's my
7 understanding it's been standard Staff practice.

8 Q. What is the basis of your understanding? Did
9 you look at particular Commission decisions? How did you
10 form your understanding?

11 A. In discussions with Staff.

12 Q. Did you personally, you, yourself, Mr. Bax,
13 take a look at any of the -- any prior Commission orders
14 dealing with this issue? And by "this issue" I mean the
15 timing issue between knowing a fact and when it occurs
16 vis-a-vis the end of the test year and the time the rates go
17 in effect.

18 A. No, I did not.

19 Q. Backing up a little bit, am I to take it then
20 that your understanding about what the Commission's past
21 policy has been is based on some internal discussions with
22 other members of the Staff?

23 A. Yes.

24 Q. And it is in -- if I misstate it, correct me.
25 Is it my understanding then that you're saying that it's

1 your belief that the Commission has previously decided this
2 sort of timing issue with respect to known and measurable
3 changes consistent with your recommendation in this case?

4 A. Changes?

5 Q. Let me restate it. Is it your understanding
6 then -- is it your belief that the Commission has previously
7 decided this issue consistent with your recommendation?

8 A. Yes.

9 Q. Okay. If that turned out not to be the case,
10 that, in fact, previous Commission decisions have supported
11 the company's approach, do you believe that's something the
12 Commission should take into consideration?

13 A. It's my understanding that it's been
14 long-standing Commission practice that known and measurable
15 items occur -- that actually occur within the test year and
16 update period are the ones -- are considered the ones that
17 do not -- will not match up revenues with expenses in rate
18 base.

19 Q. Okay. Let me ask you this. Assume with me
20 that the Commission has decided this type of issue on a
21 number of prior occasions. And further assume with me that
22 the approach the Commission has adopted is consistent with
23 the company's approach and not with the Staff's approach.
24 Would that cause you -- well, let me ask you this. Will you
25 accept those assumptions for the moment?

1 A. That -- would you please repeat them?

2 Q. The assumptions are that the Commission has
3 dealt with this issue before in terms of the timing of the
4 event, the end of the test -- the end of -- you know, being
5 after the end of the test year but prior to the time the
6 rates go into effect. Assume the Commission has dealt with
7 that topic.

8 And assume further with me that the
9 Commission, in deciding that issue, has taken a position
10 that is consistent with the company's approach and not with
11 the Staff's recommended approach in this case. Will you
12 accept those assumptions for me?

13 A. Okay.

14 Q. If that were the case, would that cause you to
15 change your views on the topic with respect to the Odessa
16 issue in this case?

17 A. It's a hypothetical situation. I -- I'd have
18 to look -- I'd have to have all factors.

19 MR. BOUDREAU: Okay. May I approach the
20 witness, please?

21 JUDGE JONES: Yes, you may.

22 BY MR. BOUDREAU:

23 Q. Mr. Bax, I'm going to hand you a copy of a
24 Report and Order appearing -- and I'll represent to you this
25 appears in the Commission's reports. This is a Citizens

1 Electric Corporation case, 1981 vintage. This is the entire
2 decision.

3 I'm going to ask you to take a look, in
4 particular, at a discussion of the issue of payroll that
5 appears at the beginning of page 456 and there's a second
6 paragraph that overlaps onto 457. You're welcome to look at
7 any part or the entire decision, if you please, but that's
8 the portion I'd like to ask you about. Would you read that
9 section, please?

10 MR. MICHEEL: Could I get the specific cite,
11 Mr. Boudreau, to the Commission report?

12 MR. BOUDREAU: In a moment.

13 BY MR. BOUDREAU:

14 Q. Have you had a chance to review that section,
15 sir?

16 A. Yes.

17 Q. For the record, the case is Citizens Electric
18 Corporation and it's Case No. ER-81-97-- or excuse me, 79.
19 And the official citation is 24 Missouri PSC, new series,
20 commencing on page 450.

21 MR. MICHEEL: Thank you.

22 BY MR. BOUDREAU:

23 Q. Now, I just asked you to read a section out of
24 that Report and Order in that case. Did you have a chance
25 to do that, sir?

1 A. Yes.

2 Q. What was the general issue in that case?

3 A. An issue of payroll.

4 Q. Okay. And what were the circumstances under
5 which that issue was postured? What is your understanding
6 after reading that excerpt? What was the issue in that
7 case?

8 A. The -- the company seeking a in-- seeking an
9 increase in payroll.

10 Q. Okay. And what was the circumstance under
11 which they were seeking that?

12 I'll try and cut to the chase. Was it
13 postured in a circumstance similar to what we've got in this
14 case; that is, a payroll -- or yeah, payroll increase that
15 was known that was going to occur outside the test year but
16 before the rates went into effect? Is that --

17 A. That's correct.

18 Q. Okay.

19 A. I'll agree with that.

20 Q. And the company was seeking recognition of
21 that expense, that increased payroll expense, as a known and
22 measurable item; is that correct?

23 A. I believe that said that.

24 Q. Okay. And it was being opposed by Staff, I
25 believe, on the grounds that it happened outside the test

1 year; is that correct?

2 A. That it violated a matching concept, yes.

3 Q. Which I understand is the reason that you're
4 recommending -- making the recommendation you are, that it
5 violates the matching concept. Right?

6 A. Yes.

7 Q. Okay. How did the Commission decide the issue
8 in that case?

9 A. According to that document, the Commission
10 opted with the company.

11 MR. BOUDREAU: Okay. I'm going to -- I'd like
12 to approach the witness one more time, but for the record,
13 I'm going to ask the witness to take a look at a Report and
14 Order again appearing in the Commission's official reports.
15 It's St. Louis County Water Company, it's Case No. WR-88-5.
16 The citation is 29 Missouri PSC, new series, commencing on
17 page 425.

18 May I approach the witness, please?

19 JUDGE JONES: Yes, you may.

20 MR. BOUDREAU: Just so it's broadcasting maybe
21 a little bit more effectively.

22 BY MR. BOUDREAU:

23 Q. I'm going to ask you to review a document.
24 And, again, it's a copy of a Report and Order previously
25 issued by the Commission dated 1988. I'm going to ask you

1 to take a look at a short excerpt in that case appearing at
2 pages 434 and 435 dealing with the issue of postage expense.
3 Have you had a chance to review that, sir?

4 A. Yes. The section on postage.

5 Q. Yes. On postage expense. And I'll just try
6 to cut to the chase again. Is it fair to say that in that
7 case the issue was an increase in postage expense that was
8 going to go into effect after the test year but prior to the
9 date the rates were going to go into effect, and the company
10 was proposing that that increase in postage expense be
11 recognized and Staff was taking the position that it was
12 outside the test year and should not be recognized. Is that
13 a fair summary of the issue?

14 A. That it -- that it would create a mismatch
15 of --

16 Q. Again, basically the same issue, a mismatch of
17 expense and revenue; is that correct?

18 A. Yes.

19 Q. How did the Commission decide that issue in
20 the case?

21 A. The Commission determined that the postage
22 increase should be considered.

23 Q. Okay. Thank you.

24 Now, let me ask you this. After reviewing the
25 resolution of those two issues in those two previous rate

1 cases, does that cause you to reconsider your recommendation
2 in this case?

3 A. No.

4 Q. Okay. It is still your opinion that there's a
5 mismatch of expenses to revenues?

6 A. Yes. Now, it is still my determination that
7 it -- that it happened outside the test year and that there
8 is a mismatch of revenue expenses to the rate base.

9 MR. BOUDREAU: Okay. I don't believe I have
10 any more questions for this witness. Thank you.

11 JUDGE JONES: Thank you.

12 QUESTIONS BY JUDGE JONES:

13 Q. Mr. Bax, I have just a couple of questions.
14 I'm just trying to get a grip on what you all are talking
15 about.

16 I understand the issue that there's a question
17 of whether or not the City of Odessa should be considered in
18 this rate case given the fact that the company won't be
19 doing business with them after April of 2004. What I don't
20 understand is, one, how much money is involved here and
21 where does it go, rate base or cost or expense, what?

22 A. Your Honor, I made a calculation of a -- of a
23 jurisdictional allocation factor and provided it to Staff
24 Witness Phil Williams who could better answer that question.

25 JUDGE JONES: Okay. Thanks, Mr. Bax.

1 Is there any other recross now that I've asked
2 the question?

3 Seeing none, is there any redirect from Staff?

4 MR. FREY: Yes, your Honor. Just a couple of
5 questions.

6 REDIRECT EXAMINATION BY MR. FREY:

7 Q. Mr. Bax, Mr. Boudreau asked you whether you
8 considered it likely that Odessa would not be lost as a
9 wholesale customer of Aquila. Do you recall that question?

10 A. Yes.

11 Q. And I believe you answered that you thought it
12 was likely; is that correct?

13 A. Yes.

14 Q. Can you conceive of any circumstances under
15 which Aquila might actually end up still serving Odessa as a
16 wholesale customer?

17 A. Odessa's supplier as of April may -- may
18 very -- it -- it would be possible that they would have --
19 that the supplier may not --

20 MR. BOUDREAU: Well, your Honor, I think I'm
21 going to object. I think this is just calling for pure
22 speculation on the part of the witness.

23 JUDGE JONES: In all fairness, many of the
24 questions you asked were very speculative. He's just
25 wanting to know if it's certain. I think that goes

1 specifically to the issue of whether it's likely Odessa will
2 be a customer of Aquila after April 1st, 2004.

3 Go ahead with your answer, Mr. Bax.

4 THE WITNESS: Thank you, your Honor.

5 It could be that the supplier that Odessa has
6 chosen is unable to meet its, if you will, obligations, in
7 which case Odessa may very well approach Aquila again and --

8 BY MR. FREY:

9 Q. Thank you.

10 Mr. Boudreau also referred on numerous
11 occasions to the fact that this event is occurring after the
12 close of the update period. Do you recall that?

13 A. Yes.

14 Q. And just for the record, could you point out
15 how far after the close of the update period we're talking
16 about?

17 A. Yes. It -- the update period was through
18 September 30th, 2003 and we're talking April 1, 2004. Six
19 months.

20 Q. Thank you.

21 So during this half of the -- half a year, is
22 it not possible then that the circumstances could change
23 considerably and that various factors would gain relevancy
24 and should be considered before a decision would be made to
25 include -- or I should say exclude Odessa from the Staff's

1 case?

2 A. Certainly. That -- that would be one factor.
3 We'd have -- the cus-- we'd have customer growth we'd need
4 to consider, for example, or if indeed Odessa is lost as a
5 wholesale customer, the additional capacity that would be
6 available for off-system sales.

7 Q. And as far as you know, those items have not
8 been considered in this case; is that correct?

9 A. That's correct.

10 Q. Mr. Boudreau also showed you a couple of cases
11 where apparently the Commission made a decision contrary to
12 the Staff's position with regard to this timing issue. Do
13 you recall that?

14 A. Yes.

15 Q. I would just ask you, to your knowledge, has
16 the Staff ever taken a position other than the position that
17 the Staff is taking in this case with respect to Odessa?

18 A. Not to my knowledge.

19 Q. And the Staff did not take that position in
20 those cases. Correct?

21 A. Correct.

22 Q. So that the position you're representing,
23 again, is the position that Staff routinely takes in a
24 case -- in a situation such as this?

25 A. Yes.

1 MR. FREY: I don't believe I have anything
2 further, your Honor. Thank you.

3 JUDGE JONES: Okay. Thank you. Mr. Bax, you
4 may step down.

5 THE WITNESS: Thank you, your Honor.

6 JUDGE JONES: Oh, I thought I heard
7 somebody -- oh, it looks like we finished what we intended
8 to do for today. However, we still have another hour left
9 and given the history of this case, it seems as though we
10 might at least ask if the Company Witness Matthew Daunis is
11 even here today. Someone from the company, is Mr. Daunis
12 here today?

13 MR. SWEARENGEN: Judge, I think, if I may
14 suggest, we talked about -- my understanding was once we
15 went through the issues that were scheduled for the day,
16 then we would go over to page 3 of the document, the list of
17 issues and go to the miscellaneous issues.

18 JUDGE JONES: Is that everyone's
19 understanding?

20 MR. MICHEEL: That was my understanding also,
21 your Honor. And I am prepared for the next issue,
22 Accounting Record Keeping.

23 MR. PAULSON: Yes. That's FEA's understanding
24 as well.

25 MS. WOODS: Yes, your Honor that's Missouri

1 Department of Natural Resources understanding.

2 MR. CONRAD: Your Honor, we concur.

3 JUDGE JONES: All right.

4 MR. SWEARENGEN: If everyone's agreeing, maybe
5 I need to re-think my position on that.

6 JUDGE JONES: I suppose we should take up
7 Accounting and Record Keeping of Beverly Agut. Why don't we
8 take a quick five-minute break and call it an hour after
9 that.

10 (A recess was taken.)

11 JUDGE JONES: Let's go ahead and get started.

12 MR. SWEARENGEN: I guess if we're going to get
13 started, that would be my witness. Living up to my
14 reputation of being the oldest lawyer in the hearing room
15 and the slowest.

16 BEVERLEE AGUT testified as follows:

17 DIRECT EXAMINATION BY MR. SWEARENGEN:

18 Q. Ms. Agut, I think you've been on the stand
19 before and if I understand correctly, your testimony has
20 been admitted into evidence. What is the issue as you
21 understand it this afternoon at this time? Is it Accounting
22 Record Keeping?

23 A. Yes.

24 Q. And is that testimony found in your
25 Exhibit 1018?

1 A. Yes, it is.

2 Q. That's your Rebuttal Testimony?

3 MR. SWEARENGEN: Thank you very much.

4 JUDGE JONES: Is there any cross-examination
5 from Missouri Department of Natural Resources?

6 MS. WOODS: No, your Honor.

7 JUDGE JONES: Sedalia Energy Industrial Users'
8 Association?

9 MR. CONRAD: No sir.

10 JUDGE JONES: And Public Counsel?

11 MR. MICHEEL: Yes, your Honor.

12 JUDGE JONES: Go right ahead.

13 MR. MICHEEL: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. MICHEEL:

15 Q. Ms. Agut, at page 4, line 5 in your Rebuttal
16 Testimony -- and all my questions are going to be related to
17 your Rebuttal Testimony because that's where this issue is
18 at. Could you please define for me the term you use there,
19 "batch processing"?

20 A. The term there "batch transaction processing"
21 deals with the details being held in a subsidiary system,
22 and the batch being they are then summarized and then posted
23 to -- in this case the general ledger.

24 Q. When you say "subsidiary system," are you
25 talking about a subsidiary computer system or what do you

1 mean by that?

2 A. A subsidiary accounting system, subsidiary
3 books and records.

4 Q. Would you agree with me that batch processing
5 is just a way that computerized processing of accounting
6 data is updated to the financial books of record?

7 A. Yes, it can be that meaning.

8 Q. And is that how Aquila utilizes it?

9 A. As just as in an update to the books and
10 records? We run batch transactions to post a variety of
11 accounting information in a summarized form.

12 Q. Are you familiar with the term "real-time
13 processing"?

14 A. Yes.

15 Q. And what does that mean?

16 A. It means the transaction is processed and
17 posted immediately.

18 Q. And is it correct that Aquila does not use
19 real-time processing?

20 A. Yes. I believe that is true.

21 Q. Is it correct that batch processing does not
22 allow anyone examining a payroll posting to obtain detailed
23 information?

24 A. That is correct.

25 Q. Doesn't that also prevent auditors from

1 reviewing detail information on that specific document?

2 A. No, it does not.

3 Q. And why doesn't it do that?

4 A. An auditor can certainly request the detail of
5 the transaction.

6 Q. And if an auditor requests the detail of the
7 transaction, would that be a lot of boxes and a lot of
8 information?

9 A. On a payroll transaction -- one payroll
10 transaction, probably not.

11 Q. From your batch transaction processing, can an
12 auditor determine what specific transaction it is in the
13 batch by just looking at it?

14 A. The auditor can tell whether it's an accounts
15 payable transaction, payroll transaction, an entry made by
16 the general accounting department, an inventory transaction,
17 cash transaction, a revenue transaction, etc.

18 Q. But they can't find out any of the specifics
19 about a transaction; isn't that correct? Other than it's a
20 general accounting transaction or one of the other
21 transactions; isn't that correct?

22 A. There are certain specifics that can be found.
23 I'm -- could you rephrase that? I'm not sure what you're
24 asking.

25 Q. Well, if I were to look at the batch like a

1 payroll transaction, I wouldn't know just looking at it what
2 that specific payroll transaction was for; isn't that
3 correct?

4 A. You would know probably the date that the
5 transaction was posted. And from that, you would then know
6 the period of time covered by the payroll. You would know
7 what department the payroll transaction originated in; in
8 other words, that would give you a group of the people that
9 are encompassed in that department. You would be able to
10 tell whether it was regular time, overtime, holiday,
11 vacation, sick.

12 Q. Would you agree with me that in some
13 computerized accounting systems it's possible that the
14 generalizing of economic data collected is posted directly
15 to the general ledger rather than utilizing the subsidiary
16 ledgers as you've discussed earlier?

17 A. I have seen that in small corporations and
18 small companies.

19 Q. Would you agree with me at page 6, line 7 of
20 your Rebuttal Testimony you state, Since our general ledger
21 posts in a batch mode, the invoice-specific information is
22 not contained in the general ledger; is that correct?

23 A. It is contained in our general ledger module,
24 but it is not contained in the general ledger table, that is
25 correct.

1 Q. And isn't it true then that the active batch
2 processing could, if so designed, actually post the
3 accounting data directly to the general ledger; isn't that
4 correct?

5 A. That is correct.

6 Q. And for whatever reason, Aquila chose not to
7 design its general ledger in that way; isn't that correct?

8 A. I would say that is correct.

9 Q. And that design makes it harder for the
10 auditor to understand the transactions; isn't that correct?

11 A. If that is the only place he is looking, or
12 she.

13 Q. Is it correct in the previous MPS rate case
14 you provided Mr. Robertson with documents that you purported
15 to be a detailed general ledger?

16 A. Yes, I did.

17 Q. And is it correct that those documents were
18 about 28 large copy boxes?

19 A. I believe that is approximately how many boxes
20 there were of paper.

21 Q. Is it correct that your accounting system has
22 the capability to combine the MPS generation and MPS
23 distribution accounting data provided in those two ledgers
24 into one ledger document?

25 A. The report can be written to combine those

1 two, that's correct.

2 Q. And Aquila has just chosen not to do that;
3 isn't that correct?

4 A. Aquila can do that on request.

5 Q. So Aquila would be willing to do that if we
6 requested that; is that correct?

7 A. Yes, is it would.

8 Q. Beginning on page 7, line 19 you discuss the
9 new financial accounting screen that Aquila's made available
10 to auditors to review detail accounting data in its
11 PeopleSoft system; isn't that correct?

12 A. That's correct.

13 Q. Isn't it also correct that Public Counsel
14 auditors were not able to view that information in that
15 computer screen from its offices here in Jefferson City?

16 A. That's correct. They could only review it
17 from our Raytown facilities.

18 Q. So making that screen available when a party
19 doesn't have a budget to come to Raytown and do a bunch of
20 out-of-city travel really is not a very valuable tool to
21 that party; isn't that correct?

22 A. I believe there was an auditor from the Office
23 of the Public Counsel's office that lived in Lee's Summit,
24 Missouri that did have access to that system.

25 Q. And were you here today when that particular

1 auditor testified?

2 A. At the very end.

3 Q. And did you hear my questions that his audit
4 was a limited scope; is that correct?

5 A. As I recall, he was, yes, looking at only
6 corporate overheads.

7 Q. And he's an outside auditor; isn't that
8 correct?

9 A. He is.

10 Q. And so we'd probably have to pay him for his
11 services, don't you think?

12 A. Well, I hope they pay me for my services, but
13 yes, you would pay him for his services.

14 Q. So that doesn't help any of our folks that are
15 stationed here in Jefferson City; isn't that correct?

16 A. That's correct.

17 Q. And isn't it correct that there could be
18 capabilities made with the computer that the screen could be
19 accessed here in Jefferson City?

20 A. We would have to -- to look into the
21 feasibility of that for security reasons, as stated in my
22 testimony.

23 Q. You're aware that the Office of the Public
24 Counsel by law cannot divulge any of your company's secrets;
25 isn't that correct?

1 A. I am. And those were not the security
2 problems I was addressing.

3 Q. And those security problems you're addressing
4 are with computers; is that correct?

5 A. It is.

6 Q. And is it your belief that the State computer
7 system is in some way insecure?

8 A. I would not have any knowledge of that. I
9 would suggest the two IT groups meet with each other and
10 discuss the protocol between the two.

11 Q. Is your IT group prepared to do that?

12 A. Yes, they are.

13 Q. Is your IT group prepared to allow the Office
14 of Public Counsel access to that computer screen here in
15 Jefferson City?

16 A. If that access could be worked out and it
17 could be secured, certainly.

18 Q. Do you have any reason to believe that that
19 access couldn't be secured?

20 A. I have no knowledge one way or the other.

21 Q. So you don't know whether those access issues
22 are insurmountable or not; isn't that correct?

23 A. I -- yes, I do not know.

24 Q. Do you think that the State of Missouri also
25 has security with respect to their computer systems?

1 A. Being a reasonable person, I would most
2 certainly hope they would.

3 Q. On page 8 of your testimony, at line 9 you
4 indicate that it's against company policy to allow access to
5 company systems from non-Aquila computers; is that correct?

6 A. That is correct.

7 Q. Does that policy effectively prevent the
8 Office of Public Counsel from auditing the company via that
9 computer screen here in Jefferson City?

10 A. Unless our company policy was changed, yes.

11 Q. Is it possible to change company policy?

12 A. That would -- that is not one -- a question I
13 could answer.

14 Q. So you don't know if you can change your
15 company policy at Aquila?

16 MR. SWEARENGEN: Objection. She said it was a
17 question she couldn't answer.

18 JUDGE JONES: Mr. Micheel?

19 MR. MICHEEL: That was a different question.

20 Let me try it this way.

21 BY MR. MICHEEL:

22 Q. How long have you been with the company,
23 Ms. Agut?

24 A. Be 28 years Wednesday.

25 Q. Have any policies ever changed in the company

1 over your 28 years?

2 A. Yes.

3 Q. So the company can change policies; isn't that
4 correct?

5 A. Yes.

6 Q. Do you think it would be a good policy for the
7 company to allow the Office of Public Counsel access to the
8 PeopleSoft computer screen that would better allow the
9 Office of Public Counsel to carry out its statutory duty to
10 represent ratepayers before the Missouri Public Service
11 Commission?

12 A. As I previously stated, that access was
13 granted in our Raytown facilities.

14 Q. That wasn't my question. My question was here
15 in Jefferson City.

16 A. You did not say Jefferson City. But if you
17 mean in Jefferson City, again, we would have to look into
18 the feasibility of granting that access, but I would think
19 if the details could be worked out and if our security could
20 be assured -- security to our data, we're trying to secure
21 it from hackers, we're trying to secure the system from
22 viruses. And if that could be worked out, I don't see any
23 problem with that.

24 Q. Is it correct that the company's current
25 accounting system also maintains economic and financial data

1 with respect to the company's nonregulated operations?

2 A. Yes, it does.

3 Q. And is it correct that that's even the
4 nonregulated operations that have recently been jettisoned
5 by the company?

6 A. Not all of them.

7 Q. Which ones were not included?

8 A. The operations in Australia, New Zealand, the
9 operations in Canada that are soon to be sold. Our current
10 operations that we have with Everest, they have their own
11 system. I believe that's it.

12 Q. So for the merchant trading, that system was
13 used; is that correct?

14 A. Yes. Our general ledger system and financial
15 accounting system was used.

16 Q. For the pipelines that you own, your general
17 ledger system was used; isn't that correct?

18 A. Yes, it is.

19 Q. For the storage assets that you'd previously
20 owned that are unregulated, the system was used; isn't that
21 correct?

22 A. Most of them -- most of the systems were used.

23 Q. And with exception of your -- with the
24 exception of your international -- former international
25 operations and Everest Communications, all other operations,

1 regulated or nonregulated, were functioning under this
2 financial accounting system; isn't that correct?

3 A. Yes. That would be correct.

4 Q. On page 9, line 19 you discuss -- or line 13,
5 excuse me, you discuss the allocation process; is that
6 correct?

7 A. Yes, I do.

8 Q. Would you agree with me that the major reason
9 that there's an allocation process utilized by the company
10 is due to the fact that regulators do not want costs
11 associated with the company's nonregulated operations, such
12 as the merchant trading business, to be passed on or
13 assigned to the regulated operations?

14 A. That is one of the reasons, yes.

15 Q. And that indeed was one of the reasons why
16 this computer system was designed, isn't that correct, to
17 separate out those costs?

18 A. I would not agree with that.

19 Q. So that was not one of the purposes of the
20 computer system. Is that your testimony?

21 A. That is not the main purpose.

22 Q. Has absolutely nothing to do with the
23 nonregulated operations previously of Aquila?

24 A. The nonregulated operations as well as all of
25 our utility operations are on the same system.

1 Q. Let me ask you this. Prior to the demise,
2 shall we say, of the merchant trading business, was that
3 business a bigger operation in terms of revenue than the
4 regulated operations?

5 A. At one time, yes, it was.

6 Q. So one would think that that would have more
7 transactions on the system; isn't that correct?

8 A. I don't think size has anything to do with the
9 number of transactions, so no.

10 Q. So size doesn't matter when it comes to
11 transactions on the system. Is that your testimony?

12 A. That would be correct.

13 Q. Okay. Is it correct that that system was used
14 to allocate the costs or to capture costs that were going to
15 be allocated between reg and nonreg?

16 A. That is correct.

17 Q. And that was to be the primary method that the
18 company used, isn't that correct, to allocate those costs --
19 to capture and allocate those costs?

20 A. An accounting system? Yes.

21 MR. MICHEEL: Thank you very much for your
22 time.

23 JUDGE JONES: Will there be any cross from
24 Staff?

25 MR. DOTTHEIM: No cross.

1 JUDGE JONES: Redirect from Aquila?

2 MR. SWEARENGEN: No, I don't think so. Thank
3 you, Judge.

4 JUDGE JONES: Ms. Agut, you may step down.

5 MR. MICHEEL: We would call Mr. Robertson,
6 your Honor.

7 JUDGE JONES: Thank you, Mr. Robertson. You
8 remain under oath.

9 MR. MICHEEL: And if I may, your Honor, I'll
10 just tender him from my seat, if that's all right.

11 JUDGE JONES: That will be fine. Will there
12 be any cross, I'm reluctant, from Missouri Department of
13 Natural Resources?

14 MS. WOODS: No, thank you, your Honor.

15 JUDGE JONES: From the Federal Executive
16 Agencies?

17 MR. PAULSON: No, thank you, your Honor.

18 JUDGE JONES: Staff of the Commission?

19 MR. DOTTHEIM: No questions.

20 JUDGE JONES: And from Aquila?

21 MR. SWEARENGEN: Just a few, your Honor.

22 JUDGE JONES: Go right ahead.

23 TED ROBERTSON testified as follows:

24 CROSS-EXAMINATION BY MR. SWEARENGEN:

25 Q. Mr. Robertson, do you have page -- excuse me,

1 do you have your Surrebuttal Testimony with you there?

2 A. I do.

3 Q. Turn to page 2, if you would. I want to make
4 sure I understand what the issue here is on Accounting
5 Record Keeping and Reporting. And there on page 2 of my
6 copy of your testimony it says, What is the issue?

7 And then your answer, the first sentence says,
8 This issue concerns Aquila, Inc.'s apparent inability to
9 produce a simple general accounting ledger of sufficient
10 detail that will allow Missouri regulatory auditors, with a
11 minimum of effort, to identify and verify the existence,
12 accuracy and validity of the costs the company alleges to
13 have incurred during any specific accounting period.

14 That's your testimony?

15 A. Yes.

16 Q. Okay. And that's still your testimony?

17 A. It is.

18 Q. And then if you would turn, please, to page 16
19 of your testimony.

20 MR. MICHEEL: Are you still in his
21 Surrebuttal, sir?

22 MR. SWEARENGEN: Yes.

23 BY MR. SWEARENGEN:

24 Q. There is the question on line 17, Does this
25 issue have a rate impact in the instant case? And you say,

1 No.

2 Is that correct?

3 A. That's correct also.

4 Q. And that's still your testimony?

5 A. That's correct.

6 Q. Then if you would turn to the top of page 17
7 of your Surrebuttal Testimony, lines 3 and 4, you indicate,
8 We want to continue to work with the company to resolve the
9 issue, if at all possible.

10 Is that your testimony?

11 A. It is.

12 Q. And does that continue to be your testimony?

13 A. Yes.

14 Q. Then also on page 17 you go on to say there
15 are two other recommendations that you're making. The first
16 is that the Commission order the company to develop and
17 maintain a general ledger for costs associated with its
18 Missouri regulated utilities of at least sufficient detail
19 as that produced prior to its implementation of the
20 PeopleSoft accounting systems; is that correct?

21 A. That's correct.

22 Q. And that's still your testimony?

23 A. It is.

24 Q. And then as an alternative recommendation, you
25 suggest that the Commission initiate a docketed case to

1 investigate Aquila's investment and operation of its current
2 accounting and other related operating systems; is that
3 correct?

4 A. That's correct also.

5 Q. And that's still your testimony?

6 A. It is.

7 Q. Going back to your first statement that I
8 referred you to on page 17, your statement that you want to
9 continue to work with the company to resolve this issue if
10 at all possible, if the company would agree with you that at
11 the conclusion of this case, it would sit down and attempt
12 to resolve the issue in an informal manner and establish a
13 time frame to do this, let's say two or three months, and
14 that at the end of that period of time it had not been
15 resolved to your satisfaction the Public Counsel could ask
16 the Commission to open a docket to investigate this matter,
17 would that satisfy your interest in this proceeding at this
18 point in time?

19 A. You know, I really can't commit to that
20 because I don't have the authority at this time. And the
21 reason I state that is there was a prehearing conference for
22 this case. And during that prehearing conference we had
23 plenty of time to talk to the company up until the beginning
24 of this hearing and even during this hearing about something
25 like that happening.

1 We haven't met with the company on a formal
2 basis to discuss what that would entail, what would exist
3 from it and -- and the Public Counsel himself has not been
4 involved in it. So I don't have the authority to make that
5 decision.

6 Q. And I appreciate that, that you may not have
7 the authority to make that decision. But what I was trying
8 to learn from you, from your own viewpoint, would that be an
9 appropriate way to resolve this? And would you recommend
10 that course of action to Mr. Coffman or Mr. Micheel, who I
11 assume would have the authority to enter into that type of
12 an arrangement? What I'm trying to find out from you is do
13 you view that as a workable solution to this problem?

14 A. Let me couch it this way. As far as I'm
15 concerned, only the companies knowing how their accounting
16 system and associated auxiliary systems operate. I think
17 they've got all the information that it takes to try to
18 determine whether they can come together with us and the
19 parties and create an accounting detailed general ledger
20 that we think is a -- is at least as detailed as was prior
21 to the implementation of this new accounting system. They
22 have that information.

23 We certainly would be willing to work with
24 them to try to resolve the issue. We've tried in the past
25 and we've made some progress, but we really haven't gotten

1 to where we should be -- or where we were before the system
2 was actually implemented, so --

3 Q. Now, you indicated you tried in the past and
4 you have made some progress. And can you expand on that a
5 little bit by what you mean you have made some progress?

6 A. Sure. As we've stated in the testimony, both
7 I have and Ms. Agut has also, in the company's last rate
8 case -- electric rate case for MPS we requested a detailed
9 general ledger similar to the one that existed prior to the
10 PeopleSoft software being implemented.

11 They weren't able to produce that. It came up
12 with a trial balance which they called their ledger, which
13 is not a ledger. What it is is -- anybody that doesn't
14 really know what a general ledger is, it's really just a
15 balance sheet and income statement accounts. It's just with
16 all the detailed entries in it.

17 They gave us a trial balance, which is all the
18 balance sheet and income statement accounts but just all the
19 numbers summed together for that period that we were looking
20 at, so you didn't see what the detail was behind it. They
21 provided that, we had problems with it, we talked with the
22 company.

23 As part of the agreement of the last case, the
24 company agreed to produce some different reports, which
25 essentially were just an expansion of that trial balance in

1 that they expanded -- it was still a trial balance, but they
2 expanded it out by month instead of just a one-year period
3 and then they broke the cost down by what they called
4 resource codes.

5 Now, the resource codes are just generalized
6 descriptions of the type of costs that are involved.
7 They're not the actual detailed entries or the source that
8 describe the source documents that led to the costs in the
9 first place. And that's where we're at right now.

10 Q. Let me ask you this question. Would you agree
11 that the Commission Staff auditors in this case have been
12 able to complete their audit of the books and records of
13 Aquila at least adequately so that they could file testimony
14 and evidence in this proceeding concerning costs of service
15 and revenue requirement?

16 A. I would also have to couch that answer in that
17 Staff goes about an audit -- and I'm not sure if you know
18 what they do, but they go about an audit in a different way.

19 They use the financial accounting system, but
20 Staff will generally build their accounting schedules from
21 the ground up. And by that I mean they'll go in -- they
22 won't necessarily take the ledger documents and sit there
23 and just glean through those for this cause that they need.
24 They will use them, but they're not just -- they don't just
25 stay there.

1 For example, they'll -- take payroll. They'll
2 go out and get a listing of all the payroll employees that
3 are employed, what their pay rates are, what their job
4 positions are, what their overtime was and so on and then
5 they build that payroll.

6 They'll come up with a number and then they'll
7 compare it with what's in the financial records and -- and
8 any difference plus or minus is in-- included in their
9 accounting schedules and their adjustments. And they do a
10 lot of the costs in that similar manner, essentially they
11 build their case.

12 For someone like us at the Public Counsel, one
13 of the main documents that we've used to look at the
14 company's costs for any time period is the detailed general
15 ledger that used to exist for MPS, exists for most utility
16 companies -- most of the large utility companies in the
17 state so that we -- we can have them either in electronic
18 format, microfiche, often paper form so we can analyze each
19 account for whatever period we're looking at and get a good
20 idea of what kind of detailed costs are in there.

21 We look for -- in answer -- the short answer
22 to your question is we look more at the detailed general
23 ledger than Staff does.

24 Q. You've audited other utility companies in this
25 state, have you not?

1 A. I've been employed with Public Counsel for
2 over 13 years. I've seen a few.

3 Q. And, for example, tell the Commission which
4 companies you've audited.

5 A. I think I have a listing in my Direct
6 Testimony. In Schedule TJR-1 to my Direct Testimony in this
7 case, United Telephone, Missouri Public Service, Missouri
8 City Water, United States Telephone, St. Louis County Water,
9 Imperial, Southwestern Bell Telephone Company, St. Joseph
10 Light & Power, Raytown Water, Capital City Water, Laclede
11 Gas Company, Union Electric Company, Atmos Energy Company,
12 and Empire District Electric.

13 Q. Now, with respect to those companies that you
14 just listed, have you conducted an audit of the books and
15 records of those companies at one time or another?

16 A. In every company I listed there, I used their
17 general detailed -- excuse me, their detailed general ledger
18 to perform audits, yes.

19 Q. Were all of those -- the formats of those
20 general ledgers of those companies identical?

21 A. They were not identical, but they were quite
22 similar.

23 Q. What were the differences that might have
24 existed between the general ledgers of those companies? Can
25 you give us some examples?

1 A. It could have been just the way they -- the
2 titles they put on the individual pages about what
3 department, what the expense ID is, what the allocation ID
4 is, what the invoice number is. It could be any -- any
5 number of different kinds of categories.

6 Now, the costs themselves -- usually there was
7 a cost amount and it would either be a debit or credit
8 column. That was usually pretty uniform. A description --
9 I mean, the description depended on the cost, what cal-- I
10 mean, what the variability would be.

11 Q. Would you characterize those differences as
12 just format differences?

13 A. I would not only characterize them as format
14 differences, I'd also characterize them as -- as a volume --
15 the volume included in them also. As an example, St. Joe
16 Light & Power, their detailed general ledger for calendar
17 year 2000 for that entire electric company was less than
18 nine inches thick.

19 When I looked at the one that they provided --
20 that MPS provided in the last -- last rate case, it was
21 boxes and boxes. I mean, there was a total of 28 boxes for
22 the ledger document that they called a detailed general
23 ledger.

24 Q. Have you done any accounting work with any
25 other industry other than the utility industry?

1 A. I have.

2 Q. And what industry?

3 A. I worked for State Farm Insurance Corporation
4 for a year in their accounting procedures department, which
5 was involved in the designing of accounting system for that
6 corporation. And then also I worked for a short time for a
7 CPA firm doing write-up in auditing work.

8 Q. How would you contrast the accounting
9 requirements for State Farm Insurance as compared to, say,
10 an electric utility in Missouri in terms of complexity?
11 Which is more complex? Is the electric utility accounting
12 more complex or would the State Farm accounting be more
13 complex?

14 A. The State Farm would probably be more complex
15 simply by the fact that they operated in most of the
16 states -- almost 49 of the states, I believe. So they
17 had -- they had departments and offices in each of those
18 states.

19 Q. Are there any requirements for accounting for
20 State Farm as there would be for utilities subject to this
21 Commission's jurisdiction?

22 A. There are requirements for the -- for MPS to
23 follow the -- the FERC Uniform System of Accounts that State
24 Farm would not have had to have done. And, of course, State
25 Farm would have had to follow general accepted accounting

1 procedures and also they would also have had to follow IRS
2 regulation, IRS code. Those are similarities. But the only
3 difference I can think of off the top of my head -- overall
4 high-level differences would be the fact that MPS is a
5 regulated utility.

6 Q. It would have to follow the FERC system of
7 accounts?

8 A. And they -- the Missouri Commission has
9 adopted the FERC system of accounts and they're required to
10 follow them.

11 Q. And would you agree that that would probably
12 make the accounting on the electric utility side a little
13 bit more complex than perhaps the accounting for the State
14 Farm Insurance operations?

15 A. Well, it's ironic that you make that comment
16 because that's not true. The FERC system of accounts is
17 pretty straightforward and all utilities -- it's pretty much
18 the same for all electric utilities. The accounts are the
19 same.

20 Now, within that FERC system of accounts, they
21 have the opportunity if they don't want to use those balance
22 sheet/income statement accounts that are already set up for
23 electric utilities, the -- MPS or any other electric utility
24 can use -- can create their own, a different set of accounts
25 as long as they have a method to get from one to the other,

1 documentation that shows how you get from that to the one
2 that FERC has set up.

3 MPS actually has done it. They set up a
4 different set of uniform set of accounts. They did that
5 because they thought they were going to become electric
6 deregulation. That's how the PeopleSoft accounting system
7 first came about.

8 The company thought they were going to move
9 into a different kind of operating environment and they set
10 up a different set of accounts that are not the same as
11 what's in the FERC Uniform System of Accounts, but they
12 have -- and it's allowed -- and they have documentation that
13 shows how they get back to the regulated set of accounts
14 that are in the FERC -- listed in the FERC Uniform System of
15 Accounts.

16 Q. You're not suggesting that they're not in
17 compliance with the FERC Uniform System of Accounts? And
18 when I say "they," I mean Aquila.

19 A. Oh, no. My point wasn't to say they weren't
20 in compliance. My point was to say the complexity -- if
21 they had just stuck with the Uniform System of Accounts that
22 the FERC has listed for electrical utilities, that's a level
23 of complexity that would not exist, but they've switched
24 over and created their own set of accounts which whenever --
25 they don't maintain at all times.

1 It's -- we only see it when they come in for a
2 rate case and then they use a computer system to pick and
3 choose the numbers and put them into the FERC system of
4 accounts and give it to us, hopefully.

5 Q. One of the things I'm trying to determine here
6 this afternoon -- and I heard, based on the questions of
7 your counsel to the UtiliCorp witness, this concern that if
8 some sort of a screen could be made available here in
9 Jefferson City such as was provided to the Commission
10 auditors in Kansas City, that this would resolve your
11 concerns; is that true?

12 A. I don't know that I would go so far as to say
13 it would resolve our current concerns. I'm not quite sure
14 how we can get where we want to be right now. Only the
15 company knows how their accounting system, operating systems
16 operate. They have all the detailed information.

17 To simply provide that screen, would that
18 resolve it? I'm not sure. The company has stated that they
19 maintain a lot of detailed information in subsidiary ledgers
20 and that this accounting screen would get us to that
21 information. I haven't seen it. It's -- it's their
22 comments that say the information is there. I'm not sure
23 that it would. We're certainly willing to look at that,
24 but --

25 Q. You don't know whether or not the accounting

1 details are actually found in the subsidiary ledgers?

2 A. No. I'm not saying that. I haven't made the
3 allegation the company's not maintaining the data.

4 Q. So what are you saying then with respect to
5 the subsidiary ledgers? I wasn't really clear.

6 A. I haven't seen the subsidiary ledgers they're
7 talking about. I don't know what data's in it. I don't
8 know how it rolls up into the ledger, the general ledger, to
9 see how that data would be able to -- the auditability of
10 it.

11 Q. Have you asked the company to show that
12 information to you or to try to explain to you how that
13 works?

14 A. I have not.

15 Q. Is that something you think might be
16 appropriate in a dialogue with the company to try to find
17 some way to resolve your concerns?

18 A. Sure. Yes.

19 Q. And I think you indicated that you didn't
20 really know what the solution was because you didn't have
21 any information; is that correct?

22 A. I don't know what the solution is to the
23 current situation. I know what used to exist, I know
24 basically what we're getting now from the company and -- and
25 we've got some concerns with that, that we're not getting

1 the detailed information that we need to -- to perform our
2 jobs.

3 We've made some recommendations. One, either
4 start producing and providing us a detailed general ledger
5 of at least sufficient details to what you used to, what
6 St. Joe Light & Power used to do, what most of the utilities
7 in the state do or, you know, not oppose or have the
8 Commission open a docket so we can go in with the company
9 and other parties and investigate what their system does do
10 as far as the regulated utilities are concerned, what the
11 system consists of, what it captures, what it can report and
12 try to resolve this issue.

13 MR. SWEARENGEN: Okay. Thank you very much.
14 That's all I have.

15 JUDGE JONES: I don't have any questions.
16 Is there any redirect from Public Counsel?

17 MR. MICHEEL: No, your Honor.

18 JUDGE JONES: Okay. In light of the fact that
19 it's a quarter till, I don't suppose you want to start
20 another issue today, so --

21 MR. SWEARENGEN: I think we could dispose of
22 one more issue, your Honor, if you'll bear with us just for
23 a second. The next issue on the miscellaneous issues list
24 is Service Quality and Reliability. And I think we've
25 worked out an agreement with the Commission Staff on that

1 point. It's been reduced to writing. I could have it
2 marked as an exhibit and offer it, if that's appropriate.

3 JUDGE JONES: That will be fine. Is any other
4 party a party to the agreement?

5 MR. DOTTHEIM: Yes. The Staff is party to the
6 agreement. It's based on recommendations that the Staff
7 made in Direct Testimony. And Mr. Swearengen's correct,
8 we've reached a resolution on that item and it has been
9 committed to a two-page document.

10 MR. MICHEEL: Your Honor, if I may, I have
11 been provided a copy of that two-page document. The first
12 sentence says, Aquila, Inc. agrees to provide the Staff of
13 Missouri Public Service Commission the following
14 information.

15 And I am certainly agreeable to this
16 resolution if that first sentence is amended to say Aquila,
17 Inc. agrees to provide the Staff of the Public Service
18 Commission and the Office of the Public Counsel the
19 following information.

20 MR. SWEARENGEN: I'd have to check with my
21 client to make sure that's acceptable.

22 JUDGE JONES: Can you check with your client
23 now?

24 MR. SWEARENGEN: Sure. Be glad to, if we can
25 take just a minute.

1 JUDGE JONES: That's fine.

2 MR. DOTTHEIM: And certainly the Staff has no
3 objection.

4 JUDGE JONES: AG Processing?

5 MR. CONRAD: I don't -- we don't need to be
6 listed as a party, your Honor, but it certainly is desirable
7 to have the resolution of this issue reflected on the record
8 somewhat.

9 MR. SWEARENGEN: Judge, I don't have anyone
10 here that I can talk to about that, but we'll take it up
11 first thing in the morning if that's okay.

12 JUDGE JONES: That's what we'll do.

13 The hearing is adjourned for today and we'll
14 resume tomorrow at 8:30.

15 WHEREUPON, the hearing was adjourned until
16 March 2, 2004 at 8:30 a.m.

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