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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

February 23, 2004  
Jefferson City, Missouri  
Volume 6

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

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

KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE.

CONNIE MURRAY,  
ROBERT M. CLAYTON, III  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
ASSOCIATED COURT REPORTERS

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Service  
Commission.

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

2 JUDGE JONES: Good morning. My name  
3 is Kennard Jones, and I will be conducting this  
4 hearing. Today is Monday, February 23rd, 2004. It  
5 is 8:35 a.m., and we are here for a hearing in Case  
6 No. ER-2004-0034, in the matter of the request of  
7 Aquila, Incorporated, doing business as Aquila  
8 Networks - L&P and Aquila Networks - MPS to implement  
9 a general rate increase in electric rates. This case  
10 has been consolidated with Case No. HR-2004-0024,  
11 wherein Aquila implemented a rate increase for steam  
12 rates. ER-2004-0034 is the lead case.

13 According to the schedule agreed upon by  
14 the parties, today's hearing will consist of entries  
15 of appearances, marking of exhibits, opening  
16 statements and the first witnesses will be called.  
17 At this time, I'll take entries of appearance, first  
18 from Aquila.

19 MR. SWEARENGEN: Thank you, Judge. Let  
20 the record show the appearance --

21 JUDGE JONES: Be sure you speak into the  
22 microphone.

23 MR. SWEARENGEN: Let the record show the  
24 appearance of James C. Swearngen, W.R. England, III,  
25 Paul Boudreau, Dean Cooper and Janet Wheeler with the

1 firm Brydon, Swearingen & England, P.C. Our address  
2 is 312 East Capital Avenue, Jefferson City, Missouri,  
3 appearing on behalf of Aquila, Inc.

4 And I would also like to enter the  
5 appearance of Carl Zobrist from the firm of  
6 Blackwell, Sanders, Peper, Martin. His address is 2  
7 Pershing Square, 2300 Main Street, Kansas City,  
8 Missouri.

9 JUDGE JONES: Thank you, Mr. Swearingen.  
10 And Staff of the Commission?

11 MR. WILLIAMS: Dana K. Joyce, Nathan  
12 Williams, Bruce H. Bates, Robert S. Berlin, Steven  
13 Dottheim, Robert B. Franson, Dennis L. Frey, David A.  
14 Meyer, Thomas R. Schwarz, Ajar., appearing on behalf  
15 of Staff, P.O. Box 360, Jefferson City, Missouri  
16 65102.

17 JUDGE JONES: Thank you, Mr. Williams.  
18 And on behalf of Public Counsel?

19 MR. COFFMAN: Let the record reflect the  
20 appearance of John B. Coffman and Douglas E. Micheel  
21 for the Office of the Public Counsel, P.O. Box 2230,  
22 Jefferson City, Missouri 65102.

23 JUDGE JONES: Thank you, Mr. Coffman.  
24 And for AG Processing, Incorporated?

25 MR. CONRAD: Stuart W. Conrad of the law

1 firm of Finnegan, Conrad & Peterson, 1209 Penntower  
2 Office Center, 3100 Broadway, Kansas City, Missouri  
3 64111.

4 JUDGE JONES: Thank you, Mr. Conrad.  
5 Sedalia Industrial Energy Users Association?

6 MR. CONRAD: Also Stuart W. Conrad, of  
7 the law firm of Finnegan, Conrad & Peterson,  
8 1209 Penntower Office Center, 3100 Broadway, same  
9 city and same zip code.

10 JUDGE JONES: Thank you, sir. For the  
11 Federal Executive Agencies?

12 MR. PAULSON: Major Craig Paulson, 139  
13 Barnes Drive, Suite 1, Tindell Air Force Base,  
14 Florida 32403.

15 JUDGE JONES: Thank you, Mr. Paulson.  
16 And for the Missouri Department of Natural Resources?

17 MS. WOODS: Shelley A. Woods, Assistant  
18 Attorney General, for the Missouri Department of  
19 Natural Resources, Post Office Box 899, Jefferson  
20 City, Missouri 65102.

21 JUDGE JONES: And lastly for the City of  
22 Kansas City, Missouri?

23 MR. COMLEY: Thank you, Judge.  
24 Let the record reflect the entry of Mark W. Comley,  
25 Newman, Comley & Ruth, 601 Monroe Street, Jefferson

1 City, Missouri 65101 on behalf of the City of Kansas  
2 City.

3 JUDGE JONES: Thank you, Mr. Comley.

4 Before we move on, there are several  
5 preliminary matters we need to discuss. One, any  
6 proponent of highly confidential testimony is  
7 responsible for bringing this to the Commission's  
8 attention and requesting that an in-camera testimony  
9 be taken and that the hearing room be cleared as  
10 necessary.

11 Second, if it appears that we are moving  
12 through the schedule faster than anticipated, it will  
13 be necessary to move on to the next witness. Have  
14 those witnesses that may soon testify present and  
15 ready to do so. I'll also remind the parties that if  
16 a person is not listed as a witness on the witness  
17 list, they will not be allowed to testify.

18 Also, unless specifically allowed,  
19 witnesses will not be excused after giving testimony,  
20 as the Commissioners may want to recall them for  
21 further questioning.

22 At this time I'll ask the parties if  
23 they will stipulate to the dispensing with the laying  
24 of foundations for each witness. Mr. Swearngen?

25 MR. SWEARENGEN: Absolutely. I think

1 that's a great idea.

2 JUDGE JONES: Mr. Joyce?

3 MR. WILLIAMS: Yes.

4 JUDGE JONES: I should say Mr. Williams.  
5 I'm sorry. Mr. Coffman?

6 MR. COFFMAN: Yes.

7 JUDGE JONES: Mr. Conrad?

8 MR. CONRAD: Let me get clarified by  
9 foundation what you mean, Judge.

10 JUDGE JONES: Well, that the document  
11 that's being entered is what the witness testified to  
12 and things along that line.

13 MR. CONRAD: Well, with all respect,  
14 you're going to need to be a little more specific  
15 with things along that line. I'm concerned about --  
16 if all we're talking about is formal question and  
17 answer, did you prepare these documents or whatever,  
18 if I were to ask you the questions that are reflected  
19 there would your answers be the same, and all we're  
20 talking about are those type of formal questions, I  
21 don't think I have a problem with that. If it goes  
22 beyond that to something about admissibility and ends  
23 up waiving objections that I might have, then I would  
24 have problems.

25 JUDGE JONES: Issues to admissibility, I



1 can understand you not wanting to stipulate to that,  
2 but the questions I mean are for purposes of  
3 identifying the testimony that's being offered.

4 MR. CONRAD: With that understanding, we  
5 would have no objection.

6 JUDGE JONES: Thank you, Mr. Conrad.  
7 Ms. Woods?

8 MS. WOODS: I have no objection, your  
9 Honor.

10 JUDGE JONES: And Mr. Comley?

11 MR. COMLEY: No objection.

12 JUDGE JONES: Thank you, sir. Also,  
13 Staff of the Commission has filed several motions  
14 that have not yet been addressed. There's a motion  
15 by Staff for leave to correct -- to correct the  
16 direct testimony of Witness Cary Featherstone. At  
17 this time I'd like to know if there are any  
18 objections to this motion? Have all of you had an  
19 opportunity to review the motion? Please say so on  
20 the record beginning with Aquila.

21 MR. SWEARENGEN: We've reviewed it, and  
22 we have no objection. Thank you.

23 JUDGE JONES: Okay. Also, I should  
24 remind you all, be sure you speak into the  
25 microphones as your voices will not be heard, because

1 I can barely hear you, so I know they're not being  
2 cast as they should.

3 Staff of the Commission? I'm sure you  
4 don't have an objection.

5 Public Counsel?

6 MR. COFFMAN: No objection to that.

7 JUDGE JONES: AG Processing?

8 MR. CONRAD: We don't have an objection  
9 to it.

10 JUDGE JONES: Federal Executive  
11 Agencies?

12 MR. PAULSON: I have no objection to  
13 that. I also have no objection to the proposal you  
14 made on foundation.

15 JUDGE JONES: Thank you, Mr. Paulson.  
16 Ms. Woods?

17 MS. WOODS: I have no objection, your  
18 Honor.

19 JUDGE JONES: Mr. Comley?

20 MR. COMLEY: No objection, your Honor.

21 JUDGE JONES: Hearing no objections,  
22 Staff's motion for leave to correct direct testimony  
23 of Staff Witness Cary Featherstone is granted.

24 Staff has filed two other motions  
25 concerning testimony. Next is Staff's motion for

1 leave to correct surrebuttal testimony of Staff  
2 Witness Rosella Schad. Are there any objections to  
3 this motion?

4 MR. SWEARENGEN: The company has no  
5 objection.

6 JUDGE JONES: Public Counsel?

7 MR. COFFMAN: No objection.

8 JUDGE JONES: AG Processing?

9 MR. CONRAD: No objection.

10 JUDGE JONES: Federal Executive  
11 Agencies?

12 MR. PAULSON: No objection.

13 JUDGE JONES: Missouri Department of  
14 Natural Resources?

15 MS. WOODS: No objection.

16 JUDGE JONES: The City of Kansas City?

17 MR. COMLEY: No objection.

18 JUDGE JONES: And lastly, there's a  
19 motion for leave to file supplemental surrebuttal  
20 testimony of H. Davis Rooney. Are there any  
21 objections to this motion?

22 MR. SWEARENGEN: I want to make sure I  
23 understand. That's the motion that the Staff has  
24 filed seeking to file supplemental surrebuttal in  
25 response to the surrebuttal of Company Witness

1 Rooney?

2 JUDGE JONES: That's correct.

3 MR. SWEARENGEN: We object to that  
4 motion, and if we have not already done so, we'll be  
5 filing a written response today setting out our  
6 reasons.

7 MR. COFFMAN: Your Honor, I'm not sure I  
8 understand which motion. Is that the motion to late  
9 file surrebuttal last Friday or is that the previous  
10 motion?

11 MR. WILLIAMS: It's Staff's motion to  
12 respond to an issue that Staff believes was first  
13 raised by the company in surrebuttal.

14 JUDGE JONES: And, Mr. Swearngen, you  
15 say you'll be filing something today on this motion?

16 MR. SWEARENGEN: Yes, we will. I think  
17 the Staff asked in its pleading -- and I don't recall  
18 the exact date, but I think they wanted us to file a  
19 response to it by this Wednesday, is that correct,  
20 Mr. Williams? Do you recall?

21 Anyway, whatever that request was, we'll  
22 file something today.

23 JUDGE JONES: Okay. Thank you.

24 MR. SWEARENGEN: Thank you.

25 JUDGE JONES: The order of opening

1 statements today will be Aquila, Staff, Public  
2 Counsel, Sedalia Industrial Energy Users Association  
3 and AG Processing, Federal Executive Agencies,  
4 Missouri Department of Natural Resources, then Kansas  
5 City, Missouri. Are there any other matters that  
6 need to be discussed prior to moving on to opening  
7 statements?

8 Mr. Conrad?

9 MR. CONRAD: Yes. Before we get started  
10 here, I wanted to get at least clarification on the  
11 rules that are in play. On July 17 of 2003, my  
12 clients filed applications to intervene. The  
13 Commission rule, as I understand it, provides for a  
14 ten-day period for objections. None were received to  
15 either of those applications, but it was some almost  
16 30 days later on the 25th of August that those  
17 applications were sustained.

18 On January 12 of this year, we filed a  
19 motion to dismiss some aspects of this proceeding. I  
20 notice that on January the 20th Aquila asked for  
21 additional time to respond. They requested  
22 additional time to respond to that motion. There was  
23 no request in that motion that it be handled on an  
24 expedited basis, nor that the response time be  
25 shortened.

1                   One day later, indeed as we were  
2 preparing a response to that motion, their motion for  
3 additional time, which had not been asked be  
4 expedited and the response time had not been  
5 requested to be shortened and certainly no orders to  
6 that effect had been issued, that motion was granted  
7 in less than 24 hours.

8                   Given those discrepancies in timing, I  
9 just want to get clarification right off the bat  
10 which set of rules we're running under.

11                   JUDGE JONES: Chapter 2 rules are the  
12 Commission rules.

13                   MR. CONRAD: Then how is it that that  
14 motion could have been sustained in less than 24  
15 hours if you're following those rules, Judge?

16                   JUDGE JONES: Would you like time to  
17 respond? You mean you didn't have time to respond to  
18 that motion?

19                   MR. CONRAD: Well, you've already  
20 granted the motion, so I don't need time to respond.  
21 I'm asking you why, if the rules are so specific  
22 about ten days and if you want a shortened time then  
23 you ask for it, and if you want a shortened response  
24 time then you ask for that, why you cut through all  
25 that if we're operating under Section 2 rules?

1                   JUDGE JONES: It's implicit in the  
2 Commission granting that motion in a shortened time  
3 that -- I suppose the Commission in that motion wants  
4 responses from everyone.

5                   MR. CONRAD: Which motion?

6                   JUDGE JONES: The motion to dismiss. We  
7 want responses from everyone. We want a full display  
8 of all opinions. We're going to give people time to  
9 deal with it. Knowing that the Commission would not  
10 rule on that motion, not by today, we wanted  
11 responses from all the parties. We want a full  
12 inclusion of all the parties' responses on that  
13 motion to be able to fully consider the issue.

14                   MR. CONRAD: You haven't responded to my  
15 question, Judge.

16                   JUDGE JONES: Well, maybe I'm not sure  
17 what your question is.

18                   MR. CONRAD: My question is that you  
19 took almost 30 days to rule on my client's  
20 applications to intervene, which were unopposed after  
21 ten days, but despite the fact that Aquila did not  
22 even request expedited treatment or a shortened  
23 response time, you ruled favorably on their motion  
24 within 24 hours.

25                   JUDGE JONES: Those are two sets of

1 motions and applications, first of all, Mr. Conrad.

2 MR. CONRAD: I understand there are two  
3 separate motions, Judge, but you indicated earlier  
4 that we were working under the same set of rules, and  
5 I'd like to get clarification as to which set of  
6 rules it is we're running.

7 JUDGE JONES: Well, again, I'll tell  
8 you, the rules are Chapter 2. I don't know how much  
9 clearer I can be on that. If you have a problem with  
10 how things are done, then you need to file something  
11 and let me know.

12 MR. CONRAD: I'm making this objection  
13 now on the record, Judge, so that it's reflected in  
14 the record of this proceeding.

15 JUDGE JONES: Okay. Thank you,  
16 Mr. Conrad.

17 Are there any other considerations to be  
18 taken up before we move on?

19 MR. CONRAD: Yes, there are. We still  
20 do have pending a motion to dismiss the aspects of  
21 this proceeding insofar as they pertain to the former  
22 St. Joseph Light & Power service territory. That  
23 motion has not been ruled on by the Commission, and  
24 anything that we do here that deals with St. Joseph  
25 Light & Power service territory is under objection.



1 That is a continuing objection from my client, AG  
2 Processing.

3 JUDGE JONES: Your continuing objection  
4 is noted, and the Commission is considering your  
5 motion.

6 MR. COFFMAN: Your Honor?

7 JUDGE JONES: Mr. Coffman?

8 MR. COFFMAN: Public Counsel would like  
9 to join in that continuing objection. If there is  
10 some indication of when and if the Commission is  
11 going to rule on that, we'd be interested in knowing  
12 that as well.

13 JUDGE JONES: There isn't any  
14 indication, and I'll note that -- your continuing  
15 objection,  
16 Mr. Coffman.

17 Mr. Williams?

18 MR. WILLIAMS: Mine's more of a  
19 ministerial nature. I was just wondering if we were  
20 going to premark the exhibits at the beginning in  
21 accordance with the exhibit list you provided or if  
22 we'll take them as the witnesses appear.

23 JUDGE JONES: The exhibits are marked  
24 according to the list I provided. If a witness  
25 appears in a different order than what's on that list

1 and they're not anywhere else on the list, then that  
2 witness' testimony will be added at the end of the  
3 list in numerical order to those already listed.

4 MR. WILLIAMS: I was under the  
5 understanding we were going to be providing hard  
6 copies to the court reporter, which is the reason for  
7 my inquiry.

8 JUDGE JONES: Oh.

9 MR. CONRAD: That is customary, Judge.  
10 And I also have Robert Stevens' direct testimony,  
11 which did not make the list, and since I have it here  
12 today and the issue is not set to be tried until the  
13 5th of March, I'd like to get those copies delivered  
14 to the court reporter properly marked and numbered.

15 JUDGE JONES: Things will be done as  
16 normal. This list was provided as a matter of  
17 convenience, primarily for the court reporter and for  
18 you-all, if you can make use of it.

19 MR. WILLIAMS: Judge, I've seen it done  
20 both ways. I was just asking.

21 JUDGE JONES: I understand. They will  
22 need to be provided and marked as exhibits.

23 MR. COFFMAN: Do we want to do that at  
24 this time?

25 JUDGE JONES: What we'll do at this time

1 is present those testimonies of persons who will  
2 testify today, or we can do all of them. In fact,  
3 let's mark all of the exhibits now so we can get that  
4 out of the way for the rest of the two weeks.

5 MS. WOODS: I do have one other sort of  
6 administrative matter. I have been cordially invited  
7 to Franklin County Circuit Court tomorrow morning. I  
8 hope that's not a problem. My witnesses aren't  
9 scheduled to testify until next week, but I won't be  
10 available in the morning.

11 JUDGE JONES: I don't understand what  
12 that means.

13 MS. WOODS: I have to appear on another  
14 matter in Union tomorrow morning, so I won't be here.

15 JUDGE JONES: Will someone be here in  
16 your stead?

17 MS. WOODS: Probably not. But we don't  
18 have any questions, any cross-examination for any of  
19 the witnesses until next week.

20 JUDGE JONES: Okay.

21 MS. WOODS: And I'm asking to be  
22 excused.

23 JUDGE JONES: You can be excused.

24 MS. WOODS: Thank you.

25 JUDGE JONES: At this time, we'll

1 proceed with marking of exhibits.

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

3 (EXHIBIT NOS. 1 THROUGH 146 WERE MARKED  
4 FOR IDENTIFICATION BY THE REPORTER.)

5 JUDGE JONES: At this time we're going  
6 to begin with opening statements. First is Aquila,  
7 Incorporated. Mr. Swearengen?

8 MR. SWEARENGEN: Thank you, Judge. May  
9 it please the Commission. I'll try to keep my  
10 comments as brief as I can so that we can get on with  
11 some of the issues in this case.

12 I think the Commission is aware that the  
13 tariffs initiating these proceedings were filed by  
14 Aquila with the Commission back on July 3, 2003. The  
15 tariffs seek to increase the company's electric rates  
16 for both the Aquila Networks - MPS and the Aquila  
17 Networks - L&P operating divisions, and also seek to  
18 increase industrial steam rates for its L&P  
19 industrial steam operations.

20 The amount of the demonstrated increase  
21 for each of these operations is approximately \$77  
22 million for the MPS electric operations, about \$14.7  
23 million for the L&P electric operations and about  
24 \$2.9 million for the L&P steam operations.

25 The actual MPS, Missouri Public Service

1 increase, however, has been reduced to 65 million  
2 through the tariff filing in order to mitigate the  
3 impact on the company's customers.

4 By way of background, the MPS operating  
5 division includes the area served by what at one time  
6 was known as the Missouri Public Service Company. I  
7 think the Commission will recall that that company  
8 was later renamed UtiliCorp United, Inc., and then in  
9 February of 2002 it was renamed Aquila, Inc.

10 What we referred to as the L&P operating  
11 division is the area that was formerly served by the  
12 St. Joseph Light & Power Company, and since that  
13 merger has been completed, that area is now served by  
14 Aquila through what we call its L&P division.

15 The Missouri Public Service electric  
16 rates were last adjusted by the Commission in March  
17 of 2002 when a stipulated rate reduction in the  
18 amount of \$4,250,000 was put into effect. That case,  
19 what we call the 2001 case, was driven largely by  
20 fuel costs, especially the cost of natural gas, which  
21 was very high at the time the case was filed in 2001.  
22 However, as that case was being processed, those  
23 natural gas costs came down significantly, and  
24 essentially eliminated the need for the company's  
25 rate increase. That led to the rate reduction.

1                   Interestingly, the natural gas prices  
2 which are built into the MPS rates as a result of  
3 that decision are about \$2.80 per MCF. Also as a  
4 result of that case, in addition to the rate  
5 reduction, the company adopted the Staff's proposed  
6 depreciation rates, which had the effect of reducing  
7 the company's depreciation expenses by about  
8 \$16 million. So the net result of that case was a  
9 reduction in -- a net decrease in expenses in the  
10 amount of about \$12 million.

11                   The L&P, the former St. Joe Light &  
12 Power electric rates were last adjusted in 1999 when  
13 a \$2.5 million rate reduction was put in place, and  
14 the steam rates were also lowered at that time.  
15 However, testimony in the subsequent merger case, the  
16 case involving the merger between UtiliCorp and  
17 St. Joe Light & Power indicated that, had that merger  
18 not been completed, St. Joe Light & Power was  
19 planning to seek rate relief in the near future.

20                   With that background in mind, the  
21 present case that is in front of you today involves  
22 over 30 contested issues, and these issues are all  
23 listed on the reconciliation, along with the revenue  
24 requirement that is associated with each. The  
25 company has proven up about \$95 million in total

1 revenue requirement for the electric cases and the  
2 steam case. The way the case now stands, the Staff  
3 is proposing an increase of about \$10 million, and  
4 the Public Counsel's position is somewhat less than  
5 that.

6 I'm not going to try to go through all  
7 the issues in the opening statement this morning. I  
8 will simply refer you to our statement of position on  
9 the issues, which has been filed, and on that  
10 document our position on all of the issues has been  
11 summarized. I want to focus my comments this morning  
12 on a couple of more significant issues in terms of  
13 the revenue requirement impact, but before doing  
14 that, there are a couple of points I would like to  
15 make.

16 We all assume that the Commission is  
17 fully aware of the financial difficulties which is  
18 now facing Aquila as a result of its unregulated  
19 activities, and Mr. Keith Stamm, the company's senior  
20 vice president and chief operating officer, will be  
21 here today and will testify, and you will hear from  
22 him with respect to that issue.

23 But the point I want to make at the  
24 outset is that the company, in this rate case, has  
25 made its best effort and has attempted to ensure to

1 the extent possible that the impacts from the  
2 negative financial results from its non-regulated  
3 businesses have not been included in determination of  
4 the revenue requirements in this case. And we think  
5 that that has been accomplished. I'm not really  
6 aware of any significant issue in this case where  
7 it's being argued that we're attempting to recover  
8 costs associated with those non-regulated activities  
9 from our regulated customers.

10           The second point I wish to make is that  
11 the Staff and Public Counsel's proposed revenue  
12 requirement of around \$10 million for all these  
13 operations would leave the company's rates about  
14 where they were 20 years ago, even though its  
15 investment in operating expenses have increased  
16 significantly since that time. We find that to be  
17 very unusual.

18           In fact, if you just look at what's  
19 happened to the MPS operations since the last rate  
20 case in 2001, you'd see some substantial increases in  
21 expenses. For example, just looking at the cost of  
22 natural gas, which using -- and using the number the  
23 Staff supports in this case, the Staff has conceded  
24 that revenue requirements for MPS have increased at  
25 least \$15 million since the company's 2001 case.



1 That's quite a bit of money.

2                   The Staff has also recognized that the  
3 company's off-system sales have declined at least  
4 \$9 million since that last case. The Staff has also  
5 agreed that the company's pension expense has risen  
6 at least \$7 million since the last case. And the  
7 Staff also concedes that over the past three years,  
8 the company has committed capital of over  
9 \$120 million to new investments. So those are pretty  
10 significant changes that have occurred in just the  
11 Missouri Public Service electric operating division  
12 since the last rate case.

13                   However, despite these significant  
14 increases in expenses and the substantial new  
15 investments, the Staff's recommendation in this case  
16 for the MPS electric operations is only \$6.6 million.  
17 And, of course, we ask the question, how can that be  
18 possible, how can a company that since its last rate  
19 case has invested over \$120 million, seen gas costs  
20 increase 15 million, seen a pension increase of  
21 7 million, a loss of off-system sales revenue of  
22 9 million only be entitled to \$6.6 million revenue  
23 increase for its MPS division?

24                   Well, we think what's happened in this  
25 case, when you get into it, is not all that difficult

1 to understand. We think the Staff has approached  
2 this case from the standpoint that they recognize and  
3 they realize that they've got to allow these  
4 legitimate operating expenses, and what they've done  
5 is gone out and looked for other ways to offset those  
6 expenses to hold down the revenue requirement.

7           Now, conceptually there's nothing wrong  
8 with that, but what we think the Staff has done in  
9 this case is overreached, and they have done that in  
10 a couple of key areas that I would like to talk  
11 about. One is capital structure rate of return, a  
12 second is depreciation, and the third is the issue  
13 that we referred to as the Aries purchased power  
14 agreement.

15           Now, I think everybody realizes that in  
16 the areas of cost of capital and depreciation, those  
17 are subjective areas, and what we have found out is  
18 that the Staff almost magically can make millions of  
19 dollars either appear or disappear in that area.  
20 Those are things that we need to look at closely in  
21 this case.

22           Depreciation, for example, in the last  
23 case for Missouri Public Service, the 2001 case, we  
24 adopted the Staff's depreciation rates. We willingly  
25 adopted those rates. In this case, apparently the

1 Staff isn't satisfied with that, and they're now  
2 seeking to reduce those depreciation rates another  
3 \$6 million, about \$3 million on the MPS side, and  
4 about \$3 million on the St. Joe side.

5           Once again, this is one of those areas  
6 where it's difficult to get your hands around and  
7 it's pretty easy to make money appear or disappear.  
8 We don't really understand why they're doing that.

9           On capital structure we're about  
10 \$10 million apart, and on return on equity about  
11 \$15 million apart. Those are areas that are  
12 difficult to get our hands around and you can make  
13 money appear or disappear, but you need to look  
14 closely at those issues and see what the Staff has  
15 done.

16           And the last issue where we were having  
17 trouble on this is the Aries issue, the Aries  
18 purchased power agreement. On that issue the Staff  
19 has made what we call and I think the Staff has  
20 called a penalty adjustment against the company for  
21 its decision to enter into this purchased power  
22 agreement, and that's worth about \$6 million. So  
23 just those four issues I talked about, we're talking  
24 about approximately \$35 million.

25           Now, this may be good for the consumers

1 on a short-term basis if the Commission adopts this  
2 approach, but we think if the Commission adopts this  
3 approach to regulation, the public is going to pay  
4 for it greatly in the long run through higher cost of  
5 capital and perhaps restricting the company's ability  
6 to finance.

7           And one of the key points I want to make  
8 to you this morning is that in making these decisions  
9 that the Staff has made and overreaching, the way  
10 I've described it, we think the Staff has lost sight  
11 of what I've always known to be the historical role  
12 of attempting to balance the interests of the  
13 shareholders of the company with the interests of the  
14 customers.

15           And I think no better evidence of that  
16 can be seen than the fact that the Public Counsel,  
17 the Office of the Public Counsel who represents the  
18 consuming public, has filed testimony in this case  
19 supporting a return on equity of 10.1 percent, which  
20 is 100 basis points above the Staff's mid point ROE  
21 recommendation.

22           We find that hard to understand. We've  
23 seen this happen in past cases. We don't understand  
24 how a party who represents a class of customer can  
25 come in with a higher ROE recommendation than the

1 Staff whose job it is to balance the interests of the  
2 company and its customers.

3           Now, I recognize -- and I've been trying  
4 cases over here for a long time, and I recognize in  
5 recent years it's become much more difficult for this  
6 Commission to rule against its Staff on issues, but  
7 you're going to get a chance to do that in this case,  
8 and we would ask you to take a close look at those  
9 issues that I've just discussed and give it your  
10 careful consideration with my comments in mind.

11           We're only earning approximately 2 to  
12 3 percent return on equity on our Missouri operations  
13 right now, and if we are denied adequate rate relief,  
14 we think that our investors are going to be  
15 penalized, and as a result of that, we think  
16 investors will seek to put their money in places  
17 other than this state.

18           And as I indicated, the result of that  
19 will be that both debt and equity capital will become  
20 more difficult for this company to obtain, and when  
21 and if it is obtainable, it will come at higher cost,  
22 which will ultimately be passed on to the company's  
23 customers.

24           The worst scenario is that if the  
25 company can't finance, it won't be able to continue

1 to provide safe and adequate service. So these are  
2 serious issues.

3                   We have two witnesses that will discuss  
4 these issues in greater detail. One is Susan Abbott,  
5 who has over 20 years of experience in establishing  
6 credit ratings for Moody's, and she will provide some  
7 testimony on how a credit rating agency takes into  
8 account the regulatory decisions in making those  
9 assessments and how its rating agency assessments can  
10 impact a utility as well as its customers. She will  
11 also sponsor testimony about how Missouri utilities  
12 have already been impacted by recent regulatory  
13 trends in this state.

14                   A second company witness, John Reed,  
15 will testify on the same matters but from the equity  
16 market viewpoint, and we would ask you to give  
17 careful consideration to the testimony of those two  
18 witnesses.

19                   Turning back to the capital -- cost of  
20 capital issue, which is made up of two components,  
21 capital structure and return on equity, with respect  
22 to the capital structure, what the Staff has done is  
23 utilized Aquila, Inc.'s corporate capital structure  
24 to establish proper capital structure for UtiliCorp's  
25 -- excuse me -- Aquila's Missouri utility operations,

1 and we think that's wrong for several reasons.

2                   First, the capital of Aquila includes  
3 capital to support non-regulated businesses and  
4 international operations and is in no way consistent  
5 with the capital that will actually be used to  
6 support the utility operations here in Missouri.

7                   Second, using the parent or corporate  
8 capital structure is inconsistent with the company's  
9 goal, and presumably the Commission's goal to protect  
10 customers from the risks and costs of non-regulated  
11 operations. On the other hand, what the company  
12 supports is a divisional capital structure, a capital  
13 structure which in one case that this Commission has  
14 endorsed on the grounds that it would isolate utility  
15 customers from the risks that we're concerned about.

16                   The divisional capital structure that  
17 we are supporting that we believe is appropriate for  
18 the MPS and the L&P operations is one which has about  
19 52.5 percent long-term debt and a common stock equity  
20 component of 47.5 percent. Once again, this is an  
21 approach that we are using that has been adopted by  
22 the Commission in a prior case involving this  
23 company, and we think it's the way that the  
24 Commission needs to go on this issue.

25                   The Staff on the other hand is

1 supporting a capital structure which is based on the  
2 result of Aquila's corporate financial condition as  
3 it exists now, from which the Staff witnesses say its  
4 Missouri utility operations should be protected or  
5 insulated, and to us that makes absolutely no sense.

6                   the second major problem with the  
7 Staff's capital structure approach is that its  
8 so-called comparable companies are in no manner  
9 comparable to the operation of Aquila's Missouri  
10 utilities.

11                   The Staff witness selected a group of  
12 so-called comparable companies with a very low common  
13 stock equity ratio that averages about 36 or  
14 37 percent, and the common equity level he  
15 recommends, the Staff witness recommends for Aquila  
16 in this proceeding is about 35 percent, similar to  
17 the common equity ratio of those companies. But we  
18 believe those so-called comparable companies that the  
19 Staff has selected to use are totally inappropriate  
20 and should not be used. Those companies have severe  
21 financial problems and are not examples of healthy  
22 electric utilities.

23                   We think that no one would disagree that  
24 it is important to select healthy utility companies  
25 as a comparable standard for ratemaking purposes.



1 Surely no one would argue that this Commission should  
2 set a return for a Missouri utility based on the  
3 performance of a group of unhealthy utilities, but  
4 this, in fact, is exactly what the Staff would have  
5 you do.

6           Really, just the converse is true; the  
7 equity ratio of a healthy group of utilities is the  
8 capital structure that is most appropriate for the  
9 company in this case and is the capital structure  
10 that you should use, and that's exactly what the  
11 divisional capital structure urged by Aquila in this  
12 case attempts to do.

13           In the company's last electric case, the  
14 MPS case, the 2001 case, the Staff recommended a  
15 common equity ratio of 49 percent, said that's what  
16 we ought to use for setting rates. Well, I would ask  
17 you to look at that 49 percent and contrast it now to  
18 the recommended equity ratio of only 35.65 percent.

19           The Staff doesn't explain in this case  
20 in any testimony how the company's utility operations  
21 have deteriorated in just a couple of years to result  
22 in this swaying of about 13 points in its equity  
23 ratio. Once again, the only conclusion that we can  
24 reach from this is that this is an example of what I  
25 talked about earlier of the Staff overreaching and

1 trying to find some way to offset the legitimate  
2 operating expenses.

3                   Moving from the capital structure issue  
4 to the return on equity issue, and looking again at  
5 the Staff's selection of comparable companies, the  
6 estimated 2003 return on common stock equity for that  
7 group of companies averaged 12.83 percent. We're not  
8 surprised by that.

9                   That companies with low equity ratios or  
10 high financial risk would have such a high common  
11 equity return is not surprising, but what is  
12 surprising is that Staff's recommended return for  
13 Aquila in this case, which ranges from 8.6 to the  
14 9.6, with a mid point of 9.14, is far removed from  
15 the actual returns of the Staff's so-called  
16 comparable companies.

17                   So in other words, the Staff uses these  
18 risky -- financially risky companies to come up with  
19 a capital structure for this case, but then ignores  
20 the corresponding return on equity for these  
21 companies, and we think that the Staff witness has  
22 failed to reconcile this obvious inconsistency, which  
23 to us makes absolutely no sense.

24                   As I indicated, as a result of the  
25 Staff's approach, the Staff has recommended an

1 initial return on equity of about 9.1 percent at the  
2 mid point. What we believe to be serious flaws in  
3 the Staff's approach in this regard will be  
4 approached by Dr. Don Murray in his testimony.

5 Dr. Murray developed a method for  
6 evaluating the cost of common stock components of the  
7 MPS and L&P operating divisions that do not let the  
8 financial circumstances of Aquila affect his  
9 calculations. And as I indicated earlier, the issue  
10 is worth about \$15 million on the ROE side and  
11 approximately \$10 million on the capital structure  
12 side.

13 And once again, as I noted, the Public  
14 Counsel witness took what we believe to be a more  
15 realistic approach, and the high end of his  
16 recommended range is 10.01 percent return on equity.  
17 Simply moving from the Staff's 9.1 to the Public  
18 Counsel's 10.1 would increase the revenue requirement  
19 for the MPS electric operations by \$4.5 million and  
20 it would increase the revenue requirement for the L&P  
21 operations by \$1 million or a total of \$5.5 million.

22 The other issue that I wanted to talk  
23 about is the Aries purchased power plant issue, the  
24 Aries purchased power agreement issue is the way it  
25 should be characterized, I think. I think the

1 Commission is familiar with some of the background of  
2 that.

3                   In 1999 the company entered into a  
4 purchased power agreement for its MPS electric  
5 operations with a partnership that was formed to  
6 operate the Aries power plant in the company's  
7 Missouri service territory. Aquila is one of the  
8 partners in this plan, and MPS, Aquila's operating  
9 division, purchases 500 megawatts of capacity from  
10 the plant in the summer months when its peak  
11 requirements are highest and the cost of capacity is  
12 the greatest. Aquila purchases about 200 megawatts  
13 of power from the plant the remainder of the year.

14                   The evidence that we will present on  
15 that issue later in the hearing will show that this  
16 arrangement is unique and is beneficial to the  
17 company and its customers because it better matches  
18 MPS's purchases with its load requirements. We think  
19 it's highly unlikely that such an arrangement could  
20 be obtained in today's market. I don't think there's  
21 any dispute in this case that the purchased power  
22 agreement was an arm's length transaction and was the  
23 lowest cost available among a number of sources that  
24 bid on MPS's load. The purchased power agreement was  
25 entered into only after extensive negotiations and

1 was ultimately approved by this Commission as being  
2 in the public interest.

3           Now, unfortunately, on this issue you're  
4 going to hear from the Staff that the Staff believes  
5 that senior company executives who made the decision  
6 to enter into this purchased power agreement and who  
7 decided not to build a company-owned generation unit  
8 at that time made their decision -- I'll just use the  
9 word greed -- for reasons of greed and the desire to  
10 take an unfair advantage of their affiliate  
11 relationship with the owners of the plant. And as a  
12 result of this, the Staff has proposed what we think  
13 is a completely arbitrary revenue requirement  
14 reduction to penalize the company for entering into  
15 this agreement.

16           The Staff characterizes Aquila's actions  
17 in this regard as affiliate abuse, a term which we  
18 reject and we think is simply designed to be  
19 inflammatory. There's no evidence to support the  
20 Staff's claim. It is based on pure conjecture, and  
21 we think this issue needs to be decided on the facts,  
22 not on conjecture. The facts are that the company  
23 has saved its customers over \$20 million per year for  
24 each year of the Aries purchased power agreement.

25           What that means is, through this

1 decision, that the Staff criticizes as having been  
2 based on greed, will actually benefit the company's  
3 customers in the amount of \$60 million over the life  
4 of the contract.

5                   When you get into the Staff's evidence  
6 on this, it appears that the Staff breaks their  
7 position on this issue down into two sub-issues. The  
8 first is whether or not the price Missouri Public  
9 Service is paying for this capacity is fully  
10 justified, and then the second issue is what happens  
11 after the Aries purchased power contract expires in  
12 May of 2005.

13                   The company has focused on the first  
14 issue, whether or not the price is justified. The  
15 Staff is really focusing on the second issue, and  
16 that is what happens after 2005.

17                   Our evidence, the company's evidence  
18 will show that MPS's costs for the purchase from  
19 Aries are the lower of cost or market, which is the  
20 standard that Staff is using, and consequently these  
21 costs are fully justified. The Staff, on the other  
22 hand, incorrectly argues that the purchased power  
23 contract is priced to charge the company higher costs  
24 than if the company had built its own generation.

25                   You will hear testimony in this case

1 from company witness Max Sherman, who will testify  
2 that -- using data that has been provided to and  
3 reviewed by the Staff, that he can demonstrate  
4 clearly that the operating and capital costs for self  
5 generation would have substantially exceeded the  
6 payments which the company has made under the  
7 purchased power agreement. Simply put, we believe  
8 the Aries purchased power contract was the best deal  
9 for the company's customers at the time it was  
10 entered into, and it has continued to be the best  
11 deal for those customers.

12                   There are other errors in the Staff's  
13 logic on this Aries issue which will be refuted by  
14 company witnesses. For example, the Staff puts a lot  
15 of its argument or its position on this issue on its  
16 belief that by the year 1998 the company was  
17 operating under a policy of not investing in  
18 regulated generating units and that this was somehow  
19 bad or wrong. Well, the fact is that by 1998, the  
20 company had adopted that policy, but it was based on  
21 what was understood to be the market conditions and  
22 the utility environment that existed at that time.

23                   You will recall that during the late  
24 '90s, during that time frame, electric restructuring  
25 was well under way. Over 30 states had adopted some

1 form of electric market competition, and the FERC had  
2 ordered all utilities under its jurisdiction to  
3 provide open access to their transmission lines to  
4 all third parties at comparable rates, terms and  
5 conditions.

6           Given the circumstances that were  
7 existing at that time in the late 1990s, it would  
8 have been very risky for a regulated utility to spend  
9 hundreds of millions of dollars of investing in new  
10 generation assets. Jon Empson will be our witness on  
11 that topic, and he will address this in more detail  
12 in his testimony.

13           However, the Staff -- contrary to the  
14 facts and what we think was the conventional wisdom  
15 at the time this decision was made, the Staff in  
16 testimony in this case now alleges that the company's  
17 decisions that were made back in the 1990s were  
18 really designed to take unfair advantage of customers  
19 and to maximize profits, but there's nothing to  
20 support this. There's no facts to support this.

21           We believe it is clear that in the  
22 context of the time in which those decisions were  
23 made, there can be no question that the company was  
24 following what for it was the prudent and recommended  
25 course of action. Notwithstanding the fact that



1 market restructuring subsequently faltered, the Aries  
2 purchased power agreement has turned out to be a  
3 benefit for the company's customers, as I've  
4 indicated. It was clearly the lowest cost among the  
5 number of competitive bids available at the time, and  
6 it was clearly more economical than having Missouri  
7 Public Service build the plant itself, which is  
8 apparently what the Staff thinks we should have done.

9           Furthermore, given the fact that plant  
10 construction costs have not really escalated over the  
11 past five years, MPS has maintained considerable  
12 flexibility in determining its future supply options.  
13 We believe that had MPS built and owned the plant,  
14 which is what the Staff would have had us done, the  
15 cost of owning and operating it would have exceeded  
16 payments under the contract by at least \$20 million  
17 per year through May of 2005, which, as I indicated,  
18 amounts to a savings for customers of \$60 million  
19 over the life of the contract.

20           While the Staff argues that the company  
21 should have built and owned a plant as the least cost  
22 approach to meeting needed load, the Staff hasn't  
23 offered any analysis to support that claim. And as I  
24 indicated, if it's decided that it is in the best  
25 interests of the customers to build a regulated plant

1 in the future, one can be constructed now at  
2 approximately the same cost as would have existed in  
3 1999. So nothing has been lost by not building it in  
4 the past. The Aries issue is worth about  
5 \$6 million.

6                   Once again, I appreciate your time and  
7 listening to my statement. I would ask you to please  
8 listen carefully to the evidence on the issues that  
9 I've outlined this morning, as well as the other  
10 issues, and please do not be afraid to rule against  
11 your Staff. Thank you.

12                   JUDGE JONES: Thank you, Mr. Swearingen.  
13 Now we'll hear from Staff of the Commission.

14                   MR. WILLIAMS: May it please the  
15 Commission? My name is Nathan Williams, and I am  
16 representing the Staff.

17                   The facts in this case will show that  
18 Aquila, Inc. is a company in severe financial  
19 distress due to debt it incurred in business  
20 activities this Commission does not regulate. Aquila  
21 is now left with essentially only its regulated  
22 operations to service that debt. Aquila has filed  
23 general rate increases for all of its Missouri  
24 regulated utility operations, electric, steam and  
25 gas. This hearing is for electric -- for Aquila's

1 electric and steam cases.

2           The Missouri Aquila's operations  
3 primarily serve rural and residential customers  
4 located in the western part of the state, including  
5 areas in Lee's Summit, Warrensburg, Sedalia,  
6 St. Joseph and parts of Kansas City, Missouri. Its  
7 steam operations serve six industrial customers in  
8 St. Joseph, Missouri.

9           In its electric rate case, Aquila is  
10 seeking rate increases designed to increase Aquila's  
11 annual revenues from its MPS electric customers by  
12 \$65 million and from its L&P electric customers by  
13 \$14.6 million. In its steam rate case Aquila is  
14 seeking rate increases designed to increase Aquila's  
15 annual revenues from its L&P customers by \$1.3  
16 million. If approved, these would be increases in  
17 revenues of 19.2 percent for MPS electric,  
18 15.5 percent for L&P electric and 19.2 percent for  
19 MPS steam -- L&P steam.

20           Aquila is supporting these proposed  
21 increases with positions on issues that this  
22 Commission has rejected in other cases, positions  
23 such as that the cost of removing retired plant  
24 should be included in depreciation rates rather than  
25 treated as an expense, that a hypothetical capital

1 structure rather than a natural capital structure  
2 should be used to determine the cost of capital, and  
3 that the tax deduction allowed for determining rate  
4 case should be based on the accelerated depreciation  
5 method allowed and used for federal income tax  
6 purposes rather than the straight line depreciation  
7 method.

8           These are major issues in this hearing.  
9 Although Aquila is representing to this Commission  
10 that it has divorced its poor financial condition  
11 from the rate relief it seeks here, the Staff is  
12 aware of at least one situation where it has not done  
13 so. That situation is Aquila's inability to continue  
14 to sell its accounts receivable because of its  
15 financial rating. That inability, which Aquila has  
16 made no adjustment for in this case, has the effect  
17 of increasing Aquila's cash working capital needs.

18           Aquila, with its merger savings sharing  
19 plan, is proposing to base its rates on consideration  
20 other than its cost to provide service. This is  
21 despite the fact that Aquila has had the sole benefit  
22 of these claimed savings since its merger with  
23 St. Joseph Light & Power Company closed December 31,  
24 2000, and will continue to benefit from them at least  
25 until the operation of law date of this case.

1                   Despite the fact of a true-up period in  
2 this case, Aquila is seeking relief on jurisdictional  
3 allocations, payroll, property taxes and fuel expense  
4 based on events that were not known and measurable on  
5 or before September 30, 2003, the end of the update  
6 period in this case.

7                   The Staff has also raised as an issue in  
8 these cases Aquila's motivations in choosing to build  
9 the Aries combined cycle generating unit as an  
10 unregulated plant, then leasing power from that plant  
11 to meet the needs of its regulated Missouri customers  
12 without consideration of the option of building a  
13 regulated generating plant operated by MPS.

14                   In illustration of the Staff's concerns,  
15 you will hear about a generating facility called  
16 Greenwood, which Aquila built, sold, leased for 25  
17 years, then reacquired at a cost exceeding the  
18 original build price.

19                   The parties in this case recognize the  
20 hardship that the extreme volatility in recent  
21 natural gas and purchased power prices has caused  
22 utilities and others. While the other parties in  
23 these cases have made other proposals, the Staff is  
24 proposing that the Commission adopt an interim energy  
25 charge similar to the one the Commission approved in

1 Case No. ER-2001-299 and ER-2002-1074. If adopted by  
2 the Commission, the interim energy charge would  
3 provide Aquila protection from the high prices of the  
4 current energy market and, through a refund  
5 mechanism, provide customers with protection should  
6 natural gas and purchased power prices fall.

7           The parties in this case have entered  
8 into a Stipulation & Agreement with respect to rate  
9 design for Aquila's Missouri electric operations.  
10 The Staff entered into that Stipulation & Agreement  
11 because of the pending customer class cost of service  
12 rate design proceeding that was established after  
13 Aquila's last general electric rate case for the  
14 purpose of designing Aquila's electric rates in  
15 Missouri. That case is E0-2002-384.

16           The Stipulation & Agreement here defers  
17 changes to rate design in Case No. ER-2004-0034 to  
18 that case. Unlike Aquila's last rate case, Case  
19 No. ER-2001-672, where the Commiss-- where the Staff  
20 determined that Aquila was overearning, here the  
21 Staff has determined that aquila is entitled to rate  
22 relief. The Staff's evidence will support rate  
23 increases to implement increased electric revenues of  
24 about \$6.7 million for MPS, increased electric  
25 revenues of about 2.7 million for L&P, and increased

1 steam revenues of about 870,000 for L&P.

2 Also an issue in this case is the  
3 question of whether the setting of rates for L&P's  
4 electric and steam customers is properly before this  
5 Commission for decision. The Staff's position is  
6 that the Commission has authority in this case to set  
7 rates for L&P's customers. The Staff asks that the  
8 Commission carefully weigh the evidence presented by  
9 the parties on each of the listed issues, in light of  
10 the law, and make appropriate decisions on each of  
11 those issues.

12 Thank you.

13 JUDGE JONES: Thank you, Mr. Williams.  
14 The Office of the Public Counsel?

15 MR. COFFMAN: Good morning. May it  
16 please the Commission?

17 I need to begin by noting that Public  
18 Counsel has lodged a continuing objection. Public  
19 Counsel objects to the Commission going forward with  
20 this evidentiary hearing as it relates to the tariffs  
21 filed by Aquila for the St. Joseph Light & Power  
22 Company service territory, an area for which we  
23 believe Aquila has no right to request rate relief.

24 As Public Counsel has noted in its  
25 suggestions in support of AG Processing's motion to

1 dismiss, the Missouri Supreme Court has reversed the  
2 Commission's order approving the UtiliCorp/SJ L&P  
3 merger, and that order is now void. The merger was  
4 not legally effectuated, and thus we do not believe  
5 the Commission has the jurisdiction to consider  
6 Aquila's request to increase rates in the SJ L&P  
7 area.

8                   We understand the Commission has  
9 discussed the motion to dismiss in the agenda  
10 session, but no decision on that order has been  
11 forthcoming. We also note that the Commission has  
12 reopened the merger application case, Case No.  
13 EM-2000-292, in order to we hope, consider the  
14 acquisition premium issue as it relates to all the  
15 other issues in the case as directed by the Supreme  
16 Court.

17                   Now, if the Commission is to proceed  
18 today with this rate case as it relates to  
19 St. Joseph Light & Power Company, it appears to me  
20 that the Commission is prejudging that decision that  
21 it has yet to make in the merger case. Again, I urge  
22 you to dismiss that portion of the rate case before  
23 we begin today.

24                   If the Commission, nonetheless, does  
25 decide to proceed despite the motion to dismiss,



1 Public Counsel's participation with other issues  
2 should not be construed as conceding or acquiescing  
3 to any arguments relating to that motion to dismiss.

4           Now, let me briefly highlight the  
5 evidence that the Public Counsel is prepared to  
6 present this week and next week. Staying on the  
7 topic of the purported merger with SJ L&P, Public  
8 Counsel is opposed to the so-called merger savings  
9 proposal, which would allow the company to indirectly  
10 recover merger acquisition and transaction costs for  
11 a proposed merger that Public Counsel thought then  
12 and continues to think is detrimental to the public  
13 interest, so detrimental, in fact, that it cannot be  
14 mitigated by any conditions.

15           The testimony of Public Counsel Witness  
16 Ryan Kind will show with overwhelming evidence that  
17 the decision to pursue that merger was driven  
18 entirely by the expectation that shareholders would  
19 benefit through opportunities for unregulated  
20 earnings. The testimony of James Dittmer and Ted  
21 Robertson will show that there has been no  
22 demonstration of, quote, unquote, savings and further  
23 that the retention of energy savings to incent  
24 mergers is not supported by any evidence.

25           This -- as you might gather, this

1 particular moniker for this issue does kind of bother  
2 me. I think it would actually be more accurate to  
3 call these savings phantom costs or imaginary costs.  
4 They're costs that never occurred, costs that for  
5 many reasons should not be charged to ratepayers.

6           Public Counsel will present the  
7 testimony of Ted Robertson on various issues relating  
8 to Accounting Authority Orders. I won't go into all  
9 the minute details there, but we do believe that  
10 shareholders should share in the risks associated  
11 with regulatory lag that's mitigated by these various  
12 AAOs.

13           Mr. Robertson also is presenting  
14 testimony relating to the accounting recordkeeping  
15 that is maintained by Aquila. Mr. Robertson  
16 recommends that the Commission investigates the  
17 necessity and the cost associated with all aspects of  
18 the current accounting system as it relates to  
19 company's regulated operations. Since this was fully  
20 implemented in the late 1990s, it has continued to be  
21 a source of frustration for us.

22           I don't -- I'm not alleging any sort of  
23 intentional design in order to make our job harder,  
24 but it was a program that was put in place in order  
25 to accommodate the unregulated domestic international

1 activity the company did in conjunction with the  
2 related activity, and it has complicated our ability  
3 to perform a rate case.

4                   Now, Staff believes it has been able to  
5 comply and perform an audit using the current  
6 accounting system, but Staff does have numerous  
7 auditors that can camp out at a utility's  
8 headquarters for many days and recreate its own  
9 accounting schedules in a case like this.  
10 Unfortunately, I do not have that luxury.

11                   Parties that would like to perform their  
12 audits with limited personnel like myself now find  
13 that the company's system is just not as amenable to  
14 effective auditing procedures, and our ability to  
15 audit as we used to audit is hindered.

16                   Public Counsel's also presenting the  
17 testimony of James Dittmer on several issues relating  
18 to the protection of regulated ratepayers from the  
19 dramatic changes that occurred since Aquila's  
20 spectacular losses experienced solely as a result of  
21 its unregulated activities, and Mr. Dittmer has a lot  
22 of experience and knowledge about this company.  
23 He has testified going way back to numerous original  
24 MoPub cases and brings that wealth of knowledge here  
25 to testify on a few of these issues.

1 Corporate restructuring. It is true  
2 that the company has proposed to eliminate some costs  
3 relating to the winding down of a number of its  
4 business operations, but we believe it has not gone  
5 far enough to protect ratepayers from such corporate  
6 restructuring activities.

7 Severance costs. In 2002, company  
8 exited several domestic and international business  
9 interests, laying off many employees and making  
10 considerable severance payments, some of which were  
11 eliminated in company's proposal. Public Counsel  
12 proposes eliminating all of those severance costs  
13 afforded in the test year from the calculation of  
14 regulated rates.

15 A third issue that Mr. Dittmer will be  
16 presenting relates to the 20th West 9th building,  
17 where company's corporate headquarters now experience  
18 significant unused and excess capacity. Mr. Dittmer  
19 will present evidence proposing to eliminate over  
20 30 percent of the net plant costs associated with the  
21 excess capacity in that building.

22 There are a variety of fees,  
23 miscellaneous charges that Public Counsel Witness  
24 James Busch will present recommendations on, based on  
25 a cost study. Public Counsel proposes a collection

1 fee of \$20 and a late payment charge no greater than  
2 1.25 percent, and we also propose the increases in  
3 special meter reading charges.

4           The last major issue that has been  
5 touched on by the Staff and the company relates to  
6 fuel costs. And there have been numerous settlement  
7 discussions throughout this case regarding company's  
8 proposed gas cost recovery mechanism and ideas such  
9 as the interim energy charge that was adopted in  
10 Empire District Electric's case in 2000. All parties  
11 have taken an open mind in these discussions and have  
12 looked at the appropriateness of this particular  
13 situation in this time period. Unfortunately, those  
14 discussions did not produce the unanimous agreement  
15 as they did in the Empire District case in 2001.

16           Surprisingly, Staff has late-filed  
17 testimony and surrebuttal this Friday supporting its  
18 new position on this issue that the Commission adopt  
19 an interim energy charge, despite the lack of an  
20 agreement. The problem is that, absent such an  
21 agreement to pursue a mechanism and an agreement that  
22 would waive the legal arguments regarding it, we  
23 believe the interim energy charge suffers from some  
24 legal deficiencies that have been litigated long ago.

25           In 1979, the Missouri Supreme Court made

1 it clear in Utility Consumers Council of Missouri vs.  
2 PSC, 558 SW 2nd 82, that such electric fuel  
3 mechanisms violate the prohibition against single  
4 issue ratemaking and violate the prohibition against  
5 retroactive ratemaking.

6           The company and Staff, I anticipate,  
7 will attempt to distinguish their proposals from the  
8 prohibited fuel adjustment clauses that have been  
9 struck down, but we believe that interim energy  
10 charge would require rate changes without proper  
11 consideration of all relevant factors that would  
12 otherwise need to be examined when the proposed  
13 true-up is to occur, perhaps justifying other  
14 decreases at that time, which would be two years  
15 later. Also at that time, adjustments would be made  
16 that would be retroactive, also contrary to Missouri  
17 law.

18           The legal deficiencies aside, Public  
19 Counsel's evidence will point to reasons that such a  
20 mechanism may be contrary to good regulatory policy.  
21 The incentive to prudently procure and manage fuel  
22 costs would be lessened. The customer would have to  
23 pay up front the higher projected cost and bear the  
24 risk of not receiving a refund due to company's  
25 ability to manage fluctuating fuel prices. However,

1 it is the company alone that has this ability to  
2 pursue practices minimizing its costs. The customer  
3 has no ability to hedge those fluctuations.

4           When any reduction in fuel costs would  
5 be refunded -- when you have a mechanism that would  
6 refund reductions in fuel costs to consumers, the  
7 company does not have quite the same incentive to  
8 procure and manage fuel supplies at an optimal level  
9 that they would have if the rates were set at a fixed  
10 level. The customer would then bear more risk of  
11 rising and volatile prices, though rates already  
12 include a risk premium through the return on equity  
13 in the calculation of rates. In other words,  
14 customers already pay Aquila for taking on the risk  
15 of managing fuel costs.

16           Neither Staff nor company are proposing  
17 to make any adjustment that I've seen yet to their  
18 proposed return on equity recommendations to reflect  
19 this proposed change in company's risk profile that  
20 would occur if an interim energy charge were  
21 approved. Absent a unanimous agreement on the  
22 interim energy charge, Public Counsel proposes that  
23 the Commission adopt a standard fuel price in the  
24 ratemaking calculation that includes a natural gas  
25 price of \$3.99 per MMBtu. Public Counsel witness

1 James Busch supports this recommendation based on a  
2 proper blending of historical prices with future  
3 projections.

4                   The historical prices included in this  
5 calculation go all the way back to January 2001 when  
6 those prices reached nearly \$10. In other words,  
7 those high prices are not excluded from the  
8 historical portion. While some witnesses have  
9 extolled the virtues of either historical indicators  
10 or future indicators, Public Counsel's approach takes  
11 both into account, and we believe it is the best  
12 indicator of a just and reasonable level of natural  
13 gas prices going forward.

14                   Finally, I will mention a little bit  
15 about return on equity. Public Counsel is not  
16 offering a witness to testify, although you heard  
17 Mr. Swarengen mention, Mark Burdette did file direct  
18 testimony in this case before he left Public  
19 Counsel's office. Unfortunately, I don't have a  
20 witness to sponsor his testimony. I was unable to  
21 afford someone to sponsor it and take that over.

22                   However, I disagree with the  
23 characterization that it is somehow out of line with  
24 Staff's recommendation. We believe Staff's ROE  
25 calculation is by far the best recommendation that



1 will be offered to you in this case.

2                   The Staff recommended range of 8.64 to  
3 9.64 actually overlapped the recommended range that  
4 Mr. Burdette would have proposed to you. His  
5 recommendation at that time was 9.6 to 10.1. This is  
6 far from Aquila's recommended 12 percent to  
7 12.5 percent. I think that Staff recommendation is  
8 clearly reasonable and we are supporting that.

9                   Thank you very much.

10                  JUDGE JONES: Thank you, Mr. Coffman.

11 And now we'll hear from Sedalia Industrial Energy  
12 Users Association and AG Processing, Incorporated.

13                  MR. CONRAD: Good morning, your Honor.  
14 Like Mr. Coffman, I have to begin by noting that what  
15 we do here is subject to a continuing objection that  
16 is without prejudice to our position on the motion  
17 that we filed on January 12th of 2004, pointing out  
18 that you-all do not have jurisdiction to pursue a  
19 rate filing by this utility with respect to the  
20 former St. Joseph Light & Power service territory, as  
21 it's so-called. Out of respect for a senior -- many  
22 years senior to me counselor at the bar,

23 Mr. Swearingen --

24                  MR. SWEARENGEN: What did I do to  
25 deserve that?

1                   MR. CONRAD: -- I did not choose to  
2 interrupt his extemporaneous presentation to you -- a  
3 string of objections to that this morning, but that  
4 objection was made earlier and on the record.

5                   I will come back to that point for a few  
6 moments, but let me also lift up for you that many of  
7 the concerns that my clients have in this proceeding,  
8 save for those previously mentioned, have been  
9 addressed in a rate design stipulation that was filed  
10 with the Commission on 12/16/03. That continues to  
11 be before you, and I would presume it would be taken  
12 with the case and presumably would also be ruled upon  
13 favorably, since no one has provided time in the  
14 two-week hearing schedule to deal with the very  
15 complex issues of rate design.

16                   The steam service issue is a matter of  
17 concern to the AGP client. Our testimony there,  
18 subject to again the previous objection, is that that  
19 service is ancillary to the electric operations in  
20 St. Joseph, it does not require any significant  
21 additional capital to provide and, therefore, it  
22 should not be costed on a fully allocated basis, but  
23 rather on an ancillary basis.

24                   Mr. Brubaker, of the Brubaker &  
25 Associates group in St. Louis, has provided testimony

1 at the Commission on that, and I believe his exhibit,  
2 when it comes in, will be No. -- I'm sorry. I think  
3 it's 127.

4 Let me turn quickly to an issue that  
5 Mr. Coffman touched on, and that is the discussion of  
6 merger savings. It's difficult for me, your Honors,  
7 to discuss merger savings on a merger that we think  
8 did not occur.

9 Setting aside for just a moment that  
10 little issue, our testimony on that is from a  
11 gentleman named Stevens. I believe his surrebuttal  
12 testimony is marked as Exhibit 97, and his direct is  
13 marked as Exhibit 143, at the point in time that they  
14 come in. He agrees, I believe, with Mr. Coffman's  
15 comments that those savings are actually fictional  
16 and hypothetical and can't be measured.

17 Now, let me jump on the merger issue for  
18 just a second. It's very clear to me that under the  
19 constitution of this state, Article 5, the supreme  
20 judicial power of the State is afforded to an entity  
21 that we call the Missouri Supreme Court.

22 Article 23 -- or Section 2, rather, of  
23 Article 5 says that everybody else bends their knee  
24 to that court, right or wrong. On October 28 of last  
25 year that court reversed this Commission's decision.

1                   Now, when the Supreme Court of the state  
2 reverses an administrative decision, it does so in a  
3 banc decision. I think I would have a tough time as  
4 a counselor of law defending the proposition that the  
5 administrative agency somehow has a veto power over  
6 that reversal. Gentlemen, lady, that order is gone.  
7 It is gone as much as if all eight of them or seven  
8 of them or six of them, in that case, Judge Price  
9 setting aside, came in here in this hearing room and  
10 took it and tore it. It's gone. It is reversed.

11                   It is not up to this Commission to  
12 decide whether it wants to go along with what the  
13 Supreme Court has ruled. There's little more that I  
14 can say but that. You do not have jurisdiction, and  
15 gentlemen and lady, it is not in persona jurisdiction  
16 that you lack, it is subject matter jurisdiction that  
17 you lack. There simply is no jurisdiction. There is  
18 no order in that case. They remanded the case. They  
19 reversed the order. You need to read perhaps what  
20 they say.

21                   I agree with Mr. Coffman that going  
22 ahead in the context of this decision, this case, to  
23 talk about merger savings presupposes the existence  
24 of a merger, presupposes how that merger was  
25 effected, presupposes when it was effected,

1 presupposes all sorts of things about that decision.

2           And, Commissioners, with all respect,  
3 the problem in the EM case arose at both the Western  
4 District and the Supreme Court because an issue that  
5 should have been dealt with at the time that that  
6 case was before you was punted to some future time.  
7 I suggest to you again, going forward with St. Joe  
8 rates here just goes right down the same path.

9           Mr. Coffman mentioned the fuel issue.  
10 He did that very well. The parties, through  
11 extensive discussions starting during the prehearing  
12 and, frankly, continuing right to today, have been  
13 working on mechanisms to try to deal with that. The  
14 villain there is gas costs. Gas costs, like J.P.  
15 Morgan said when he was asked what the market would  
16 do, fluctuate. They fluctuate. They in some  
17 instances have been somewhat surprising in the extent  
18 of their fluctuation.

19           Because of the nature of how the  
20 utilities operate, when they choose to buy gas and  
21 the cost of the gas that they buy drives decisions  
22 with respect to purchased power, so it's a very  
23 complex equation that has to be run through. Both  
24 company and your Staff have computer models to do  
25 this.

1           One of the areas I think that remains to  
2 be resolved is why those models, even though they're  
3 both using the same software and supposedly the same  
4 issues of the same software, come to different  
5 results, not widely different results, but different  
6 results nonetheless. We are continuing to have those  
7 discussions. Mr. Coffman points out that that issue  
8 is still open, that Staff has put some new material  
9 in. We're, frankly, in the process of more  
10 thoroughly analyzing that, but we do hope that those  
11 discussions continue.

12           That issue, Commissioners, is set for, I  
13 believe, the 5th of March, the very last day of this  
14 schedule. And it's very likely that -- well, I won't  
15 say likely, but it's possible that there may be some  
16 mechanism that can be brought to you before then. I  
17 do concur, however, albeit reluctantly, with  
18 Mr. Coffman on this point because I think his law is  
19 right.

20           And again, although it's only a decision  
21 of the Missouri Supreme Court, in 1979 the UCCM  
22 decision did invalidate the existing fuel adjustment  
23 costs. Judge Sylar wrote in that decision that he  
24 was reluctant in coming to the conclusion and  
25 encouraged the Legislature to take action. That was

1 1979. 25 years have passed and the Legislature has  
2 not taken action, has not seen fit to take action and  
3 has not changed that rule. So there again, I think  
4 we have a Supreme Court decision that, unless all  
5 parties can come to agreement on that issue, your job  
6 on that, it strikes me, is to pick a number.

7           And in that I endorse what Mr. Coffman  
8 has said. The company can always come in if the  
9 number's too low and seek additional revenue. I  
10 grant you there's a delay, but if the circumstances  
11 are too bad, they can come to you and present a case  
12 for interim relief. Ratepayers, however, have no  
13 recourse other than to pay.

14           What we're hoping to come to is some  
15 kind of package that can address the position in the  
16 middle. We may not succeed, and we may end up  
17 pushing that decision to you. If so, it will not be  
18 because we have not tried.

19           With those thoughts, I will relinquish  
20 the podium.

21           JUDGE JONES: Thank you, Mr. Conrad.  
22 Now we'll hear from the Federal Executive Agencies.

23           MR. PAULSON: Good morning,  
24 Commissioners. I am Major Craig Paulson. I  
25 represent the Federal Executive Agencies in this

1 matter. My primary client in the Federal Executive  
2 Agencies is Whiteman Air Force Base. We will be  
3 co-sponsoring testimony from Brubaker & Associates,  
4 along with Mr. Conrad. We'll be addressing two areas  
5 that you already heard about, merger savings and the  
6 fuel cost issue.

7           We also support an interim energy  
8 charge. One of the reasons that my client supports  
9 that is Mr. Brubaker will testify that, in his  
10 opinion, natural gas prices will go down, and that  
11 being the case, there's a risk of overcollection by  
12 the company unless the prices that are set allow for  
13 some refund mechanism or unless they're set at a  
14 level low enough to prevent that.

15           With regard to merger savings, as  
16 Mr. Conrad indicated and as Public Counsel indicated,  
17 it's our position that the savings just are not well  
18 documented. In addition, their concept of regulatory  
19 lag should be considered by you, meaning that the  
20 company has already, during the period between the  
21 occurrence of the so-called savings and the present,  
22 has already received benefit if there are any merger  
23 savings.

24           In addition, we believe that the  
25 testimony will show that the company is predicting or



1 did predict at one time that the merger savings will  
2 increase every year. That means in the future they  
3 can be anticipated, again if they exist at all, to  
4 increase.

5 That concludes my comments. Thank you.

6 JUDGE JONES: Thank you, Major Paulson.  
7 Now we'll hear from Missouri Department of Natural  
8 Resources.

9 MS. WOODS: Good morning, Commissioners.  
10 My name is Shelley Woods. I'm representing the  
11 Missouri Department of Natural Resources in the  
12 matter before you. The Department has three issues  
13 in the electric and the steam rate cases before this  
14 Commission. Those three issues are outlined in the  
15 testimony of Anita Randolph, who is the director of  
16 the Department's energy center.

17 The first issue that the Department has  
18 is a request that Aquila make certain much-needed  
19 changes to its low-income weatherization program. At  
20 present, the Aquila program is non-existent in the  
21 L&P service area and in the MPS service area. Very  
22 few have been able to take advantage of the money  
23 offered by Aquila in the past to weatherize homes.  
24 Aquila should offer the programs in all of its  
25 service areas and offer a program that will provide

1 actual weatherization services.

2                   The Department also seeks to have Aquila  
3 expand its weatherization program to provide energy  
4 efficient Internet online audits to residents and  
5 commercial entities within its service area and  
6 participate in what's termed the "change a light,  
7 change the world" program.

8                   And finally, the Department seeks to  
9 have Aquila complete an assessment MMG in a part of  
10 its service area, based on promising work the  
11 Department has already funded to date. This project  
12 is in keeping with the Department's mandate to  
13 conserve and protect the natural resources of this  
14 state.

15                   While the Department's issues are narrow  
16 in comparison to the number of issues before this  
17 Commission in this rate case, they are nonetheless  
18 significant in terms of benefit to ratepayers, the  
19 company and the state's energy environment.

20                   We'd like to thank the Commission for  
21 its time and attention, and ask the Commission --  
22 that the Commission find in the Department's favor on  
23 the three issues raised by it in this rate case.  
24 Thank you.

25                   JUDGE JONES: Thank you, Ms. Woods. Now

1 we'll hear from City of Kansas City, Missouri.

2 MR. COMLEY: May it please the  
3 Commission? My name is Mark Comley, and I represent  
4 the City of Kansas City in this matter. And it's  
5 appropriate that I follow the Missouri Department of  
6 Natural Resources in our opening remarks, because I  
7 do have a similar issue to address with you.

8 The City has provided the testimony of  
9 Robert T. Jackson. Mr. Jackson has had a long tenure  
10 as the weatherization program administrator for the  
11 City of Kansas City's Department of Housing and  
12 Community Development. Mr. Jackson has pointed out  
13 in his testimony the chronicle of events that led up  
14 to a very successful weatherization program for a gas  
15 company in Kansas City, Missouri Gas Energy, and also  
16 a report that was issued recently by -- I'll call it  
17 TechMarket Works in Case No. GR-2000-1292.  
18 Mr. Jackson quotes from there, and I'll just briefly  
19 say the market, the consultant found the program, the  
20 weatherization program provides positive benefit cost  
21 ratios, strong energy savings as well organized and  
22 structured to provide valuable services to the  
23 participants.

24 The City of Kansas City is one of the  
25 team members, along with the Missouri Department of

1 Natural Resources and the United States Department of  
2 Energy, that provides a very meaningful and  
3 significant service to low income subscribers to  
4 electric service and gas service, and it's the  
5 proposal of the City of Kansas City, like that of  
6 Missouri Department of Natural Resources, that the  
7 Commission implement on a wider scale the  
8 weatherization program that has proven so successful  
9 for the utilities. Again, the benefits are not only  
10 to the subscribers, but also to the company and the  
11 shareholders.

12 JUDGE JONES: Thank you, Mr. Comley. At  
13 this time maybe we should take a very short  
14 five-minute break to allow people time to refill  
15 their coffee cups. We'll be back here at 11 o'clock,  
16 and we will go 'til noon at least, perhaps 12:30.

17 (A BREAK WAS TAKEN.)

18 JUDGE JONES: We have a quick issue to  
19 deal with. Mr. Comley for the City of Kansas City  
20 has asked that he be excused for those portions of  
21 the hearing that he doesn't have cross-examination  
22 for. I don't suppose anyone objects to his being  
23 excused?

24 (No response.)

25 JUDGE JONES: That being so,

1 Mr. Comley, you may be excused.

2 MR. COMLEY: Thank you, Judge.

3 MS. WOODS: Judge, I would ask --

4 JUDGE JONES: Yes, Ms. Woods?

5 MS. WOODS: I would ask for the same  
6 opportunity to be excused during those portions of  
7 what we don't have an issue with, and we would also  
8 waive cross-examination.

9 JUDGE JONES: You may also be excused.  
10 Does anyone else need a hall pass?

11 (No response.)

12 JUDGE JONES: Okay. Thank you.

13 The first scheduled to appear is Keith  
14 Stamm for Aquila.

15 MR. SWEARENGEN: That is correct, your  
16 Honor.

17 JUDGE JONES: Mr. Stamm, would you  
18 please approach the witness stand, and will you say  
19 and spell your name.

20 THE WITNESS: Keith, K-e-i-t-h, Stamm,  
21 S-t-a-m-m.

22 JUDGE JONES: And will you raise your  
23 right hand.

24 (Witness sworn.)

25 JUDGE JONES: You may be seated.

1 KEITH STAMM testified as follows:

2 DIRECT EXAMINATION BY MR. SWEARENGEN:

3 Q. Mr. Stamm, do you have with you this  
4 morning your direct, rebuttal and surrebuttal  
5 testimony that you filed in this case?

6 A. Yes.

7 Q. And is it your understanding your direct  
8 testimony has been marked as Exhibit 1, your rebuttal  
9 as Exhibit 2 and your surrebuttal as Exhibit 3?

10 A. Yes.

11 Q. Are there any changes that you need to  
12 make?

13 A. No.

14 Q. Thank you.

15 MR. SWEARENGEN: With that, your Honor,  
16 I would offer into evidence Exhibits 1, 2 and 3 and  
17 tender the witness for cross-examination. Thank you.

18 JUDGE JONES: Thank you. Exhibits 1, 2  
19 and 3 are admitted into the record.

20 (EXHIBIT NOS. 1, 2 AND 3 WERE RECEIVED  
21 INTO EVIDENCE.)

22 JUDGE JONES: First scheduled for  
23 cross-examination is Missouri Department of Natural  
24 Resources. Ms. Woods?

25 MS. WOODS: I have no questions, your

1 Honor.

2 JUDGE JONES: Thank you. Next scheduled  
3 is Sedalia Industrial Energy Users Association and AG  
4 Processing. I don't see Mr. Conrad here. We'll come  
5 back to him.

6 Next there's Federal Executive Agencies,  
7 who is also not here. And next on the list is the  
8 Office of the Public Counsel. Mr. Micheel?

9 MR. MICHEEL: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. MICHEEL:

11 Q. Mr. Stamm, is it correct that starting  
12 in 1985 UtiliCorp United, later Aquila, pursued a  
13 growth strategy through acquisition of other domestic  
14 utility properties?

15 A. Yes, it is.

16 Q. Is it correct that the strategy was to  
17 diversify risk by product geography and regulatory  
18 jurisdiction to create economies of scale and scope  
19 that would benefit both customers and shareholders?

20 A. That's correct, and weather  
21 diversification was also a strategic objective.

22 Q. And when you say create economies of  
23 scale and scope, what do you mean?

24 A. There are typically costs associated  
25 with a corporation that can be allocated, and the

1 business is larger, then those costs are allocated  
2 over a larger business, and those costs should be  
3 then smaller to the individual businesses.

4 Q. And that covers both the scale and the  
5 scope component of that?

6 A. That covers the scale.

7 Q. And what about the scope component?

8 A. The scope is with respect to the  
9 diversification of the risks that we spoke about  
10 earlier.

11 Q. And is it correct from 1985 to 1995  
12 Aquila made eight domestic utility acquisitions in  
13 seven mid-continent states?

14 A. That sounds correct, yes.

15 Q. Well, do you state that at page 8,  
16 line 7 and 8 of your direct testimony, Exhibit 1?

17 A. That's correct.

18 Q. Did those eight domestic utility  
19 acquisitions create economies of scale and scope that  
20 benefitted both customers and shareholders?

21 A. We believe it did, yes.

22 Q. What eight domestic utility acquisitions  
23 are you referring to at page 8, line 8 of your  
24 testimony?

25 A. We acquired People's Natural Gas, West



1 Virginia Electric and West Virginia Gas, Northern  
2 Minnesota Utilities, Michigan Gas Utilities, the  
3 Centel Properties. Those are the ones that off the  
4 top of my head I can recall.

5 Q. Well, perhaps let me refresh your  
6 recollection. Did you -- did Aquila/UtiliCorp  
7 acquire Kansas Public Service?

8 A. Yes.

9 Q. Did you acquire West Plains Energy?

10 A. Yes, that was part of the -- that's the  
11 Centel acquisition.

12 Q. Minnegasco's Nebraska operations?

13 A. Yes.

14 Q. Arkla's Kansas operations?

15 A. That's correct.

16 MR. MICHEEL: I need to get an exhibit  
17 marked, your Honor, and I believe it's going to be  
18 Exhibit 147. And it's portions of UtiliCorp United,  
19 Inc.'s 1991 annual report.

20 (EXHIBIT NO. 147 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. MICHEEL:

23 Q. Mr. Stamm, I've handed you what's been  
24 marked for purposes of identification as Exhibit 147.  
25 It's a portion of the UtiliCorp United's annual

1 report, specifically page 2. Do you recognize that,  
2 sir?

3 A. Yes, I do.

4 Q. And do you see the columns and tables at  
5 the bottom of that page that list Aquila's  
6 acquisitions from, I guess it would be 1984 through  
7 1991?

8 A. Yes.

9 Q. And is that consistent with your  
10 testimony, sir, for that time period through '91,  
11 with the exception of West Coudenay (ph. sp.), which  
12 is not a U.S. domestic utility?

13 A. Yes.

14 MR. MICHEEL: I would move the admission  
15 of Exhibit 147.

16 MR. SWEARENGEN: No objection.

17 JUDGE JONES: Are there objections from  
18 anyone else to Exhibit 147?

19 MR. WILLIAMS: No objections.

20 JUDGE JONES: Hearing no objections,  
21 Exhibit 147 is admitted into the record.

22 (EXHIBIT NO. 147 WAS RECEIVED INTO  
23 EVIDENCE.)

24 BY MR. MICHEEL:

25 Q. I want to talk to you, Mr. Stamm, about

1 those acquisitions. With respect to the Kansas  
2 Public Service acquisition, the first one that's  
3 listed there on Exhibit 147 --

4 A. Yes.

5 Q. -- is it correct that there was no  
6 recovery of an acquisition premium for that merger?

7 A. I don't know that.

8 MR. MICHEEL: I need to get another  
9 exhibit marked, your Honor. This would be  
10 Exhibit 148. It's Public Counsel Data Request 5007.

11 JUDGE JONES: This exhibit will be  
12 marked as Exhibit 148.

13 (EXHIBIT NO. 148 WAS MARKED FOR  
14 IDENTIFICATION BY THE REPORTER.)

15 BY MR. MICHEEL:

16 Q. Have you had an opportunity to review  
17 what's been marked for purposes of identification as  
18 Exhibit 148?

19 A. Yes, I have.

20 Q. And does that question ask whether or  
21 not UtiliCorp United received an acquisition premium  
22 for the Kansas Public Service acquisition in 1984?

23 A. Yes.

24 Q. And does it indicate there was no  
25 acquisition premium with respect to that merger?

1           A.     It does indicate that, yes.

2           MR. MICHEEL:  With that, I would move  
3 the admission of Exhibit 148.

4           JUDGE JONES:  Are there any objections  
5 to Exhibit 148?

6           (No response.)

7           JUDGE JONES:  Seeing none, Exhibit 148  
8 is admitted into the record.

9           (EXHIBIT NO. 148 WAS RECEIVED INTO  
10 EVIDENCE.)

11          MR. MICHEEL:  I need to get another  
12 exhibit marked, your Honor.  Well, let me ask a  
13 question first.

14 BY MR. MICHEEL:

15          Q.     Mr. Stamm, are you aware of whether or  
16 not UtiliCorp United requested synergy savings be  
17 recovered from that merger?

18          A.     I'm not aware of that.

19          MR. MICHEEL:  I need to get an exhibit  
20 marked, your Honor.  It will be Exhibit 149.  It's  
21 Public Counsel Data Request 5008.

22          (EXHIBIT NO. 149 WAS MARKED FOR  
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. MICHEEL:

25          Q.     Mr. Stamm, do you have before you what's

1 been marked for identification as Exhibit 149, Public  
2 Counsel Data Request 5008?

3 A. Yes.

4 Q. And does the company's response to that  
5 Data Request indicate that Aquila did not request  
6 recovery of synergy savings?

7 A. That's correct.

8 MR. MICHEEL: I would move the admission  
9 of Exhibit 149, your Honor.

10 JUDGE JONES: Objection to Exhibit 149?  
11 (No response.)

12 JUDGE JONES: At this point I should  
13 probably emphasize that upon asking if there are any  
14 objections, many of you are shaking your heads no.  
15 That doesn't sound like a no. It looks like a no to  
16 me. So I'd appreciate if you would speak into the  
17 mike and say no if you have no objection.

18 MR. WILLIAMS: Staff has no objection.

19 MR. SWEARENGEN: The company has no  
20 objection. Thank you.

21 MR. PAULSON: FEA has no objection.

22 MS. WOODS: DNR has no objection.

23 JUDGE JONES: Thank you. Exhibit 149 is  
24 admitted.

25 (EXHIBIT NO. 149 WAS RECEIVED INTO

1 EVIDENCE.)

2 BY MR. MICHEEL:

3 Q. Referring again to Exhibit 147, the  
4 annual report there, the next merger listed is the  
5 People's Natural Gas merger; is that correct?

6 A. Yes, it is.

7 Q. And that occurred in December of 1985;  
8 is that correct?

9 A. Correct.

10 Q. And is it correct that the company did  
11 not seek any recovery of an acquisition premium in  
12 the People's case?

13 A. I believe that's correct.

14 Q. And is it correct that Aquila made no  
15 request to share synergy savings in that case?

16 A. I believe that's correct.

17 Q. I want to discuss with you the next one  
18 on the list there, Northern Minnesota Utilities. Is  
19 it correct that there was no recovery of an  
20 acquisition premium sought in that proceeding?

21 A. I believe that's correct.

22 Q. And it is correct that there was no  
23 recovery of synergy savings sought in that  
24 proceeding?

25 A. I believe that's the case, yes.

1           Q.     Talk about the West Virginia Power ones  
2 there, and I know that they're disaggregated so I  
3 want to take them one at a time. Is it correct that  
4 there was no acquisition adjustment for the West  
5 Virginia Gas purchase?

6           A.     I believe that's the case.

7           Q.     Is it correct that there were no synergy  
8 savings for the West Virginia Gas acquisition?

9           A.     I believe that's the case.

10          Q.     And is it correct that there was no  
11 acquisition adjustments with respect to the West  
12 Virginia Electric?

13          A.     I believe that's the case.

14          Q.     And Aquila did not request recovery of  
15 any synergy savings in the West Virginia Electric  
16 case; isn't that correct?

17          A.     I believe that's the case.

18          Q.     The next one there on the list for  
19 domestic utilities, the Michigan Gas Utilities, is it  
20 correct that there was no recovery of an acquisition  
21 premium in that proceeding?

22          A.     I believe that's the case.

23          Q.     Is it correct that there was no recovery  
24 of synergy savings or request for recovery of synergy  
25 savings in that case?

1 A. I believe that's the case.

2 Q. Next one listed there is the West Plains  
3 Energy; is that correct?

4 A. Yes, it is.

5 Q. Is it correct that Aquila was allowed to  
6 recover a portion of the acquisition adjustment in  
7 that proceeding only to the extent that there were  
8 demonstrated savings?

9 A. Yes, it is.

10 Q. Would you agree with me in the West  
11 Plains merger, though, that the company did not  
12 request any specific synergy savings recovery?

13 A. I don't recall the wording, no.

14 Q. Well, in that case you got recovery of  
15 parts of the acquisition adjustment; is that correct?

16 A. Yes, it is.

17 Q. And there was no request for synergy  
18 savings because the acquisition adjustment was  
19 recovered based on whatever savings the company  
20 demonstrated; isn't that correct?

21 A. That sounds correct.

22 MR. MICHEEL: Well, let's clear up that,  
23 then. If I may approach the witness, your Honor?

24 JUDGE JONES: You may.

25 BY MR. MICHEEL:



1           Q.     Mr. Stamm, I'm handing you a copy of the  
2 order in 99-WPEEE181-RTS before the State Corporation  
3 Commission of Kansas in the matter of application of  
4 UtiliCorp United, d/b/a West Plains Energy. If you  
5 could, sir, turn to page 7 of that order and look at  
6 paragraph 16, sir, and read that to yourself and let  
7 me know after you've read that.

8           A.     I've read it.

9           Q.     Does that indicate that Aquila will be  
10 allowed recovery of acquisition -- an acquisition  
11 premium but only to the extent that they prove  
12 synergy savings?

13          A.     That's correct.

14          Q.     And does that paragraph also indicate  
15 that absent sharing of or proving synergy savings,  
16 that no acquisition adjustment will be allowed to be  
17 recovered?

18          A.     Yes.

19          Q.     Let me retrieve that.

20                     The next case on our list -- well,  
21 that's the end of that list, so we're going on to a  
22 new year here. I want to talk to you about the  
23 MinneGasgo acquisition of the MinneGasgo Nebraska  
24 operations. Are you familiar with those?

25          A.     I'm familiar with the operations, yes.

1 Q. Is it correct that when Aquila -- in  
2 that case Aquila -- at that time it was People's  
3 because you operated in divisions; is that correct?

4 A. Yes, it is.

5 Q. -- was allowed to recover one-third of  
6 the unamortized acquisition adjustment paid?

7 A. Yes.

8 Q. And is it correct there was no synergy  
9 savings requested in this case?

10 A. That's correct.

11 Q. I want you to discuss the Arkla Kansas  
12 operations. Is it correct that Aquila did not seek  
13 recovery of an acquisition premium when it acquired  
14 the Arkla Kansas operations?

15 A. I believe that's correct, yes.

16 Q. And is it correct that Aquila did not  
17 seek recovery of synergy savings in that case?

18 A. I believe that's the case, yes.

19 Q. Would you agree with me that in not one  
20 of the eight domestic utility acquisitions that we've  
21 talked about that Aquila had -- from that time frame,  
22 1985 to 1995, that Aquila sought no time to recover  
23 synergy savings?

24 A. That's correct, yes.

25 Q. So at least with respect to those eight

1 mergers when you had a corporate policy of merging,  
2 there was no need to share synergy savings; isn't  
3 that correct?

4 A. We did not ask to share synergy savings,  
5 that's correct.

6 Q. And if the company felt it was important  
7 to do that, you would have asked, wouldn't you?

8 A. We would have balanced that request  
9 amongst a number of other considerations, yes.

10 Q. And isn't it correct with respect to  
11 those eight acquisitions that we just talked about,  
12 only in two of the eight did Aquila get the ability  
13 to recover a portion of the acquisition premium?

14 A. Yes, it is.

15 Q. And yet during those ten years, Aquila  
16 had an acquisition strategy to acquire domestic  
17 utilities; isn't that correct?

18 A. That's correct.

19 Q. Are you aware of any Missouri PSC cases  
20 where the Commission has allowed recovery of an  
21 acquisition premium in rates?

22 A. I am not aware of any, no.

23 Q. Did you undertake any attempt to look to  
24 find out if this Commission has ever allowed that?

25 A. I'm sure we did look at that, and I'm

1 not aware of any.

2 Q. Are you aware of any Missouri PSC cases  
3 where the Commission has allowed the sharing of  
4 alleged synergy savings?

5 A. I'm not aware of any, no.

6 Q. Let me ask the converse. Are you aware  
7 of any Missouri PSC cases where the Commission has  
8 denied the sharing of alleged synergy savings?

9 A. I'm aware that the issue has been  
10 raised, and I can't speak to the details, though.

11 Q. So you don't know, sitting there today,  
12 whether or not this Commission has ever allowed the  
13 sharing of synergy savings; is that correct?

14 A. I do not believe it's been allowed.

15 Q. And when Aquila was seeking to purchase  
16 St. Joe Light & Power, do you think those are factors  
17 that the mergers and acquisition team would have  
18 looked into; when I say factors, whether or not the  
19 Missouri Public Service Commission had ever allowed  
20 recovery of an acquisition adjustment and whether or  
21 not the Missouri Public Service Commission ever  
22 allowed the recovery of synergy savings?

23 A. I'm certain those would have been  
24 considerations, yes.

25 Q. And so if the Commission had never

1 allowed those two prior to that merger, Aquila would  
2 have been aware of that fact; is that correct?

3 A. That's correct.

4 Q. And if indeed that is the fact, Aquila  
5 still chose to go forward with the merger; isn't that  
6 correct?

7 A. Aquila did choose to go forward with the  
8 merger, yes.

9 Q. And that was Aquila's choice, knowing  
10 the Commission had never allowed acquisition of  
11 premium or synergy savings in rates; isn't that  
12 correct?

13 A. Aquila did make that strategic decision,  
14 yes.

15 Q. And so Aquila was aware in a rate case  
16 proceeding or maybe even in a merger, we don't know,  
17 that the Commission may reject recovery of  
18 acquisition premium and synergy savings; isn't that  
19 correct?

20 A. Aquila had every intent of asking for  
21 that during the acquisition process, but was fully  
22 aware that it had not been approved historically,  
23 yes.

24 Q. Is it correct that Aquila no longer has  
25 the strategy to grow through mergers and

1 acquisitions?

2 A. Aquila is not in a position today to be  
3 growing through mergers and acquisitions, that's  
4 correct.

5 Q. And Aquila's not in that position  
6 because its losses in the non-regulated side have  
7 such impacted its financial condition that even if  
8 you wanted to be a purchaser of properties, Aquila  
9 wouldn't have the wherewithal to do that; isn't that  
10 correct?

11 A. Certainly our financial condition does  
12 not put us in a position to be acquiring utilities  
13 today, that's correct.

14 Q. Could you turn to page 11 of your direct  
15 testimony, sir? Would you agree with me that despite  
16 the fact that Aquila has not been allowed or  
17 requested to share merger synergy savings in any of  
18 its previous mergers, that the strategy was and  
19 continues to be a successful one, in your opinion?

20 A. Can you repeat the question?

21 Q. Sure. Would you agree with me that  
22 despite the fact that Aquila has not been allowed or  
23 even requested to share merger synergy savings in any  
24 of its previous mergers, that the strategy was and  
25 continues to be a successful strategy, in your

1 opinion?

2           A.     Well, certainly as you've pointed out  
3 there were a number of cases where we did not request  
4 that, so I presume those would be successful. In the  
5 cases where we have requested it, which have been  
6 rare, it's met with mixed success.

7           Q.     Well, I'm looking at the last word  
8 there, sir, on line 23, page 11, going over to page  
9 12 where you state, and I quote, our utility  
10 acquisition strategy was and continues to be  
11 successful. Is that correct?

12          A.     I'm sorry. I must be looking at a  
13 different version. This is the direct testimony,  
14 page 11?

15          Q.     Yes, sir.

16          A.     The last line?

17          Q.     Yes, sir.

18                 MR. MICHEEL: May I approach the  
19 witness, your Honor? We may have another EFIS issue  
20 here. I'm off the hard copy. Maybe he's looking at  
21 the EFIS copy.

22                 JUDGE JONES: You may.

23 BY MR. MICHEEL:

24          Q.     Your direct testimony, page 11, line 23.  
25 Right there.

1           A.     Okay.  So it's the sentence on page 12?

2           Q.     Yes, the "our" starts on the last line  
3 there of page 11.  It says, our utility acquisition  
4 strategy was and continues to be successful.

5           A.     I believe our acquisition strategy was  
6 successful, yes, on the domestic side.

7           Q.     And that's despite the fact that Aquila,  
8 in the vast majority of the cases, was not allowed  
9 recovery of acquisition premium; is that correct?

10          A.     As you pointed out in the vast majority  
11 of cases, we did not ask.

12          Q.     Okay.  But it was still successful even  
13 without recovery of any acquisition premium; is that  
14 correct?

15          A.     In those instances, yes.

16          Q.     And in none of cases did you ask to  
17 share merger synergy savings; is that correct?

18          A.     That's correct.

19          Q.     And yet you still testified today that  
20 it was a successful strategy; is that correct?

21          A.     For the most part, I believe it was a  
22 successful strategy, yes.

23          Q.     If you could, sir, turn to page 21 of  
24 your direct testimony.  And I'm focusing there on the  
25 question that starts on line 12 and goes on to



1 line 13; you say with respect to the authorized  
2 returns on common equity, I'm advised by counsel that  
3 this Commission frequently adopts the results of a,  
4 quote, company-specific, closed quote, discounted  
5 cash flow analysis and that does not meet the  
6 comparable company approach mandated by the United  
7 States and Missouri Supreme Courts. Do you see that,  
8 sir?

9 A. Yes, I did.

10 Q. Which learned counsel advised you of  
11 this matter?

12 A. I don't recall which individual counsel  
13 advised me.

14 Q. Which counsel are your advisors?

15 A. Well, we have internal counsel and we  
16 have external counsel.

17 Q. Do you know whether it was internal or  
18 external?

19 A. We had a series of meetings leading up  
20 to this rate case. So, no, I don't recall the  
21 specific conversation.

22 Q. Are you aware that the Missouri  
23 Commission has selected this company-specific DCF  
24 method for well over a decade?

25 A. Yes, I am.

1           Q.     If this method didn't meet the  
2 comparable company approach mandated by the United  
3 States and Missouri Supreme Courts, were you shown  
4 any court decisions that invalidated this method here  
5 in Missouri?

6           A.     No, I was not.

7           Q.     Are you personally aware of any Supreme  
8 Court cases in Missouri that -- or the United States  
9 court circuit system that has invalidated this  
10 system?

11          A.     I believe our issue is with the way that  
12 it's been calculated, not the approach itself, but  
13 I'm not aware of the -- of any Supreme Court  
14 decisions or likewise.

15          Q.     So maybe this is helping me understand.  
16 I appreciate that. So the company does not have a  
17 problem with the company-specific discounted cash  
18 flow analysis; is that what you just testified to?

19          A.     It needs to -- in our view, the  
20 company-specific cash flow needs to be calculated,  
21 but then we need to be looking at what it takes for a  
22 healthy utility to operate.

23          Q.     But it's not the calculation of the  
24 company-specific DCF cash flow that you take issue  
25 with; is that correct?

1           A.     It's at the corporate level that I take  
2 the issue with.  It's not at the divisional level.

3           Q.     Is it correct that Aquila has proposed a  
4 50/50 sharing of alleged synergy savings with  
5 customers in this proceeding?

6           A.     Yes, it is.

7           Q.     Is it correct that those alleged savings  
8 are derived from joint dispatching and spreading  
9 Aquila's support costs over a larger customer base?

10          A.     That's correct.  That's about 12 million  
11 of the synergy savings, yes.

12          Q.     Well, those are the only two synergy  
13 savings that the company's requesting recovery of in  
14 this case; isn't that correct?

15          A.     That's correct.

16          Q.     There may be others, but you're only  
17 requesting those two; isn't that correct?

18          A.     That's correct, yes.

19          Q.     Would you agree with me that the savings  
20 are calculated by determining what cost the company  
21 is not experiencing as a result of the merger?

22          A.     That is correct, yes.

23          Q.     Would you agree with me that imputed  
24 costs like those are not current costs of providing  
25 utility service?

1           A.     They are not current costs, that's  
2 correct. The costs are fairly easy to determine.  
3 For example, we don't have two CFOs, we don't have  
4 two treasurers, as you would have with two separate  
5 companies, so those costs are pretty readily  
6 calculated.

7           Q.     Well, I'm glad you said for example,  
8 because I want to do an example here because I want  
9 to understand how we calculate those.

10           MR. MICHEEL: If I could just get the  
11 board here, your Honor.

12           JUDGE JONES: You may.

13 BY MR. MICHEEL:

14           Q.     And all of these numbers that I'm going  
15 to use, they're not the actual numbers. I just --  
16 I've got to dumb it down so I can understand what  
17 you're wanting. Let me just set my example out here.  
18 And I'll try to speak up. I know this may not go on  
19 the Internet. I'm sorry I can't do it like that.

20                     Let's just say, for example, we've got  
21 St. Joe Light & Power and Aquila, and in this case  
22 it's Aquila - MPS. Okay? And prior to the merger,  
23 the costs for dispatching and support for St. Joe  
24 Light & Power are \$20. Can you make that assumption?

25           A.     Yes.

1 Q. And for Aquila - MPS, prior to the  
2 merger, the cost for dispatching and support are \$20.  
3 And that's as those companies -- St. Joe stand-alone,  
4 Aquila stand-alone.

5 A. Yes.

6 Q. After the merger, the costs for  
7 dispatching and support for the combined  
8 St. Joe/Aquila or in this case the L&P and MPS  
9 districts for dispatching and support are \$30.

10 A. Okay.

11 Q. And that's the idea of the scale and the  
12 scope that we talked about before; isn't that  
13 correct?

14 A. That's correct.

15 Q. And so those costs when you combine  
16 these two get lowered; is that correct?

17 A. That's correct.

18 Q. So in this example we have \$10 of what  
19 Aquila would claim are merger savings, synergy  
20 savings; is that correct?

21 A. That's correct.

22 Q. That's because the actual costs when  
23 Aquila and St. Joe were separate was \$40; is that  
24 correct?

25 A. The combined cost was 40, that's

1 correct.

2 Q. And now the actual cost is \$30; is that  
3 correct?

4 A. Yes.

5 Q. Now, we've identified our \$10 of alleged  
6 synergy savings here, and if I understand Aquila's  
7 proposal, \$5 of this \$10 in merger savings goes right  
8 to the ratepayers or 50 percent; is that correct?

9 A. Yes, it is.

10 Q. And \$5 or 50 percent go to the  
11 shareholders; is that correct? I know there's  
12 another step and we're going to get there.

13 A. Up to this point, that's correct, yes.

14 Q. And then once the shareholders get their  
15 50 percent, they're going to split that 50 percent  
16 again, that 50 percent of that \$5, and \$2.50 is  
17 ultimately going to go to the shareholders; is that  
18 correct?

19 A. Yes.

20 Q. And then \$2.50, in other words  
21 50 percent of your 50 percent, is going to go to low  
22 income; is that correct?

23 A. That's correct.

24 Q. Now, we've talked about the actual cost  
25 here of those items is \$30; is that correct?

1           A.     Yes.

2           Q.     Okay.  Because the shareholders are  
3 going to keep \$5 of those \$10 merger savings costs,  
4 the costs that you're going to seek to recover  
5 through rates for ratepayers now is going to be \$35,  
6 is that correct, because you have to add back the  
7 50 percent or the \$5 in my example that the  
8 shareholders and low income folks are getting; is  
9 that correct?

10          A.     That's correct.  But that \$30 would  
11 never have occurred absent the merger.  It would have  
12 been 40.

13          Q.     Well, let's talk about that.  To arrive  
14 at the \$20, does St. Joe Light & Power exist anymore?

15          A.     To arrive at the \$20, does -- there's a  
16 history of St. Joe Light & Power.

17          Q.     Let me say this:  To determine your  
18 actual synergy savings, okay, isn't it correct that  
19 the company modeled on a stand-alone basis St. Joe  
20 Light & Power's joint dispatch?

21          A.     I don't know how else you would do it.  
22 If you use the criteria that I think you're  
23 suggesting, then no company could ever justify  
24 merging or justify acquisition merger savings.

25          Q.     My point is, we don't know what St. Joe

1 Light & Power's actual costs are, do we, Mr. Stamm,  
2 because St. Joe Light & Power doesn't exist?

3 A. How would you know that for any company  
4 for any merger in doing that type of analysis?

5 Q. I don't think you would.

6 A. So would that mean that no companies  
7 should ever merge?

8 Q. Well, let me ask the questions here, and  
9 then maybe afterwards you and I can have a chitchat  
10 about this, but -- you know, and I'll be happy to  
11 engage you about that. But Aquila made the decision  
12 to purchase St. Joe Light & Power; isn't that  
13 correct?

14 A. Using standard criteria for evaluating  
15 mergers, yes.

16 Q. And so St. Joe Light & Power doesn't  
17 exist, and it's just -- you have to figure out what,  
18 hypothetically, the costs for joint dispatch and  
19 other support costs would be for St. Joe; isn't that  
20 correct?

21 A. That's the case for every company that  
22 merges, in our industry or any other.

23 Q. Would you agree with me that companies  
24 such as Aquila are always striving to cut costs and  
25 become more cost effective?



1           A.    No.  I think companies like Aquila are  
2 striving to balance efficiency and effectiveness,  
3 which is customer satisfaction, with the ability to  
4 track capital.

5           Q.    Let me go back.  Back to my example, is  
6 it correct, even though after the merger the actual  
7 cost of providing the joint dispatch and the support  
8 services is \$30, if the Commission -- and I know  
9 these numbers aren't right, but I want to make them  
10 simple.  If the Commission were to accept Aquila's  
11 proposal, customers would be charged \$35; isn't that  
12 correct?

13          A.    That's correct.

14          Q.    For costs that's costing \$30 to do?

15          A.    But the \$30 occurs only after the  
16 merger.

17          Q.    I understand that, but that extra \$5  
18 cost are costs that are being imputed back; isn't  
19 that correct?

20          A.    Correct.  It would have been 40 absent  
21 the merger; it's 35 now, correct.

22          Q.    Let me ask you about the 125 percent  
23 component here for low income.  How was that arrived  
24 at?

25          A.    The 50/50 sharing in terms of the

1 50 percent, the 50 percent balance that goes to the  
2 shareholders, and then how is it 50/50 beyond that?

3 Q. Yeah. Why is it appropriate only to  
4 give 25 percent to low income?

5 A. Well, in our view, you can pick any --  
6 you can pick a range of numbers, but 50/50 sharing  
7 seems fair to us.

8 Q. And why? What factors did you look at  
9 to determine if 50/50 sharing was fair with low  
10 income?

11 A. There's not a lot of precedent here, so  
12 we were looking at, from our perspective, if you look  
13 at all of the stakeholders involved, what seems like  
14 a fair balance. And a fair balance in this case  
15 would be to give 50 percent of the savings to the  
16 customers, then take 50 percent of the savings that  
17 would go to the shareholders and take half of that  
18 and use it for low income, weatherization, that type  
19 of thing.

20 Q. Why not give 75 percent to the  
21 ratepayers and 25 percent to the shareholders, and  
22 12.5 to the shareholders and 12.5 to low income?

23 A. We could have a discussion around an  
24 infinite range of possibilities, I presume, and there  
25 is a plausible and reasonable range that reasonable

1 people could agree upon.

2 Q. Is that a reasonable solution?

3 A. The 50/50 sharing?

4 Q. No, the example that I just gave,  
5 75 percent to ratepayers, 25 percent to shareholders,  
6 12.5 percent to shareholders, 12.5 percent to low  
7 income?

8 A. I suppose I'd have to ask you the same  
9 question you asked me: How did you arrive at that  
10 and why is 75/25 fair versus 50/50?

11 Q. Do you think that's fair, yes or no?  
12 It's a simple question.

13 A. I believe that the 50/50 sharing is most  
14 appropriate.

15 Q. And why do you believe that?

16 A. It's -- it seems very equitable to me  
17 that you take 50 percent of the savings and those go  
18 to the customers. You take -- and out of the  
19 50 percent that go to the shareholders, you give half  
20 of that to low income customers in terms of  
21 weatherization and income assistance and bills.

22 Q. Did the customers request that Aquila  
23 merge with St. Joe Light & Power?

24 A. No, they did not.

25 Q. Were the customers even asked about

1 whether they wanted Aquila to merge with St. Joe  
2 Light & Power?

3 A. No.

4 Q. Talk to you about the design of the low  
5 income program that you're proposing. How are you  
6 recommending that that program be designed?

7 A. I think ultimately we have quite a bit  
8 of flexibility around the design of that. Again,  
9 what we're interested in is the concept, and our  
10 Witness Daunis can go in a lot more detail in terms  
11 of some of the design possibilities.

12 Q. Well, have you reviewed his testimony?

13 A. I have reviewed it, but it's been some  
14 time, yes.

15 Q. Did he propose any sort of design for  
16 the low income program in his testimony?

17 A. The objective is to work within  
18 parameters with all of the stakeholders and come up  
19 with a program that makes sense for everybody, but  
20 you have to start with a stake in the ground, and we  
21 feel like this is a very good stake in the ground.

22 Q. And you say in your testimony that  
23 Aquila's going to have essentially no administration  
24 over the program; is that correct?

25 A. We think that it's actually better to

1 have outside agencies administer, those that have a  
2 lot more expertise in dealing with these situations  
3 than we do. So I think there are plenty of agencies  
4 that would provide a lot more expertise in  
5 administering it than Aquila, yes.

6 Q. And when are we going to hash out the  
7 parameters of that program?

8 A. We can do that -- we can do that --  
9 we've had plenty of opportunity to do that, and we  
10 continue to have opportunity to do that, so any time  
11 before the case -- the rates go into effect.

12 Q. But Aquila didn't see fit in any of its  
13 direct filed testimony or rebuttal or surrebuttal  
14 testimony to set out what their vision of the program  
15 was, other than to say, we want to give 25 percent to  
16 low income; is that correct?

17 A. And the reason that we did that is  
18 because, again, this is -- we deal with a relatively  
19 new concept and we don't view ourselves as experts in  
20 how to administer this type of a low income program.  
21 We think there are others who know a lot more about  
22 it than we do, and so rather than drawing up a  
23 specific and very detailed plan, we thought it made  
24 more sense to consult with those that have much more  
25 expertise than we do.

1 Q. Would Aquila agree to a plan where the  
2 shareholders kicked in a little extra money for the  
3 program?

4 A. We have to balance the ability to  
5 attract capital overall and the provision of service  
6 to customers. That's the -- those are the dual roles  
7 that we have.

8 Q. Is it correct that from January 2000  
9 through November 2001, you served as CEO of Aquila  
10 Merchant Services, Inc.?

11 A. Yes, it is.

12 Q. Is it correct that Aquila Merchant  
13 Services, Inc. engaged in wholesale marketing of  
14 electricity and natural gas in the Merchant trading  
15 operations, with a focus on natural gas?

16 A. The genesis was in natural gas, yes, but  
17 it was electricity, natural gas and other products.

18 Q. Is it correct during your tenure as CEO  
19 of Aquila Merchant Services, there were actions taken  
20 and the Commodities and Future Trading Commission  
21 brought a complaint alleging that several of Aquila's  
22 trading desks reported false information, including  
23 price and volume information concerning natural gas  
24 transactions to certain reporting firms?

25 A. The CFTC investigation came up in, I

1 believe, 2000 and at the end of 2003, but it was with  
2 respect to that period of time. And the comment that  
3 I think it's appropriate to make is that we, as a  
4 management team, take full accountability for the  
5 situation that our company's in financially. We  
6 don't claim to be victims at all. We made a number  
7 of strategic decisions that did not work out. We've  
8 made every attempt to insulate the impact of those  
9 decisions from this rate case, but we have made a  
10 number of mistakes and we accept full accountability  
11 for those.

12 Q. And is it correct that the CFTC alleged,  
13 while on your watch, that your company was providing  
14 false information?

15 A. The CFTC alleged that over a period of  
16 time, yes, and part of that was when I was the CEO of  
17 the trading organization, marketing and trading  
18 organization. And I accept accountability for that.

19 Q. And is it correct that Aquila paid a  
20 \$26.5 million fine as a result of those charges?

21 A. Yes, it is.

22 MR. MICHEEL: I'd like to get an exhibit  
23 marked, your Honor.

24 JUDGE JONES: This exhibit will be  
25 marked as Exhibit 150.

1 (EXHIBIT NO. 150 WAS MARKED FOR  
2 IDENTIFICATION BY THE REPORTER.)

3 BY MR. MICHEEL:

4 Q. Mr. Stamm, in front of you is an exhibit  
5 which has been marked for purposes of identification  
6 as Exhibit 150. It's CFTC Docket No. 0408; is that  
7 correct?

8 A. Yes, it is.

9 Q. And is this the CFTC order regarding the  
10 fine that Aquila Merchant Services, Inc. paid?

11 A. Yes, it is.

12 Q. And have you seen that order before,  
13 sir?

14 A. Yes, I have.

15 MR. MICHEEL: With that, your Honor, I  
16 would move the admission of Exhibit 150.

17 JUDGE JONES: Are there any objections  
18 to Exhibit 150?

19 MR. SWEARENGEN: No objection.

20 MR. WILLIAMS: Staff has no objection.

21 MS. WOODS: No objection.

22 MR. PAULSON: No objection.

23 JUDGE JONES: Exhibit 150 is admitted  
24 into the record.

25 (EXHIBIT NO. 150 WAS RECEIVED INTO



1 EVIDENCE.)

2 BY MR. MICHEEL:

3 Q. Now, sir, on Exhibit 2, Exhibit -- your  
4 rebuttal testimony, sir, at page 5, you state that  
5 once reputational capital is lost, it is very  
6 difficult to regain from the debt and equity markets;  
7 is that correct?

8 A. That's correct.

9 Q. Would you agree with me that Aquila has  
10 lost reputational capital in the debt and equity  
11 markets because of its huge losses in the  
12 non-regulated operation of Aquila?

13 A. Yes.

14 Q. Would you agree with me that Aquila has  
15 lost reputational capital in the debt and equity  
16 markets because of the claims that Aquila Merchant  
17 Services manipulated the gas market?

18 A. I'm sure it had an impact, yes.

19 Q. Are Aquila's electric systems of low  
20 quality and technologically inferior to other utility  
21 electric systems?

22 A. No.

23 Q. At page 6 of your testimony -- and I  
24 think I'm still on your rebuttal testimony,  
25 Exhibit 2 -- you indicate that economic development

1 is important to Missouri; is that correct?

2 A. That's correct.

3 Q. You also note that Missouri was among  
4 the hardest hit in terms of job loss during the  
5 economic downturn of the last few years; is that  
6 correct?

7 A. That's correct.

8 Q. Is it correct that the merger between  
9 Aquila and St. Joe was purported to be closed on  
10 December 31st, 2000?

11 A. Yes.

12 Q. Would you agree with me, as a result of  
13 the merger, one-third of St. Joseph Light & Power  
14 employees lost their jobs?

15 A. I don't recall if that's the number.  
16 There was a reduction in force, that's correct.

17 Q. Was it a significant reduction in force?

18 A. The total reduction in force, I don't  
19 have the number in front of me, but yes, it was  
20 material.

21 MR. MICHEEL: Well, may I approach the  
22 witness?

23 JUDGE JONES: You may.

24 BY MR. MICHEEL:

25 Q. Let me hand you the transcript from

1 EM-2000-293. It's my cross-examination of Mr. Terry  
2 Steinbecker, who was a former CEO of St. Joe Light &  
3 Power. And I'm looking at page 114 there, sir.

4 On page 15, do you see my question,  
5 one-third of St. Joe Light & Power's current employee  
6 job positions will be eliminated as a result of the  
7 merger; isn't that correct? Mr. Steinbecker, answer,  
8 I believe that's what I said, one-third, about  
9 one-third of the current positions will be  
10 eliminated.

11 A. Yes.

12 Q. Do you know how many people at the end  
13 of the merger were finally terminated as a result of  
14 the merger?

15 A. The total reduction in force that we've  
16 had within the U.S. networks has been just under 500,  
17 but that includes -- that's beyond St. Joe.

18 Q. And would you agree with me that  
19 Aquila's merger with St. Joe contributed to Missouri  
20 losing jobs in the last few years?

21 A. That's correct.

22 Q. So rather than being part of the  
23 solution, Aquila was part of the problem; isn't that  
24 correct?

25 A. As you've pointed out, there are savings

1 associated with the synergies associated with the  
2 merger as well. And in your example, you go from  
3 \$40 down to \$30, and that would not have occurred  
4 absent the merger.

5 Q. Let me ask you this: At the time that  
6 Aquila purchased St. Joe Light & Power, isn't it  
7 correct that St. Joe Light & Power with that oversize  
8 work force had the lowest electric rates in the State  
9 of Missouri?

10 A. St. Joe Light & Power, I believe, was  
11 indicating that they had about \$9 million of rate  
12 increases that they were planning on filing.

13 Q. That wasn't my question, Mr. Stamm, and  
14 I would ask the Judge to direct this witness to  
15 answer my question.

16 My question was, at the time of the  
17 merger, did St. Joe Light & Power have the lowest  
18 electric rates in the State of Missouri?

19 A. I don't know that to be the case, but I  
20 would assume that since you've stated that, that  
21 that's correct. I don't know where St. Joe was in  
22 their rate cycle, other than that they were planning  
23 to file a rate case.

24 Q. Well, let me ask you this: Since the  
25 merger, has St. Joe Light & Power had any rate

1 increases?

2           A.     Since the merger, there's been a rate  
3 reduction.

4           Q.     Okay.  And in your surrebuttal  
5 testimony, sir, at page 6, Exhibit 3, line 8, you  
6 have a question there that says, to what aspects of  
7 Staff Witness Williams' rebuttal testimony do you  
8 want to respond?  Answer, Mr. Williams indicated in  
9 his rebuttal testimony that for 2002 calendar year,  
10 MPS existing rates were the second lowest electric  
11 rates in the State, and L&P electric rates were the  
12 lowest in Missouri; isn't that correct?

13           A.     That's correct.

14           Q.     And you didn't dispute Mr. Williams'  
15 claim there, did you?

16           A.     No.  Again, you have to look at where  
17 we -- where a particular company is in its rate  
18 cycle.  So whenever they're about to go into a rate  
19 case, then they would typically have lower rates.  As  
20 they come out of rate cycle, they would typically  
21 have higher rates.

22           Q.     We'll never know if St. Joe Light &  
23 Power was going to file that competitive rate case,  
24 will we, because the merger occurred; isn't that  
25 correct?

1           A.     I suppose technically that's correct,  
2     but again, if you use the criteria that you're  
3     setting forth for mergers, I don't know of anybody  
4     that could merge under any circumstance.

5           Q.     I'm not talking about merger. I'm just  
6     saying, we know they didn't file a rate case, did  
7     they, Mr. Stamm, because of the merger?

8           A.     It would have been impossible to file a  
9     rate case, that's correct.

10          Q.     Would you agree with me, Mr. Stamm, that  
11     Aquila's failures in the non-regulated markets  
12     resulted in approximately 1,200 jobs being eliminated  
13     in Missouri?

14          A.     No, I would not.

15          Q.     Is it correct Aquila laid off 1,200  
16     workers when it closed down its Merchant Services?

17          A.     It did, but those were not all in  
18     Missouri. The vast majority of those were in  
19     Missouri, but we had job losses in Canada, we had job  
20     losses in the U.K., we had job losses in Texas and in  
21     California.

22          Q.     Okay. How many people did the company  
23     employ? You were the CEO of Aquila Merchant  
24     Services, correct?

25          A.     I was until 2001, that's correct.

1 Q. How many did they employ at 1 Kansas  
2 City Place?

3 A. They -- we employed at our peak about  
4 1,200 folks.

5 Q. At 1 Kansas City Place?

6 A. At 1100 Walnut.

7 Q. At 1100 Walnut. I'm sorry.

8 And those jobs no longer exist, do they,  
9 Mr. Stamm?

10 A. We do have -- we've moved the  
11 individuals that are left in the marketing and  
12 trading organization to the annex at 20 West Ninth.

13 Q. And how many folks are those?

14 A. Well, altogether it's about 150.

15 Q. So it's about 1,150 jobs gone?

16 A. 1,050.

17 Q. 1,050. Okay. Sorry. Arithmetic's  
18 never been my strong point.

19 Do you believe, Mr. Stamm, that the  
20 Missouri PSC should encourage mergers by allowing  
21 merger savings that result in jobs being eliminated  
22 in Missouri?

23 A. I believe it should be based on a number  
24 of considerations, including potential savings to  
25 customers, as well as those type of impacts. So I

1 think it should be based on a wide range of  
2 considerations, not any single consideration.

3 Q. And the loss of jobs in Missouri is a  
4 consideration that the PSC should take into account?

5 A. I believe it should be a consideration,  
6 certainly.

7 Q. Is it correct that Aquila sought  
8 recovery of alleged synergy savings from its St. Joe  
9 Light & Power merger in the most recent Natural rate  
10 case in Iowa, Docket No. RPU-02-05?

11 A. Yes, it is.

12 Q. Is it correct Aquila settled that case  
13 and there was absolutely no recognition that Aquila  
14 recovered any alleged synergy savings from the  
15 St. Joe Light & Power merger in rates?

16 A. I believe that was a black box  
17 settlement, so I don't believe anything was  
18 stipulated, that's correct.

19 Q. Is it correct that Aquila sought  
20 recovery of alleged merger savings from the St. Joe  
21 Light & Power merger in its most recent natural gas  
22 rate cases in Nebraska, MG-001, MG-002 and MG-003?

23 A. Yes, it is.

24 Q. is it correct that Aquila settled those  
25 cases and there was absolutely no recognition that



1 Aquila received recovery of any alleged synergy  
2 savings from the St. Joseph merger?

3 A. I believe that was also a black box  
4 settlement where there were no stipulations around  
5 any of the issues.

6 Q. So it didn't indicate that Aquila  
7 recovered any synergy savings; isn't that correct?

8 A. Or did not.

9 Q. Okay. And apparently in settling,  
10 Aquila didn't feel it was -- that issue was strong  
11 enough to continue to fight it; isn't that correct?

12 A. As in the case of mergers, rate cases, I  
13 think, are the same thing. There are a range of  
14 issues and considerations, and so when you enter into  
15 settlement discussions, you'd have to look at all of  
16 the issues and arrive at a decision as to whether to  
17 settle or not. I think all the parties have to do  
18 that.

19 MR. MICHEEL: Thank you for your time,  
20 sir.

21 JUDGE JONES: Thank you, Mr. Micheel.  
22 Federal Executive Agencies, do you have cross?

23 CROSS-EXAMINATION BY MR. PAULSON:

24 Q. I just have a couple short questions.  
25 Mr. Stamm, in your direct testimony, if I'm not

1 mistaken, you testified that almost half of the  
2 revenue requirements, I believe, in the MPS service  
3 territory were based on natural gas price increases?

4 A. Half of the rate case, that's correct.

5 Q. Okay. You also, I believe, testified  
6 that your current rates are lower than they were  
7 20 years ago; is that correct?

8 A. That's correct.

9 Q. You would agree with me that rates  
10 should be based on your costs, right, not on what you  
11 paid -- not on rates 20 years ago? They should be  
12 based on your current costs, correct?

13 A. That's correct.

14 Q. And one of the things that could affect  
15 those costs are decisions that the company makes,  
16 correct, such as -- I'll be more specific -- such as  
17 decisions like the decision you made on the Aries  
18 facility in which your company decided to position  
19 itself in a deregulated environment instead of  
20 obtaining that facility in a regulated environment?  
21 Those types of decisions affect your costs, do they  
22 not?

23 A. With respect to the Aries decision in  
24 particular, we were replacing one purchased power  
25 contract with another purchased power contract,

1 and --

2 Q. That's -- my question is, if you acquire  
3 facilities in your regulated operations, then that  
4 affects your rates, correct? That increases your  
5 rate base, correct?

6 A. If we build, does that increase our rate  
7 base?

8 Q. Yes.

9 A. If we build, it does increase our rate  
10 base, yes.

11 Q. Right. And if you make a decision to  
12 enter into -- well, let me put it another way. If  
13 you make -- if your company as a whole, your  
14 headquarters, makes a decision to acquire something  
15 and place it in an unregulated environment, then that  
16 could reduce your rate base, right?

17 A. I don't know that it would reduce the  
18 rate base, but it certainly would not increase the  
19 rate base. The purchased power contract would be a  
20 pass-through expense.

21 Q. You've answered my question. Thank you.  
22 So the decisions the company made have odiously  
23 affected what your rate base is now, and that could  
24 be the reason that there's not a big change, as you  
25 say, in rates of 20 years ago?

1           A.    No.  I believe our rate base has  
2 actually increased, but all decisions affect  
3 ultimately rate base, and then what's ultimately  
4 allowed through rates.

5           Q.    Right.  So what happened 20 years ago  
6 doesn't really have a lot of relevance with your  
7 position today, does it?

8           A.    I think it's -- I think it is important  
9 to point out where our -- where our rates sit today  
10 relative to 20 years ago.  It is, I think, an  
11 important fact, yes.

12          Q.    I thought you said that rates should be  
13 based on your current costs.

14          A.    They should.

15                MR. PAULSON:  Okay.  That's all the  
16 questions I have.

17                JUDGE JONES:  Thank you, Mr. Paulson.  
18 And now we'll have cross from the Staff of the  
19 Commission.

20                MR. WILLIAMS:  Thank you, Judge.

21 CROSS-EXAMINATION BY MR. WILLIAMS:

22          Q.    Mr. Stamm, you've indicated we should be  
23 looking at things regarding aquila 20 years ago.  Are  
24 you familiar with Aquila's capital structure at that  
25 time?

1           A.     Generally familiar with it. I know that  
2 the capital structure for the corporation was a lot  
3 stronger then than it is today.

4           Q.     Would you be surprised if around 1980  
5 Aquila had a capital structure that included less  
6 than 35 percent common equity?

7           A.     Well, in 1980 in particular, with that  
8 particular time period, my recollection is there was  
9 quite a bit of inflation, and so the economy was in a  
10 bit of a state of flux. It was before I was employed  
11 by the company, but at any particular point in time,  
12 it could have been below that, yes. That's certainly  
13 not what we would strive for and certainly not what  
14 investment grade companies in the utilities sector  
15 are required to have today.

16          Q.     So did Aquila have common equity below  
17 35 percent around 1980?

18          A.     I don't have knowledge of that.

19          Q.     Does Aquila still have about \$3 billion  
20 in outstanding debt?

21          A.     That's correct, slightly under  
22 \$3 billion.

23          Q.     What resources does Aquila have to  
24 service that debt?

25          A.     We have the ability to continue to sell

1 our non-regulated assets, which we're doing. We've  
2 also eliminated the dividend, and we use the cash  
3 flow that would otherwise be used to pay the dividend  
4 to pay down that debt.

5 Q. Cash flow from regulated operations?

6 A. Well, as a utility, any utility would  
7 have a debt structure. So there would be cash flow  
8 operation to pay down debt in our utility as there  
9 would be with any others.

10 Q. Aquila's in the process of divesting of  
11 its non-regulated operations, is it not?

12 A. Yes, it is.

13 Q. Whenever it's finished divesting those  
14 non-regulated operations, will it be in a position to  
15 eliminate that 3 billion in outstanding debt?

16 A. It will be a function of a number of  
17 different factors. It will be a function of our  
18 liability management program; in other words, exiting  
19 the tolls, such as Aries, and the Elwood toll. It  
20 will be a function of the price that we buy back the  
21 debt. It will be a function of actually closing the  
22 asset of sales, and it will be a function of the  
23 overall performance of our remaining regulated  
24 properties in the U.S.

25 Q. Let's assume you don't get a reduction

1 in the amount of the debt. With your remaining  
2 non-regulated assets, I'm sure you have some  
3 projections as to what you anticipate obtaining from  
4 the sale of those. Can you give us some idea as to  
5 how much debt will remain, based on those  
6 projections?

7 A. Not without violating SEC rules. We  
8 have not provided any forward guidance with respect  
9 to our earnings or otherwise the situation of the  
10 company, and so not without providing-- or violating  
11 the fair disclosure rules, I cannot do that.

12 Q. So you're not in a position to tell this  
13 Commission that?

14 A. That's correct.

15 Q. Did you have any involvement in Aquila's  
16 decision to build the Aries generating plant as an  
17 exempt wholesale generator?

18 A. I was stationed in Australia at the time  
19 that decision was made.

20 Q. Is your answer no?

21 A. It's no.

22 Q. So you had no involvement in that  
23 decision whatsoever?

24 A. That's correct.

25 Q. Do you know who did make that decision?

1           A.     I'm sure ultimately it would have come  
2 up to senior management within the organization, but  
3 I can't tell you the specific individual, no. Again,  
4 I was overseas at the time.

5           Q.     You said senior management. Who do you  
6 mean by senior management?

7           A.     It would have likely involved at the  
8 time Harvey Patawork (ph. sp.), who was running the  
9 wholesale operations. It could have involved Bob  
10 Green as well. But again, I don't know specifically  
11 who made the decision.

12          Q.     And in what capacity would Bob Green  
13 have been acting?

14          A.     At that time he would have been the  
15 chief operating officer, president of the company.

16          Q.     Do you know what the basis was for the  
17 decision to build Aries as an exempt wholesale  
18 generating plant and not as a plant owned by Aquila  
19 as a regulated entity?

20          A.     I have some idea of that, and if I  
21 might, I might just go back to the 1998 time period  
22 when that decision was made. As we introduced into  
23 evidence Jon Empson JRE-1, there was a report issued  
24 by the Missouri Public Service Commission Staff on  
25 June 12th, 1998 that talks about the uncertainties in



1 terms of deregulation and retail competition in  
2 Missouri, and there are a number of quotes in there  
3 that I think are relevant in terms of the mindset at  
4 the time and I think will demonstrate clearly that  
5 reasonable people could have a different view in  
6 terms of whether retail competition was or was not  
7 going to happen in Missouri.

8 Q. Before you do that, did Aquila make the  
9 decision?

10 A. Yes, it did.

11 Q. The Commission did not, did it?

12 A. No. The decision was taken for  
13 approval, the purchased power contract was taken for  
14 approval of the Commission, but the decision was made  
15 by Aquila.

16 Q. Let me turn your attention to page 3 of  
17 your direct testimony. And there at lines 1 to 3 you  
18 state what Aquila's request for rate relief stands on  
19 the merits of the needs of Missouri regulated  
20 operations alone, insulated from the impacts of our  
21 non-regulated activities, do you not?

22 A. That's correct.

23 Q. And isn't the revenue deficiency that  
24 Aquila has claimed in this place based in part on  
25 including the cost of removing retired plant and

1 depreciation rates, using a hypothetical capital  
2 structure for purposes of determining cost of capital  
3 and using accelerated depreciation for determining  
4 income tax costs --

5 A. Yes, it is.

6 Q. -- for purposes of rate setting?

7 A. Yes, it is.

8 Q. Then on that same page at line 6 through  
9 10, you state that although MPS Electric has an  
10 additional revenue requirement of 79 million, Aquila  
11 is only seeking a rate increase of 65 million. How  
12 did Aquila arrive at the figure of 65 million?

13 Q. The overall increase would have been  
14 around 23 percent, and we made the decision that,  
15 given the magnitude of the increase, that we should  
16 try to keep that under 20 percent. So there was not  
17 a quantifiable criteria as much as the view that,  
18 going forward with something in excess of 20 percent,  
19 it made more sense to keep it under 20 percent. So  
20 65 million is 19.2 percent.

21 Q. So if I understand what your testimony  
22 is, Aquila decided to limit the increase to  
23 20 percent?

24 A. To 19.2 percent, that's correct.

25 Q. Well, I heard you indicate a 20 percent

1 cutoff.

2 A. We decided that we should try to keep it  
3 below 20 percent.

4 Q. Also on page 37, at lines 14 to 15, you  
5 state that senior management made the decision to  
6 limit the electric rate increase case for MPS to  
7 65 million?

8 A. That's correct.

9 Q. Who is -- could you identify who senior  
10 management is in that statement?

11 A. I would have been involved in that  
12 decision.

13 Q. Who else?

14 A. That would have gone to the leadership  
15 team, which is basically the CEO, myself, the CFO,  
16 the chief administrative officer, general counsel.

17 Q. Would you provide names to those  
18 positions you've identified?

19 A. Rick Green, Rick Dobson, Les Perette,  
20 Leo Morton.

21 Q. Would the board of directors of Aquila  
22 have played any role in the decision?

23 A. I believe it would have been within the  
24 delegation of authority of management to make that  
25 decision, but certainly would have informed the

1 board, yes.

2 Q. And on page 3 at lines 18 through 20,  
3 you state that at the time Aquila acquired St. Joseph  
4 Light & Power Company, representatives of St. Joseph  
5 Light & Power Company indicated that they had  
6 prepared and were ready to file for a general  
7 electric rate increase case to seek additional annual  
8 revenues of \$9 million. Why was that rate increase  
9 case not filed?

10 A. Because of the merger itself and St. Joe  
11 was not in a position then to file that rate case  
12 because of the merger. It's no longer an entity that  
13 was in a position to file a rate case.

14 Q. Couldn't Aquila have filed the case in  
15 lieu of St. Joseph Light & Power Company? You've  
16 done it here.

17 A. We could not have filed it as St. Joe  
18 Light & Power, but certainly as Light & Power we  
19 could have filed a rate case, yes.

20 Q. Do you know who made the decision not to  
21 file a rate case at that time?

22 A. No, I do not.

23 Q. Turn your attention to page 4 of your  
24 direct testimony. At line 3 you state, in February  
25 2002 Aquila's Missouri electric rates were reduced by

1 about \$4 million. Wasn't that reduction a result of  
2 the Commission approving a Stipulation & Agreement  
3 that Aquila entered into in its last general rate  
4 case, Case No. ER-2001-672?

5 A. Yes, it is.

6 Q. Didn't that reduction only apply to what  
7 is now the area served by Aquila Networks - MPS?

8 A. I believe that's the case, yes.

9 Q. Also on page 4 of your direct testimony,  
10 you have a table, and at line 17, which is the line  
11 of that table that says capital additions --

12 A. Yes.

13 Q. -- is there any amount in that line that  
14 is related to new generation plant?

15 A. Not to new generation plant. There  
16 would be generation in there, but not to new  
17 generation plant.

18 Q. Then turning your attention to page 9 of  
19 your direct testimony --

20 A. Yes.

21 Q. -- at lines 17 through 19 you state that  
22 Aquila senior management accepts full responsibility  
23 for the strategic choices we made and the resultant  
24 consequences. Would you please identify who you're  
25 referring to whenever you use the term "senior

1 management"?

2 A. I certainly include myself, and the  
3 decisions that we made can probably be boiled down to  
4 a couple of general strategic mistakes.

5 Q. I've asked you to identify the people  
6 that you're referring to as senior management. I've  
7 heard you identify yourself. Who else?

8 A. I know that Rick Green accepts  
9 responsibility. I think the folks that -- there were  
10 a number of people involved in senior management over  
11 the years. I can only speak to the individuals that  
12 are with the company right now.

13 Q. Please, go ahead and identify them.

14 A. Certainly, I do. I know that Rick Green  
15 does as well. We had a different CFO at the time, so  
16 I can really only speak to Mr. Green and myself.

17 Q. Turn your attention to page 12 of your  
18 direct testimony. At lines 14 through 16 you state  
19 that in November of 2001, Aquila instituted a program  
20 to restructure its U.S. utility operations into a  
21 state-based organization. Has Aquila ever had a  
22 state-based organization before?

23 A. We've had something similar to  
24 state-based organizations, yes.

25 Q. When did it have that organization?

1           A.     That would have been in the early to mid  
2 1990s. As we were acquiring utilities, they were  
3 primarily kept as state-based organizations.

4           Q.     When did that organization change?

5           A.     We went to a more centralized platform  
6 because we had, in some cases, a dozen different  
7 billing platforms, a dozen different HR systems and  
8 policies. So in the mid 1990s, we decided to move to  
9 a common platform, primarily for governance and  
10 efficiency reasons.

11          Q.     Has Aquila returned to its state-based  
12 organization now?

13          A.     We have returned to a state-based  
14 organization now. We think that's the next logical  
15 step in the evolution of the company, once we've put  
16 those common systems and platforms in place, yes.

17          Q.     So you have completed that  
18 reorganization?

19          A.     Yes, we have.

20          Q.     Turn your attention to page 13 of your  
21 direct testimony. At lines 10 through 11 of that, on  
22 that page, you state that Aquila serves a largely  
23 rural, largely residential customer base. Are these  
24 the customers that will be impacted by the electric  
25 rate increases that Aquila is proposing?

1 A. Yes.

2 Q. Do these customers live in and about  
3 Lee's Summit, Sedalia, Warrensburg, St. Joseph and  
4 parts of Kansas City, Missouri?

5 A. We have well over 100 towns, so those  
6 would be part of them, yes.

7 Q. On page 14 at line 7 through 10 of your  
8 direct testimony, you referenced the need for Aquila  
9 to responsibly manage its cash flow. How much of  
10 Aquila's \$3 billion in debt is due to Aquila's  
11 Missouri-regulated operations?

12 A. Well, we have approximately in Missouri  
13 about 900 million total investments, net investment  
14 after depreciation, so just under or right at a half  
15 a billion, using the capital structure that we would  
16 suggest. If we used the Staff's capital structure,  
17 it would be more debt.

18 Q. I'm sorry. How much of Aquila cash flow  
19 need is due to Aquila's Missouri-regulated  
20 operations?

21 A. The cash flow need will vary, depending  
22 primarily upon gas prices, and so it can vary -- it  
23 can swing overall for the U.S. utility by about  
24 \$250 million. Missouri Public Service and St. Joe  
25 would be a significant portion of that, but something



1 less than half.

2 Q. The section of your testimony that  
3 you've entitled impact of current financial  
4 conditions, pages 7 through 14 of your direct  
5 testimony, in particular on page 14 at line 6, you  
6 refer to unwinding Aquila's non-regulated operations.  
7 Will Aquila's experience in unwinding its  
8 non-regulated operations prove beneficial if Aquila  
9 has to unwind its merger with St. Joseph Light &  
10 Power Company?

11 A. I don't believe the two things are  
12 remotely related. Unwinding an unregulated operation  
13 is basically unwinding trade positions with  
14 counter-parties. So I'm not sure those things are at  
15 all similar.

16 Q. So if I understand your answer  
17 correctly, you're saying that it will not provide any  
18 benefit to the company if it has to unwind the merger  
19 with St. Joseph Light & Power Company?

20 A. I see those as two completely different  
21 issues.

22 Q. On page 14 at lines 14 through 15 of  
23 your direct testimony, you state that Aquila has  
24 developed internal service quality matrices that are  
25 reported to you on a monthly basis?

1           A.     Not only to myself, but to the entire  
2 employed population. We post them on our intranet.

3           MR. WILLIAMS: I'm going to need to mark  
4 an exhibit. May I approach the witness?

5           JUDGE JONES: This exhibit will be  
6 marked as Exhibit 151, and you may approach the  
7 witness.

8                     (EXHIBIT NO. 151 WAS MARKED FOR  
9 IDENTIFICATION BY THE REPORTER.)

10 BY MR. WILLIAMS:

11          Q.     I'm handing you what's been marked as  
12 Exhibit 151. Would you please review that  
13 Exhibit 151.

14          A.     I've reviewed it.

15          Q.     Does that exhibit correctly identify the  
16 internal service quality matrices that are reported  
17 to you on a monthly basis?

18          A.     These are the matrices that we do post  
19 on our intranet. Certainly during operating reviews  
20 we would go into more detail than this with the  
21 operating vice presidents, but these are the ones  
22 that we report on our intranet sites, yes.

23          Q.     So those are reported to you on a  
24 monthly basis?

25          A.     That's correct.

1           Q.     Are those service quality matrices that  
2 you've identified in exhibits -- that's been marked  
3 as Exhibit 151 reported on a total Aquila basis or  
4 are they reported solely for the Missouri operation  
5 of Aquila Networks - MPS and L&P?

6           A.     We break them out by state. So we have  
7 Kansas, we have Missouri, we have Colorado, and then  
8 for the gas states we do the same for the employee  
9 report, the one that's posted monthly. When we get  
10 into the operating review, we go into more details in  
11 terms of where specifically the reliability  
12 statistics reside and what the variances are within a  
13 particular date.

14                   MR. WILLIAMS: I'd like to offer --

15 BY MR. WILLIAMS:

16           Q.     Oh, what is Exhibit 151? Is that  
17 Aquila's response to a Data Request issued by the  
18 Staff that identifies monthly service quality  
19 reports?

20           A.     Yes, it is.

21                   MR. WILLIAMS: I'd like to offer

22 Exhibit 151.

23                   JUDGE JONES: Are there any objections  
24 to Exhibit 151?

25                   MR. SWEARENGEN: The company has none.

1 MS. WOODS: The Department has none.

2 MR. MICHEEL: Public Counsel doesn't  
3 have an objection.

4 JUDGE JONES: Exhibit 151 is admitted  
5 into the record.

6 (EXHIBIT NO. 151 WAS ADMITTED INTO  
7 EVIDENCE.)

8 MR. WILLIAMS: May I approach the  
9 witness, your Honor?

10 JUDGE JONES: You may.

11 BY MR. WILLIAMS:

12 Q. I'd like to direct your attention again  
13 to page 14 of your direct testimony at line 17  
14 through 18. There you state that Aquila's customer  
15 satisfaction rating stands at approximately  
16 94 percent?

17 A. That's correct.

18 Q. What is a customer satisfaction rating  
19 that you're referring to?

20 A. That's based on criteria that the Gallup  
21 organization uses.

22 Q. Is that company-wide or is that for  
23 Aquila Networks - MPS or Aquila Networks - L&P?

24 A. In this particular case, this would be  
25 company-wide. This would be based primarily on our

1 back office, our billing credit collection call  
2 center, as well as an overall survey, but that's  
3 reported company-wide.

4 Q. Also on page 14 of your direct  
5 testimony, at lines 18 through 19, you state that the  
6 Aquila reliability measures are better than the SPP  
7 benchmark and U.S. average benchmark.

8 First question for you is, what is the  
9 SPP benchmark that you make reference to?

10 A. The SPP benchmark is the Southwest Power  
11 Pool. All of the utilities in the Southwest Power  
12 Pool provide their reliability in the season. Those  
13 are reported by the Southwest Power Pool.

14 Q. What is the U.S. average benchmark that  
15 you make reference to?

16 A. The U.S. average would likely come from  
17 NARC, the North American Reliability Council.

18 Q. When you refer to the Aquila reliability  
19 issues, is that for total Aquila or is that totally  
20 for Aquila Networks - MPS and L&P?

21 A. Actually, Aquila Networks - MPS and L&P,  
22 the improvements have been better than reported --  
23 than the company average. Our SDI, system average  
24 duration index, how long per year a customer is  
25 without electricity is about 80 minutes today versus

1 it's historically been around 110 or 120 minutes.

2 Q. Do you know where other electric  
3 utilities with service territories in Missouri stand  
4 with regard to these measures of reliability?

5 A. To the extent they report them to the  
6 Southwest Power Pool and they're part of that  
7 benchmark, we would know that. But do we have their  
8 specific information? No, we do not.

9 Q. Are there SPP benchmarks for other  
10 quality of service matrices that Aquila uses?

11 A. The ones that we use that I'm aware of  
12 are system average duration index, SDI, which is how  
13 long a customer is without electricity per year,  
14 customer average duration index, which is when a  
15 customer has an outage, how long does that particular  
16 outage last, and then what's called SAFI, a system  
17 average interruption frequency, which is how many  
18 times per year is the customer interrupted.

19 So if you take the numbers of  
20 interruptions times the average duration of the  
21 outage, you get the total number of outage minutes  
22 per year. Those are the three that I'm most familiar  
23 with.

24 Q. Do you know where Aquila -- Aquila's MPS  
25 and L&P operations stand on those measures in

1 relationship to the SPP benchmark?

2 A. Significantly better. I believe that --  
3 and Glenn Keefe can provide more detail later in this  
4 hearing, but my recollection is that the Southwest  
5 Power Pool is well in excess of 120 minutes and we're  
6 sitting at about 80 minutes today.

7 Q. Is that from one of the measures or for  
8 all of those you've identified?

9 A. That is for SDI. Our SAFI, our system  
10 average frequency index is about 1.1, and I believe  
11 the Southwest Power Pool number is something less  
12 than average two outages per year, but it's greater  
13 than 1.1. I don't have the number off the top of my  
14 head. And I believe the same is true with customer  
15 average duration index. Our index is better than --  
16 our reliability is better than the Southwest Power  
17 Pool average.

18 Q. Are there U.S. average benchmarks for  
19 any of the other quality of service benchmarks that  
20 Aquila uses?

21 A. From an operational perspective, the  
22 operational ones that we've been discussing are the  
23 most common, but certainly for the call center, for  
24 example, the average speed of answer would be a  
25 common index, as well as the duration of the call,

1 number of calls not answered, percentage of calls not  
2 answered would be common indices as well.

3 Q. Do you know where Aquila's Missouri  
4 operations, and specifically the MPS and L&P  
5 operations, stand in relation to the U.S. average  
6 benchmark for those quality of service matrices you  
7 just identified?

8 A. Our billing, credit collection and call  
9 center, we have two of those, one in Kansas City and  
10 then one in Lincoln, Nebraska, and those are for all  
11 of the states that we operate, all seven states and  
12 ten jurisdictions that we operate within. So I don't  
13 have the specific matrices for Missouri. I'm not  
14 sure that we measure it at the Missouri level.

15 I can tell you that last year at the  
16 beginning of the year and towards the end of the  
17 previous year, we were not satisfied with those  
18 indices. But in the last quarter in particular, the  
19 last quarter of last year, after hiring about 40  
20 additional people for our call center, we are  
21 significantly better than the average, and that's on  
22 average speed of answer.

23 Q. Is Aquila working towards getting that  
24 information on a state basis?

25 A. I don't know what would be required to



1 do that. Certainly Witness Carter can provide more  
2 detail on that.

3 Q. I want to turn your attention now to  
4 page 15 of your direct testimony, in particular  
5 line 5. There you state that the costs associated  
6 with the departure of Aquila's former CEO and CFO  
7 have not been included in this rate case filing. Are  
8 you referring to the costs associated with the  
9 departure of Bob Green?

10 A. Bob Green and Dan Streak, yes.

11 Q. I'm sorry?

12 A. Dan Streak is the former CFO.

13 Q. On page 15 of your direct testimony, at  
14 lines 21 through 23 you state that it is not Aquila's  
15 intent to assign debt to utility operations at a cost  
16 higher than what could be obtained by a utility with  
17 an investment grade rating. What is Aquila's current  
18 debt to equity ratio?

19 A. It's -- it's about 65 percent debt,  
20 35 percent equity at the corporate level.

21 Q. Turn your attention to page 16 of your  
22 direct testimony, at lines 2 through 5. There you  
23 indicate Aquila's service quality matrices that are  
24 reported to you monthly. When you refer to these  
25 service quality matrices that are reported to you

1 monthly, are these service quality matrices for total  
2 Aquila or for the MPS and L&P operations?

3 A. The operational matrices, the number of  
4 outages, the average duration of the outage, the  
5 frequency of the outages, those are reported on a  
6 state basis. The call center statistics are reported  
7 on an aggregate basis.

8 Q. Then you also indicate that you conduct  
9 a detailed review as a state operating vice president  
10 for Missouri regarding service quality performance.  
11 Who is that person or persons?

12 A. In the case of Missouri --

13 Q. For Missouri?

14 A. In the case of Missouri Electric, that's  
15 Glenn Keefe.

16 Q. On page 16 at lines 2 through 5 of your  
17 direct testimony and on page 14 at lines 14 through  
18 15, you state that internal service quality matrices  
19 are reported to you monthly. Since these internal  
20 service quality matrices are reported to you monthly,  
21 why does Aquila object to reporting these service  
22 quality measures monthly to the Staff?

23 A. If we're speaking of exactly the same  
24 matrices and providing this information that we  
25 provide to the employees, I don't know that we would

1 have an objection. So I don't know the detail behind  
2 what's been requested on a monthly basis from Staff.

3 Q. On page 16 of your direct testimony at  
4 lines 2 through 5, you state that enhancement of  
5 regulatory transparency is a key business principle  
6 that Aquila will maintain its focus on. Reporting  
7 service quality matrices to the Staff monthly rather  
8 than quarterly would enhance regulatory transparency,  
9 would it not?

10 A. Yes, it would. And again, I don't know  
11 that we would have an issue with that if we're  
12 reporting the same statistics that we're reporting to  
13 the rest of the company.

14 Q. Also on page 16 at lines 5 through 6 of  
15 your direct testimony, you state that you conduct --  
16 conduct detailed -- I'm sorry. I believe I've  
17 already asked that question.

18 On page 17 of your direct testimony,  
19 lines 15 through 17, you state that the necessity of  
20 filing these rate cases was unavoidable and the  
21 timing unalterable. Why was the necessity  
22 unavoidable?

23 A. The return on equity we were earning on  
24 our Missouri properties was less than 3 percent, and  
25 we don't feel like that's sufficient to be able to

1 attract capital.

2 Q. Why was the timing unalterable?

3 A. Again, the returns at the state, where  
4 the returns were, didn't feel like we had a choice to  
5 wait.

6 Q. What is Aquila's current rate revenue  
7 from its MPS electric customers?

8 A. I typically think in terms of earnings  
9 before tax and earnings. The revenue number for  
10 electric only, I don't have that number off the top  
11 of my head.

12 Q. And what is Aquila's current rate  
13 revenue from its L&P electric customers?

14 A. I don't know that I have the revenue  
15 number with me. The net income for the operation has  
16 varied anywhere between 11 million and 30 million,  
17 depending on gas prices, but I don't have the  
18 revenue.

19 Q. When you said 11 to 30 million, are you  
20 talking about total Missouri operations or --

21 A. Yes, I am, electric.

22 Q. On page 18 of your direct testimony at  
23 lines 5 through 17, you state that the negative  
24 impact of the energy market is the single largest  
25 factor in Aquila's need for immediate rate relief,

1 then refer to natural gas prices.

2                   Would the interim energy charge that the  
3 Staff is proposing address this factor?

4           A.     I'm not familiar with the latest  
5 iteration of the discussions, but based on my  
6 understanding, it would.

7           Q.     On page 19 of your direct testimony at  
8 line 7 through 8, you state that Aquila's transition  
9 system is significantly constrained from reaching  
10 existing market areas. Could you explain in some  
11 detail what you mean by this statement?

12          A.     The reason that demand has declined is  
13 there were a number of intermediate areas in previous  
14 years in the wholesale market that would take risks  
15 and move energy to the different locations in the  
16 country, we were one of those on the non-regulated  
17 side. We're not willing to take those risks as a  
18 regulated utility either going long or short; in  
19 other words, making a directional bet on which way  
20 power prices will go.

21                   And if you coupled that aversion to risk  
22 with the constraints within the existing transmission  
23 system, it's very difficult to move energy more than  
24 one or two systems out today versus historically, at  
25 least over the last few years, that was more possible

1 because there were intermediaries in the business  
2 that would be willing to take the risks and move the  
3 energy.

4 Q. On page 21 of your direct testimony at  
5 lines 14 through 16, you state, with respect to  
6 authorized returns on common equity, I'm advised by  
7 counsel that this Commission frequently adopts the  
8 results of a, quote, company-specific, closed quote,  
9 discounted cash flow analysis that does not meet the  
10 comparable company approach mandated by the United  
11 States and Missouri Supreme Courts.

12 Did your counsel provide you with any  
13 authority for this advice?

14 A. I don't recall the authority. The  
15 discussion was around the return and capital  
16 structure for a division of a company versus at the  
17 corporate level.

18 Q. Do you have any citations to any cases  
19 that support your statement?

20 A. I do not.

21 Q. Or statements. Are you an attorney at  
22 law?

23 A. I am not.

24 Q. Do you have any support for these  
25 statements other than the advice of counsel you

1 referenced in your testimony?

2 A. I personally do not, no.

3 Q. Direct your attention now to page 27 of  
4 your direct testimony. There you discuss a low  
5 income assistance proposal. Is Aquila still  
6 proposing to provide low income assistance if the  
7 Commission does not adopt Aquila's position on merger  
8 savings incentives?

9 A. Aquila's perspective is that there will  
10 need to be a balance between the ability to attract  
11 capital to have an attractive investment thesis and  
12 providing this type of program. So we'd have to look  
13 at it in the whole. We think that this is one  
14 mechanism that will provide for that, and so this  
15 is -- this is what we've set forward.

16 Q. Well, let me ask the question this way:  
17 If the Commission does not adopt Aquila's position on  
18 merger savings or synergies, will Aquila still  
19 provide low income assistance as it's outlined in its  
20 proposals?

21 A. Again, we would have to take a look at  
22 the outcome of the case as a whole and, again,  
23 overall what's our ability to attract capital, what  
24 type of return are we receiving on our investment  
25 versus this type of a program and how this type of a

1 program would be funded. So that I suppose would be  
2 our question, is how would the program be funded?

3 Q. So you're saying it's not contingent  
4 totally on the Commission adopting Aquila's position  
5 on merger savings or synergy?

6 A. What I'm saying is we would have to look  
7 at in totality where we end up with the ability to  
8 attract capital versus providing these type of  
9 services and how are these type of services paid for?  
10 So again, we have to understand what the proposal was  
11 before I could really comment on that.

12 Q. Also on page 27 at line 16 through 17 of  
13 your direct testimony, you state, Aquila would  
14 continue to set aside funds for the low income  
15 sharing program as long as the synergy savings from  
16 the acquisition are embedded in rates.

17 Aquila is proposing that the asserted  
18 synergy savings stay permanently in rates, is it not?

19 A. That's correct. Until the next rate  
20 case, that's correct.

21 Q. I now want to turn your attention to  
22 your rebuttal testimony, in particular page 2 at  
23 lines 13 through 14. There you state, one of the  
24 objectives of rate setting should be to establish  
25 rates that will reflect to the extent possible the



1 costs that will actually be incurred when rates are  
2 in effect. Do you know what natural gas prices will  
3 be next year?

4 A. Do I know what they will be next year?

5 Q. Yes.

6 A. No.

7 Q. Do you know what they will be next  
8 month?

9 A. There's a forward curve that gives us  
10 some idea of what they will be, so we know what  
11 people are buying and selling next month for today,  
12 but what will it actually physically be next month,  
13 no, I cannot predict that.

14 Q. Do you know what they will be next week?

15 A. Physically, no. There is a -- there is  
16 a forward curve that people are buying and selling  
17 natural gas for delivery next week, so that  
18 information is available. What will it -- what will  
19 the -- what will it physically be delivered for, no,  
20 versus what people are buying and selling it for  
21 today, that's very difficult to predict.

22 Q. On pages 4 to 5 of your rebuttal  
23 testimony you state, my own view is that over the  
24 past several years the Staff has come to assume a  
25 role of consumer advocacy instead of the role of

1 attempting to balance the interests of consumers and  
2 investors. While the reasons for the increases I  
3 mention are well known and unavoidable, Staff's  
4 objective seems to be aimed at retaining existing  
5 rate levels to the extent possible by offsetting  
6 these known increases through aggressive and what I  
7 believe to be unjust and unreasonable stances on  
8 nearly every other major issue.

9           Is it your view that the Staff should  
10 endorse Aquila's request to increase MPS customer  
11 electric rates by nearly 20 percent, L&P electric  
12 rates by 15 percent and L&P steam rates by nearly  
13 20 percent?

14           A. I believe we provided justification for  
15 those types of increases. My issue is more with some  
16 of the examples that were discussed earlier.  
17 Consistently what we've seen is that Staff, for  
18 example, comes in with a lower return on equity than  
19 Public Counsel, and we've seen that not only in our  
20 case, but we've seen that in other recent cases as  
21 well, and that perplexes us.

22           Q. My question wasn't whether or not Aquila  
23 thinks it's supported its case. My question was  
24 whether or not you believe Staff should endorse the  
25 company's proposal?

1           A.     Certainly we have an idea of how the  
2 regulatory process works, and we would expect the way  
3 that it works here in Missouri for Staff to work up  
4 their own case and come forward with their  
5 recommendations.

6           Q.     You indicate that in your view the  
7 Staff's positions are unjust and unreasonable stances  
8 on nearly every major issue aside from the gas price  
9 mechanism. Specifically what positions are you  
10 referring to?

11          A.     The capital structure, the return on  
12 equity, depreciation.

13          Q.     Are any of these positions that Staff's  
14 taken inconsistent with Commission orders?

15          A.     I think, for example, the depreciation  
16 seems to be a step further than we've gone before, at  
17 least in terms of the way it's been addressed with  
18 Aquila historically. And my understanding is that  
19 the view on depreciation has changed over time. So  
20 there have been a number of different ways to address  
21 depreciation over the last decade, and that really,  
22 over the last three to four years it has changed to  
23 exclude salvage value and recovering the cost of  
24 removal.

25          Q.     Why did you describe the Staff's

1 positions as unjust?

2           A.     Again, looking at the position of Staff  
3 and what we understand the role of Staff to be, which  
4 is to balance the needs of the shareholders and the  
5 customers, and then looking at the position of Staff  
6 relative to those that are clearly charged with  
7 representing the consumer, we often see no difference  
8 and, in fact, we often see the situation where Staff  
9 is taking a view that is more consumer than even the  
10 consumer advocate, and again, that perplexes us.

11           Q.     And why do you call the Staff's  
12 positions unreasonable?

13           A.     We believe the role of Staff is to  
14 balance the needs of customers and investors, and  
15 we're not seeing that in the positions that are  
16 coming forward, in that those positions are as much  
17 in favor of the consumer as the consumer advocate, if  
18 not more. And we've seen that consistently over the  
19 last few years.

20           Q.     On page 5 of your rebuttal testimony at  
21 lines 9 through 17, you state, as the Staff has taken  
22 more unreasonable stances in rate proceedings in  
23 recent years, rating agencies and investors have  
24 begun to look askance at investments within Missouri  
25 versus opportunities elsewhere. A change in the

1 outlook on utilities operating within the state  
2 occurs gradually, almost imperceptibly. Once  
3 reputational capital is lost, however, it is very  
4 difficult to regain from the debt and equity market.  
5 The result is that both debt and equity capital is  
6 more difficult to obtain and, when it is obtained, it  
7 is more costly. Customers eventually have to pay for  
8 the entire cost of capital. Therefore, the  
9 unreasonable rate actions recommended by the Staff  
10 will ultimately impact our customers negatively.

11                   Is your criticism directed at the Staff  
12 of the Commission?

13           A.    I'm describing a scenario here.

14           Q.    Isn't it the Commission that ultimately  
15 sets rates?

16           A.    It is the Commission that ultimately  
17 sets rates.

18           Q.    How can you separate Aquila's  
19 difficulties in attracting less costly debt and  
20 capital between the impacts of its financial  
21 difficulties resulting from its unregulated  
22 operations and your claim that the regulatory  
23 environment in Missouri deters investment?

24           A.    We clearly have made mistakes, and  
25 that's increased our cost of capital as an

1 organization. What we endeavor to do in this rate  
2 case was put forward a capital structure of an  
3 investment grade utility with investment grade debt  
4 cost and investment grade capital structure, and  
5 that's all we're asking for. We're not asking for a  
6 non-investment grade cost of capital in this rate  
7 case.

8 Q. On page 6 of your surrebuttal testimony  
9 at lines 13 through 15 you state, we need to attract  
10 more industry to our service territory in order to  
11 create a more balanced peak demand and spread the  
12 high cost of infrastructure. How will raising rates  
13 attract industry?

14 A. The act of raising rates in and of  
15 itself does not attract industry. Reliable  
16 infrastructure attracts industry, and so -- to the  
17 extent that infrastructure capital starved and  
18 reliability starts to decrease, then industry does  
19 not typically move forward and locate in those type  
20 of areas.

21 Q. Has Aquila's service quality in its  
22 electric operations in Missouri deteriorated  
23 recently?

24 A. Not recently, no.

25 Q. What commitments has Aquila made to

1 attract industry into its Missouri service territory?

2 A. We have a number of initiatives to  
3 attract capital. We have -- or attract industry. We  
4 have an economic development group that not only  
5 operates in Missouri, but operates in all of our  
6 other states, but we have individuals dedicated in  
7 Missouri for economic development. We also offer  
8 economic development rates to industries to relocate  
9 into our service territory, for example the Harley  
10 Davidson rate that was recently put in place.

11 JUDGE JONES: Mr. Williams, at this time  
12 I'll have to interrupt you. We need to break for  
13 lunch. You've gone since 11:30. Because some of you  
14 may need to get acclimated to where to eat around  
15 here, we'll come back at a quarter after 2. So be  
16 back at quarter after 2.

17 (A BREAK WAS TAKEN.)

18 JUDGE JONES: We are back on the record  
19 with Case No. ER-2004-0034. We are continuing with  
20 the cross-examination by the Staff of the Commission  
21 of Aquila's witness Mr. Keith Stamm. Staff, you may  
22 proceed.

23 MR. WILLIAMS: Thank you, Judge.

24 BY MR. WILLIAMS:

25 Q. Mr. Stamm, on page 7 of your rebuttal

1 testimony, at lines 3 through 5 you state, yet  
2 Staff's unwarranted recommendations, if accepted,  
3 will make it difficult for Aquila to invest in any  
4 new technology or innovations which could maintain  
5 and improve efficiency and reliability.

6                   What new technology and innovations are  
7 you referring to?

8           A.     As the electric industry continues to  
9 evolve, there are technologies that become proven  
10 technologies that help increase reliability. A good  
11 example of that over the last 10 or 15 years have  
12 been ACRs, or automatic circuit reclosers. Those  
13 aren't absolutely necessary to meet any reliability  
14 standard, but they're certainly helpful. And so it's  
15 those type of technologies.

16                   Our investment plan would be only proven  
17 technologies. We wouldn't do anything that's cutting  
18 edge. So there are a number of examples, but they're  
19 typically around reliability and customer service.

20           Q.     I'm sorry. Is the example you provided  
21 something that Aquila is already implementing, ACRs?

22           A.     We do have ACRs, yes.

23           Q.     So are you proposing any other  
24 technology that's currently available that has not  
25 yet been implemented by Aquila?



1           A.     Certainly there's more solid state  
2 electronics that can be employed, for example, at  
3 substations to help improve the flow of information  
4 from out in the distribution system back to a central  
5 location. Again, those are not absolutely necessary  
6 to meet what would be today's reliability standards,  
7 but would certainly improve things. But it becomes a  
8 question of investment. Do you make that investment  
9 or not, if you're already meeting the requirements?

10           Q.     Has Aquila made any commitments to  
11 implement that technology you just referred to?

12           A.     We continue to invest in the system, and  
13 again, the investments that we make are based on the  
14 best available technology that's proven today.

15           Q.     On page 8 of your rebuttal testimony at  
16 line 16, you state that acceptance of the Staff's  
17 recommendation for return on equity will harm  
18 Aquila's ability to raise capital. Is Aquila able to  
19 raise equity capital now?

20           A.     We are not in the market raising equity  
21 capital, although we have filed for the ability to do  
22 that, yes.

23           Q.     On page 11 of your rebuttal testimony,  
24 at lines 8 through 10, you state, over the objections  
25 of the plant's operating partner Calpine, a data room

1 was established by Aquila to provide even extremely  
2 confidential and market sensitive information to  
3 review.

4                   Is it Aquila's belief that providing the  
5 Staff confidential and market sensitive information  
6 for review regarding the Aries plant was a concession  
7 by Aquila that it was not obligated to make?

8           A.     We believe in providing that  
9 Information -- we know that in providing that  
10 information, it was against the wishes of the other  
11 owner in doing that. So we were looking at the  
12 obligation that we had as co-owner of that facility,  
13 and under that agreement versus what we felt was  
14 necessary in making that information available.

15           Q.     Don't you have an obligation to the  
16 Commission to make that information available?

17           A.     We have an obligation to make that type  
18 of information available. Again, I'm not trained as  
19 a lawyer, but there were obviously conflicting  
20 objectives there where the co-owner did not want us  
21 to make that information available and we wanted to  
22 make it available to the Commission Staff.

23           Q.     Isn't your obligation to make that  
24 information available to the Commission a statutory  
25 obligation?

1                   MR. SWEARENGEN:  Objection, that calls  
2 for a legal conclusion.  He said he's not a lawyer.

3                   JUDGE JONES:  Mr. Williams?

4                   MR. WILLIAMS:  That's fine.

5                   JUDGE JONES:  Objection sustained.

6 BY MR. WILLIAMS:

7                   Q.     On page 11 of your rebuttal testimony at  
8 lines 16 through 18, you state, Mr. Oligschlaeger  
9 states incorrectly that the purchased power contract  
10 was priced to charge our MPS division costs higher  
11 than if the utility division had built its own  
12 generation.  Can you direct me to where in  
13 Mr. Oligschlaeger's direct testimony he makes such an  
14 assertion?

15                  A.     I do not have his testimony with me.

16                  Q.     Is there any reason why he would not  
17 have access to HC material in that testimony?

18                  A.     There is actually.  To the extent that  
19 it contains information with respect to the resource  
20 plan, there could be an issue, yes.

21                  Q.     Did you review the nonproprietary  
22 version?

23                  A.     Yes, I did.

24                  MR. WILLIAMS:  Okay.  May I approach?

25                  JUDGE JONES:  Yes, you may.

1 BY MR. WILLIAMS:

2 Q. I'm handing you what's been marked as  
3 Exhibit No. 64NP for identification, which is the  
4 direct testimony of Mark L. Oligschlaeger, with  
5 highly confidential material redacted.

6 A. I'm reading, and this is just the first  
7 instance that I've come across it. There's 25 pages  
8 so this may take a bit. I'm reading on page 7,  
9 lines 4 through 20, question: What is the Staff's  
10 position on appropriate ratemaking treatment for  
11 affiliate transactions? Answer: The Staff believes  
12 affiliate transactions in which a regulated entity  
13 receives goods or services from an unregulated  
14 affiliate should be valued for ratemaking purposes at  
15 the lower of the fully distributed cost or market  
16 price of the goods and services. This has long been  
17 a position of the Staff, and recently this position  
18 was codified in rules adopted by the Commission in  
19 1999 concerning affiliate transactions,  
20 4 CSR 240-29.015.

21 Question: Why is a lower of fully  
22 distributed cost or market price policy appropriate  
23 for goods or services obtained by utilities from  
24 affiliates? The policy's appropriate in order to  
25 avoid affiliate abuse. Affiliate abuse is a

1 phenomenon when a regulated utility makes a decision  
2 based not on the best interests of its customers but  
3 on the best interest of an affiliate entity or a  
4 regulated utility's corporate parent. Another way of  
5 stating this is that affiliate abuse occurs when a  
6 regulated entity enters into a transaction with an  
7 affiliated entity that will maximize corporate  
8 profits at the expense of its customers when another  
9 course of action would have been more economical to  
10 its customers.

11                   Following on on page 7, line 21,  
12 question, given Aquila Merchant MPPH's affiliation to  
13 Aquila/UtiliCorp's MPS division, does the Staff  
14 believe that Aquila/UtiliCorp's selection of MPPH to  
15 supply the future power needs of its MPS divisions to  
16 be reasonable? Answer: Yes, if the division is  
17 charged a fair portion of the costs incurred to serve  
18 its power needs.

19                   In early 1999 in Case No. ER-99-3069  
20 Aquila/UtiliCorp applied to the Commission for  
21 certain determinations required to be made by the  
22 Missouri Public Service Commission under 32K of the  
23 Public Utility Company Holding Company Act of 1935,  
24 respecting its contract with MPPH for supply of power  
25 from the Aries unit. As part of its analysis of Case

1 No. EO-99-369 application, the Staff reviewed the  
2 bidding process, as well as the decision to choose  
3 MPPH as a supplier of power. Based on that review,  
4 the Staff concluded that MPPH's bid was a reasonable  
5 selection when compared to other bids received.

6           Question: why was the Commission asked  
7 to make certain determinations respecting the PPA  
8 from MPS and MPPH in Case No. EO-99-369? Answer:  
9 Certain determinations by the Commission were  
10 necessary because MPPH is an affiliated exempt  
11 wholesale generator. Question: What is an exempt  
12 wholesale generator? Answer: An EWG is a  
13 non-regulated affiliate of an electric utility that  
14 is exclusively in the business of owning or  
15 operating, or both owning and operating, all or part  
16 of an eligible facility and selling electric energy  
17 at wholesale.

18           EWGs came into existence as part of  
19 Section 711 of the Electric Policy Act of 1992.  
20 Under EPA Act, regulated utilities are allowed to  
21 enter into purchased power agreements with affiliated  
22 EWGs, as long as certain determinations are made by  
23 their state regulatory commissions. Aquila/UtiliCorp  
24 filed a case, EO-99-369 to obtain the necessary  
25 determinations from the Missouri PSC regarding the

1 PPA between MPS and MPPH.

2                   Question: Did the Commission make  
3 requested determinations from UtiliCorp in that  
4 proceeding? The line of questioning that I took  
5 particularly with respect to the abuse, the affiliate  
6 abuse, I took as one instance of Staff asserting that  
7 that was not the best option for customers.

8           Q.     So the sections that you've just read  
9 are your support for your statement?

10           A.     That's based on my review of the first  
11 ten pages. I'd need a couple minutes to go through  
12 the rest of them.

13           Q.     Sure.

14           A.     On page 10, line 13, question: Why was  
15 the short-term nature of the Aries PPA not -- why was  
16 the short-term nature of the Aries PPA not been in  
17 the best interests of the company's customers?

18           Answer: The short term of the PPA exposes MPS  
19 customers to greater risks associated with future  
20 market pricing of power than if the situation -- than  
21 would be the situation if MPS owned the Aries plan?  
22           Aquila/UtiliCorp's overall corporate strategy since  
23 at least the late 1990s has been to construct  
24 Merchant generating units to capture the value of its  
25 expected -- of its expectation of increased electric

1 power prices.

2                   This strategy was pursued by -- was  
3 pursued both by selling power from Merchant  
4 generating units to non-native-load customers via  
5 opportunities available through electric  
6 restructuring initiatives, and also by selling power  
7 at higher prices to its native load customers in  
8 Missouri through non-regulated generating units.  
9 This strategy is not appropriate in relationship to  
10 Aquila/UtiliCorp's obligation to its MPS division  
11 customers to make decisions that best protect their  
12 interests and constitutes affiliate abuse.

13                   Reading a portion of the answer on  
14 page 12 without going through the entire Q&A on 11,  
15 page 12, line 5, on its face the comparison of the  
16 Cass County annual lease payments, the capacity  
17 charges to be paid by MPS for power from Aries unit  
18 do not appear to be reasonable.

19                   Page 15, question: How is the Aries PPA  
20 an example of an affiliate abuse? Answer: As  
21 previously stated Aquila/UtiliCorp established the  
22 terms of the PPA transaction so that -- so that it,  
23 in essence, recovers the entire cost for capacity of  
24 the Aries unit from its captive MPS division  
25 customers.



1                   I believe the rest of the answer on  
2 page 15, without reading through that, supports my  
3 assertion as well.

4           Q.     Anything else?

5           A.     No.

6           Q.     Thank you. On page 13 of your rebuttal  
7 testimony at lines 9 through 10, you state, FERC was  
8 clear in its desire to expand the wholesale bulk  
9 power market and provide discussion on the  
10 recoverability of stranded costs.

11                   Regarding the FERC's discussion of the  
12 recoverability of stranded costs, would you describe  
13 the FERC's policy during the late 1990s as being  
14 generally supportive of utilities' ability to recover  
15 wholesale stranded costs?

16           A.     I believe the FERC looked at it on a  
17 case-by-case basis and, in many instances, also left  
18 that to the jurisdiction of the individual states.

19           Q.     On page 13 of your rebuttal testimony,  
20 beginning at line 19 and continuing to page 14 at  
21 line 4, you indicate that the short -- that  
22 short-term power contracts would be the norm during  
23 the relevant time frame. What is the relevant time  
24 frame to which you're referring?

25           A.     The restructuring that we anticipated,

1 and I think the Commission Staff anticipated, that  
2 would occur from the late 1990s through the first  
3 part of this decade. And in support of that, I have  
4 a number of documents from the Commission Staff, as  
5 well as letters from the Public Counsel that have  
6 been introduced already as evidence in Frank  
7 DeBaker's testimony and Jon Empson's testimony that  
8 describe the climate at the time and the fact that  
9 reasonable people at that time --

10 Q. I think my question was just what the  
11 relevant time period was.

12 A. It was through the mid part of this  
13 decade.

14 Q. Did other regulated Missouri electric  
15 utility companies build regulated generation during  
16 this time frame?

17 A. Both regulated and unregulated  
18 generation facilities were built during that time  
19 frame, again, reflecting the fact that reasonable  
20 people could have different views on how the future  
21 might evolve.

22 Q. Were those companies that built  
23 regulated generation acting imprudently?

24 A. No, absolutely not. Again, I think  
25 reasonable people could have different views of the

1 future, given the uncertainty at the time.

2 Q. On page 13 of your rebuttal testimony,  
3 beginning on line 20 you state, this Commission and  
4 its Staff in particular supported the assumption that  
5 restructuring would occur, that utilities should seek  
6 to divest assets in order to avoid stranded  
7 investment, and that short-term purchased power  
8 contracts would be the norm.

9 Can you tell us what is your specific  
10 basis for asserting that the Commission has supported  
11 the assumption that restructuring would occur?

12 A. I might read from a document dated  
13 June 12th, 1998 entitled Electric Restructuring Plan  
14 For the Competitive Supply of Generation in Missouri  
15 by the Missouri Public Service Commission Staff. In  
16 that document -- and this was introduced by Jon  
17 Empson as Exhibit No. 1 to his testimony, and I don't  
18 recall if that was his rebuttal or surrebuttal  
19 testimony.

20 Q. You're referring to some schedule which  
21 is attached as an exhibit --

22 A. Yes, I am.

23 Q. -- to some testimony?

24 A. Yes, I am. And this is on page 11.

25 It's JRE-1, Schedule JRE-1, page 14 of 37, this from

1 the Staff's report about the middle of the page.  
2 There's no line numbering. Only in the case where  
3 the utility has made significant divestiture of its  
4 generation assets should the subsequent charges not  
5 be set at levels necessary to allow 100 percent  
6 recovery of remaining utility's stranded costs or  
7 100 percent of the remaining utility's stranded costs  
8 to be recovered.

9                   From that same page -- from that same  
10 report, on page 12, about the middle of the page, the  
11 Staff believes that divestiture of generation  
12 utilities -- of generation by utilities will more  
13 quickly promote vigorous competition in the  
14 generation markets and raise fewer questions and  
15 concerns regarding independence and operation of the  
16 generation assets. And again, this is under the  
17 scenario that's being discussed of electric  
18 restructuring and retail competition under that  
19 scenario.

20                   In that same report, page 28, second  
21 full paragraph, second, third sentence, the utility  
22 will not want to commit to new contracts over long  
23 periods when such a contract term might result in  
24 stranded costs at the time direct access is  
25 implemented.

1                   Page 29 of that report, first full  
2 paragraph, addition of generating capacity to meet  
3 load growth. In addition to replacing existing  
4 generation capacity, all of the investor-owned  
5 utilities will need to add additional capacity to  
6 meet their growth in native load, paren, otherwise --  
7 paren, wholesale under contract and retail, close  
8 paren. It is anticipated that much of this new  
9 generation capacity will be acquired through  
10 short-term purchased power contracts, rather than  
11 from the addition of new generation capacity.

12                   I would also read from the Commission  
13 Order No. EO-98-316 which is Frank DeBaker's -- in  
14 Frank DeBaker's testimony, FAD-6, and this order was  
15 issued July 7th, 1998, and again, I believe,  
16 describes the climate at the time and the rationale  
17 for individuals and companies to believe that retail  
18 competition may occur.

19                   This is on page 5 at the bottom of the  
20 first full paragraph. In the context of emerging  
21 competition for retail customers, MPS is now focusing  
22 on shorter-term planning horizons and looking for  
23 short-term purchases acquired through competitive  
24 bids as the preferred method for meeting those  
25 resource requirements.

1           On the next page, reports and briefings  
2 during the transition. In Missouri, the next several  
3 years is being viewed by many as a transition period  
4 during which the electric industry's focus will be on  
5 issues surrounding retail competition. And there's  
6 more in that report, as well as a letter from the  
7 Public Counsel dated May 11th, 1998. And this is  
8 Frank DeBaker Exhibit No. 9.

9           Q. I'm sorry, but I believe my question was  
10 directed towards your specific basis for asserting  
11 that the Commission has supported the assumption that  
12 restructuring would occur. I mean, if you want to  
13 quote OPC for that, that's fine, but --

14           A. No.

15           MR. WILLIAMS: May I approach, Judge?

16           JUDGE JONES: Yes, you may.

17 BY MR. WILLIAMS:

18           Q. May I see the Schedule JRE-1 you  
19 referred to?

20           A. Yes.

21           Q. Would you read the caption at the  
22 beginning page of that exhibit?

23           A. Electric restructuring plan for the  
24 competitive supply of generation in Missouri by the  
25 Missouri Public Service Commission Staff, task force

1 on retail competition of the Missouri Public Service  
2 Commission, Case No. EW-97-245, June 12th, 1998.

3 Q. And I believe my question for you was  
4 your support for the position that the Commission has  
5 supported the assumption that restructuring would  
6 occur. You're relying on a Staff report for that?

7 A. Yes, I am.

8 Q. And then what is your specific basis for  
9 asserting that the Commission has supported utility  
10 divestiture of generating assets? Would your  
11 authority be any different in terms of the exhibits  
12 you've already referred to?

13 A. No.

14 Q. And the same question, which is, what is  
15 your specific basis for asserting that the Commission  
16 has stated that short-term purchased power contracts  
17 would be the expected norm? Would your support be  
18 the same as what you provided previously?

19 A. Yes, it would. And in addition, I  
20 believe Frank DeBaker has additional information, but  
21 in terms of my support, that's correct.

22 Q. Thank you. On page 14 of your rebuttal  
23 testimony at lines 9 through 11, in discussing the  
24 Aries plant you state, moreover, plant construction  
25 costs have not escalated over the past five years

1 and, therefore, MPS has maintained supply option  
2 flexibility.

3                   Could Aquila now build the equivalent of  
4 Aries at the same cost as it took to build Aries?

5           A.     Without bidding it in today's market, I  
6 believe the cost would be about the same, but we have  
7 not been out to bid a combined cycle facility, so I  
8 can't state that with absolute certainty. But  
9 anecdotally, we're not seeing dramatic increases in  
10 the prices, no.

11          Q.     On page 14 of your rebuttal testimony at  
12 line 20, beginning at line 20 and continuing to  
13 page 15 at line 17, you discuss your view that the  
14 Staff's proposal for depreciation rates, particularly  
15 calculation of net salvage on a pay-as-you-go basis  
16 and exclusion from the determination of depreciation  
17 rates is harmful to Aquila's customers in a number of  
18 ways.

19                   Didn't the Commission decide to base net  
20 salvage on historical salvage and treat it as an  
21 expense when the issues were presented to it as  
22 contested issues in Case No. ER-2001-299?

23          A.     That's correct.

24          Q.     On page 15 of your rebuttal testimony,  
25 you discuss the harm you view your customers will



1 suffer if net salvage is calculated on a  
2 pay-as-you-go basis and excluded from the  
3 determination of depreciation rates. Has Aquila  
4 removed an electric generation plant after it was  
5 retired?

6 A. We've not removed one of the magnitude  
7 of, say, Sibley, which would be perhaps \$100 million  
8 of removal costs that would be amortized over a  
9 five-year period, but we've not moved anything of  
10 that magnitude, no.

11 Q. On page 166 your rebuttal testimony at  
12 lines 9 through 12 you further discuss Aquila's  
13 perceived problem with the Staff's current approach  
14 for treating net salvage for ratemaking purposes.  
15 Isn't the Staff's approach this Commission's current  
16 approach?

17 A. I think the emphasis is current  
18 approach. My understanding is it's been done a  
19 number of different ways, but this is the current  
20 approach.

21 Q. I'd like to turn your attention to your  
22 surrebuttal testimony now. On page 4 of that  
23 testimony, at lines 3 through 4 --

24 A. I'm sorry. You said page 4?

25 Q. Yes, page 4 at lines 3 through 4. You

1 state, constructing a large combined cycle regulated  
2 power plant would have been anathema to stranded cost  
3 of Williams. Are you personally aware of any studies  
4 performed by or on behalf of Aquila that examine the  
5 potential stranded cost exposure to Aquila from the  
6 Aries unit if it had been placed in the rate base as  
7 a regulated unit?

8 A. The documents that I've just read from  
9 that indicated the plausibility of retail competition  
10 in the mid to late 1990s as discussed by Staff, and  
11 then looking at the cost of an Aries facility that  
12 would be something in the neighborhood of  
13 \$300 million amortized over a 30-year time period  
14 with retail competition as a plausible scenario in  
15 the next three to four would leave a significant  
16 portion of that stranded. I've not seen a specific  
17 calculation for that, but I'm certain that's the --  
18 that would be the underlying rationale.

19 Q. Are you personally aware of any study  
20 performed by or on behalf of Aquila that examined in  
21 general terms Aquila's potential stranded cost  
22 exposure from various generating resource planning  
23 scenarios from the mid 1990s forward?

24 A. I was stationed overseas at the time, so  
25 no.

1           Q.     On page 4 of your surrebuttal testimony  
2 at line 11 through 16, you discuss Aquila's Greenwood  
3 generating units.  Didn't Aquila pay in lease  
4 payments the cost of building the Greenwood  
5 generating units and then reacquire those units at  
6 the close to the original cost to build them?

7           A.     Aquila entered into an operating lease  
8 for those units in the mid 1970s.  If Aquila would  
9 have entered into, say, a capital lease, the rates  
10 would have been much, much higher.  And so our view  
11 is that this was not raised as an issue in the '70s  
12 or the '80s or the 1990s, and it's now raised as an  
13 issue.  It seems like it's hindsight, 20/20  
14 hindsight.

15                     We think to properly look at this, it  
16 needs to be viewed from the perspective of the mid  
17 1970s when the generation went into effect and what's  
18 the net present value from that time period, as  
19 opposed to what's happening at the end of this  
20 particular lease.

21           Q.     My question to you is, weren't the total  
22 of the lease payments more than the same or more than  
23 the cost of building those generating units  
24 originally?

25           A.     On a -- on a nominal basis or present

1 value basis?

2 Q. Nominal basis.

3 A. On a nominal basis, of course.

4 Q. And then didn't Aquila reacquire those  
5 units at close to the original cost to build them?

6 A. That's correct, on a nominal basis.

7 Q. And by nominal basis, you mean not  
8 taking into account the time value of money?

9 A. From the mid 1970s, that's correct,  
10 forward. In other words, it was a 30-year decision.  
11 So the time value of money certainly should be taken  
12 into consideration.

13 Q. On page 5 of your surrebuttal testimony  
14 on lines 8 through 10 you state, finally, given the  
15 current high cost and volatility of gas, it is  
16 doubtful today that a gas-fired combined cycle plant  
17 would be the first choice for supplying our base load  
18 needs. Is power taken under the Aries purchased  
19 power agreement being used to supply Aquila's base  
20 load needs?

21 A. It's more of an intermediate load  
22 requirement.

23 Q. If building to replace the power that it  
24 is now obtaining from the Aries plan, what type of  
25 generating unit would Aquila build?

1           A.     Are you speaking of where the load was  
2     in the mid 1990s when the decision was made or where  
3     the load is going to be at the expiration of the  
4     contract?

5           Q.     Let's time it currently.

6           A.     Time it currently? Well, I think  
7     that --

8           Q.     Or expiration of the contract.

9           A.     The expiration of the contract? I don't  
10    have the details of the resource plan because I've  
11    been involved in the Aries -- negotiation of the  
12    Aries toll and terminating that particular toll.  
13    What I can say is that Missouri Public Service has a  
14    very low load factor, which means that our average  
15    use compared to our peak use is low. It's about  
16    47 percent. So that our portfolio generation should  
17    always include some amount of base load, some amount  
18    of peaking and some amount of intermediate load.

19                   I don't ever see us getting away from  
20    peaking and intermediate load with that low of a load  
21    factor. I can't tell you offhand what we would  
22    replace it with, but I think it's always necessary to  
23    have that portfolio, again, given the fact that we  
24    have the poorest load factor in the state.

25           Q.     I believe you characterized the power

1 being taken from the Aries unit to be intermediate;  
2 is that correct?

3 A. Yes.

4 Q. Wouldn't Aquila want to replace that  
5 load with intermediate power also if it were  
6 building, I mean, that generation?

7 A. Over time, no. It will be necessary to  
8 put more additional base load in because the load of  
9 the company is growing as well. So, for example, as  
10 our base load requirements grow and outgrow the  
11 capabilities of the Sibley plant, the Iatan and our  
12 Jeffrey rights, then we will have to add base load in  
13 the future.

14 Q. Aren't Staff's positions in this case  
15 regarding Missouri Public Service essentially the  
16 same positions the Staff took in Aquila's last rate  
17 case, Case No. ER-2001-672?

18 A. With respect to Aries?

19 Q. With respect to the -- generally with  
20 respect to the issues that are present in this case,  
21 not just Aries.

22 A. Well, for example, the depreciation  
23 is -- there's a \$6 million difference between  
24 depreciation in that case and this case, as I  
25 understand it.

1           Q.     I'm not talking about in terms of  
2 dollars. I'm talking about in terms of methodology.  
3 Aren't the issues in this case essentially the same  
4 issues as there were in Case No. ER-2001-672?

5           A.     Aries was an issue in the last case,  
6 depreciation was an issue in the last case, that's  
7 correct.

8           Q.     Cost of capital?

9           A.     Cost of capital, yes.

10          Q.     Straight line tax?

11          A.     Yes.

12          Q.     Aren't Staff's positions in this case on  
13 those issues essentially the same as they were in the  
14 ER-2001-672 case, if you know?

15          A.     I think at the end of the day, it  
16 ultimately translates into revenue requirements, and  
17 that's -- and so it's hard for me to agree with that  
18 because the revenue requirements are -- for example,  
19 there's a \$6 million difference, so it depends on how  
20 you define essentially.

21          Q.     Setting aside the results, I'm talking  
22 about the approaches. Aren't Staff's approaches the  
23 same now as they were then?

24          A.     But the approach should result in the  
25 final result. So -- I'm sorry. I'm struggling to

1 understand the difference.

2 Q. Hasn't Staff used the same methodology  
3 in approaching cost of capital and the treatment  
4 of --

5 A. No, I don't believe so. For example,  
6 the capital structure that Staff was suggesting in  
7 the last rate case, the equity component was closer  
8 to 50 percent. I believe it was 47 percent. Today  
9 it's about 35 percent. So I think there are  
10 significant differences in the approach that Staff is  
11 taking. The issues are the same, but I think  
12 incrementally there's significant differences.

13 Q. Is the basis for your answer the  
14 results, as opposed to how they were arrived at?

15 A. Well, no. If you look at, again, the  
16 capital structure and the equity component of  
17 47 percent, which I believe was the number in the  
18 last rate case, versus 35 percent in this rate case,  
19 it seems to me that that's a significantly different  
20 approach.

21 MR. WILLIAMS: No further questions.

22 JUDGE JONES: Thank you, Mr. Williams.  
23 I should note for the record that Sedalia Industrial  
24 Energy Users Association and AG Processing is not  
25 present for cross-examination. And at this time, I



1 will move on to questions from the Bench.

2 Commissioner Murray?

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon, Mr. Stamm.

5 A. Good afternoon.

6 Q. Staff attorney was asking you about  
7 ER-2001-299. Do you recall?

8 A. Yes.

9 Q. Can you tell me what was the title of  
10 that case?

11 A. ER-2001-299?

12 Q. Yes.

13 A. I believe that was the electric case.

14 Q. Okay. And do you know if any part of  
15 that was stippled out?

16 A. The case was settled.

17 Q. The whole thing was settled?

18 A. I believe that's the case, yes.

19 Q. Okay. That's very interesting because  
20 we've been through this before, and with the same  
21 issue, as a matter of fact. Are you aware that  
22 stipulations and agreements have no value in  
23 determining the Commission's position as to a  
24 specific issue?

25 A. Yes, I am.

1 Q. And so Staff is asking you if that is  
2 the Commission's position based on a Stipulation &  
3 Agreement, is that your understanding?

4 A. That would appear to be the case, yes.

5 Q. But you understand that a Stipulation &  
6 Agreement cannot indicate a Commission's position as  
7 to the specific issue?

8 A. I do understand that, yes.

9 Q. Do you know how many rate cases where  
10 the issue of net salvage was litigated and where the  
11 Commission has found that the approach that Staff is  
12 recommending here was the approach that we would use?

13 A. I know that it's been an issue in a  
14 number of the recent cases over the last few years,  
15 but I do not know the number that it was actually  
16 litigated.

17 Q. Okay. Are you aware that the Commission  
18 has also recently found that the traditional  
19 treatment would be afforded net salvage and cost of  
20 removal in certain cases?

21 A. Yes.

22 Q. And are you also aware that the  
23 Commission itself does not suddenly have a new policy  
24 in terms of a particular methodology simply because  
25 it may -- that methodology may appear and reappear as

1 the position of a particular party, Staff or any  
2 other particular party, even if the Commission adopts  
3 it in one or two particular cases based upon the  
4 specific facts of those particular cases?

5 A. I'm aware of the new policy by the  
6 Commission, that's correct.

7 Q. And on the issue of net salvage cost of  
8 removal, if we were to treat that item the way Staff  
9 is recommending that we treat it here, is that a  
10 departure from the traditional way that most state  
11 commissions and this state commission has treated net  
12 salvage cost of removal over the years?

13 A. My understanding is that is a definite  
14 departure from the way that most commissions treat  
15 that, because it effectively causes future customers  
16 to pay for the assets that today's customers are  
17 using.

18 Q. And the effect of that in the short run  
19 is usually to reduce the revenue requirement, is it  
20 not?

21 A. Yes, it is.

22 Q. But then in the long run, would the  
23 opposite of that hold true?

24 A. My understanding is that the cost of  
25 removal would then be recovered over the following

1 five years that it was removed or amortized over a  
2 five-year period, so yes, it would increase costs or  
3 it would increase rates at that time.

4 Q. And in your rebuttal testimony, on  
5 page 16 you say, I suppose that when faced with the  
6 multi-million-dollar cost of such a retirement -- and  
7 we're talking about an unusually large or a large  
8 retirement -- the Staff may recommend amortization of  
9 that extraordinary amount into the future. Such a  
10 solution, however, would only increase the inequity.  
11 Customers who have never received one kilowatt hour  
12 of benefit from the plant would be paying for its  
13 removal years into the future.

14 Now, would you assume that at the time a  
15 large removal had to take place, creating a  
16 significant cost, that Staff would say, oh, no,  
17 you're not expensing that this year, that's going to  
18 have to be amortized over the future? Would you  
19 expect that approach to be followed?

20 A. I believe that's a very plausible  
21 scenario, particularly given the fact that if we're  
22 retiring a facility, we're probably putting in a very  
23 large power plant which would involve its own rate  
24 case, so we'd make the rates that much larger because  
25 we'd want to put the new plant in and then recover

1 the salvage value of the old plant.

2 Q. And would you expect the other parties  
3 to take that same position that they did not want --  
4 did not consider it fair that the cost of the large  
5 removal be expensed in the year that it was actually  
6 occurred?

7 MR. MICHEEL: I'm going to object, calls  
8 for speculation as to what other parties would want  
9 to do.

10 COMMISSIONER MURRAY: I'm just asking  
11 what he would expect.

12 JUDGE JONES: Your objection is  
13 overruled.

14 THE WITNESS: I believe that's a very  
15 plausible scenario, yes.

16 BY COMMISSIONER MURRAY:

17 Q. And would that be, in fact, a position  
18 to take that -- to use that methodology? Does it  
19 seem that that would be a position that might be very  
20 attractive politically for the short term, but would  
21 be very detrimental to the ratepayers over the long  
22 term?

23 A. Yes.

24 COMMISSIONER MURRAY: Thank you. That's  
25 all I have.

1                   JUDGE JONES: Thank you, Commissioner  
2 Murray. Commissioner Clayton?

3 QUESTIONS BY COMMISSIONER CLAYTON:

4           Q.     I just have a couple of questions a bit  
5 more historical in nature, rather than focusing on a  
6 particular issue.

7                   With all of the mergers and the changes  
8 that Aquila has undergone in the last couple of  
9 years, can you give me an overview on the difference  
10 in where MPS, Missouri Public Service and St. Joe,  
11 each entity gets its power, whether it's generated by  
12 its own units, whether it buys it? Can you give me  
13 just a general idea of where its electricity comes  
14 from?

15           A.     Missouri Public Service historically has  
16 had a combination of own generation and purchased  
17 power contracts. For example, in the mid 1980s  
18 through 2000, over the end of the 1990s, Missouri  
19 Public Service had purchased power contracts with  
20 Ameren and Associated Electric Company. St. Joe  
21 Light & Power, I'm not as familiar with their  
22 history, other than I know they had an interest in  
23 Iatan, as well as purchased power out of Nebraska.  
24 So both companies have a history of portfolio of  
25 owned generation and purchased power contracts.

1                   And the -- Aquila has not taken a  
2 different view with that philosophy. We do think  
3 that that portfolio approach does make sense over the  
4 long run, and we should not be prejudiced one way or  
5 the other towards owned generation or purchased power  
6 contracts.

7                   Q.     Can you give me an idea more  
8 specifically -- and let's focus on Missouri Public  
9 Service. Could you break down, say, what percentage  
10 of power comes from its own facilities versus a  
11 purchased power contract? Is that possible or do you  
12 have that information?

13                  A.     It is possible, and there are two  
14 different ways to look at that. The more relevant  
15 way is to look at how much energy actually goes to  
16 the customers versus how much capacity is available.  
17 And the distinction there is that we have to have  
18 enough capacity for that one peak hour of the year,  
19 even though we may not run that generating unit  
20 except for a few hours a year for that peaking  
21 requirement. That's particularly relevant to us  
22 because we have needle peaks with primarily rural  
23 customers. The majority of energy comes from Sibley,  
24 as well as our interest in Iatan and --

25                  Q.     I'm sorry. Would you say that again?

1           A.     I'm sorry.  The majority of our energy  
2 comes from our base load facilities that we have an  
3 owned interest in or that we have participation in,  
4 for example, through Jeffrey Energy Center or Iatan  
5 or the Sibley facility, which we own.

6           Q.     Sibley, I think is what I --

7           A.     S-i-b-l-e-y.

8           Q.     Okay.  So you say the majority, and then  
9 the remainder is through purchased power contracts?

10          A.     And our peak facilities, that's correct.

11          Q.     And then how many peaking facilities  
12 does Missouri Public Service have?

13          A.     We have peaking generation at our Ralph  
14 Green facility, at our Pleasant Hill, the Nevada  
15 facility.  Those are all gas and oil-fired generation  
16 units.

17          Q.     There was some discussion between you  
18 and Mr. Williams earlier regarding the Aries plant;  
19 is that correct?

20          A.     That's correct.

21          Q.     And where does that fit into Missouri  
22 Public Service, or does it?

23          A.     Aries is an intermediate load type  
24 facility.  It's a combined cycle-type facility, and  
25 Aries fits in between base load and peaking.  The



1 distinction is that base load units are very  
2 expensive to build up front, but once they run, the  
3 operating cost is low. So you want to use those  
4 where you can amortize those over a lot of kilowatt  
5 hours.

6                   Peaking units are relatively inexpensive  
7 to build, but when you do run them, the operating  
8 costs can be three, four, five times higher, so you  
9 only run those a few hours a year for the needle  
10 peaks. The intermediate load fits in between the  
11 combined cycle facility runs at a conversion rate of  
12 about 10 MMbtus per kilowatt hour. A peaking  
13 facility is --

14           Q.     Sir, I'm just a lawyer. I'm not an  
15 engineer, so don't -- before you start using a bunch  
16 of letters and numbers that I'm going to get confused  
17 by.

18           A.     An intermediate load facility is much  
19 more efficient than a peaking facility.

20           Q.     But it's a combined cycle, you say?

21           A.     That's correct.

22           Q.     And just tell me what that means,  
23 combined cycle.

24           A.     Combined cycle means that you take the  
25 heat from the exhaust of a peaking facility and then

1 use that to heat water to essentially generate more  
2 electricity. So it takes the exhaust heat, which  
3 would generally be wasted, and then is used to more  
4 efficiently generate more electricity.

5 Q. Is that intermediate facility, is it  
6 used both at Missouri Public Service and the St. Joe  
7 systems?

8 A. The Aries facility is Missouri Public  
9 Service.

10 Q. Entirely?

11 A. Yes. It was -- when it was -- that  
12 contract was entered into, it was with Missouri  
13 Public Service. We do joint dispatch today, which  
14 means that we dispatch the St. Joe requirements and  
15 the Missouri Public Service requirements together.  
16 So today it's actually blended, but it was entered  
17 into for Missouri Public Service.

18 Q. How long is that contract for, over how  
19 much time?

20 A. It expires at the end of May 2005.

21 Q. And is it owned by Aquila or by Missouri  
22 Public Service? It's all one corporation, right?

23 A. It is owned by an entity that is  
24 50 percent owned by Aquila and 50 percent owned by a  
25 company called Calpine, and the Aquila ownership

1 interest is on -- the non-regulated side owns that.

2 Q. Okay. And is that, what, an LLC or a  
3 corporation or a --

4 A. It is --

5 Q. -- partnership?

6 A. I believe it is an LLC. It's  
7 non-recourse back to Aquila.

8 Q. Okay. Now, for St. Joe Light & Power,  
9 where does its power come from, its capacity or its  
10 load?

11 A. St. Joe has a higher load factor and has  
12 had a higher load factor than Missouri Public  
13 Service. It is in the mid 50s, in other words,  
14 50 percent load to peak load, and it has a  
15 combination of base load, has a Lake Road facility,  
16 which is a combination of coal and gas. It also has  
17 participation in Iatan.

18 Q. And what is Iatan? I'm sorry. I don't  
19 mean to cut you off.

20 A. That's all right.

21 Q. Is it a combined cycle, is it a gas  
22 fired, is it --

23 A. Iatan is a coal-fired facility that is  
24 operated by Kansas City Power & Light, majority owned  
25 by Kansas City Power & Light. And then also St. Joe

1 takes power out of Nebraska, a base-load-type power  
2 out of Nebraska on a purchased power agreement.

3 Q. Okay. Now, on page 4 of your direct  
4 testimony, you have a chart that makes reference for  
5 the increased revenue requirements for each of the  
6 subsidiaries, and it says that 44 percent of the  
7 requested increase for Missouri Public Service, it's  
8 28.4 million in increased -- increased natural gas  
9 costs, while St. Joe Power & Light only has, looks  
10 like, 200,000 increase in gas costs. Could you  
11 explain that to me, why there's such a significant  
12 difference?

13 A. Yes. It's primarily due to the  
14 intermediate load or the Aries facility which, again,  
15 was -- Missouri Public Service entered that purchased  
16 power agreement. This was prior to the merger with  
17 St. Joe.

18 Q. So that increased gas cost of all these  
19 different facilities that we talked about here is  
20 basically because of Aries?

21 A. For the most part, yes.

22 Q. Okay. And why is it? Why is it  
23 different between Aries and all the other ones?

24 A. The other ones are used for peaking  
25 requirements, so they are not run very many hours per

1 year. An intermediate load will be run more hours  
2 per year than peaking but less hours per year than a  
3 base load.

4 Q. How often is an intermediate load  
5 facility used? You have your base loads, sets your  
6 base, and then when does the intermediate kick in, if  
7 that's even a fair way of putting it?

8 A. That is a fair way of describing it.  
9 And start with the peaking facility. That might run  
10 5 percent of the time.

11 Q. Basically during the summer months?

12 A. Summer hours, a few hours during the  
13 summertime. An intermediate load facility can run  
14 35, 45 percent of the time. A base load facility, if  
15 it's a nuclear unit, close to 100 percent, and coal  
16 fired 80, 90 percent.

17 Q. A combined cycle is natural gas?

18 A. In most cases it is, yes.

19 Q. Could you also on that same chart on  
20 page 4 explain to me the line that says decline in  
21 off-system margins of \$9 million?

22 A. Yes. Essentially with the generation  
23 fleet that Missouri Public Service has, historically  
24 it's been able to take its excess energy, energy not  
25 used -- needed for the retail customers, and then

1 sell that in the open market for a profit.

2                   We've seen a couple of things happen.

3 One, we've seen that wholesale market decline,  
4 because there are not as many participants and, two,  
5 with the load growth of Missouri Public Service  
6 customers, the amount of excess energy that's  
7 available from the base load units is now being used  
8 by our customers, as opposed to historically we would  
9 have had that available to sell.

10           Q.     Where would the power come from for  
11 those off-system sales?

12           A.     Typically those would come from our own  
13 generating fleet, so it would be excess energy from,  
14 say, Sibley. When our customers were not using it,  
15 we would sell it from Sibley or we would sell it from  
16 Jeffrey or -- primarily those two.

17           Q.     Sibley and Jeffrey are both owned by  
18 Aquila?

19           A.     Yes. Aquila has an ownership interest  
20 in Jeffrey. Jeffrey is actually operated by  
21 Weststar.

22           Q.     I've heard a little bit about them, too.  
23 Aries, that is an LLC that is owned 50 percent by  
24 Aquila, 50 percent by Calpine; is that correct?

25           A.     The equity in the facility, that's

1 correct.

2 Q. Okay.

3 A. And again, I believe it's an LLC, but we  
4 can correct that if that's not the case. It's a  
5 structure that is not recoured back to Aquila, the  
6 parent. In other words, it is not -- there's no  
7 recourse back to Aquila the parent. In other words,  
8 there is debt against that facility of about  
9 \$190 million. The lenders have no recourse back to  
10 Aquila corporate.

11 Q. Other than what's been invested?

12 A. Other than what's been invested, that's  
13 correct.

14 Q. Do you know, does Aries LLC have  
15 employees?

16 A. Yes, it does.

17 Q. It does. And who are the managers of  
18 Aries? Who are its board of directors?

19 A. The board is comprised of the owners,  
20 which is a combination of employees from Aquila and  
21 Calpine.

22 Q. Are you on the board of Aries?

23 A. No, I am not.

24 Q. Do you know who the members are of the  
25 board of Aries?

1           A.     In our case, Bob Paling has been on the  
2 board for Aries, who's a senior vice president above  
3 capacity resources.

4           Q.     That's it, just one member from Aquila?

5           A.     There may be another individual at an  
6 operating level. It's a fairly small board.

7           Q.     Small board?

8           A.     Yes.

9           Q.     And then is it equal membership with  
10 Calpine?

11          A.     Yes, it is.

12          Q.     So maybe a four-member board?

13          A.     No.

14          Q.     Or do you-all have an odd number to  
15 break a tie in the event you disagree?

16          A.     It's four.

17          Q.     Can you give me just a general idea of  
18 the number of employees of Missouri Public Service?

19          A.     The way that we've structured the  
20 business, we have Missouri electric operations and  
21 then we have support for the Missouri electric  
22 operations, and that support is in the form of a call  
23 center, which is centralized so that supports the  
24 customers in all seven states, and then our corporate  
25 costs --



1           Q.     Maybe I need to rephrase the question.  
2     As I look at the line 3 on that page 4 for pension  
3     expense, generally I want an idea of how many  
4     employees or how you determined your pension expense  
5     for the two different companies. Is it based on  
6     number of employees that flow through there? Since  
7     you only have one corporate entity and you have  
8     shared services, how do you determine the pension  
9     expense for each subsidiary or each division?

10           A.     It would be based upon direct charges to  
11     the division. So, for example, a lineman in Sedalia  
12     would be a direct charge to Missouri Public Service.  
13     An accountant at the corporate office, their cost  
14     would be allocated.

15           Q.     Okay. How many are allocated to MPS and  
16     how many -- do you have a general idea?

17           A.     Offhand, I would say the majority are  
18     direct charged, but I don't have that number.

19                    COMMISSIONER CLAYTON: Okay. I'm sure  
20     we'll have an opportunity to talk about that sometime  
21     in the next year or however long this goes on. Thank  
22     you very much. No further questions.

23                    JUDGE JONES: Thank you, Commissioner  
24     Clayton. At this time we'll have recross, and I'll  
25     remind you all that recross is based on questions

1 from the Bench. I'll note for the record that City  
2 of Kansas City, Missouri does not have cross, as he's  
3 been excused from this proceeding today. Missouri  
4 Department of Revenue?

5 MS. WOODS: Your Honor, we don't have  
6 any.

7 JUDGE JONES: Does not have any cross.  
8 Sedalia Industrial Users Association and AG  
9 Processing not present and I presume does not have  
10 any cross. At this time, I'll ask if Federal  
11 Executive Agencies has any recross?

12 MR. PAULSON: No recross, your Honor.

13 JUDGE JONES: Thank you. And Public  
14 Counsel?

15 MR. MICHEEL: None, your Honor.

16 JUDGE JONES: And Staff of the  
17 Commission?

18 MR. WILLIAMS: Thank you, Judge.

19 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q. I believe Commissioner Murray asked you  
21 a question about Case No. ER 2001-299. As I recall,  
22 that was a case involving the Empire District  
23 Electric Company where the issue of depreciation was  
24 litigated. Are you familiar with that case at all?

25 A. I was thinking of the Missouri Public

1 Service case in 2000. I am aware of the Empire case,  
2 yes.

3 Q. There wasn't any settlement of  
4 depreciation in the Empire case, was there?

5 A. I'm not familiar enough with the case,  
6 but I don't believe so.

7 Q. And Aquila's last rate case, which  
8 involved what's currently its MPS service area, was  
9 ER-2001-672. Would you agree with me on that  
10 representation?

11 A. That sounds correct. I don't have the  
12 docket number in front of me.

13 Q. And in that case there was a settlement  
14 between the parties that was approved by the  
15 Commission?

16 A. That's correct.

17 Q. And wasn't that settlement basically a  
18 black box settlement where no statements were made on  
19 the majority of the positions?

20 A. Where there was no precedent set with  
21 that particular settlement?

22 Q. Well, in particular the issue of  
23 depreciation. There was no agreement on the parties  
24 as to how depreciation would be determined, but there  
25 was agreement about what should happen to rates,

1 correct?

2 A. There was an agreement of the rate  
3 impact, that's correct.

4 Q. And the Commission approved that  
5 agreement, did it not?

6 A. Yes.

7 Q. If Aquila never removed any plant,  
8 wouldn't the company reap a windfall if salvage is  
9 included in depreciation rates?

10 A. I'm not sure that's the case.  
11 Presumably that would ultimately result in some type  
12 of an overearning situation if it was earning at its  
13 allowed rate of return otherwise.

14 Q. Do you know what Aquila's current  
15 balance is in its depreciation reserve?

16 A. I don't have that number in front of me,  
17 no.

18 Q. Do you have any idea, even approximately  
19 ballpark?

20 A. I know that our investment in Missouri,  
21 our total investment is about \$1.2 billion. We have  
22 about 900 million that's not been depreciated or  
23 amortized, and then, depending on the capital  
24 structure, maybe 50/50 would be our -- our structure  
25 in terms of what the debt to equity is.

1 MR. WILLIAMS: No further questions.

2 JUDGE JONES: Thank you, Mr. Williams.

3 No further questions. At this time, we'll have  
4 redirect from Aquila.

5 MR. SWEARENGEN: I have no redirect.  
6 Thank you.

7 JUDGE JONES: Thank you. You may step  
8 down, Mr. Stamm, unless there are questions from the  
9 Bench.

10 (No response.)

11 JUDGE JONES: Okay. You may step down.

12 MR. SWEARENGEN: May Mr. Stamm be  
13 excused from these proceedings?

14 JUDGE JONES: Give me a moment to be  
15 sure of that. In the meantime, can you stick around?

16 THE WITNESS: Sure.

17 JUDGE JONES: Okay. Aquila, you may  
18 call your next witness.

19 MR. SWEARENGEN: We would call Glenn  
20 Keefe.

21 JUDGE JONES: Would you say and spell  
22 your last name.

23 THE WITNESS: Glenn Keefe, G-l-e-n-n  
24 K-e-e-f-e.

25 JUDGE JONES: Thank you. Would you

1 raise your right hand, please.

2 (Witness sworn.)

3 JUDGE JONES: Thank you.

4 GLENN KEEFFE testified as follows:

5 DIRECT EXAMINATION BY MR. SWEARENGEN:

6 Q. Mr. Keith, you have one piece of  
7 testimony in this proceeding; is that correct?

8 A. That's correct.

9 Q. And it's surrebuttal testimony?

10 A. That's correct.

11 Q. And it's been marked as Exhibit 4. Are  
12 there any changes you need to make in that testimony  
13 this afternoon?

14 A. One small change.

15 Q. Would you give us the page and line,  
16 please?

17 A. On page 2, line 2, where it says April  
18 2003, that's 2002.

19 Q. Thank you. And with that change, I  
20 assume the rest of your responses are true and  
21 correct?

22 A. That's correct.

23 MR. SWEARENGEN: Thank you very much. I  
24 would offer into evidence Exhibit 4 and tender the  
25 witness.

1 JUDGE JONES: Are there any objections?  
2 MR. WILLIAMS: No objection from Staff.  
3 MR. PAULSON: No objection.  
4 MR. MICHEEL: No.  
5 MS. WOODS: No objection.  
6 JUDGE JONES: Thank you. Exhibit 4 is  
7 admitted into the record.  
8 (EXHIBIT NO. 4 WAS RECEIVED INTO  
9 EVIDENCE.)  
10 MR. SWEARENGEN: Thank you, Judge.  
11 JUDGE JONES: At this time we'll take  
12 cross-examination from Public Counsel -- or Federal  
13 Executive Agencies.  
14 MR. PAULSON: I have no  
15 cross-examination, your Honor.  
16 JUDGE JONES: We'll go on to Public  
17 Counsel.  
18 MR. MICHEEL: No.  
19 JUDGE JONES: And Staff of the  
20 Commission?  
21 MR. WILLIAMS: No questions.  
22 JUDGE JONES: Are there any questions  
23 from the Bench?  
24 COMMISSIONER MURRAY: Thank you.  
25 QUESTIONS BY COMMISSIONER MURRAY:

1           Q.     I have a question on page 7 of your  
2 testimony regarding the chart there, and it may be  
3 that I just haven't looked at it long enough to have  
4 figured this out, but this is all public testimony,  
5 right? This is not highly confidential numbers in  
6 any way?

7           A.     No.

8           Q.     For the Empire, you show 15.4 customers  
9 per square mile; is that right?

10          A.     Yes.

11          Q.     And yet --

12          A.     You're probably on the right side. It's  
13 the difference of customer per employee, not customer  
14 per square mile. Is that what you're looking at?

15          Q.     Yes. I was looking at the customer per  
16 square mile, the 15.4, and then the difference  
17 customer per employee, I'm -- it hasn't been that  
18 long since I read this, but I have forgotten. What  
19 does the -- okay. The first line is the one that  
20 you're comparing everything else to; is that right?

21          A.     Yes. The first set of blocks is  
22 territory in square miles, and it lists the  
23 territories of all these companies. The second box  
24 is the number of employees. The next box is the  
25 number of customers. The next box is the customers



1 per square mile, which is the customers, of course,  
2 divided by the employees. And then the next box is  
3 square miles per employee. The next box is customers  
4 per employee, which would be the customers divided by  
5 the employees. And the last one is a difference  
6 which compares the customers per employee with  
7 Aquila, which is zero now because it's no difference  
8 with Aquila, and the other companies.

9 COMMISSIONER MURRAY: Okay. I think I  
10 just need to look at that longer because I can't -- I  
11 can't recall what my question was there when I  
12 circled that number, but there was something that  
13 looked strange to me about the Empire numbers in  
14 comparison to the others. I don't think I have  
15 anything else. Thank you.

16 JUDGE JONES: Commissioner Clayton?

17 COMMISSIONER CLAYTON: Thank you, Judge.

18 QUESTIONS BY COMMISSIONER CLAYTON:

19 Q. Mr. Keefe, I want to apologize, first of  
20 all, because with all this testimony, I've somehow  
21 slipped through without getting ahold of yours.  
22 Could you just briefly summarize what your  
23 surrebuttal testimony's about?

24 A. What I did was I looked at the four  
25 major investor-owned utilities in the state of

1 Missouri, which is Aquila, Kansas City Power & Light,  
2 Ameren and Empire, and based on the electrical  
3 system, which is customer density, load factor, all  
4 of those things that involve the electrical system,  
5 we're trying to develop a model to say which company  
6 should have the highest rates, which company should  
7 have the next highest rates, et cetera, et cetera.

8           That particular model is based on, like  
9 I said, the square miles per customer, the density of  
10 that, also the transmission pole miles, also the load  
11 factor, which is very, very important, because a  
12 company's load factor -- and Missouri Public Service  
13 has the lowest load factor in the state -- is very  
14 important to return on equity. For every  
15 .8 percent -- for every one percent of load factor,  
16 it's a .8 return on equity, which is worth about  
17 \$3 million to the net bottom line.

18           So if you look at Missouri Public  
19 Service with their load factor of 47 percent versus,  
20 let's say, a Kansas City Power & Light which has a  
21 much denser population, there's a huge difference  
22 there on return on equity. It's also a huge  
23 difference in cost.

24           If you look at transmission miles per  
25 customer, a company that has more miles of

1 transmission per customer has to have higher rates to  
2 have those customers pay for that same amount of  
3 line. And also if you look at it, too, you have to  
4 look at the generation mix. As Mr. Stamm testified,  
5 we have a low load factor. We have a lot of peaking  
6 generation because of that. And the customers with  
7 the higher load factor can incorporate more base  
8 load.

9 Q. So what is the conclusion of your  
10 testimony?

11 A. The conclusion is that, based on these  
12 facts of the electrical system, that the lowest cost  
13 utility in the state should be Ameren, the second  
14 lowest cost should be Kansas City Power & Light, the  
15 third lowest cost should be Empire, and Aquila should  
16 be the highest.

17 Q. Okay.

18 A. Based on --

19 Q. So basically your conclusion is that  
20 Aquila should have the highest rates in the state?

21 A. Yes, based on the electrical system.

22 Q. Do you work for Aquila?

23 Okay. Would the 23 percent increase --  
24 would the 23 percent increase that's been requested  
25 make you-all have the highest rates in the state?

1           A.     Yes, it would.

2                   COMMISSIONER CLAYTON:  Okay.  Thank you.

3  No further questions.

4                   JUDGE JONES:  Thank you.  Is there any  
5  recross based on questions from the Bench?

6                   MR. PAULSON:  No questions.

7                   MR. WILLIAMS:  Staff has no recross.

8                   MR. MICHEEL:  No questions.

9                   JUDGE JONES:  Thank you.  Is there any  
10 redirect?

11                   MR. SWEARENGEN:  No redirect, thank you.  
12 And can this witness be excused?  Put him on your  
13 list if you would, please.

14                   JUDGE JONES:  I will.  Thank you.

15                   This looks like a good time to break  
16 before we move on to Aquila's next witness.  So we'll  
17 come back here at quarter 'til four.

18                   (A BREAK WAS TAKEN.)

19                   JUDGE JONES:  We can go ahead and go on  
20 the record here.  We have -- is Mr. Swearngen coming  
21 back?

22                   MR. COOPER:  I'm here, your Honor.

23                   JUDGE JONES:  And is this Denny Williams  
24 on the stand?

25                   MR. COOPER:  It is, your Honor.

1                   JUDGE JONES: Mr. Williams, could you  
2 say and spell your last name, please.

3                   THE WITNESS: Dennis R. Williams. The  
4 last name is spelled W-i-l-l-i-a-m-s.

5                   JUDGE JONES: Will you please raise your  
6 right hand.

7                   (Witness sworn.)

8                   JUDGE JONES: Thank you. Mr. Cooper?

9 DENNIS WILLIAMS testified as follows:

10 DIRECT EXAMINATION BY MR. COOPER:

11                 Q. Mr. Williams, is it your understanding  
12 that your rebuttal testimony has been marked as  
13 Exhibit 7 for identification and that your  
14 surrebuttal testimony has been marked as Exhibit 8  
15 for identification?

16                 A. Yes, it is.

17                 Q. Do you have any changes or corrections  
18 that need to be made to those pieces of testimony?

19                 A. I have just three minor changes that  
20 I'd like to make to my rebuttal testimony at page 15,  
21 line 14, it says return of that investment. The  
22 words should be "return on that investment."

23                 Q. That's on page 15, line 14 of your  
24 rebuttal?

25                 A. That's correct.

1 Q. What's the second correction that you  
2 need to make?

3 A. The second correction is on my rebuttal  
4 at page 18, line 6; 20 should be changed to 24.

5 Q. What is the third correction?

6 A. My final correction is in the  
7 surrebuttal testimony at page 7, line 16. I did not  
8 complete the quote of the Public Counsel witness.  
9 After the word "balances," it should say, comma,  
10 property taxes and depreciation expenses.

11 Q. Are those all the changes you have?

12 A. Yes, they are.

13 MR. COOPER: Your Honor, I would offer  
14 into evidence Exhibits 7 and 8 and tender  
15 Mr. Williams for cross-examination on the Accounting  
16 Authority Order issue.

17 JUDGE JONES: Thank you. I suppose  
18 there are no objections?

19 (No response.)

20 JUDGE JONES: Exhibits 7 and 8 are  
21 admitted into the record.

22 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO  
23 EVIDENCE.)

24 JUDGE JONES: Mr. Williams, before I go  
25 on, what was the second correction on the rebuttal

1 testimony again?

2 THE WITNESS: It was page 18, line 6.  
3 The number 20 should be changed to 24.

4 JUDGE JONES: Thank you. At this time  
5 we'll move to cross-examination. I'll note for the  
6 record that the City of Kansas City is not present  
7 and did not intend to cross-examine the witness, as  
8 is so with Missouri Department of Natural Resources.  
9 We'll move on to Sedalia Industrial Energy Users  
10 Association and AG Processing. Do you have  
11 cross-examination for Mr. Williams?

12 MR. CONRAD: We have no questions for  
13 this witness on this issue.

14 JUDGE JONES: Thank you. And Federal  
15 Executive Agencies?

16 MR. PAULSON: No questions, your Honor.

17 JUDGE JONES: Public Counsel?

18 MR. MICHEEL: Yes, your Honor.

19 CROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Williams, would you agree with me  
21 that inclusion of the unamortized AAO balance in rate  
22 base is necessary to permit MPS to recover its full  
23 cost of investment in and repair of the Missouri  
24 electric -- Missouri electric system for the ice  
25 storm in 2002?

1           A.     I would.

2           Q.     And you state that at page 12, lines 11  
3 and 13 of your rebuttal testimony; isn't that  
4 correct?

5           A.     That's correct.

6           Q.     Is it your belief that the AAO process  
7 is designed to allow a utility to recover its full  
8 cost of investments and to make the utility whole  
9 financially?

10          A.     I don't believe that the AAO process  
11 guarantees that.

12          Q.     Well, then I'm -- explain to me your  
13 statement on page 12, by not allowing the unamortized  
14 balance in rate base, the company's penalized from  
15 earning a reasonable return on its plant investment  
16 and the company is not financially made whole.  
17 That's what you state; is that correct?

18          A.     That is correct.

19          Q.     And is it your testimony that if the  
20 Commission accepts the proposal made by Aquila, the  
21 company will be made financially whole?

22          A.     No. The proposal made by Aquila would  
23 not allow the company to be made or the shareholders  
24 to be made whole either.

25          Q.     And you would agree with me that's not



1 the purpose of an AAO, is it?

2 A. I believe an AAO is intended to provide  
3 for extraordinary items -- recovery of extraordinary  
4 items, recovery of and on.

5 Q. To give the company an opportunity to  
6 recover, isn't that correct, not a guaranteed  
7 recovery?

8 A. I would agree with that.

9 Q. Would you agree with me in Case  
10 No. ER-97-394, the Commission's Report and Order is  
11 silent with regard to the treatment of the Sibley  
12 rebuild AAO deferrals?

13 A. I don't recall, and I don't have a copy  
14 of that order with me.

15 MR. MICHEEL: Okay. May I approach the  
16 witness, your Honor?

17 JUDGE JONES: Yes, you may,  
18 Mr. Micheel.

19 BY MR. MICHEEL:

20 Q. I'm going to hand you a copy of the  
21 Commission's Report and Order in ER-97-394 in the  
22 matter of Missouri Public Service, a division of  
23 UtiliCorp United. Mr. Williams, is that a copy of  
24 the Commission's Report and Order in Case ER-97-394?

25 A. It appears to be.

1 Q. And could you point to me where the  
2 Commission in ER-97-394, if anywhere, discusses  
3 recovery of AAO, the Sibley AAO deferrals?

4 A. It's a rather long document, but looking  
5 at the table of contents, I do not see AAO listed, so  
6 I assume it was not an issue in that case.

7 Q. Well, I'm interested, because on page 16  
8 of your rebuttal testimony you say, in the past four  
9 rate proceedings involving MPS, and then you say, one  
10 of them is ER-97-394, that recovery was recommended.  
11 And I'm asking you, did the Commission grant that  
12 requested recovery?

13 A. I believe my statement was that Staff  
14 had recommended recovery, and it not being an issue  
15 in the case apparently, I believe it didn't come to  
16 the Commission for an Order.

17 Q. So the Commission, as far as you know in  
18 that particular case, didn't grant recovery  
19 specifically; isn't that correct?

20 A. I agree they did not specifically grant  
21 or deny.

22 Q. The next case that you have listed there  
23 is ER-2001-672; is that correct?

24 A. That is correct.

25 Q. And would you agree with me that that

1 case was a stipulated case with absolutely no mention  
2 of the treatment of the Sibley rebuild deferrals from  
3 the AAO?

4 A. That is correct. The AAO was not an  
5 issue.

6 Q. And so with respect to that, there's no  
7 Commission direction regarding recovery of that AAO  
8 in that case; isn't that correct?

9 A. That's correct. It was not an issue in  
10 that case.

11 Q. Is it correct that you assert that in  
12 Case No. GR-98-140, the Missouri Gas Energy decision  
13 that ruled against inclusion of the unamortized  
14 balance in rate base is, quote, not a valid  
15 comparison to the MPS ice storm deferral?

16 A. I'll agree to that.

17 Q. And that's at page 16, lines 8 through  
18 21 of your rebuttal testimony; is that correct?

19 A. That's correct.

20 Q. And the reason you say it is not a valid  
21 comparison is that in MPS's case, the costs incurred  
22 were of an extraordinary nature; is that correct?

23 A. That is a difference, certainly.

24 Q. Does that mean that you believe that in  
25 the MGE case, the costs that were deferred pursuant

1 to the AAO were not extraordinary in nature?

2 A. I believe they were different types of  
3 costs, as opposed to an act of God.

4 Q. But were they extraordinary costs, that  
5 was my question?

6 A. I believe they were extraordinary costs,  
7 but different types of extraordinary costs.

8 Q. So your statement at the bottom of  
9 page 16, in MPS's case, the costs incurred were of an  
10 extraordinary nature isn't relevant; isn't that  
11 correct?

12 A. Well, I believe that it is relevant,  
13 perhaps not in the context that we're talking about  
14 here, but any time that we have an AAO, I believe the  
15 Commission -- one of the things they look at is  
16 whether costs are extraordinary in nature or not.

17 Q. Indeed, would you agree with me that any  
18 cost that is deferred pursuant to an AAO must be an  
19 extraordinary cost; is that correct?

20 A. That has been the precedent of this  
21 Commission.

22 Q. So to the extent that you claim that the  
23 MGE costs weren't extraordinary, that's a distinction  
24 without a difference; isn't that correct?

25 A. Both entail extraordinary costs,

1 different types of extraordinary costs.

2 MR. MICHEEL: I need to get an exhibit  
3 marked, your Honor. I believe it will be  
4 Exhibit 152, and I would identify it is the Order  
5 Granting Application for Accounting Authority Order  
6 in Case EO-91-247.

7 (EXHIBIT NO. 152 WAS MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)  
9 BY MR. MICHEEL:

10 Q. Mr. Williams, do you have in front of  
11 you what's been marked for purposes of identification  
12 as Exhibit 152?

13 A. I do.

14 Q. And does that appear to be the  
15 Commission's Order Granting Application for  
16 Accounting Authority Order in the St. Joe case?

17 A. Yes, it does.

18 Q. And could you confirm for me that that's  
19 the Report and Order that granted the Accounting  
20 Authority Order for St. Joe's automated mapping  
21 facilities management system?

22 A. That's correct.

23 Q. And in this case, we're calling that the  
24 AMFM system?

25 A. Correct.

1 Q. Very nifty. Would you agree with me --

2 MR. MICHEEL: Well, let me move

3 admission of Exhibit 152, your Honor.

4 JUDGE JONES: Are there any objections

5 to Exhibit 152?

6 MR. COOPER: No objection.

7 MR. CONRAD: No objection.

8 MR. PAULSON: No objection.

9 MR. MEYER: No objection.

10 JUDGE JONES: Hearing none, Exhibit 152

11 is received into the record.

12 (EXHIBIT NO. 152 WAS RECEIVED INTO

13 EVIDENCE.)

14 BY MR. MICHEEL:

15 Q. Could you turn to page 5 of that Order,

16 sir?

17 A. I'm there.

18 Q. Is it correct that the Commission in its

19 Report and Order in EO-91-247 stated that the costs

20 deferred there would have to be amortized over a

21 six-year period; is that correct?

22 A. There's a statement here that says

23 pursuant thereto, St. Joseph Power & Light Company

24 may defer and accumulate labor costs, including

25 appropriate overheads and carrying costs associated

1 with the project, and to amortize the balance to the  
2 appropriate transmission and distribution accounts  
3 over the same six-year period used to depreciate the  
4 project's hardware and software cost.

5 Q. So it says that there's a six-year  
6 period; is that correct?

7 A. That was the statement in this Order.

8 Q. Are you aware of any Commission decision  
9 that explicitly changed that six-year amortization  
10 period?

11 A. It's my recollection that this Order  
12 used the six-year amortization period. What they did  
13 was they derived an amount that was to be amortized,  
14 and the amount that was used, the assumption was that  
15 the full cost would be amortized over six years.

16 Q. That's a nice answer, but I would ask  
17 that it be stricken. My question was, are you aware  
18 of any Commission order that changed the six-year  
19 amortization period from this order?

20 A. Well, I just think -- I think we'd have  
21 to clarify that it talks about accumulating labor  
22 costs as well. I am not aware of any additional  
23 order that changes any amortization period nor the  
24 amortization amount.

25 Q. So the period which the costs that are

1 allowed to be deferred pursuant to that order,  
2 Commission order, was a six-year period; is that  
3 correct?

4 A. May I take a moment to --

5 Q. Sure.

6 A. -- read this?

7 Q. And, Mr. Williams, not to interrupt, but  
8 Mr. Cooper pointed out that I've got an errant page  
9 that somehow got attached, the last page with all the  
10 numbers that should not be attached to the Order, and  
11 I apologize. Photocopying glitch.

12 MR. COOPER: Your Honor, can we have  
13 that page pulled from the Order that's been provided  
14 to the court reporter?

15 MR. MICHEEL: I don't object to that.

16 JUDGE JONES: That page will be pulled  
17 from the exhibit provided to the court reporter.

18 MR. MICHEEL: I apologize for any  
19 confusion that may have caused.

20 THE WITNESS: The Order does contain the  
21 statement that there will be a six-year period used  
22 to depreciate -- or to amortize the balance, and I'm  
23 aware of -- I am not aware of any other orders that  
24 may or may not have impacted this.

25 BY MR. MICHEEL:



1 Q. So as far as you know, the six-year  
2 period was what was ordered by the Commission; is  
3 that correct?

4 A. I believe the six-year period was  
5 ordered based on the assumption of the costs that  
6 would be incurred.

7 Q. And that order was issued on June 14th,  
8 1991; is that correct?

9 A. That is correct.

10 Q. And what would six years from that date  
11 be?

12 A. Six years from June 14th, 1991 would be  
13 June 14th, 1997.

14 Q. Thank you. Is it correct that St. Joe  
15 Light & Power's last rate case as a separate  
16 regulated entity was ER-99-247?

17 A. I'm not aware of their last case.

18 MR. MICHEEL: May I approach the  
19 witness?

20 JUDGE JONES: You may.

21 BY MR. MICHEEL:

22 Q. Mr. Williams, I'm handing you what's  
23 entitled order approving Stipulation & Agreement in  
24 Case No. ER-99-247 in the matter of St. Joseph Light  
25 & Power Company, and Case No. EC-98-553, the Staff of

1 the Commission versus St. Joe Light & Power. Could  
2 you take a look at that, sir?

3 A. Yes.

4 Q. Does that appear to be a Commission  
5 Report and Order approving a Stipulation & Agreement  
6 in both a rate and complaint case relating to St. Joe  
7 Light & Power Company?

8 A. It does.

9 Q. Does it also appear that that case was a  
10 settled case?

11 A. Yes, it does.

12 Q. Is it correct in that order, sir, that  
13 there's absolutely no mention of the treatment of any  
14 AMFM costs in the Order approving the Stipulation &  
15 Agreement?

16 A. To verify that I'd have to review the  
17 Order, if you'll give me a moment.

18 Q. I will, sir.

19 A. I see no mention made of an Accounting  
20 Authority Order for AMFM or any other item.

21 Q. Okay. And I've attached a Stipulation &  
22 Agreement to that order. Do you see that there, sir?

23 A. I have reviewed what.

24 Q. And have you reviewed paragraph 7 of the  
25 Stipulation & Agreement that indicates that no party

1 had approved or acquiesced in any ratemaking  
2 principle or any other method of cost determination;  
3 is that correct?

4 A. That is correct.

5 Q. Now, if you would, turn to page 19 of  
6 your rebuttal testimony, and I'm focusing on your  
7 last question and answer there at line 22 through  
8 line 26. And there you state, what has the treatment  
9 been in past rate proceedings of the unamortized AAO  
10 balance of the AMFM system? Answer: In St. Joe's  
11 last rate case, Case No. ER-99-247, both the Staff  
12 and St. Joe included the unamortized balance in rate  
13 base. Is that correct?

14 A. That is correct.

15 Q. But there is absolutely no recognition  
16 that that was done in the Commission's last Report  
17 and Order; isn't that correct?

18 A. No. I took that from the work papers  
19 that would have been --

20 Q. And my question was, there is no  
21 recognition of that in the Report and Order; isn't  
22 that correct?

23 A. My answer is the same, yes.

24 Q. And there's absolutely no recognition  
25 that the parties in the Unanimous Stipulation &

1 Agreement included the unamortized balance of AAOs in  
2 rate base; isn't that correct?

3 A. It does not appear to have been a matter  
4 of disagreement.

5 Q. That wasn't my question. In the  
6 Stipulation & Agreement, is there any paragraph that  
7 indicates that the parties agreed to include the  
8 unamortized AAO balance in rate base?

9 A. There does not, nor does there appear to  
10 be any number of issues that were agreed upon.

11 Q. So the Commission did not nor did the  
12 parties agree to specific AAO agreement in that case;  
13 isn't that correct?

14 A. There is no specific indication in this  
15 Order that there was agreement.

16 Q. Would you agree with me in that  
17 particular case that Public Counsel opposed the  
18 inclusion of the AMFM costs in rates?

19 A. I haven't reviewed OPC's testimony from  
20 that case, but it is my belief that they did oppose  
21 that.

22 Q. So you don't need to see any of the  
23 testimony where we opposed that?

24 A. No.

25 Q. So that was an issue that was settled in

1 that case; isn't that correct?

2 A. That is correct.

3 Q. Were you here when Commissioner Murray  
4 asked some questions of Mr. Stamm regarding what  
5 reports and ord-- what stipulations and agreements  
6 mean and their impact?

7 A. I was in the room, yes.

8 Q. And did you hear his answers to those  
9 questions?

10 A. I did.

11 Q. And did you hear him say that when  
12 there's a settled agreement, a matter that settled,  
13 it's as if nothing had happened, that the parties  
14 just live to fight another day?

15 A. I heard that, and I agree.

16 Q. So it isn't -- I mean, it may be  
17 correct that in the Staff accounting schedules and in  
18 St. Joe's accounting schedules in that case they  
19 proposed that agreement, but that's not actually the  
20 treatment that occurred; isn't that correct?

21 A. That case was settled.

22 Q. Would you agree with me that the AMFM  
23 AAO issue was settled in St. Joe Light & Power's  
24 previous rate case ER-93-41 and EC-93-252?

25 A. I have not reviewed those.

1 Q. Well, let me give you a chance to review  
2 that.

3 MR. MICHEEL: May I approach the  
4 witness?

5 JUDGE JONES: Yes, you may.

6 BY MR. MICHEEL:

7 Q. Let me hand you the Commission's Report  
8 and Order in Case No. ER-93-41 in the matter of  
9 St. Joseph Light & Power and EC-93-252, Staff of the  
10 Missouri Public Service Commission versus St. Joe  
11 Light & Power, and ask you to turn to page 33 of that  
12 Order and look at the paragraph entitled settled  
13 issues.

14 A. I have it.

15 Q. And does that paragraph indicate that  
16 the issue of AMFM AAOs was a settled issue?

17 A. It does.

18 Q. Can I retrieve that, sir?

19 So in that case there was no explicit  
20 treatment of the AMFM issue; isn't that correct?

21 A. Not other than to say it was a settled  
22 issue.

23 Q. Would you agree with me that St. Joe  
24 Light & Power's last rate case after that was  
25 ER-94-163?

1           A.     I really don't have any knowledge of  
2 St. Joe's last cases, but -- so I don't know.

3           Q.     Well, you've testified about a lot of  
4 things that occurred in these rate cases, and I was  
5 wondering if you took the time to review the report  
6 and orders in those rate cases?

7           A.     I have reviewed a number of report and  
8 orders, most of the recent ones.

9           Q.     Okay. Well, let me ask you to look at  
10 the Report and Order in Case No. ER-94-163.

11                   MR. MICHEEL: If I may approach the  
12 witness?

13                   JUDGE JONES: You may.

14 BY MR. MICHEEL:

15           Q.     I'm handing you the Report and Order in  
16 Case No. ER-94-163 in the matter of St. Joseph Light  
17 & Power for tariff sheets designed to increase  
18 electric service and ask you to take a look at that.  
19 Was that a settled case?

20           A.     There was a Stipulation & Agreement  
21 filed.

22           Q.     Well, could you read the Report and  
23 Order. Does that indicate that it was a settled  
24 case, sir?

25           A.     It appears the stipulation and

1 settlement was for the entire case, so it was a  
2 settled case.

3 Q. And have I attached the Stipulation &  
4 Agreement there, sir? And there's a little yellow  
5 sticky on a particular paragraph.

6 A. You have, and I found your yellow  
7 sticky.

8 Q. And would you agree with me that  
9 paragraph 7 of the Stipulation & Agreement  
10 specifically disclaims any ratemaking principles  
11 being agreed upon in that case?

12 A. That is correct.

13 Q. Would you like to take the time to look  
14 at that Stipulation & Agreement to confirm that  
15 there's absolutely no mention of the AMFM AAO  
16 recovery in that?

17 A. I see no mention of AMFM.

18 Q. Would you agree with me there was been  
19 no Commission Report and Order since St. Joe Light &  
20 Power received the AMFM AAO in 1991 that explicitly  
21 authorized recovery of those costs?

22 A. Unless there were other orders of which  
23 I'm not aware, not to my knowledge.

24 Q. So you're unaware of -- I mean, I got  
25 the waterfront on the St. Joe Light & Power rate



1 cases, didn't I, since the AAO came out?

2 A. It appears you did.

3 Q. I need to retrieve that.

4 So to date there's absolutely no  
5 Commission ruling on the appropriate treatment of  
6 those AMFM costs; isn't that correct?

7 A. Other than approval of the overall  
8 settlement.

9 Q. And would you -- well, okay. Let me  
10 talk about your surrebuttal testimony a little bit  
11 here, Mr. Williams. If you could, on page 2 of your  
12 surrebuttal testimony, you allege that customers  
13 should bear the cost of events like ice storms  
14 because customers have received the benefit of costs  
15 expended to restore service; is that correct?

16 A. That is correct.

17 Q. Is it your testimony that only customers  
18 received benefit of service restoration?

19 A. In general, the customers received the  
20 benefit. They certainly received the benefit of the  
21 incremental costs that were expended to restore  
22 service. Now, the company certainly received a  
23 benefit as well, in that the revenue stream that  
24 those customers generate was restored to them once  
25 they were put back in service.

1           Q.     In other words, there's something in it  
2 for the company to hook customers back up to their  
3 system since they sell a metered service, and if it's  
4 not hooked up, the company's not getting any  
5 revenues; isn't that correct?

6           A.     That would be correct, and you'd have to  
7 do an analysis of the costs expended versus the  
8 revenue stream to determine what that impact was.

9           Q.     And you didn't do that analysis, did  
10 you?

11          A.     I have not done that analysis.

12          Q.     You just indicated in your testimony  
13 that the ratepayers received all the benefit; isn't  
14 that correct?

15          A.     The ratepayers received the benefit of  
16 the restoration of service. The company received the  
17 benefit of restoration of the revenue stream, that's  
18 correct.

19          Q.     So because both parties were benefiting,  
20 you would agree with me that both parties should  
21 share the cost; isn't that correct?

22          A.     No.

23          Q.     Why isn't that correct?

24          A.     I believe that the -- in provision of  
25 service that the shareholder or the owner invests

1 cash into a business, and I think that -- I don't see  
2 any difference in the cash that was expended to  
3 restore service, to repair lines to make sure that  
4 the system was back into operating order. The  
5 shareholder expended \$14 million, and to exclude the  
6 return on \$8 million of that, I don't think is  
7 proper. But having said that, the company's last  
8 application in this case does recognize the sharing  
9 mechanism.

10 Q. Let me give you this hypothetical.  
11 Let's talk about real competition, where you've got a  
12 monopoly service territory like MPS and you're the  
13 only game in town. Let's say there are two  
14 individuals who are building widgets. Okay. And one  
15 of the widget plants has some act of God occur and  
16 it's out of service, but the other widget plant is  
17 still running. Can you make that assumption?

18 A. I can.

19 Q. Let's say it's a fully competitive  
20 market. Can you make that assumption?

21 A. I will.

22 Q. Let's say they're each selling their  
23 widgets for five cents. Okay. Can you make that  
24 assumption?

25 A. I will.

1           Q.     Because the widget factory went down or  
2     the one that went out of service, it lost a  
3     considerable amount of money, okay, just like MoPub  
4     in this case. Can you make that assumption?

5           A.     It's in terms of revenue stream?

6           Q.     Yes, sir. Isn't in cost to restore the  
7     widget factory.

8           A.     Okay. I'll make that assumption.

9           Q.     And that's what would happen, isn't it?

10          A.     Yes.

11          Q.     That's not what would happen; you  
12     wouldn't have to fix the widget factory?

13          A.     Well, you would, but what you're  
14     assuming here is that the widget factory B has not  
15     already reserved for those costs, isn't in a  
16     non-competitive or in a competitive environment. In  
17     a non-regulated environment, those companies would  
18     have reserved for unusual extraordinary items.

19          Q.     I see. So in the regulated environment,  
20     you can always get the money from the customer,  
21     there's no need for an emergency reserve, is that  
22     your testimony?

23          A.     No, that's not my testimony.

24          Q.     Did MoPub have an emergency reserve?

25          A.     My testimony is that in a regulated

1 industry, that that is not typically, at least in  
2 Missouri, although there are states I believe where  
3 reserves are established for extraordinary items and  
4 are built into rates.

5 Q. Well, let me go back to my widget  
6 factory example. Assume that the widget factory  
7 doesn't have a reserve. Can you do that, Widget  
8 Factory B, the one that goes out?

9 A. Yes.

10 Q. Now, would Widget Factory B be able to  
11 add the costs of making those widgets to its widgets  
12 to increase the cost to seven cents and remain  
13 competitive with the widget factory that's making  
14 widgets at five cents?

15 A. I don't think that's a valid comparison.

16 Q. That wasn't my question. Would they  
17 remain competitive?

18 A. I can't make that assumption because I  
19 don't think it's a valid comparison.

20 Q. Fair enough. Is it correct that you  
21 said at page 8 of your surrebuttal testimony that  
22 deferred income taxes related to -- that you  
23 discussed deferred income taxes related to MPS's  
24 deferred AAO balances?

25 A. Could you give me the reference again?

1           Q.     Sure.  I'm looking at page 8 of your  
2 testimony, lines 4 through 10, where you discuss the  
3 deferred income taxes related to the MPS AAO  
4 balances.

5           A.     Yes.

6           Q.     Is it correct that you assert that no  
7 deferred taxes related to the 1990 or 1992 AAOs exist  
8 because the tax benefits were, quote, flowed through  
9 to customers?

10          A.     That's correct.

11          Q.     Are you aware of any Commission orders  
12 that authorized MPS to flow through those benefits to  
13 customers?

14          A.     No.  I based that on the work papers  
15 that were filed or were used in the 1992 case, which  
16 is the first case after both of these accounting  
17 orders.

18          Q.     So you're unaware of any paragraph that  
19 authorized that flow through; is that correct?

20          A.     I'm not aware of any Commission order  
21 authorizing flow through.

22          Q.     Would you agree with me that you do not  
23 believe that there should be a rate base offset  
24 relating to deferred income taxes for these AAOs?

25          A.     I would agree with you there should not

1 be a deferred tax offset, because there are no  
2 deferred taxes associated with those AAOs.

3 Q. Are you aware that the updated MPS  
4 Electric Schedule 2 filed in this proceeding notes an  
5 adjustment of \$3,190,470 to offset deferred taxes for  
6 AAOs?

7 A. I am aware of that. I'm aware that most  
8 of that pertains to the ice storm for which there are  
9 deferred taxes, and I'm aware that in putting  
10 together this case, that an error was made in  
11 assuming that there were deferred taxes associated  
12 with the 1990 and '92 case.

13 So basically what was done was the  
14 unamortized balance for the 1990 and '92 AAOs were  
15 multiplied times the tax rate, and for this filing  
16 deferred taxes were assumed, but there were no  
17 deferred taxes recorded on the books.

18 Q. So when we got the initial filing, there  
19 were some deferred taxes related to those AAOs, but  
20 you're claiming that was an error; is that correct?

21 A. There was an error, yes.

22 Q. And you're unable to point to any  
23 Commission order that allowed MPS to flow through  
24 those benefits; is that correct?

25 A. I can only point to work papers.

1 Q. Do you know if there's a regulatory  
2 requirement to get Commission approval before you  
3 flow through deferred income taxes?

4 A. I do not know.

5 Q. Do you know if there's an IRS  
6 requirement for that?

7 A. I do not know.

8 Q. Would you agree with me in MPS Case  
9 No. ER-90-101 the Commission determined that deferred  
10 income taxes related to AAOs should be used to reduce  
11 rate base?

12 A. Could you give me the citation again?

13 Q. ER-90-101.

14 A. Could you help me with that? What  
15 company did that involve?

16 Q. That involved a company by the name of  
17 Missouri Public Service.

18 A. And what was your question again, now?

19 Q. Would you agree with me in that case the  
20 Commission, in a litigated case, determined that the  
21 deferred income tax related to AAOs should be used to  
22 reduce rate base?

23 A. That well could be the case.

24 MR. MICHEEL: May I approach the  
25 witness?



1 JUDGE JONES: Yes, you may.

2 BY MR. MICHEEL:

3 Q. I'm going to hand you a copy of  
4 ER-90-101, it's the Commission's Report and Order,  
5 and ask you to look at page 30 there and read into  
6 the record that paragraph.

7 A. The Commission finds that the deferred  
8 income tax related to the AAO deferral, which is  
9 included in deferred tax reserves, should be used to  
10 reduce rate base as part of the process of setting  
11 rates in this case, since that is the treatment  
12 afforded deferred income taxes related to CWIP.

13 Q. And that was a contested case, was it  
14 not?

15 A. It was.

16 Q. So the treatment of using deferred  
17 income taxes to offset rate base is something the  
18 Commission has approved in a litigated case relating  
19 to Missouri Public Service; isn't that correct?

20 A. In 1990.

21 Q. Are you aware of any litigated MPS cases  
22 that changed that position?

23 A. No. I'm only aware of the work papers.

24 Q. But the work papers aren't a Commission  
25 decision; isn't that correct?

1           A.     That's correct.

2           Q.     And you're unaware of any litigated MPS  
3 case that changed that; isn't that correct?

4           A.     That's correct. My testimony is based  
5 on the work papers and the tax -- what we record on  
6 the books and records of our company.

7           Q.     And when you say the work papers, you're  
8 meaning Aquila's work papers, so Aquila's version of  
9 what they wanted; is that correct?

10          A.     I provided in response to a Data Request  
11 received rather late, that I provided today, the  
12 company work papers. I did rely on that. I believe  
13 the Staff work papers show the same reconciliation  
14 from that case.

15          Q.     Did you provide those to us?

16          A.     I did not.

17          Q.     Are you related to Staff Witness Phil  
18 Williams?

19          A.     I am not, nor am I related to Staff  
20 Attorney Nathan Williams.

21                   MR. MICHEEL: Just wanted to clear that  
22 up. Thank you for your time, Mr. Williams.

23                   JUDGE JONES: Thank you, Mr. Micheel.  
24 Are there questions from the Staff of the Commission?

25                   MR. MEYER: Yes, there are, your Honor.

1 JUDGE JONES: You may proceed.

2 CROSS-EXAMINATION BY MR. MEYER:

3 Q. Good afternoon, Mr. Williams.

4 A. Good afternoon.

5 Q. Mr. Williams, you noted in your rebuttal  
6 testimony on page 18, lines 8 through 10, that the  
7 company could not control the natural forces that led  
8 to the ice storm, as well as the cost that resulted  
9 from it to restore service to the ratepayers in the  
10 most prudent and expeditious manner possible. Does  
11 that sound correct from your testimony?

12 A. What was the page again?

13 Q. It was page 18, lines 8 through 10.

14 A. That's correct.

15 Q. I presume you don't think that the  
16 ratepayers control the natural forces either, do you?

17 A. No, I don't.

18 Q. But in this case, you would suggest that  
19 the ratepayers should bear the full cost, including  
20 returns to the shareholders of something that was  
21 completely out of their control?

22 A. I believe similar to any other item, the  
23 government raising postage stamp rates is outside the  
24 customers' control, but I've never seen anyone  
25 challenge recovery of postage stamp rates.

1           Q.     You're aware, in fact, the Commission  
2     has previously distinguished between acts of nature  
3     out of the control of both shareholders and  
4     ratepayers involving expenses for maintenance and  
5     capital improvement type projects which certainly are  
6     within the control of the utility when determining  
7     whether to grant return on and return of expenses; is  
8     that something that you would agree with?

9           A.     I'm aware it's -- Accounting Authority  
10    Orders have been -- there have been a number of  
11    Accounting Authority Orders that have discussed that.

12          Q.     And then that distinction that I just  
13    talked about was referenced in your testimony and  
14    other people's testimony as coming out of the  
15    St. Louis Water Company case; is that correct?

16          A.     That's correct.

17          Q.     You noted that in your surrebuttal  
18    testimony, page 2, lines 22 to 23, that customers  
19    received the benefits of the expenditures to repair  
20    the system and to restore service after the ice  
21    storm; is that correct?

22          A.     That's correct.

23          Q.     Is it accurate to say that maintenance  
24    expenses and all prudently incurred expenses provide  
25    a benefit to customers but generally are not included

1 in rate base?

2 A. Well, I think to answer that you have to  
3 put that in context of how revenue requirement is  
4 determined. You have a normal level of operating  
5 expenses that is matched to a rate base and matched  
6 to cost of capital at a point in time, and within  
7 that normalized test year, those normal maintenance  
8 costs, it's assumed that there is no extraordinary  
9 items such as an ice storm.

10 So I guess I can't agree with you  
11 entirely, because the extraordinary maintenance of an  
12 ice storm, those -- those costs are different in that  
13 the company shareholders have had to fund cash up  
14 front to restore service, and it's not part of the  
15 normalized level of maintenance that's included in  
16 the rates.

17 Q. Isn't it inaccurate that when you note  
18 on page 4 of your surrebuttal testimony that Aquila  
19 will not be able to recover the deferred costs that  
20 have already been amortized because of the regulatory  
21 lag in getting the AAO in a rate case before the  
22 Commission? That was on page 4 of your surrebuttal  
23 testimony, and explain why that might be inaccurate.

24 A. You're saying that's not accurate. On  
25 its face I believe it is accurate.

1           Q.     Would you agree that if 1/5 of the  
2 unamortized expenses gets built into the rates, which  
3 is in your position, and the rates then stay in  
4 effect for five years, the shareholders would then  
5 recover all of the unamortized expenses?

6           A.     If the rates did stay in effect for five  
7 years, but again, I think you have to put that in the  
8 context of the events, and an ice storm was something  
9 that the company could not anticipate. So the  
10 earliest -- it takes probably six months to put  
11 together a rate case. If you have an ice storm, the  
12 earliest we put together a rate case, 6 months,  
13 you've got 11 months for a procedure, 17 months.

14                     Now, you could say you have that on the  
15 tail end as well. The difference is that the Staff  
16 or any other intervenor, if it's material enough,  
17 like it was to the company, the Staff and the  
18 intervenor know in advance that that's going away.  
19 So they certainly have the opportunity to eliminate  
20 that negative regulatory lag, if that's what we can  
21 define it as.

22           Q.     And I just have a clarification. I'm  
23 sorry. Let me move on.

24                     You seem to discount several times in  
25 your testimony that regulatory lag could actually

1 have positive effects for a utility. Do you believe  
2 that, in fact, regulatory lag does only have negative  
3 consequences for a utility?

4 A. In times of declining costs, regulatory  
5 lag would have benefits for a utility.

6 Q. Does the fact that that AMFM AAO  
7 referenced earlier, that only has a limited time to  
8 run, will again be built into the rates under your  
9 proposal support the proposition that there can  
10 sometimes be regulatory lag that could benefit a  
11 company?

12 A. Again, in that instance, I think you  
13 have a matter of significance. You set rates at one  
14 point in time, and yes, that amortization does go  
15 away, I believe, in October of 2004 or some such  
16 thing. I think the assumption is that there will be  
17 costs that will replace that. You have an ongoing  
18 normalized level of operating expense at the time  
19 rates are put into effect.

20 Q. Just to clarify also, had Aquila paid  
21 all of its bills and invoices associated with the ice  
22 storm restoration effort at the time the ice storm  
23 deferral amortization began in February of 2002?

24 A. That's a good point. There was probably  
25 a 30-day lag or so before a number of those those

1 were paid. There was a lot of that, though, is --  
2 was incremental labor, and those would have been paid  
3 with only a two-week lag.

4 Q. But you would agree with me that some of  
5 those invoices may not have been paid until several  
6 months later as well?

7 A. I imagine that most of them would have  
8 been paid within a month. There could have been some  
9 spillover beyond that point.

10 MR. MEYER: I have no further questions.  
11 Thank you.

12 JUDGE JONES: Thank you. At this time  
13 we'll have questions from the Bench. Commissioner  
14 Murray?

15 COMMISSIONER MURRAY: Thank you. I  
16 don't have very many.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Good afternoon, Mr. Williams.

19 A. Good afternoon.

20 Q. In your rebuttal -- yes, in your  
21 rebuttal testimony on page 11, you said that Staff  
22 had provided no explanation as to why the ice storm  
23 AAO should be treated any differently than MPS's  
24 Sibley rebuild and Western Coal conversion AAO by not  
25 including the unamortized balance in rate base. That



1 was part of your testimony; is that correct?

2 A. That is correct.

3 Q. Then did you have an opportunity to  
4 review Trisha Miller's, the Staff witness, testimony  
5 that was filed on January 26th as well?

6 A. I did.

7 Q. Did you understand her explanation there  
8 of the difference in treatment of those type of AAOs?

9 A. I did, and I believe the main thrust of  
10 her testimony was the belief that the first two were  
11 capital in nature, where the ice storm was  
12 maintenance in nature, was the gist of her testimony.  
13 The fact is the ice storm was a -- the total was  
14 about 14 million; 6 million of that capital, which by  
15 the way the company shareholders have already  
16 experienced regulatory lag pertaining to that portion  
17 because that won't be in rate base until these rates  
18 from this case go into effect, and then the other  
19 \$8 million, which were incremental operating  
20 expenses.

21 But I guess I still failed to see the  
22 distinction. It's like if I went into a bank and  
23 I've got \$10, and I go to window -- to the left-hand  
24 window and they say, okay, we'll give you a return on  
25 that money, but I go to the right-hand window and

1 they say, we won't give you a return on that money.

2 the point is whether for accounting you  
3 classify it as capital or maintenance. To me it  
4 doesn't make a lot of difference. What makes the  
5 difference is that the shareholders put up money up  
6 front and have no way to earn a return on that money  
7 that they provided.

8 Q. How would you distinguish that from the  
9 ordinary expenses that the shareholders pay that are  
10 not capitalized?

11 A. The ordinary expenses that the  
12 shareholders pay are set based on a normalized level.  
13 So the shareholders are -- the cash that they  
14 provide, the rate base and capital structure is -- is  
15 all associated with that normalized level of expense  
16 at one point in time, where these are extraordinary  
17 expenditures or extraordinary cash fusion over and  
18 above the assumption for normalized rates.

19 Q. And is it your position that the  
20 company -- that the shareholders should not share in  
21 those types of extraordinary events that cause major  
22 maintenance expenses?

23 A. It's my testimony that the company  
24 already has shared and has -- and the way this -- the  
25 accounting order works, the company has shared

1 40 percent already, over 40 percent actually, because  
2 they have received no return on any of the  
3 \$14 million that they've expended, and they have --  
4 we have already expensed 40 percent of those charges  
5 for which they will not have the opportunity to  
6 recover. So in total, the company shareholders have  
7 already borne 50 to 60 percent of the ice storm.

8 Q. Now, are you talking about the -- are  
9 you talking about 40 percent of the capital, the  
10 \$6 million in capital expenditures?

11 A. No. I'm talking about 40 percent of the  
12 \$8 million.

13 Q. But the capital expenditures will all  
14 be -- will earn a return on all of that; is that  
15 correct?

16 A. We ultimately will recover return on  
17 that. However, we've already been depreciating  
18 \$6 million for two years, so we have suffered some  
19 regulatory lag, and the -- there will not be an  
20 opportunity for the shareholders to recover any  
21 return on that.

22 Q. And that's the case with any regulatory  
23 lag, is it not?

24 A. That is correct.

25 COMMISSIONER MURRAY: I believe that's

1 all I have. Thank you.

2 JUDGE JONES: Thank you.

3 Commissioner Clayton?

4 QUESTIONS BY COMMISSIONER CLAYTON:

5 Q. Mr. Williams, my wife has an uncle named  
6 Dennis Williams in Quincy, Illinois. Are you related  
7 to him?

8 A. I am not.

9 Q. Close enough to -- you're close enough  
10 to Quincy.

11 I want to make sure I understand the  
12 positions of the parties. Are you familiar with the  
13 positions of Staff and OPC?

14 A. I am.

15 Q. Enough to discuss their positions?

16 A. I believe I can.

17 Q. I want to make sure that I understand,  
18 because we have a number of different issues and  
19 parties vary on how we should treat these. We have  
20 for Missouri Public Service three separate Accounting  
21 Authority Orders; one for the Sibley rebuild, one for  
22 the Sibley conversion, and one for the 2002 ice  
23 storm, correct?

24 A. That's correct.

25 Q. Aquila is seeking a return of and a

1 return on for each of those three AAOs; is that  
2 correct?

3 A. That is correct.

4 Q. Okay. Staff's position is that Aquila  
5 should be able to have a return of and a return on  
6 each of those three except the extraordinary  
7 maintenance expenses from the ice storm; is that  
8 correct?

9 A. That is correct.

10 Q. Okay. And what is the amount of money  
11 for the difference?

12 A. It's approximately \$727,000.

13 Q. And they agree that Aquila should -- or  
14 I say they. Staff believes that Aquila can receive a  
15 return of that figure but not a return on?

16 A. That's correct. And as I understand it,  
17 that is also the OPC position on the ice storm.

18 Q. Okay. Are Aquila and Staff in agreement  
19 on the St. Joe Light & Power AMFM AAO?

20 A. Yes, we are.

21 Q. So there's no disagreement with Staff on  
22 that issue?

23 A. That's correct.

24 Q. And can you explain what is, to the best  
25 of your knowledge, OPC's position on the AMFM AAO?

1           A.     The OPC believes that AMFM should not be  
2 included in rate base and that deferred exclusion  
3 from rate base is approximately a revenue requirement  
4 of only about \$2,000.

5           Q.     So it's not that much money?

6           A.     No. In addition, the OPC believes there  
7 should be no recovery of the amortization of that  
8 AMFM, and it's \$45,000.

9           Q.     So they believe on both sides of that  
10 that it should be just completely disallowed?

11          A.     Yes.

12          Q.     Okay. Can you give me an example with  
13 regard to the ice storm extraordinary maintenance  
14 expenses, can you give me any examples where such an  
15 extraordinary operating expense would be allowed to  
16 have a return on that investments. Can you give me  
17 any other examples in recent memory?

18          A.     I'm sorry. I was actually focused on  
19 the dollar amount of another issue which we didn't  
20 cover and I missed your question. I'm sorry.

21          Q.     Was it somebody else's question that you  
22 were answering?

23          A.     No. I was anticipating another question  
24 on the deferred taxes associated --

25          Q.     Well, why don't you answer the question

1 that you think I was going to ask? I don't want to  
2 get you out of order.

3 A. There is -- there is another difference  
4 between the company and the OPC, and that's the  
5 treatment of deferred taxes associated with the  
6 Accounting Authority Orders. And there's actually  
7 two issues within that. One, the company believes  
8 that we have flowed through the 1990 and '92 AAOs so,  
9 therefore, there is no deferred taxes to offset  
10 against rate base. That's a difference.

11 Staff believes that there are deferred  
12 taxes associated with that that should be offset  
13 against rate base. And I believe the impact of that  
14 is about \$110,000.

15 The final issue is, it's the company's  
16 position that if this Commission should find that  
17 there is no -- that the ice storm should not be  
18 included in rate base --

19 Q. The maintenance expense specifically?

20 A. That's correct. -- that if that  
21 decision should be made, then also the deferred taxes  
22 going against that ice storm should not be offset  
23 against rate base. The OPC believes that, in  
24 essence, you should have a negative rate base item as  
25 a result of restoring the service, and that -- that's

1 closer to \$214,000 different.

2 Q. Mr. Williams, forgive me. It's late in  
3 the day and I had a baby that was up last night. Can  
4 you help me understand the deferred taxes issue  
5 associated with the ice storm?

6 A. With the ice storm?

7 Q. That you just made reference to.

8 A. Yes. The company believes that the ice  
9 storm, the maintenance costs should be allowed in  
10 rate base and there should be --

11 Q. But if they are disallowed, explain to  
12 me the deferred taxes component of that.

13 A. Okay. There are deferred taxes  
14 associated with that. The company is allowed to  
15 receive some tax benefits and defer those tax  
16 benefits. The accounting entries are deferred tax  
17 expense, and you offset it with accumulated deferred  
18 taxes. The assumption is typically with deferred  
19 taxes that it's the customers that have provided  
20 those funds and, therefore, they're treated as  
21 offsets to rate base, or another way of doing it is  
22 using it as zero cost of capital. But in any event,  
23 it's assumed that those come from the customer.

24 What the -- in my opinion, what the OPC  
25 is saying is, well, the customer has provided



1 deferred tax benefits, they should get the money they  
2 put up, but shareholders, you shouldn't get the money  
3 you put up.

4 Q. Since this is the first issue in this  
5 case that we're working on, to get perspective, on  
6 the \$727,000 figure that would be included in rate  
7 base, --

8 A. Well, that's the revenue requirement  
9 impact of the amount --

10 Q. That's the revenue requirement?

11 A. Yes.

12 Q. That's not the rate base amount?

13 A. That's correct.

14 Q. Okay. Are you able to determine what --  
15 how much that figure would impact an average  
16 customer?

17 A. We could do some quick calculations.

18 Q. If you don't know the answer, that's  
19 fine?

20 A. I don't offhand.

21 COMMISSIONER CLAYTON: I understand. I  
22 was told there would be no math either. I'll leave  
23 it at that. Thank you very much.

24 JUDGE JONES: I just have a couple of  
25 questions.

1 QUESTIONS BY JUDGE JONES:

2 Q. With the Sibley rebuild, how much is in  
3 issue with that particular project?

4 A. The revenue requirement of the Sibley  
5 rebuild is approximately \$285,000.

6 Q. And the company proposes how much of  
7 that go to rate base?

8 A. Well, again, that's the revenue  
9 requirement impact.

10 Q. I should ask you, how much is that --  
11 how much did that rebuild cost?

12 A. Give me just a second. The unamortized  
13 portion that the company believes should be in rate  
14 base is \$2,813,053.

15 Q. And the same question for the Western  
16 Coal conversion?

17 A. The number I gave you was both. I'm  
18 sorry. I can break that number into two. I combined  
19 them because they occurred at approximately the same  
20 time. The 1990 Sibley rebuild in Western Coal, is  
21 \$1,391,872, and the 1992 AAO, the unamortized portion  
22 is \$1,421,181.

23 Q. And lastly that same question with  
24 regard to the ice storm?

25 A. I believe all I have here is the revenue

1 requirement impact.

2 Q. I heard you earlier mention a figure of  
3 \$14 million that was divided into 6 and  
4 8 million?

5 A. Right. 8.2 million is approximately the  
6 total of the AAO, but that has been amortized over  
7 for two years. So it's about 60 percent of the  
8 amount.

9 JUDGE JONES: Okay. Thank you,  
10 Mr. Williams.

11 COMMISSIONER CLAYTON: I'm trying to  
12 reconcile a number of documents that are up here, and  
13 I'm looking at the correction sheet that Staff filed,  
14 corrections to reconciliation filed with Staff's  
15 statement of position. Do you-all have a copy of  
16 that?

17 MR. MEYER: I do not personally have  
18 one. I'm sorry, no.

19 COMMISSIONER CLAYTON: You don't. I'm  
20 sorry. On -- it's Appendix A1, it has OPC issues and  
21 on line 30 it says, eliminate Sibley AAOs from rate  
22 base.

23 MR. MEYER: Yes. It does say that.

24 COMMISSIONER CLAYTON: Do you recognize  
25 that? Okay. I just wanted to clarify, and this -- I

1 may have to wait for other witnesses, I want to make  
2 sure.

3 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

4 Q. Mr. Williams, have you had a chance to  
5 see that document?

6 A. Yes.

7 Q. It was my understanding that OPC had the  
8 same position on the Sibley AAO. Was I mistaken as I  
9 wrote that down?

10 A. Same position as us?

11 Q. I believe it says Staff, yeah, Staff and  
12 the company. It's 285,000. You may not have that  
13 document. I believe I can find it for you. Just a  
14 second.

15 MR. COOPER: Commissioner, could I hand  
16 that document to Mr. Williams? Would that be  
17 helpful?

18 JUDGE JONES: Yes.

19 COMMISSIONER CLAYTON: I just want to  
20 make sure that I have this reconciled. We've got all  
21 these documents, all these pleadings filed, and I  
22 want to make sure they match up. If they don't, then  
23 I'll ask questions of Staff witnesses when we get to  
24 them, but --

25 THE WITNESS: There is a difference.

1 Ted Robertson in his direct testimony has recommended  
2 that the unamortized deferred balance for the Sibley  
3 Western Coal conversions at page 12 of his direct  
4 testimony, each recommended that they not be included  
5 as an addition in the determination of rate base. So  
6 that's the 285,000 that you're seeing, is the  
7 exclusion of the Sibley AAOs from rate base.

8 BY COMMISSIONER CLAYTON:

9 Q. Is that the Sibley rebuild or the Sibley  
10 conversion?

11 A. They both went together really. They  
12 were done over a period of six years.

13 Q. And it's a total of 285 between the two  
14 of them?

15 A. Yes.

16 Q. All right. That's where I was -- so the  
17 OPC has a different opinion on the AMFM for St. Joe  
18 Light & Power and on the 285,000 on Missouri Public  
19 Service?

20 A. That's correct. OPC believes none of  
21 the AAOs should be afforded rate base treatment.

22 COMMISSIONER CLAYTON: Okay. Thank you  
23 very much. Sorry for the delay.

24 JUDGE JONES: It's a little after five,  
25 so we're going to stop and continue tomorrow. As I

1 told you-all, there's a presentation going to occupy  
2 this room tomorrow, so I suggest you probably want to  
3 be here at about 9:30. It could run past 9:30, but  
4 9:30 is the best information I can give you at this  
5 time. With that, we'll go off the record. We'll  
6 continue with the recross tomorrow.

7 WHEREUPON, the hearing of this case was  
8 recessed until February 24, 2004.

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