BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

October 22, 2003

Jefferson City, Missouri

Volume 8

In the Matter of the Application by Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber Its Franchise, Works or System	Case No. EF-2003-0465

BEFORE:

RONALD D. PRIDGIN,
REGULATORY LAW JUDGE.

STEVE GAW,
COMMISSIONERS.

REPORTED BY:
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JUDGE PRIDGIN: We are on the record. Good morning. We are resuming the Aquila hearing in Case No. EF-2003-0465. We're resuming on October 22nd, 2003. The time is about 8:35 in the morning.

As I understand, we still have Mr. Empson, Jon Empson, on the stand from Aquila. And, Mr. Empson, I'll remind you you're still under oath. I won't re-swear you.

If I recall correctly, the Commission had completed questioning him last night and we are now putting Mr. Empson on for recross; is that correct?

MR. BOUDREAU: Yes. That's my understanding.

JUDGE PRIDGIN: All right. Mr. Micheel, any recross?

MR. MICHEEL: No.

JUDGE PRIDGIN: Thank you, sir.

Mr. Williams?

MR. WILLIAMS: No questions.

JUDGE PRIDGIN: Thank you.

Mr. Finnegan?

MR. FINNEGAN: No questions.

JUDGE PRIDGIN: Thank you, Mr. Finnegan.

Mr. Molteni?

MR. MOLTENI: No, sir.

JUDGE PRIDGIN: Mr. Boudreau, you don't have anything to redirect because you don't have any recross, but

I guess since the Commission questioned --

MR. BOUDREAU: Actually, I would have a opportunity to redirect because of the cross that preceded that, I think.

JUDGE PRIDGIN: Correct.

JON EMPSON testified as follows:

REDIRECT EXAMINATION BY MR. BOUDREAU:

Q. Mr. Empson, I think -- do you recall you had some questions from the Bench about whether or not in your view the -- under the application, whether all of Aquila's Missouri properties would be committed to the collateral pool. Do you recall that question?

A. Yes, I do.

Q. And what was your response again?

A. My response was that the -- we had filed this application to commit all of the Missouri assets to support the $430 million and at the approval of the application, the full approximate billion dollars worth of rate base or assets would be included in the pool.

Q. Okay. Do you know whether or not from a mechanical perspective that something less than the entire amount of Missouri properties could be committed to the pool?

A. From a purely mechanical perspective, we do operate two different types of utilities in the state of

Missouri. We have a gas utility and we have an electric utility.

The electric utility is involved, of course, in joint dispatch so it would be very difficult not to do anything but to include the entire electric. But if it got to the point where the assets had to be divided, there could be a division between the electric and the gas since they are not co-dependent upon each other.

MR. BOUDREAU: That's all I have. Thank you.

JUDGE PRIDGIN: Thank you, Mr. Boudreau.

MR. BOUDREAU: May Mr. Empson be excused?

JUDGE PRIDGIN: Any objections?

Hearing none, Mr. Empson, you are excused. Thank you very much, sir, for your testimony and your time.

MR. BOUDREAU: I have something of a clean-up item to keep the Bench posted. In the process of having -- where I discussed yesterday about the substitute exhibit for Mr. Dobson's testimony, we're having that copied and should have that hopefully before the end of the day. And at some convenient point, I'll probably bring that to the Bench's attention.

JUDGE PRIDGIN: That would be fine. Thank you, Mr. Boudreau.

I see next on the witness list we're through with Aquila's witnesses and we'll now move on to Staff's witnesses beginning with Joan Wandel.

Ms. Wandel, if you would come forward and be sworn, please.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much. If you would, please be seated.

Mr. Williams, whenever you're ready.

JOAN WANDEL testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS:

Q. Please state your name.

A. My name is Joan C. Wandel, W-a-n-d-e-l.

Q. Who is your employer?

A. My employer is Missouri Public Service Commission.

Q. And what position do you hold with the Commission?

A. I am a regulatory utility manager with the Staff of the Public Service Commission.

Q. And have you prepared revised Rebuttal Testimony that has been filed in this case?

A. Yes, I have.

Q. And that testimony has been identified as Exhibit 12 in its version that contains no highly confidential information and Exhibit 13 for the information -- the testimony that includes highly confidential information?

A. That's correct.

Q. And did you also cause to be filed what's been designated as Exhibit 14, which is a supplement to the revised Rebuttal Testimony?

A. I did.

Q. And is that supplement appendices to what's attached to your Exhibits 12 and 13 as Schedule 1?

A. Yes, it is.

Q. And if I ask you the questions that are set out in Exhibits 12 and 13, which would be duplicative in a large degree, would your answers be the same as set forth in those exhibits here today?

A. Yes, it would.

MR. WILLIAMS: I offer Exhibits 12, 13 and 14.

JUDGE PRIDGIN: Any objections?

MR. BOUDREAU: None.

JUDGE PRIDGIN: Hearing no objections, Exhibits 12, 13 and 14 are admitted.

(Exhibit Nos. 12, 13 and 14 were received into evidence.)

MR. WILLIAMS: No further questions at this time.

JUDGE PRIDGIN: Thank you, Mr. Williams.

We'll now proceed to cross. Mr. Finnegan, any questions?

MR. FINNEGAN: No questions.

JUDGE PRIDGIN: Thank you.

Mr. Micheel?

MR. MICHEEL: No.

JUDGE PRIDGIN: Mr. Molteni?

MR. MOLTENI: No questions, sir.

JUDGE PRIDGIN: Mr. Boudreau?

MR. BOUDREAU: Yes. My colleague and partner, Mr. Swearengen, will be handling this with the Bench's permission.

JUDGE PRIDGIN: Absolutely.

Mr. Swearengen, when you're ready.

MR. SWEARENGEN: Thank you.

CROSS-EXAMINATION BY MR. SWEARENGEN:

Q. Good morning, Mrs. Wandel. How are you doing?

A. Good morning.

Q. Let me ask you, first of all, yesterday I think you were in the hearing room when Commissioner Gaw, I believe, asked the question about the history of Aquila and UtiliCorp and Missouri Public Service --

A. That's correct.

Q. -- Company?

Do you recall that?

A. Yes, I do.

Q. And is it not true that I believe as an appendix or schedule to your testimony you have attempted to set out the history of that company; is that right?

A. As Schedule 1 to my testimony, there's a copy of the report that the Commission Staff prepared in December 2002. And as part of that report, there's a section that talks about Aquila before and after the Enron collapse. I believe it goes all the way back to the origination of the company and about 1917 or thereabouts.

Q. Do you have your testimony in front of you just so we can make sure on the record what you're talking about?

A. Yes, I do.

Q. And I'm looking at your HC version of your revised Rebuttal Testimony, which I understand is Exhibit 13.

A. Correct.

Q. Although I do not intend to ask you any questions this morning about the highly confidential portion. But turning to that testimony and I'm looking at Schedule 1-6, I guess it would be Schedule 1, page 6. Is that --

A. That's correct. That's where it starts.

Q. -- where you describe Aquila's corporate structure and operations?

A. Exactly.

Q. Okay. Thank you very much.

Let me ask you, you've been with the Commission since 1994; is that correct?

A. That is correct.

Q. And I think you indicated in your testimony in this case that you previously had filed testimony in the St. Louis County Water Company rate case, Case WR-96-263; is that correct?

A. Correct.

Q. And would that have been back in the 1996 and 1997 time frame?

A. Some time in that time frame. I'm not really sure any longer exactly what the time was.

Q. I understand. Let me ask you this. Would it be fair to say that you are generally familiar with the regulations -- excuse me, the regulation of public utilities by the Public Service Commission?

A. Yes.

Q. And specifically you're familiar with the rate case and the rate-making process. Would that be a fair statement?

A. Yes.

Q. Are you familiar with any rate cases or other Missouri Public Service Commission cases involving either

Aquila or its predecessor, UtiliCorp United, Inc.?
A. I have participated not as a witness, but as part of the management group on the cases that have come before this Commission since I became employed by the Staff.
Q. And I don't want to necessarily hold you to this, but you have general knowledge then of the Aquila, UtiliCorp cases that have been in front of the Commission since the mid-1990's?
A. General knowledge, yes.
Q. Thank you.
If you have your testimony there in front of you, if you will turn to page 2, please. Is it on page 2 of your testimony where you describe what you did to evaluate UtiliCorp's application in this particular case?
A. Yes, it is.
Q. And is it fair to say that you are the -- I'm going to use the word chief Staff witness or perhaps lead Staff witness in this case in the sense that you attempt to provide an overall summary of the Staff's position with respect to the application?
A. I believe that -- that's fair.
Q. And I recognize that in your testimony you say other Staff witnesses I think may have performed a more detailed examination into specific areas related to the application, but you would be the overall Staff policy

witness --
A. Yes.
Q. -- on this case? Thank you.
Can I assume that you have reviewed the application which Aquila filed to initiate this case, including the attachments that went with that application and the testimony that the company filed with that application?
A. I did.
Q. And can I assume you've also reviewed the Surrebuttal Testimony that the company has filed, including the schedules related to that testimony?
A. I did.
Q. And if my memory serves me correctly, you were a participant by telephone in the depositions of certain individuals that were taken by the Attorney General and the Office of Public Counsel in this case earlier in October; is that true?
A. I did hear parts of the depositions. I was not present for all of them.
Q. I understand. Have you read those depositions?
A. The transcripts you mean?
Q. Yes.
A. I have not.

Q. Let me ask you this, Ms. Wandel. Would you agree that what the company is seeking by way of its application in this case is Commission authority to encumber its Missouri utility assets?
A. Yes.
Q. And would you also agree that Aquila is not seeking authority or approval for any financing?
A. That's correct.
Q. Would you also agree that Aquila is not seeking the approval of any what I will call financing plan or financial plan?
A. I agree.
Q. If you would turn, please, to page 20 of your testimony. Is it there that you begin to discuss the standard which the Commission Staff has utilized in making its recommendation to the Commission as to whether or not this application should be granted?
A. Well, I believe it actually started on page 18, but that -- in that section was page 20.
Q. Okay. Your discussion starts on page 18 about the standard to this application?
A. Right.
Q. And I agree on page 18, line 14 you have the heading Standards Apply to this Application.
Over on page 20, if you have that in front of

you, am I correct that that is where you state that the Staff has used the standard of detriment or detrimental to the public interest?

A. That's correct.

Q. And meaning, I take it, that if it is shown in this case that the encumbrance of Aquila's Missouri assets is detrimental or harmful to the public, then the Commission should deny the application --

A. Yes.

Q. -- is that correct?

A. Yes. That is correct.

Q. Down there towards the bottom of page 20 you cite two Commission cases and the Commission rule as authority for the Staff's proposition and position on the standard in this case; is that true?

A. Yes.

Q. And then if you turn over to page 21, please, do I understand correctly that on that page you state that the Commission Staff views the members of the public that must be protected as consumers who take and receive a utility service from Aquila's electric, gas and steam operations?

A. That's correct.

Q. So would I be correct in stating that the Staff takes the position that the relevant public in this case to be protected is the company's customers. True?

A. Yes.

Q. And would you agree that your authority for your position on that point is referenced at the bottom of page 21 and the top of page 22 of your Rebuttal Testimony?

A. Could I have just a minute to review that section, please?

Q. Sure. And what I'm referring to is where you cite language from a merger case involving Kansas City Power & Light and Kansas Gas & Electric.

A. Yes. I'd agree with your statement.

Q. And also on page 22, lines 11 through 13 you say, Clearly, the Commission was identifying the Missouri ratepayer as the relevant public in this Report and Order. This is the standard that is being applied to this application.

That's your testimony, is it not true?

A. Yes, it is.

Q. Now, your testimony was filed back in September of 2003; is that right?

A. Yes, it was.

Q. After you filed your testimony, is it not true that the Commission on October 9 of 2003 ruled that the no detriment standard was, in fact, the appropriate standard to apply in this case?

A. That's my understanding.
Q. Could you turn to page 13 of your testimony, please? Do you have that in front of you, Ms. Wandel?
A. Yes, I do.
Q. And I would refer your attention to the last couple of lines on page 13 where you discuss UtiliCorp's corporate structure. And there have been some questions earlier in the proceeding about what that structure is.
Would you agree that Aquila's utility operations, including those which it conducts in the state of Missouri, are performed by or through divisions which are a part of one overall company?
A. Yes, I would agree.
Q. And that overall company is Aquila, Inc.; is that not true?
A. Yes, it is.
Q. If you turn to page 8 of your testimony, please, there at the bottom of page 8 you set out the following question: Are there any benefits to the company if it is able to collateralize the term loan with domestic regulated utility assets valued at no less than a 167 percent of the outstanding aggregate principal amount of the first mortgage bonds. Do you see that question?
A. I do.
Q. Could you turn the page then and read into the

record the answer to that question?

A. Certainly. Answer: Yes. If the company is able to pledge utility assets at or exceeding 167 percent of the outstanding loan balance, the company will be able to reduce the 37.625 million of interest expense that it incurs annually by 3.225 million per year. The company is currently paying 8.75 percent interest on the outstanding balance of the loan. The rate will decrease to 8 percent if the company is able to pledge regulated utility assets with debt capacity value of at least $430 million.

Q. Thank you.

If you would now turn to page 5 of your testimony, please. Are you there?

A. Yes, I am.

Q. On page 5 at line 4 you're asked the question: Is this a typical finance case? And I think your answer is that it's not because Aquila has already received the loan proceeds to which the requested encumbrance would apply. Is that a correct summary of your testimony?

A. Yes, it is.

Q. If you'd turn to page 19, please. This is the last time I'm going to ask you to do this, but would you please read into the record your statement at lines 16 through 20?

A. The company structured the loan in such a way that the actual loan did not require Commission approval in that the loan was made to Aquila, Inc., which is a Delaware corporation. It is my understanding, upon the advice of counsel, that this makes Aquila a foreign corporation, and as such, Aquila did not need approval from the Commission for this debt issuance.

Q. Thank you.

So based on your testimony, can I assume it's your understanding that a financing case in which a foreign corporation is involved, no Missouri Public Service Commission approval is required for the debt issuance or what I will call the financing portion of the transaction?

A. It's my understanding that the company would -- a company would not need to seek approval unless they were requesting approval to pledge or collateralize assets.

Q. That was going to be my next question. You would agree approval is needed for the encumbrance portion of the transaction. Correct?

A. Yes.

Q. And I think you said earlier that you're familiar with and you reviewed Aquila's application in this case; is that not true?

A. Yes.

Q. If you'd turn back to page 5 of your

testimony. There, I think in lines 5 and 6, you refer to certain financing cases which Aquila, according to your testimony, relies on as precedent for its application; is that true?

A. I don't think maybe we've got the right reference here. Did you say 5 and 6?

Q. Page 5 of your testimony and I hope I've got the right copy --

A. The right version? Right.

Q. I have the revised Rebuttal Testimony.

A. Okay.

Q. I'm looking at page 5 of that testimony and lines 5 and 6. You have an answer you say: No. Unlike every prior finance case of which the Staff is aware, including those Aquila relies upon as precedent in its application and Direct Testimony in this case, Aquila has already received the loan proceeds to which the requested encumbrance treatment would apply.

A. And your question with regard to that is?

Q. That's your testimony. Correct?

A. Yes, it is.

Q. And you're familiar with those cases which Aquila cited in its application; is that true?

A. I -- I can't say with certainty that I am.

MR. SWEARENGEN: Could I approach the witness, please?

JUDGE PRIDGIN: You may.

MR. SWEARENGEN: Thank you.

BY MR. SWEARENGEN:

Q. Ms. Wandel, I'm going to hand you a copy of the application which Aquila filed in this proceeding on April 30, 2003 and also Appendix 6 to that application. And specifically direct your attention to paragraph 18 of the application and the entire appendix.

A. Do you want me to review it?

Q. Just take a look at it and refresh your recollection. I'm going to ask you discreet details about each of those cases.

Just let me ask you a general question and if you can answer that, if you need more time, tell me that. Having had a chance to review that application and paragraph 18 and Appendix 6, would you agree that Appendix 6 cites probably over 60 Missouri Public Service Commission secured financing cases?

A. I obviously haven't had time to count them, Mr. Swearengen, but there's a number of them here.

Q. Okay. And there are also additional cases cited in the paragraph No. 18 of the application; is that not true?

A. Yes, there is.

Q. Could you just look back at Appendix 6 again and tell me if you would agree that some of those cases that we cite are as recent as last year and some go back as far as the 1940's and maybe earlier?
A. That's correct.
Q. So given that, would you agree that secured financing transactions are commonplace in the utility industry general and in Missouri in particular?
A. There are certainly secured financing facilities that have been approved by this Commission on various occasions, as you said, back as far as the 1940's and perhaps before.
Q. Are you finished?
A. (Witness nodded.) Sorry.
Q. As far as you know, Ms. Wandel, have those applications been routinely approved by this Commission?
A. I don't know that I could speak to that, Mr. Swearengen. I know that they do approve them.
Q. Are you aware of any such applications that have ever been denied?
A. No, I'm not.
Q. And as far as you know, the utility assets that would have been involved in those 60-some cases became encumbered in essentially the same fashion as Aquila is asking that its assets be encumbered in this case. Would

that be a fair statement?

A. I don't know that I would say that would be exactly how I would characterize it. To the best of my knowledge, the loan facility was approved at the same time that the collateralization of that loan was approved. And also routinely these loans are ones that have been issued for -- to the best of my knowledge, for specific purposes as opposed to working capital need type facilities.

Q. I see. Would it be true that first mortgage bonds in the past have been issued for a variety of purposes?

A. I'm sure that's true.

Q. And would you agree with me that if one reviewed Commission orders over the years approving first mortgage buying issuances, that frequently the phrase will be in those orders that the money can be expended for general corporate purposes?

A. I can't say that with certainty, but it sounds realistic.

Q. Okay. And back to my other question. As far as you know, to the extent of those cases that utility assets actually became encumbered, they would have been encumbered in essentially the same fashion that Aquila is seeking to encumber its assets in this case; is that true? Talking about the encumbrance side now, not the financing

side. And if you don't know, that's fine, tell me.
A. I just don't know.
Q. That's fine.
Take a look at page 35 of your testimony, if you would, please.
A. Okay.
Q. Do you have that in front of you?
A. Yes, I do.
Q. There on lines 22 and 23 you say that all utilities have working capital needs; is that correct?
A. That is correct.
Q. And would you also agree that many utilities have some sort of short-term credit capacity or credit revolver to finance their working capital needs?
A. I'd say that is correct as well.
Q. And looking at page 17 of your testimony, if you could turn to that for a minute, please. And I'm looking at your answer that's contained on lines 7, 8, 9 and 10. It would be your testimony that Aquila's customers in Missouri are presently paying the costs for money to support the company's working capital needs through existing rates. Is that a fair statement?
A. Yes, it is.
MR. SWEARENGEN: May I approach the witness again, please?

JUDGE PRIDGIN: You may.

BY MR. SWEARENGEN:

Q. Ms. Wandel, I have just handed you Surrebuttal Schedule CL-5, which is a schedule to Carol Lowndes' testimony. Her testimony I believe is Exhibit 3 in this case. Are you familiar with that schedule or have you seen that previously?

A. Yes, I have.

Q. And can you tell me briefly what your understanding is of what this schedule shows?

A. Well, it's described as Missouri Electric and Gas Utilities Working Capital Facilities. And it lists several of Missouri's larger utilities and provides information with regard to the revenue, the net plant, the short-term credit capacity. And those presented -- percentages shown as percentages of revenue and of net plant, the credit capacity as percentages of revenue and net plant.

Q. Thank you.

If I could direct your attention, there's a column with a heading 6/30/2003 Short-term Credit Capacity. What is your understanding of what that particular column shows?

A. That -- just what the heading says. It's the company's -- the amount of short-term credit capacity that each of these companies reported as of 6/30/2003.

Q. And I believe the fourth company listed is the Empire District Electric Company; is that true?

A. That's true.

Q. And it shows $100 million short-term credit capacity?

A. It does.

Q. And you indicated earlier -- you made a statement that this schedule showed some of the larger Missouri utility companies. Would you agree with me that Empire really is one of the smaller Missouri utility companies?

A. It's one of the smaller of the larger. We have -- we have many, many, many utilities much smaller than Empire.

Q. Let me ask you this. In terms of customers, would you agree that Empire is probably half the size of Aquila's Missouri utilities?

A. I really don't know how many customers Empire has and I'm not really sure how many customers -- I could take a stab at Aquila, but I'm not absolutely positive.

Q. So you wouldn't know whether or not it was about half the size of Aquila?

A. No. I can't tell you that.

Q. Let's refocus for a moment, if we could, back on the no detriment standard. If you could take a look at page 20 of your testimony. Starting on line 5 on page 20, do you have that in front of you?

A. I do.

Q. You make this statement: All the company must do is show no harm to the ratepayers. The Staff, on the other hand, must prove that the ratepayers have been harmed in some manner to cause the Commission to decide against the company's request.

And that's your testimony. Correct?

A. Yes, it is.

Q. Would you agree with me that the way in which a utility impacts its customers is through the rates it charges for service and the service that it provides to those customers?

A. I would say that there are other ways that the utility could impact its customers. I agree with you that that -- that the two that you stated do impact the customers, but there are other ways.

Q. And what are those ways?

A. Well, in this particular instance, the Staff's position is that the -- that the ratepayers are harmed by -- due to the fact that the assets have been encumbered and, therefore, not available -- fully available for other uses and purposes that might be necessary for the operation of

Missouri's utilities.

Q. Okay. And are there any other ways that you believe, that the Staff believes that the company's customers can be impacted other than through rates or service?

A. Other than what I just --

Q. Other than what you just said.

A. -- just stated?

I'm sure there are other ways, Mr. Swearengen. I don't know that I would be able to get a complete list. And I really hadn't thought of it except in context of this case, but I'm sure there must be other ways that --

Q. Have you discussed that with other members of the Staff prior to preparing your testimony or testifying in this case?

A. No, I did not.

Q. So no other Staff member suggested to you some other way that the company's customers might be impacted other than through rates or service other than the example you gave about the assets not being available for later financing?

A. It's -- the mere fact that this application requests that the Commission approve the use of Missouri collateral to secure a loan that supports, by our understanding, the nonregulated operations of this company to us is harmful.

This means that the Commission -- that the company has asked that -- that because of the terms of the loan -- the company agreed by the terms of the loan to provide 100 -- or to provide collateral. And this is the only thing, to my knowledge, that they -- that the lenders are asking for is 1.67 times the face amount of the note -- of this loan. They didn't ask for nonregulated collateral unless the company was unable to come up with the 1.67.

Therefore, to them, to the lenders, the important part is the regulated utilities. And by -- once they meet that collateral provision, they have, in fact, caused whatever collateral is pledged to this loan to be supporting nonregulated operations and to be supporting the regulated operations of the utilities in other states.

And it's our understanding that the Missouri Commission is responsible for protecting the ratepayers of Missouri. So by -- if they would allow the pledging of this, then in our -- it's our understanding that this would be a detriment to the public interest.

It would -- it would, in fact, put these assets potentially at risk because once the collateral has been pledged, the collateral is tied to this loan. And if the company would default, then -- then -- then those assets are specifically tied to that loan and -- and could severely impact the operation and/or disposition of those assets in the future.

Q. So am I correct in understanding that what you're saying is that this concern that you've just raised is contingent upon the company defaulting?

A. It's -- it's contingent upon the fact that they're -- that they're pledging assets to support nonregulated operations. It's contingent on the fact that the company could default on this loan and these assets would be tied to that default.

And then subject to -- I don't -- I don't know what all the ramifications of that are, but I certainly know that, again, as I think some of the Commissioners spoke about yesterday, there's -- there's -- when an asset is tied to a particular liability, that that takes on a different face in light of bankruptcy.

I know that when there's an asset tied up to a liability in a -- in a simple loan type of proceeding, that that asset is tied to that liability and if that default occurs, then -- then there's a question as to what happens to the asset.

Q. Now, wouldn't that also be true with respect to assets which have been encumbered with approval of this Commission for other utilities that operate in this state pursuant to their issuance of first mortgage bonds or other

secured financing?
A. Certainly that is true. Again, those assets are usually specifically tied to the loan that was enacted to build the assets or purchase the assets. And sometimes those assets are -- I mean, the companies do use assets to secure the acquisition of the construction of additional capacity.
Q. And would the best evidence of what those proceeds from those other secured financings in Missouri have been used for would be the orders of this Commission that authorize those financings and those related encumbrances?
A. That's true. But I would like to say that our other utilities in Missouri, our other major power utilities and gas utilities are investment grade, and as such, aren't facing the same financial situation, the financial peril that Aquila's facing.
And, therefore, given that our utilities usually are not only investment grade, they're usually healthy, there's not nearly as much concern perhaps about allowing a financing of that nature as there would be about one like this.
Q. Okay. Thank you.
Let me ask you this question. Would you agree that if the Commission allows Aquila to encumber its assets

as it has requested in this case, that that event in and of itself will not cause an increase in the rates which Aquila charges to its Missouri customers?

A. I would agree that there would be no increase in rates as a result of this application, to my knowledge at the present time.

Q. Right. And --

A. However, I do believe that while the harm occurs at the time that assets are pledged, the manifestation of that harm may be some time in the future.

Q. Now, let me ask you one more question about the rate-making process. Is it not true that rates can't change unless this Commission would authorize the change?

A. That's correct.

Q. And would you also agree that once the Commission issues an order in the rate case, as much as it sometimes pains me to say this, those rates are presumed to be just and reasonable?

A. That's true. It pains us sometimes too.

Q. Let me ask you this question. Assuming the Commission allowed Aquila to encumber its assets as it has requested in this case, would you agree that that act, that event in and of itself would have no impact on Aquila's service to its customers?

A. I don't -- I don't know that there would be any direct impact, Mr. Swearengen.

Q. Okay.

A. I can't speak about whether there might be some impact in the future.

Q. Let me ask you this question. Would it be fair to characterize your testimony as -- your opposition or the Staff's opposition to this case on the grounds that the requested encumbrances is unnecessary in the sense that Aquila has already obtained the loan proceeds and, therefore, the encumbrance is not necessary to actually get the money that's involved in the related financing?

A. I think it would be fair to characterize my testimony and the testimony of the other witnesses, the opposition that we talk about within our testimony, as being based, among other things, on the fact that the company already has received permission, from my understanding as of this morning, to pledge enough collateral to fully collateralize this loan in other states.

The fact that there -- the fact that the -- that the loan is in existence previous to this, there's -- there's no benefit to the ratepayers.

Q. Okay. Let me ask you two questions as a follow-up to that. First of all, would it be fair to say that that's sort of a needs test? In other words, the company doesn't really need the collateral in this case in order to get the money and so the Commission should not grant the requested authority; is that fair?

A. I think basically what we were trying to say here, what I was trying to say here in my testimony was that normally when a company pledges its collateral towards something, there are proceeds from that collateral that then is available for use by the company for a specific purpose.

And -- and normally that specific purpose is -- is tied directly to an event, to the acquisition of assets, to the construction of assets or something else along that line. And we're talking about secured debt.

In this case, the company issued and activated this loan facility. The monies were received and dispersed prior to the request for any collateral. So by -- by pledging Missouri's assets, we see no benefit to the ratepayer, we see actual harm to the ratepayer and we see at this point no benefit to the company.

Q. Okay. Back to my question about need though. Is part of that rationale or logic the fact that the company has indicated it's got the money and it doesn't need this collateral in order to get the money? Is that a fair statement?

A. I'd say that the fact that the -- the company has already received the proceeds of the loan and that as of this morning that they have adequate collateral to fully collateralize the whole 430 million -- previously we talked about the 250 million portion of it, but it's my understanding you actually have the whole thing collateralized now.

Q. Let me ask you about that. What is your understanding as of this morning that has caused the company to be able to fully collateralize, in your words --

A. As I understand, Iowa has approved your application. Not based on the fact that they felt -- now, this is what I read in an e-mail so it's not official and it's just my understanding, that it was not based on what the Commission saw as you proving your case from the aspect of it being supportive of the working capital, but rather that they wanted to ensure that Aquila's operations had a stable financial base.

Q. That's your understanding of what the order from the Iowa Commission says?

A. Is going to say.

Q. Is going to say. You've not seen --

A. No.

Q. -- an order from that Commission?

A. The way I understand it, it was just a vote and the order would be out in a few days.

Q. And, once again, would you agree with me that the best indication of what the Iowa Commission has said with respect to Aquila's application in Iowa would be that order?

A.   Yes.

Q.   Okay. And, once again, the same would be true with respect to what this Commission has said about any previous financing and/or encumbrance cases involving Aquila or other Missouri jurisdictional utilities? The Reports and Orders would be the best evidence of what the Commission said about those proceedings. Correct?

A.   Yes.

Q.   If you could turn to page 36 of your testimony, please. And I think you've gone over this, but I'm looking at lines 5 through 10 of your testimony. And reading that and based on what you said earlier, is it your belief that if Aquila, in your words, unnecessarily encumbers its assets, that this will reduce the amount of capital that those assets might be able to raise in the future?

A.   We feel that Missouri's assets ought to be safeguarded for Missouri's operations including future financing needs. And there has been evidence that Missouri in the near future will need additional capacity.

Q.   So back to my question though. Would your answer be that it's your belief that if Aquila unnecessarily encumbers its Missouri assets, that that will reduce the amount of capital that those assets can raise in the future?

A. I think if you look at No. 9 in my -- line 9 in my testimony, Mr. Swearengen, I said: Any assets that are unnecessarily encumbered today reduce the amount of capital that these assets can raise in the future. And I think that answers your question.

Q. Okay. Thank you.

And then I think you go on and say in lines 10 and 11 that unnecessarily encumbering assets benefits neither the company nor its Missouri customers. Correct?

A. I do say that.

Q. Okay. Could it be possible that you might be wrong in your opinion that the requested encumbrance will reduce the amount of capital that Aquila can raise in the future?

A. Well, I don't believe so. Because it's my understanding even though the company has testified that anything that has not been -- okay. Let's just say that -- that we have the existing assets pledged to this loan that we have today and that Missouri would agree to pledge its assets.

And I believe that of those assets, $60 million has to be -- go to secure the remainder of the collateral required by the loan, leaving 940 million roughly -- from my understanding of approximately a billion dollars worth of assets, leaving 940 million available.

But it's not 100 percent available. From what I understand, only 60 percent of that would be available for future collateralization purposes; therefore, limiting the amount that -- of those assets that could be encumbered. And it -- and the loan facility could not mature prior to the conclusion of this loan facility. So it has to be some time after mid-2006.

Q. Okay. Can you point me to any provision in the loan documents or the encumbrance documents that supports your testimony on that?

A. You know, I cannot specifically point to that. I have had discussions directly with Mr. Dobson about it and this was his explanation of it -- it was our understanding of it and it was his explanation of it. But I couldn't tell you exactly what provision that falls under.

Q. Have you been in the hearing room this week and heard Mr. Dobson testify about those documents?

A. Yes, I have.

Q. And is your understanding of what he said about that that he testified accurately about those documents?

A. Other than the fact that I believe that there's a limitation on the quantity of -- or the amount of assets that would be available for future collateral use purposes.

Q. So you think -- it's your testimony that Mr. Dobson was inaccurate in his description of that?

A. I just don't think that he gave that detail. I don't think he explained that detail.

Q. And would the detail be in the loan documents?

A. Again, I'm not positive, Mr. Swearengen. I did read the loan documents, but as you know, they are very complicated and I don't recall every single portion of them.

But I do -- I do know that either through con-- I know with conversations I've had with Mr. Dobson and I also know that we've had some other resources somewhere else in the context of this case that has supported that premise.

Q. Let me ask you that. You say that your knowledge of this is based on your conversations with Mr. Dobson. Correct?

A. Yes.

Q. And other resources?

A. I said reviewing like the data requests and things like that.

Q. Okay.

A. And I don't know specifically where I came upon that knowledge. I just know that it's my understanding and I verified it with Mr. Dobson that that was correct.

Q. Okay. Let me ask you this. Assuming that you are correct --
A. Uh-huh.
Q. -- that the requested encumbrance does -- or will restrict Aquila's financing flexibility in the future at some time, where in your testimony do you show that that event will result in higher rates or a deterioration in service?
A. I don't.
MR. SWEARENGEN: Thank you. That's all I have.
JUDGE PRIDGIN: Mr. Swearengen, thank you.
MR. SWEARENGEN: I would ask the Commission to take administrative notice of the proceedings and orders that are referred to in our application and also Appendix 6 to the application.
JUDGE PRIDGIN: So noted.
MR. MOLTENI: Notwithstanding the reticence by Aquila to do likewise, we won't object.
MR. SWEARENGEN: To do likewise?
MR. MOLTENI: With respect to Minnesota and other proceedings.
MR. SWEARENGEN: We're always willing to take administrative notice of Reports and Orders, but we are a little reluctant to take notice of press releases and things

that are posted on the web page. Thank you.

JUDGE PRIDGIN: Let me open up this witness to cross-examination from the Bench. Commissioner Murray?

COMMISSIONER MURRAY: Thank you, Judge.

QUESTIONS BY COMMISSIONER MURRAY:

Q. Good morning, Ms. Wandel.

A. Good morning, Commissioner.

Q. On page 7 of your revised Rebuttal Testimony, the answer beginning on line 1, would you mind explaining that in perhaps a slightly different explanation than you have in your answer there?

A. Certainly. Well, at the -- at the start of my answer we talk about Aquila's currently paying 8.75 percent per annum on the $430 million. I think that's probably clear enough for you, isn't it?

Q. Yes.

A. That equates to annual interest rate of $37.625 million of interest. If Aquila makes an optional payment, as was discussed yesterday -- I believe you were here when that testimony --

Q. Yes.

A. -- was going on, there is a significant prepayment penalty and a make whole premium. And I don't know the exact details of all of it, but it's my understanding that effectively Aquila has to pay the interest that's outstanding on that portion of the debt through the end of the term of the debt. But I wouldn't speak with full authority on that. I'm just -- that's my understanding of it.

The term loan does not have features required to support utility working capital needs. By this we mean it's not a revolver. It's not a letter of credit. They must borrow and did borrow the full $430 million of the loan and carry it for the full term of the loan unless they want to pay significant penalties or in the case they could -- they could if they sell assets, of course, pay it down then if that was their choosing.

It does not allow, as I said here, for the -- for the repayment of borrowed funds just when cash is available. In other words, as a revolver works, you borrow the money when you need it but you pay it back when you have revenues or resources that are available to get rid of that debt. So you only pay on it on a need as you go -- go -- pay it as you need it basis.

Q. And you pay it back without penalty; is that right?

A. That's correct. On a revolver.

Q. All right. Thank you. I appreciate that explanation.

On page 16 of your -- the same testimony, you discuss that Aquila's paying interest expense for funds when they're not being used to support the US utility operations. If Aquila's cash balances improved with the pledge of Missouri assets, would that benefit Missouri ratepayers?

A. Not necessarily. If the -- if the cash balances improve? I -- you know, it's probably something along the line of you can't be too thin or you can't have too much money. You know, it's one of those things.

But -- but other than just having more cash in the bank, I don't know that that necessarily helps the Missouri ratepayers. It makes it available, I guess, if they would happen to need it and there would be other -- other demands on the money at the same time. But I don't see that just having more cash in the bank is necessarily beneficial to the Missouri ratepayers.

Q. Now, I'd like to ask you if you would not -- if you would mind explaining a little bit more about the internal dividends and what you say is the difference that should be -- the different way that those monies should be treated.

A. Okay. Basically, what I was saying here was that the -- you know, and there's some argument about whether cash is transferred or not, but you've got to understand Aquila has -- in their corporate treasury they have like a joint account. They have corporate monies, they have utility monies and that would include MPS and L&P. They have other money in there.

Q. All in one account?

A. So it's all in one account. And all -- all the monies go into that account and all the monies come out of that account. They're paid -- their expenses are paid. And it's all paper transactions that account for the to and from the various operating entities, the operating sections divisions.

Okay. They have an internal policy, Aquila does, that quarterly takes 70 percent of the estimated or budgeted net income from each of their operating entities and transfers that from the section of the treasury account that is MPS or L&P or whatever other utility operation it is, and transfers it over to -- permanently to the treasury part of the account, the corporate part of the account. So -- so as I said, it's not really cash, per se, that gets transferred, but it's the paper transaction that tracks this cash.

And what we were trying to say is that by transferring these monies permanently out of the utility section, they -- that in itself creates the need to borrow working capital because it reduces the amount of revenues and monies available that's -- that's accounted for directly in the utility account and puts those monies over in the corporate portion of the account. And so then the utility doesn't have that money to support its own working capital needs.

Q. Can the utility get it?

A. Pardon?

Q. Can the utility get it though?

A. Can the utility get the money back?

Q. Yes.

A. They can borrow it back from treasury at a certain amount of interest that then becomes a cost to the ratepayer.

Q. And that is the interest rate that was agreed upon. Right?

A. It's the -- it's my understanding it's somewhere in the 3 -- 3 to 4 percent range that they charge the utilities for borrowing cash from corporate treasury.

Q. And your testimony is that that is an extra expense that the ratepayers would not ordinarily incur?

A. It is an expense that the ratepayers would not need to incur if they maintained those funds at the utility level. It's less money that they would have to borrow for corporate and, therefore, would have to pay interest on.

And that these monies not only -- once they're -- once they are transferred to corporate, Commissioner, these monies are available for -- to mitigate the cost that is being absorbed by the shareholders. So the nonregulated debt, the cost over and above what they say that they are transferring or passing onto the utilities when they borrow interest -- or borrow working capital, the difference between the 8.75 and the 3 or 4 percent that they're currently charging.

This is what they -- the corporate has, monies then available to mitigate those expenses. So in a sense, it's -- it's monies being transferred out of the utilities that's causing the -- the ratepayers' cost to go up and at the same time is being used to eliminate or lessen the nonregulated cost.

Q. Okay. And absent this arrangement, when the utility needed cash working capital, it would borrow it through a revolver type --

A. Yes. Or commercial paper.

Q. And it would be able to pay it back as cash became available?

A. Yes. And routinely the utilities are very healthy sectors of the company and Missouri, in particular, has -- has been a very healthy sector of the company. And, therefore, that -- you know, that, again, decreases the amount of interest because they -- they only have to pay it for the time it's outstanding, the company does.

Q. On page 18 you talk about the 75 basis point reduction --

A. Uh-huh.

Q. -- and the fact that it doesn't reduce the charges -- it does not reduce the interest charges to the Missouri utility operations. Would it make any difference to Staff's analysis of this proposal if Aquila were able to reduce the interest charges to the Missouri operations?

A. I think that would perhaps have some impact on it. I don't know that it would change our recommendations. You have to take all of the parts of the puzzle and put it together. And -- and certainly that would be one less objection we would have if it had -- if it had some impact, you know, on the Missouri operations.

Q. Do you know if it's possible for Aquila to do that or would that create problems in other jurisdictions or somehow violate the terms of the loan agreement?

A. I really don't know, Commissioner, whether the company could pass down all or part of that reduction to the utility operations or not. I would suppose there wouldn't be any impact -- I mean, that this would not cause a problem for the terms of the loan because this is an internal policy, how they establish what they charge their operating divisions. So I wouldn't think that there would be any impact on the loan itself. Doesn't seem practical that it would.

Q. In fulfilling the commitment that Aquila made to make a good faith effort, I'm sure you agree that there are some expenses that are being incurred?
A. Yes, I do.
Q. And do you agree that those expenses will be insulated from the ratepayers?
A. I can't guarantee that, Commissioner. If they've run -- I don't know how they've accounted for this time, for instance, that -- that the company staff is here. I don't know how they've -- how they've reported the other expenditures, the legal expense and other expenditures that's related to this case.
We will make every effort to find it, but -- and the company has said that they -- I believe Mr. Empson testified that they were -- he has told his staff to isolate it. But it's -- there's no -- there is no perfect ring fencing, there is no perfect insulation or isolation of the utility from the parent.
Q. Okay. Thank you.
Attached to your testimony is Schedule 1-1, which was a Staff report --
A. Yes, Commissioner.
Q. -- on Aquila dated December 2nd, 2002; is that correct?
A. Yes, Commissioner.

Q. And the Staff set out some recommendations for preventing or mitigating Aquila's higher cost of capital from being charged to Missouri's ratepayers in that report; is that correct?
A. I can't think what -- speak with 100 percent authority, but I believe you're correct.
Q. Okay. Did you participate in this report?
A. No, I didn't, Commissioner. I included this because I gave an update of the historical happenings or -- history of Aquila. And that was also -- that was started in this report. So I did not participate in it. And -- and my concentration focus was primarily on the section that related to what has happened to Aquila historically.
There are two people, to my knowledge, in this case that also participated in the report, and that would be Mr. Bible and Ms. Niemeier. They might have more information for you about it, in other words.
Q. Okay. Thank you.
And are you familiar with Aquila's current cash working capital needs as compared to the needs that Aquila had in the last rate case, for example?
A. I can only tell you what I've been told, that the cash working capital needs -- is that what you were speaking of?
Q. Yes.

A. Cash working capital needs I understand are still negative and substantially negative, that the company even filed it in the negative position which means that the ratepayers are net cash providers. They provide the revenue before the expenditures must be paid for. And I believe it's in the $20 million range.

Q. And you're getting that from documents that have been filed currently?

A. There have been documents filed. I haven't seen them. I actually got -- I was actually told this by people who -- staff who are participating in the case.

COMMISSIONER MURRAY: I believe that's all I have. Thank you.

THE WITNESS: You're welcome.

JUDGE PRIDGIN: Commissioner Murray, thank you.

Commissioner Gaw?

COMMISSIONER GAW: No questions.

JUDGE PRIDGIN: Thank you.

Commissioner Clayton?

COMMISSIONER CLAYTON: Thank you, Judge.

QUESTIONS BY COMMISSIONER CLAYTON:

Q. I'll tell you, I've got so much stuff up here I don't have room for the microphone and everything else.

Good morning.

A. Good morning.
Q. I just have a handful of questions. And I'm not sure if you're the right person to ask those questions, so if I ask a question that you don't know the answer, just feel free to say I don't know. I think I was asking questions to the wrong person yesterday.
You are a CPA; is that correct?
A. That is correct.
Q. And you're employed by the Commission as an analyst of some sort I believe is what's it's called?
A. Utility regulatory manager, Commissioner.
Q. I apologize. Manager.
A. No. That's all right.
Q. Affects your salary, I'm sure. That manager.
A. It helps.
Q. In some of the discussions that you had with Mr. Swearengen earlier today, there was some discussion regarding the standard that it -- that you listed in your testimony. Do you recall that conversation?
A. Yes, I do.
Q. And I believe what Staff has proposed is that the informal way of putting the standard is to do no harm to the public --
A. Exactly.
Q. -- do you recall that?

And I believe that -- I'm not sure if you defined it or Mr. Swearengen defined it, and if you could tell me which of you did, is that the harm is either an increase in rates or some sort of disruption in service or customer service, something like that. Do you recall that?

A. That's how the company has defined it. That is not how the Staff has defined it.

Q. How does Staff defined it?

A. The Staff defines it as any harm to the ratepayers. And we consider the fact that these assets will be encumbered and no longer available -- fully available to the ratepayers.

Also the fact that -- that the -- by associating this debt with this collateral, we are putting the -- the collateral at a greater risk than it would be if it was just part of the asset -- you know, company's asset pool unencumbered, in other words. We feel like both of these factors go to the question of harm.

Q. As a CPA, you use a lot of numbers. Do you sometimes take -- do you quantify things? For example -- well, I'm trying to understand and I'll tell you where I'm going and you can correct me. Mr. Swearengen brought up a comment about that the harm in this instance would be based on some sort of default by the company in the loan. Do you recall that?

A. Yes.

Q. I guess my first question is, do you believe there is harm to the ratepayers if the company -- if there was no chance of default? Do you still believe that there would be harm or public detriment?

A. I'm kind of in a quandary as to how to answer this because as Mr. Dobson was talking yesterday about there not being any working capital need, I don't see that there's ever a situation where you could be 100 percent positive that there would be no default.

So literally if there was no default, it would be at least much -- I would say there would be no harm. I don't know how else you could put it. I don't like to say there would be no harm in collateralizing something because to me just the fact that you've subjugated your assets to a loan agreement in some way harms the -- the ratepayer.

It was -- I don't know if you were here for Mr. Conrad's opening statements or not, but the harm occurs at the time that the assets are pledged is not really -- its manifestation could be some time in the future or there may be no manifestation of it. But the harm occurs because the assets are pledged and then no longer available to the company to use for the purpose of providing safe and adequate service to its ratepayers.

Q. You've listed a number of reasons in your testimony, but is your position, your comment that you just said purely based on losing access to capital in the event of an emergency or a need by Missouri ratepayers in the future?

A. I'd say that's the key reason that we argue that it is harmful that -- that and the fact that just simply the -- again, I go back to when you pledge your assets, you have put them in harm's way at least. You have --

Q. What do you mean by that?

A. Well, they are there -- if something occurs, they're going to be the first line that the lenders go to to seek reimbursement for their loan. If they can't get it from the company in the form of cash, they have those assets to rely upon to get repayment for what they loaned the company.

So if the -- if an as-- if there is no pledged assets, then it could be the whole asset pool. And -- and, of course, Missouri's assets are part of that asset pool as we speak today.

But if it's specifically linked to a loan, then that's going to be the first line, that's going to be -- right after the company says, We have no cash, we are not going to pay you, they're going to come after the assets then. If they can't work out an agreement with the company, they're going to come to the assets to get their reimbursement.

And then we don't know where Missouri's assets could end up. We don't know -- they could end up in some somebody's hands that doesn't know one thing about running a utility company.

Q. Isn't what you're talking about here risk?

A. Yes.

Q. Is that what we're talking about?

A. Yes.

Q. Are you able to quantify risk? That's where I was trying to go before and --

A. I personally could not quantify risk.

Q. Is it --

A. Maybe an economist could. Excuse me.

Q. Do you need a drink of water?

A. Yeah. Allergy time.

Q. I understand.

JUDGE PRIDGIN: Ms. Wandel, do you need a recess or are you able to continue?

THE WITNESS: I'll keep trying. Let me get this cough drop down a little bit. Go ahead.

BY COMMISSIONER CLAYTON:

Q. Struggling, fighting through adversity.

A. I may choke a little bit.

Q. Warms my heart.

Back to risk. As a CPA or as the profession of being an accountant, are you able to quantify risk or is that purely an economist position?

A. Commissioner, I've not been exposed to doing a lot of risk analysis. And I don't know whether -- I'm sure there's certainly some CPAs out there that can do it. I've just never had that exposure in my career.

Q. Well, are you familiar with the concept of risk being applied in, say, higher interest rate because an investment has got more risk?

A. Certainly.

Q. I mean, are you qualified to talk about that?

A. Well, just, again, from a general perspective because I've never worked in an organization where that was part of the -- the involvement nor have I -- except, you know, we look at -- certainty at risk as important when we analyze things, but I don't -- I haven't actually had any hands-on experience.

Q. Would you agree that any time a company -- any type of company borrows money, there's going to be some bit of risk in borrowing that money?

A. Absolutely.

Q. That any company could have a problem that arises that would cause them not to pay back the loan or not comply with all the provisions of the loan documents?

A. I'd agree.

Q. You'd agree in every case there would be some level of risk, wouldn't there?

A. Yes.

Q. Can you describe for me what threshold of risk that there must be for it to reach the level of harm?

A. I don't feel qualified to answer that question. I really don't know the --

Q. Okay. That's fine.

A. It's primarily -- I think the primary concern we have here is that this company -- it's a well-known fact this company is in a weakened financial state. So the risk is greatly increased.

And I think this is evidenced by the fact that the lenders to this company are charging them a premium interest rate of 8.75 percent. I mean, I don't remember exactly whether Mr. Dobson testified to the fact that -- what he could get money in the outside market for if they were investment grade or before when they were investment grade, but I know he's told us. It's at a substantially reduced rate.

And, therefore, that's a measure of what the lenders consider to be the risk here. They are charging 8.75 percent. And asking for collateralization at 1.67

times their regulated assets and two times their nonregulated assets if it gets into the mixed pool.

Q. Could you tell me just in comparison, to the best of your knowledge, what would be a comparable interest rate if there wasn't the weakened financial condition?

A. Again, this is what I have been told because this is not my area of expertise.

Q. Well --

A. And you might want to check with Mr. Bible about this when he comes on the stand. But I believe -- I was told that it was -- it was somewhere in the 3 to 4 percent category or maybe less.

Q. But you don't have any personal knowledge?

A. No, I do not.

Q. How long have you been with Staff?

A. I've been nine and a half years with the Staff.

Q. Nine and a half years. And you've worked in a number of rate cases?

A. I've worked in a number of rate cases, not necessarily as a witness. But I work behind the scenes, I participate in the discussions with the other Staff members, I assign Staff, I talk to my Staff, I review their work and I review their testimony.

Q. That's right. You're a manager. Right?

A. That's right.
Q. Okay. Is there a potential for harm or a greater risk to the ratepayer when a company goes in -- if a company is in a weakened financial condition, in your experience?
A. Is there a greater risk to the ratepayer? Is that what you asked?
Q. Yes. In terms of rates.
A. Potentially there is. It depends on how things are accounted for and how the utility is structured and how the costs get passed down and whether or not the company attempts to insulate or isolate the ratepayer from the costs associated with the weakened financial condition.
This is one instance where monies could be passed through, say -- and I don't know how it's being accounted for and I'm not suggesting the company's doing this, but the cost of this hearing, the cost of the financing, the additional interest cost, those kind of things could get passed down to the ratepayer.
In this particular instance, too, and we have kind of avoided this conversation so far this morning, but the company -- because of the company's weakened financial condition, they're being asked to prepay for a magnitude of items that they never had to prepay for before such as the purchased gas for electric and gas operations, the purchased

power. They're having to prepay for their coal inventory supply.

Q. How does that impact the ratepayer?

A. Well, what happens is that this impacts a ratepayer if it was passed through, which we don't feel it should be. But if it was passed through, this would -- this would increase their cost of operations by causing them to have to have additional working -- cash working capital funds and working capital funds to pay for these items in advance of where they wouldn't have had to pay for them previously and, therefore, you have your cost of money.

Q. Have you ever, in your nine and a half years, worked with any companies providing utility services in the state of Missouri that have been in a severely weakened financial condition? And I'm talking about large or small. I mean, we have many small companies also and I want to include those in your answer.

A. There have been a couple of small companies that have been in severe financial problems. I can't say that I worked directly with any of them. We've had Staff within the department that have been assigned to them.

Q. Did you manage in those particular cases?

A. Yes, I did. Any time our Staff is assigned, I'm the manager involved in the case.

Q. Did those cases involve an increase in rates?

A. We -- we do not raise rates unless the rates are justified. We do not recommend that rates are raised unless the rates are justified -- justified no matter what the company's financial condition. We do not work in a bail-out mode. It's not -- that is not our job, the way we understand it.

Q. Are you personally familiar with the terms of the security agreement that has been supplied with some of the testimony?

A. I will have to say generally familiar, Commissioner. That's a very, very thick document.

Q. Okay.

A. And it's -- as people have been fond of saying, I'm not an attorney. It's very complex --

Q. That's all right. I'm not an accountant.

A. It's very complex and it's -- therefore, I would say generally.

Q. Very generally. Okay. Do you believe there's added risk -- well, I'm not -- that question's not going to work. I think I'm going to let you go with that.

COMMISSIONER CLAYTON: Thank you very much, Judge.

JUDGE PRIDGIN: Commissioner Clayton, thank you.

Ms. Wandel, I think I have just a few

questions.
QUESTIONS BY JUDGE PRIDGIN:
Q. Is it your testimony that if the company is able to pledge at least 1.67 times the loan amount of collateral assets, that they receive a reduction in the interest rate of 75 basis points?
A. As long as those collateral assets are regulated utility assets. They must be regulated utility assets.
Q. Okay. And that that reduction of the 75 basis points would save the company, I don't remember the exact number, but roughly 3.2 to 3.3 million dollars annually in interest expense?
A. That is correct. It would save the company, not the ratepayers.
Q. Okay. Is that savings retroactive back to the beginning of the loan or when it was consummated or when does that savings start?
A. I can't speak with 100 percent authority, but I believe it starts when they reach full collateralization of the loan.
Q. Okay.
A. And that would be after -- I assume after the appraisal is conducted on the last major utility that -- or -- I'm sorry, the last state that approves the

collateralization that pushes them over the collateral level required by the term or the -- or the 430 million times 1.67. 718.5 million I believe is the total of that calculation.

Q. Is it your testimony that this savings would begin -- or would be only on a going-forward basis?

A. That's correct.

Q. And is the term loan -- excuse me, is the note payable some time in 2006?

A. I believe it's due around the middle of May of 2006.

Q. So that, for example, if the company reached that 1.67 ratio as a hypothetical in May of 2004, that they would save the roughly 3.2 to 3.3 million dollars per year for two years?

A. Yes. That's correct.

JUDGE PRIDGIN: All right. And I don't think I have any more questions, Ms. Wandel. Thank you.

THE WITNESS: Thank you.

JUDGE PRIDGIN: Let me open this back up for recross. Mr. Finnegan?

MR. FINNEGAN: No questions.

JUDGE PRIDGIN: Thank you. Make sure I will follow the order correctly.

Mr. Micheel?

MR. MICHEEL: No questions.

JUDGE PRIDGIN: Mr. Molteni?

MR. MOLTENI: No questions, Judge.

JUDGE PRIDGIN: Mr. Boudreau or Mr. Swearengen?

MR. SWEARENGEN: I believe a few, your Honor.

JUDGE PRIDGIN: Thank you.

MR. SWEARENGEN: Do you want to do that now or do you want to take a break?

JUDGE PRIDGIN: Ms. Wandel, are you --

THE WITNESS: I'm fine as long as it's a few questions.

JUDGE PRIDGIN: We'll probably break after.

CROSS-EXAMINATION BY MR. SWEARENGEN:

Q.   Just a couple questions, Ms. Wandel.

I think in response to a question from Commissioner Murray concerning the dividend -- do you recall that?

A.   Yes, I do.

Q.   Is it your testimony that the company's policy in that regard has somehow changed or is it consistent with what the company has always done?

A.   I won't say that it has always done, but it has done it for some time, Mr. Swearengen. Our -- our contingent is we think it should be suspended during the period the company's in financial peril. As long as the company's not paying external dividends to its shareholders, it shouldn't be collecting monies from its operating divisions.

And I think that's something that I failed to mention before, was that dividends are something that is paid to the owner of a -- of a stock. MPS, L&P, those are not corporations. They are merely divisions of Aquila.

And, therefore, this whole thing is fictitious. It's a -- it's a means of transferring the revenues from the utility divisions primarily. I don't know how it operates on the other end -- I can only speak about the utility divisions -- into the corporate portion of the joint account that they've got.

So that these monies normally would have been used, in good financial times, to help pay shareholders, you know. But now they're being used to mitigate costs that the shareholders are absorbing that relate to nonregulated operations.

Q. You talk about internal and external dividends. Isn't the internal dividends policy the same one that was in effect when Aquila was actually paying what you call external dividends?

A. I believe it was. I don't believe there's been in any change in its policy.

Q. Okay.
A. But different circumstances call for different acts, you know, different reactions.
Q. Mr. Clayton, Commissioner Clayton, asked you about the encumbrance, whether or not it in and of itself would harm the ratepayer and I believe you answered yes. Do you recall that?
A. Yes, I do.
Q. And would that be your testimony with respect to every encumbrance that this Commission has authorized over the years, that the encumbrance in and of itself was harmful to the ratepayer?
A. Well, my testimony is that encumbering these assets harms the ratepayers. And it could be generalized to say that other encumbrances harm the ratepayers as well.
However, in most instances our utilities are healthy institutions, operations, they are investment grade. The risk is minimal. Here, the risk is more exaggerated due to the company's weakened financial condition. Not to say that they won't make their payments, but it -- the question is out there.
Q. So let me make sure I understand. You're not saying that the Commission should come out in this proceeding with some sort of policy statement that encumbering utility assets is a bad thing and we're not

going to let that happen any more for any utility company?

A.   Absolutely not.

Q.   Okay.

A.   That's not our intent and purpose. I think the thing here too, Mr. Swearengen, is you've got to remember that this encumbrance is associated with a loan agreement that we see little to no benefit to the Missouri ratepayers.

The company says that there's a -- a peak working -- cash working capital need. We've not been given any proof that Missouri has a peak cash working capital need.

The analysis that was provided, many of the items that were included in that analysis are the same items that we -- that the company says they're going to protect us from in a rate case, the prepaids, the -- what else? And some of the other items. It wasn't just the prepaids and there were several kinds of prepaids, so there were several items, but some of the other items, these are -- these are worst case scenario items.

And even though we understand the company has to prepare for peak working capital needs, they cannot show us and have not shown us rather that Missouri has any. And if they do, that they can't be supported by borrowing monies from the gas utilities because Missouri, as they say, should be a spring or summer peak.

Why could they not then borrow from the excess funds that -- that the other utilities have on hand through the regular treasury account rather than have to go outside and finance? They have not shown us that Missouri couldn't self finance their peak working capital needs.

Q. Let me ask you this question. Would you agree, as a general proposition, that most utility companies would enter into first mortgage bond financing because that was a lower cost capital available to them as opposed to some other financing mechanism?

A. I wouldn't say that's always the case. I mean, I assume -- I shouldn't say that. Yes, I would assume if they went into a secured financing, it was because it was at a lower cost than what they could get through some other means.

Q. And that lower cost capital would enure to the benefit of the corporation. Would you not agree?

A. Yes, it would.

Q. And depending on how that lower cost capital is treated in a rate case, it could enure to the benefit of the company's customers; is that correct?

A. That is correct.

Q. And in the case of Aquila, would you agree with me that if its chosen financing method here, including the encumbrance of its Missouri assets, would result in a lower cost capital to Aquila, that that would make Aquila a stronger entity financially?

A. I do believe that -- that getting a reduced rate -- is that what you're saying, getting this reduction in rate is --

Q. Lower cost of capital would make this company stronger financially?

A. It certainly would help its cash flows and should help it financially to reduce the cost of its interest expense.

Q. Now, let's then turn to the question about how that might be reflected in rates. And I think in response to a question from Commissioner Clayton, you said the Staff might have a different view of this case if there was some benefit from this lower cost of capital being passed directly to the customer. Do you recall that testimony?

A. You know, I'm not -- I'm one witness and I don't -- I know I speak for the Staff, but at the same time I don't make decisions for the Staff.

Q. But do you recall that testimony?

A. Yes, I do.

Q. And let me ask you this question. When it comes to setting rates, is it not true that the Commission doesn't always utilize the exact or true cost of capital of the utility company?

A. That would be better directed to Mr. Bible, Mr. Swearengen. I really don't know.

Q. You've never heard of the Commission using hypothetical capital structure in a rate case?

A. I have not. But whether there is one out there, I don't know.

Q. Now, you indicated in response to a question from one of the Commissioners, and I think again it was Commissioner Clayton, about the definition of detriment and that being an increase in rates or a reduction in utility service. And you said that that was the company's definition of detriment and not the Staff's; is that true?

A. Well, I think that the company testified that that's their interpretation of the word "detrimental to the public interest," that it's -- that it includes those two factors.

Q. And is it your belief that the company concocted or came up with that definition out of thin air?

A. No. I don't believe so. I believe that they relied on counsel and they provided a case that spoke to those particular two issues. I don't know that those -- those cases necessarily meant to limit the definition to the description provided by the company, however.

Q. But wouldn't you agree with me that that is the definition that this Commission, in fact, has used in the past?

A. Again, I don't -- I don't know. You'd have -- that's a legal question and I really can't tell you.

Q. You'd have to look at the Reports and Orders of the Commission to make that determination?

A. Yes. And I certainly have not looked at every Report and Order.

Q. You talked about the cost associated with prepayments in response to a question from the Bench and indicated that that was somehow a detriment to the company's customers. Do you recall that?

A. If -- if the cost -- if -- depending on the structure of the corporation depends on how cost gets passed down. And if the cost directly associated with this downturn in financial position were passed onto a utility -- and in this given case, for instance, prepayments are a fallout of this -- then that could be a detriment to the ratepayers.

Now, Aquila has said that in the rate side of this -- on the rate side, they're not going to pass those costs along to the ratepayers. But they have included them for purposes of analyzing the working capital needs of the company, which to me seems inconsistent. If you're not going to pass them on, why are you using them to justify your encumbrance?

Q. Have you read the Surrebuttal Testimony of Jon Empson in this case?

A. I have.

Q. And would you agree with me that what Mr. Empson says in that testimony and schedules with respect to the company's intent with respect to the rate-making treatment, the prepayments, is the company's position on that?

A. You know, I -- I'd have to look at it, Mr. Swearengen. And -- and I've got it up here if you want me to try to look at it. I mean, can you direct me to a specific spot within the testimony?

Q. Sure. If you have Mr. Empson's Surrebuttal Testimony, take a look at Schedule JRE-2 and there's four pages to that.

A. JRE-2.

Q. I can hand them to you if that would be easier.

A. That would be easier.

MR. SWEARENGEN: Can I do that, your Honor?

JUDGE PRIDGIN: Certainly.

THE WITNESS: I've got a big book here.

Did you need me to read all of these, all of these three --

BY MR. SWEARENGEN:

Q. Let me --

A. -- DRs?

Q. -- ask you the question and then if you need to continue to read it to answer, please feel free to do so.

A. Okay.

Q. Once again, referring to Mr. Empson's testimony and the schedules attached to that, wouldn't you agree that the company has promised not to seek to pass through rates to its Missouri customers any higher costs associated with the prepayments?

A. Yes. I would agree with that.

MR. SWEARENGEN: That's all I have. Thank you.

JUDGE PRIDGIN: Thank you.

May this witness be excused?

MR. WILLIAMS: I think I have a little redirect.

JUDGE PRIDGIN: I'm sorry, Mr. Williams. Thank you.

REDIRECT EXAMINATION BY MR. WILLIAMS:

Q. You've been asked several questions regarding the standards that the Staff applied in this case. Has the Staff requested the Commission to limit the standard that it applies necessarily to the one that the Staff has used?

A. No, it has not.

Q. And as to the standard that the Staff applied, you've been asked about portions of that relating to whether there's been harm to the ratepayers, whether there's a need. Did Staff look at any one particular factor or were those just portions of what it evaluated whenever it made its review?

A. The Staff looked at how the -- this application would impact the ratepayers from a variety of different viewpoints and -- and considering a variety of different factors.

Q. Let me try to be a little more specific. You were specifically asked whether an encumbrance was a harm and you were asked whether the company's need for the $430 million at this stage were -- I guess triggers what the -- were determining factors. Did the Staff rely solely on any one of those in making its determination as to its recommendation in this case?

A. No. They were -- all of those factors are interrelated, so we considered all of them in the process of evaluating our position on this case.

MR. WILLIAMS: May I approach the witness?

JUDGE PRIDGIN: You may.

BY MR. WILLIAMS:

Q. I'm handing you what's been marked for identification as Exhibit No. 35.

JUDGE PRIDGIN: Mr. Williams, is this a new exhibit?

MR. WILLIAMS: No, it is not.

BY MR. WILLIAMS:

Q. What is that exhibit?

A. This is the company's response to OPC Data Request No. 5087. Do you want me to read the question?

Q. Please.

A. Okay. Is Aquila aware of any circumstances presented in any case referred to in paragraph 18 and Appendix 6 of its application wherein the utility filed for approval to mortgage or encumber its properties to secure a debt obligation that has already been incurred?

The response to this is: No. And this was signed by Jon Empson.

Q. Is that response by Aquila consistent with your statement that Staff is unaware of any cases where a utility has sought approval for an encumbrance after receiving loan proceeds?

A. Yes, it is.

Q. You've been asked about dividends between the utility operations and the corporation?

A. Yes, I have.

Q. And you've referred to that as a permanent transfer?

A. Yes.

Q. Could you contrast that permanent transfer characterization with respect to the loan characterization you gave for funds coming back to the utility?

A. Yes. The way Aquila again accounts for its -- its cash and -- and the operations of the companies is that they maintain this joint account at the corporate level at treasury. All the revenues from the utilities, cash that's received -- and as I said, maybe other operations, I'm not positive -- but all the cash goes into these accounts.

And it's kept separate. In other words, MPS -- I'm not sure how separate it is. I won't go into the details, saying just MPS has a chunk and somebody else has a chunk. But the Missouri utilities, however they are accounted for, has a chunk of -- of monies in this joint account that specifically really relate directly to Missouri operation.

As long as there's monies in that account that are still directly tied to the Missouri operations accounted for as part and parcel of the Missouri operations, they can use those finds to pay for any expenditures that they have to support their working capital needs, per se.

If they become in a negative cash mode, in other words, if they need to borrow monies from corporate --

and that corporate money can come from the money that's actually in the corporate account, portion of the joint account or in another portion of the joint account, say, like the other utilities -- they can borrow those monies out at a certain rate of interest. And then they pay them back on an as-needed basis.

And -- and if they have excess money in that account and others borrow that money out, then they're paid a certain amount of interest for the monies that -- that they use to advance to another portion of the company's operations.

So it's kind of like a little short-term financing that goes on internally. And they do recognize that there's a value to that money and they do pay the entity for the use of their funds. Did that answer your question?

Q. What I was wanting to get at is, is there any benefit to the operating division that makes the dividend transfer up to the -- I guess we'll call it parent since we've been doing an analogy to a holding company structure, after the dividend is paid out?

A. Not to my knowledge there's not, because the cash is then gone permanently. It's -- it's -- it operates very similar to an external dividend. It's -- it's -- once it's paid to the shareholder, it belongs to the shareholder.

Once it's paid to corporate, it belongs to corporate.

Q. So the operating division doesn't get any interest return on that dividend?

A. Exactly. They lose the interest return and they lose the use of that money, so therefore, it potentially causes them to have a greater need for borrowing of working capital.

Q. And Mr. Swearengen referred you to some cases that the company had relied on for its source for saying that not detrimental to the public interest pertained to rates and quality of service. Do you recall that?

A. Yes.

Q. Do you know if those cases were merger cases?

A. I believe they were. I'm -- I can't speak with 100 percent surety, but I believe they were.

Q. Would the Reports and Orders in those cases indicate what type of cases they were?

A. Yes, they would.

MR. WILLIAMS: No further questions.

JUDGE PRIDGIN: Mr. Williams, thank you.

Now may this witness be excused?

MR. WILLIAMS: As far as I'm concerned.

JUDGE PRIDGIN: All right. Hearing no objection, Ms. Wandel, thank you very much for your time and your testimony.

This looks to be a perfect time to take a break. Let's take roughly 10 minutes and we'll reconvene by the clock on the wall at roughly 10:40. We're off the record.

(A RECESS WAS TAKEN.)

JUDGE PRIDGIN: We're back on the record. At this time I see the next scheduled witness for Staff is Ronald Bible. Would Mr. Bible come forward and be sworn, please.

MR. BOUDREAU: If I might, as a preliminary matter, I've got -- as a clean-up matter, I have that substitute schedule that I've been talking about incessantly since Mr. Dobson took the stand. Maybe as a housekeeping matter, if it's okay, I'll just have this marked and offer it into the record.

JUDGE PRIDGIN: That's fine.

MR. BOUDREAU: I guess this would be Exhibit 57?

JUDGE PRIDGIN: That's correct.

MR. BOUDREAU: Would you like more than one copy of it, by the way?

JUDGE PRIDGIN: Please. If we can get a copy for everybody on the Bench.

(Exhibit No. 57 was marked for identification.)

MR. BOUDREAU: It's my understanding this will be Exhibit 57. It's a substitute schedule RD-12 to Rick Dobson's Direct Testimony. As I indicated earlier, an incorrect schedule was originally filed with his Direct Testimony earlier in the proceedings, so this is just to make sure the correct set of corporate resolutions is attached or affixed to his testimony.

So with that, I would offer Exhibit 57 into the record.

JUDGE PRIDGIN: Thank you, Mr. Boudreau.

Any objections?

Hearing none, Exhibit 57 is admitted into evidence.

(Exhibit No. 57 was received into evidence.)

(Witness sworn.)

JUDGE PRIDGIN: Thank you, Mr. Bible. If you would, please be seated.

Mr. Frey.

MR. FREY: Thank you, your Honor.

RONALD BIBLE testified as follows:

DIRECT EXAMINATION BY MR. FREY:

Q. Can you please state your name for the record, sir?

A. Ronald L. Bible.

Q. And by whom are you employed and in what capacity?

A. Missouri Public Service Commission in the financial analysis department.

Q. And are you the same Ronald L. Bible who prepared and caused to be filed in this proceeding what have been marked for identification purposes as Exhibits 15 and 16; namely, Ronald L. Bible Rebuttal, both NP and HC?

A. Yes.

Q. Do you have any corrections to make to that testimony?

A. No, I don't.

Q. And if I were to ask you today the same questions as are in that testimony, would your answers today be substantially the same?

A. Yes.

Q. And are those answers true and accurate to the best of your knowledge, information and belief?

A. Yes, they are.

MR. FREY: With that, your Honor, I would offer Exhibits 15 and 16 into evidence and tender the witness for cross.

JUDGE PRIDGIN: Thank you. Any objections?

Hearing none, Exhibits 15 and 16 are admitted.

(Exhibit Nos. 15 and 16 were received into evidence.)

JUDGE PRIDGIN: Mr. Finnegan, any cross?

MR. FINNEGAN: No questions -- just one question.

JUDGE PRIDGIN: Yes, sir.

CROSS-EXAMINATION BY MR. FINNEGAN:

Q. Morning, Mr. Bible.

A. Morning.

Q. If Aquila borrowed money for its Missouri assets and if it were a BBB rated company, what interest rate would it pay?

A. It's hard to say specifically what it would be for a particular company. I can tell you based on my experience and what I recently looked at in Moody's, a Triple B company newly issued debt would be somewhere in the range of 6 to 7 percent. But specifically for the company, you know, I just couldn't say.

Q. Would that make a difference if it were secured debt or unsecured debt?

A. It could, yes.

Q. It would be lower if it were secured than if it were unsecured?

A. Typically it would, yes.

MR. FINNEGAN: Thank you. That's all the questions.

JUDGE PRIDGIN: Thank you, Mr. Finnegan.

Mr. Micheel?

MR. MICHEEL: No questions.

JUDGE PRIDGIN: Mr. Molteni?

MR. MOLTENI: No questions for Mr. Bible.

JUDGE PRIDGIN: Mr. Boudreau?

MR. BOUDREAU: I have no questions for Mr. Bible. Thank you.

JUDGE PRIDGIN: Thank you.

Let me see if we have any questions from the Bench. Commissioner Murray?

COMMISSIONER MURRAY: I'm not ready that quickly, but I will look.

QUESTIONS BY COMMISSIONER MURRAY:

Q. Mr. Bible, did you participate in the Staff report that was filed with Ms. Wandel's testimony regarding Aquila that was dated December 2002?

A. Yes, I did.

Q. And in that Staff recommended one way to protect Missouri ratepayers would be for Aquila to use a hypothetical capital structure; is that right?

A. I don't believe I used the terminology protect Missouri ratepayers. I believe I used the terminology to mitigate the financial circumstances and the impact of those financial circumstances that Aquila finds itself in on -- to mitigate that impact on its regulated utilities, that the

Commission could consider using a hypothetical.
Now, I don't typically recommend a hypothetical. I recommend using the company's actual capital structure. But certainly extenuating circumstances would cause one to reflect and potentially consider doing something different because those circumstances have changed.
Q. Okay. On page 23 of that report it says: To prevent or mitigate Aquila's higher cost of capital from being charged to Missouri ratepayers, the Commission can order the use of a hypothetical capital structure for rate-making purposes to determine the appropriate mix of debt and equity that's appropriate for MPS and L&P.
Do you agree with that?
A. Yes.
Q. And the capital structure that is being proposed to be -- the hypothetical that's being proposed --
A. By?
Q. By Aquila.
A. In the rate case?
Q. No. I'm talking about in the treatment of the -- the way Aquila is agreeing to treat the capital structure of the utility in terms of any interest rate that it gets charged.
A. Okay.

Q. Are you in agreement with that?
A. The way the company proposes it?
Q. Yes.
A. No, I'm not.
Q. And how do you differ or how would you do it differently?
A. Well, basically, what's been presented by the company is that the hypothetical and their capital allocation process is one and the same.

And my understanding is they have done a study or at least they claim to have done a study -- you know, we asked for the information on how they do it and that wasn't provided.

But that -- what they have proposed -- and this was in the minutes of the interview -- telephone interviews that we did with them. What they have proposed, they do not actually have that level of equity that they would hypothetically allocate or whatever and use in the rate case. So that's one reason I'm not in agreement with it.

And I don't necessarily agree with their methodology. Again, I haven't specifically seen the study that they've done, but -- I can't say that, you know, based on my evaluation of something I haven't seen, whether or not I -- I would agree with how they approached it.

Q. On page 12 of -- 12 of your testimony, excuse me, you discuss the article about ring fencing?
A. Yes.
Q. And since Aquila and its divisions are not separate and since the divisions cannot borrow money on their own, what practical difference does a separate credit rating by S&P for the divisions make?
A. Given -- given the current structure that the company is in, there is -- there would be no differentiation in credit rating for MoPub or St. Joe and Aquila. They would -- they would look at that as a whole, in its entirety.
Q. So wouldn't the only way to achieve any kind of a difference be what the company has proposed; in other words, treating the divisions differently in terms of allocating interest rates?
A. Are you asking is what the company proposing adequate for the credit rating agencies to acknowledge that they should have a different credit rating?
Q. No. That's not what I'm asking. Since the credit -- I believe you just stated the credit rating agencies are not going to give them a different rating; is that correct?
A. Not in the existing structure they're in now, no.

Q. Right. And since that is the case, what the company has proposed in terms of internal allocations, is that a way to achieve the effects of -- that would be similar to different credit ratings by --

A. Absolutely not.

Q. I understand that it would not insulate -- it would not be true -- it would really not be ring fencing because it would not insulate the utilities in case of a company's ultimate demise, but if the company remained healthy, would it not achieve the same result that a different credit rating would achieve?

A. Not -- not along the lines you're talking about with insulation and ring fencing. It would not accomplish the same effects.

If -- if you look at insulation and ring fencing as it's presented and defined by credit rating agencies, there are certain criteria that they look at to determine to what extent a company would be insulated or to what extent they have insulated to -- potentially to become ring fenced.

And it's not just the existing structure. It's how Aquila treats its division that's contributes to what you're referring to as the same effect and preventing that same effect.

For example -- and probably one of the key examples is whenever -- if you were a customer of MoPub and you wrote a check out for your electric service, it goes directly to Aquila's in Aquila's lock box. It doesn't go through MoPub and then MoPub decides how much they're going to give to Aquila. All that cash flow goes directly to Aquila and Aquila decides then how much they're willing to give back to MoPub and St. Joe.

And that -- that's -- that cash flow and the control of that cash flow is one of the key components that a credit rating agency would look at as far as whether or not, you know, there would be any distinction or difference in creditworthiness between the entities.

So, you know, that's one key factor right there that would prevent, you know, any kind of hypothetical capital structure having any kind of impact to provide that kind of protection.

Q. But assuming the utility remains healthy, it does have the impact of giving the utility access to a different interest rate. Correct?

A. I'm not sure I'm following your question.

Q. Well, if the company agrees to treat internally the utility as having a hypothetical capital structure that is better than -- that would get that company a certain interest rate if they were separately rated by the rating agencies, then the practical effect of that is that it gives the utility access to that lower interest rate, does it not?

A. I guess I'm still not quite following what you're asking. Are you saying that regardless of the fact that Aquila gets all the money, that because it only charges the utility a certain interest rate, that that gives them the access to lower cost of capital or --

Q. Well, that's what I'm saying. Is that not true, that they do have access to the cost of cap-- or to the lower cost of capital that Aquila has agreed to hypothetically allocate to them?

A. But that's a fictitious lower cost of capital because the reality of it is -- and an example of that, this -- this working capital loan is 8.75 percent. And I believe Mr. Dobson yesterday said, well, we're only going to charge Aquila properties the regulated 3 percent.

Well, where's the money going to come from for -- to payoff the other 5.75 percent? Particularly when they're a vertically integrated utility and they don't have any more nonregulated operations to contribute to the revenue and the earnings. The only place it can come from is the regulated ratepayers.

Q. Okay. We've got several figures here that have been talked about. We've got the 8.75 and then we've got a 75 basis point reduction.

A. Okay. 8 percent and 3 percent, 5 percent. Where's the other 5 percent going to -- how's that going to get paid for?

Q. And the -- hold on just a second. Okay. Why don't you try, if you can, to simplify and just lay out a process whereby if the utility -- Missouri utility needed cash working capital which they would under normal circumstances get through a revolving loan type of arrangement, under the proposal here, how would the Missouri utility do that?

A. Well, typically a Missouri utility would not even come in here and ask for permission because that would be a short-term loan. And by statute, they're not required to come in here for short-term loans.

And that's -- that's what distinctly makes this different than -- than the other cases that have been presented and proposed by the company that they're the same. This -- this is not the same kind of case.

When a company goes out for working capital, it's typically a commercial paper, a year or less, and they're not required to come in and ask for permission to do that. It's typically long-term debt that they come in and ask for permission to issue.

And they typically -- I mean, since I've been here, they always come in first and lay out a pro forma for us, do an analysis, show us specifically what they're using the money for, what the impact is financially on their balance sheet and their income statement and ask our permission to do it first before even talking about collateralizing anything.

And I'm not aware of any of those cases -- I mean, I've seen nothing presented where any of those cases are similar to what's being proposed here.

Q. Okay. Contrast that to what is being proposed here.

A. Well, they've already borrowed the money. They didn't come in here and ask for permission to do it. And now they want to collateralize the Missouri properties to do it.

Q. But what about when Missouri utilities have a cash working capital need, a specific need, what happens if we grant Aquila's application here? I just wanted you to walk through that process.

A. Are you saying specifically what would be the process with MoPub and St. Joe --

Q. Yes.

A. -- if we -- I -- I guess I'm still not following. Are you asking how would they access that working capital?

Q. Yes.

A. I -- I don't know. I mean, I don't know what their internal procedures are for allocating working capital or, you know, short-term loans to -- to the companies. I mean, I would assume that based on what they've said, that they're going to hold that at the corporate level, that MoPub or St. Joe's management would have to come up with some justification or being able to tap into that.

COMMISSIONER MURRAY: Okay. I think that's all I have. Thank you.

JUDGE PRIDGIN: Commissioner Murray, thank you.

Commissioner Gaw?

QUESTIONS BY COMMISSIONER GAW:

Q. Mr. Bible, following up on some of Commissioner Murray's questions, it's your experience that utilities would generally come in for approval of this type of a loan prior to the loan or is that is -- in -- is that what your testimony was?

A. No. Not -- not specifically this type, because as I said, working capital loans are typically short term in nature. And any borrowings that the companies do that have a term of a year or less, they aren't required to come in and request Commission approval to borrow that --

Q. Is that the kind of loan this is?

A. Well, part of it is and part of it's like a three-year revolver.

Q. All right. You want to that explain that, what you mean by that?

A. As far as the terminology short term?

Q. Terminology and the -- this particular note itself.

A. Well, my understanding of this note is part of it has a three-year term and part of it has I think a year term as far as maturity or when it's actually due. And specifically for the one-year term, they wouldn't have to come in and ask for permission to -- to do that.

But if a company were going to borrow money, issue bonds or stock, they would come in prior to actually executing that issuance. And, as I said, they would provide us with a pro forma showing the impact on the balance sheet and the income statement, identifying specifically what they would use those funds for. And as part of that in their application, request encumbrance, if you would.

But that would be, you know -- it would be kind of -- the sequence would be more asking permission first before expecting us to approve the encumbrance and providing that information. And the reason this one differs is they've already done that, they've already issued those securities and only now coming in to ask to encumber Missouri assets.

Q. Okay. I want to break this down just a little bit more. If this loan were entirely a year or less and we were not dealing with any collateralization or any collateral and it would be -- it were being used for working capital, would you not expect a utility, in your experience, to come in?

A. That's correct.

Q. If it were greater than a year payoff, but again no collateral was at issue, and it was to be used for working capital, under that circumstance is your experience that a utility would come in for Commission approval?

A. If they were not going to encumber the Missouri assets, no.

Q. All right. Is there a length of time as far as a term is concerned where absent collateral your experience would say normally the utility would come in?

A. Not that I'm aware of.

Q. So the time frame is not as relevant then as the issue of the collateral itself?

A. In this situation, that's correct.

Q. I'm just trying to follow through your analysis. So your concern in this case in the way this is -- this was presented to the Commission is because collateral is involved and the request occurred after the loan was received?

A. That would be part of my concern, yes.

Q. And I don't want to -- I don't mean to say that that's your all-inclusive list of concerns.

A. Yeah.

Q. But that's part of your concern?

A. Yes.

Q. And in your experience, that hasn't happened in the past?

A. That's correct.

Q. In your discussions of ring fencing, what is the -- what's the threshold that you have seen in your experience in regard to what will achieve adequate separation in order to get a separate rating for purposes of borrowing funds?

A. That's -- that's something that -- and that's a good topic, I think, to discuss and try to understand. And it's similar along the lines to a credit rating agency bestowing a credit rating on a company.

And what they do, they will identify certain things. For example, they will identify things they would call structural insulating factors and they will -- they will identify things they would refer to as regulatory insulating factors. But they don't lay out this cookbook of if you do this, this, this and this, we will deem you insulated and we will give you X notches different in credit rating.

Similarly to the actual credit rating they give, they will look at -- they will look at qualitative factors such as the market that the company is in, the regulatory environment, the management ability and they will look at quantitative factors. They will look at things like fund flow from operations, total debt to total capital.

They will tell you what things they will look at and they will even give you benchmarks of where other companies are at that have certain credit ratings, but they will not tell you if you do this, this, this and this, we will give you a Triple B.

What they do is they reserve the right to look at everything in its entirety, looking at all those factors, evaluate it and then tell you, yes, we believe you have done enough to get this credit rating or, yes, we believe you have done enough to be considered insulated at a -- at a certain level that your parent would get this credit rating and you would get this credit rating maybe two notches higher or a notch higher or three notches higher, something like that.

So I can't tell you specifically, you know, in a numerical sense or a factual specific sense. I can just describe to you the kind of things that they will look at and -- and assure you they will reserve the right to look at everything in its entirety, not tie themselves down to any specifics.

Q. No matter what, there will be some subjective --

A. Yes.

Q. -- determinations?

Let's get into the things though that are important factors in the analysis.

A. Okay.

Q. In looking at this current situation that we find Aquila in in regard to the separation that's done between its regulated and nonregulated activity, are there any things currently existing that would be considered factors in favor of suggesting that they are adequately insulated?

A. No. None whatsoever. In fact, during the telephone interviews, I took the list of structural and regulatory insulating factors identified in a publication put out by Standard and Poor's, which I made available to Mr. Empson, as well as some ring fencing factors. And I read those off, do you have this, do you have this? And virtually everything was no.

Q. All right.

A. And nowhere in -- I don't mean to keep going --

Q. Please. I'm interested.

A. Nowhere in there was anything about an allocated or a divisional or an assigned or whatever capital structure as -- as any factor related to insulation or ring fencing. And nowhere in there was any kind of assigned embedded cost of debt as a factor in any kind of insulation or ring fencing.

Q. All right. Is it possible, Mr. Bible, in your opinion, for Aquila to do some things that would provide more of an argument that at some point in the future that their regulated utilities are adequately insulated from the other parts of their company?

A. They would have to take some significant steps, I believe, to -- to restructure the company.

Q. What kind of steps would those be?

A. They would have to actually set them -- set them up as separate subsidiaries. One of the things that Standard and Poor's has identified is establishing special purpose entities, single-purpose entities. They've identified separate Boards of Directors. They've identified restrictions to cash flow going to the parent.

Numerous things like that that would have to be in place in order for them to consider adequate -- or consider -- even consider having adequate separation.

Q. Do you know whether at this point in time in

Aquila's current condition it would be feasible or possible for some of those -- some of those things to be done?

A. I would say if -- and -- and I've debated whether or not I would say this. MoPub and St. Joe can exist without Aquila and they can prosper without Aquila. Aquila cannot exist and prosper without MoPub and St. Joe.

Basically, what you would have to do is you would have to, you know, as a Commission, order them to -- to implement those things. And, you know, you're potentially saying good-bye to Aquila, the corporate overhead.

Q. What remains besides -- when you say Aquila, what remains there if you take out, under your scenario, MoPub and St. Joe?

A. What remains at Aquila?

Q. Yes.

A. Senior management, basically, you know, the back office functions. Like I said, there's a lock box at Aquila that all the money goes to, those kinds of things.

Q. Okay. Awhile ago when you were talking about -- talking with Commissioner Murray about where the money was going to come from to pay the additional interest rate, the difference between the 3 percent -- I don't know exactly the amount that might be supposedly charged on the books to the regulated side and the total amount of the interest at 8 -- is it 8.75?

A. At present, yes.

Q. You said that -- I think -- and I don't want to misstate your -- what your point was. I believe you were suggesting that there is -- in all likelihood, that the money that's going to pay that extra interest is still going to have to come from the regulated side, the income from the regulated side. Did I understand that correctly and could you maybe expand upon it, if I did?

A. Yes. You understood me correctly. And I think that's another important issue here. The company has laid out a plan. And at the end of that plan, they have basically shown that there's a certain amount of debt. I think in the interview Mr. Empson referred to as --

MR. BOUDREAU: I'm going to object -- just to caution the witness if we're talking about the financial plan --

THE WITNESS: I'm not going to say the number.

MR. BOUDREAU: Okay. Thank you.

THE WITNESS: That's proprietary.

COMMISSIONER GAW: Thank you, counsel.

THE WITNESS: But he referred to it as residual debt. And I addressed this in my testimony. There's a significant amount -- I consider the number significant amount of regulated debt, regulated utility debt. There's also a significant amount of nonregulated debt at the end of this implementation of this plan.

Now, as part of that plan, also the company has stated that it's their intent to becoming a vertically integrated company. And during the interview they said basically there's -- no nonregulated operations would be left.

Now, what's problematic for me and where I believe that the true detriment lies is you have this residual nonregulated debt left with no nonregulated operations to support the debt service, pay the interest and all you have left is regulated ratepayers as the source of income for not only the debt associated with the regulated operations, but the rest of the debt.

Now, the company -- company proposes a fix in that they say they can issue common equity or convertible preferred to take care of that. But the fallacy, I think, in believing that that offer is something, is there's still a cost of capital associated with that. It doesn't just go away.

And that cost -- once again, there is no one else left to pay that cost but the regulated ratepayers. And that, to me, is what presents the real detriment here and is -- to me is very problematic. I think my attorney referred to it as the elephant in the room that nobody wants to talk about.

BY COMMISSIONER GAW:

Q. Someone referred to it as that. I can't remember which attorney it was.

A. Mr. Frey.

Q. If you look at the current situation that Aquila is in financially -- I suppose that one question is, from Aquila's standpoint, what choices do they have? Are they in a box that there is no -- from which there is no escape? Is this the only choice that they can make at this point because of the circumstances that exist today, ignoring how they arrived there?

A. I believe that would be an accurate depiction. And, again, I distinguish Aquila versus MoPub and St. Joe. And, again, you know, I believe that MoPub and St. Joe can survive and prosper without Aquila. Aquila just can't do it without those properties.

Q. Would that have been the case -- how long have you been with the Commission, Mr. Bible?

A. A little over six years.

Q. And have you been familiar with Aquila, slash, UtiliCorp for that length of period of time or --

A. I have been familiar with the cases that have come in for them. I have -- I have just a basic working knowledge of cases prior to that, but -- you know, from reviewing documents and hearing about them and discussions.

Q. Six years ago, that would have been --

A. 1997.

Q. -- '97. Aquila was -- how heavily involved was Aquila in their trading operation when you first came?

A. I -- when I first got here, I don't remember hearing much, if anything, about Aquila's trading operation then.

Q. At some point in time I suppose you started hearing more about it?

A. Yes.

Q. When you first arrived here, what kind of condition financially was Aquila or UtiliCorp in?

A. It was UtiliCorp then. And I can't say specifically, but just based on my memory, they -- they were in as decent a condition as any of the utilities that we had.

Q. In Missouri -- operating in Missouri?

A. Yes.

Q. And what kind of condition would that be?

A. Well, I believe they had a Triple B investment grade credit rating. Now, UtiliCorp -- and when I first got here, at the time was trying to expand their operation Warranty International.

And I know there was a rate case going on at the time. And there was some discussion about how to handle some of the capital as it flowed domestically and internationally, but I know they were getting into -- I think Australia and New Zealand started making their utilities available for public ownership and outside of those comments. So they developed an interest in that and started acquiring properties there.

Q. Okay. And it's my understanding, and please correct me if this is incorrect, that there is no dispute about the reason for the change in financial condition between the time you first arrived and today in Aquila. Is that your understanding or is there a dispute?

A. Maybe you could help me. I mean, I guess tell me what your impression is of what caused that change and --

Q. Let me ask what your impression is, Mr. Bible?

A. My impression is the reason that Aquila finds themselves in the situation that they're in was because of the energy trading operations. I've been involved with the finance cases on their acquisitions domestically and internationally and those in and of themselves have not caused -- now, those have gotten caught up in the other problems that the company has.

But, you know, the things we actually have looked at and reviewed and recommended for approval have not been the cause of this financial situation. It is -- well, it's not just the energy trading. I mean, some of the tolling agreements the company got into, they made some decisions that, hindsight being what it is, were pretty poor decisions.

Q. Do you think the majority of the difficulties then were as a result of their trading activity on the unregulated side of the business?

A. I believe it is.

Q. All right. You would not attribute any of that problem to the regulated side of their business?

A. I couldn't say I wouldn't attribute any of that problem. I mean, the company's made a good point about -- you know, some of their issues with being able to recover rates and things like that. But, in my mind, those issues still even existed before they got heavily into energy trading and they were still, you know, doing as well as any of our utilities were.

Q. Can you be specific about what those things are?

A. Oh, you know, obviously always the companies come in, they don't believe they've gotten enough return on equity.

Q. Okay.

A. That's the one that comes to mind, one of the issues that I deal with.

Q. You're not necessarily agreeing with them, I take it?

A. No, no. Purchased gas adjustment clauses, things -- you know, things of that nature where they believe they should be able to recover certain things. All the utilities deal with -- with those issues.

Q. But as far as Aquila itself is concerned on the regulated side, did you see anything that was peculiar to Aquila or that you would say would be impacting them in a negative way on their financing over the course of time you've been here at the Commission?

A. Not unique to them, no.

Q. And as far as the industry itself is concerned, you believe the industry in Missouri other -- on the regulated side is healthy?

A. I believe it is, yes.

Q. And would you say that they're -- that that part of the business on the electrical and gas side in Missouri of the utility companies doing business here is a positive financial picture?

A. I believe it is. I think a good example for this particular situation is Ameren. And, you know, I'm no cheerleader for Ameren, but they have been able to maintain a very high level of creditworthiness and credit quality and a very good level of customer service in spite of the fact that we had a complaint case against them and they had their rates reduced.

And I would -- I would make the distinction that the reason they have been able to maintain that is that they have not gone off and gotten into some of those other nonregulated operations that have caused so many other problems for other utilities.

And, you know, Aquila is not unique in the problems that they've run into with their nonregulated operations. There are companies across the country who find themselves in a similar situation, utility companies.

Q. Because Aquila has been in need of -- well, let me ask you this. Has Aquila been in need of cash inflow in the last year and a half or so?

A. Aquila has, yes.

Q. And in seeking additional -- additional cash, has Aquila tried to sell some of its assets?

A. Yes, it has.

Q. And as a result of -- have they sold some of those assets?

A. To my knowledge, they have, yes.

Q. Have other utilities -- I see -- have other companies that have been doing business in the United States also been trying in some cases -- let me -- let me strike that question.

Let me ask it this way. Would you say that it's a buyer's or a seller's market out there for utility assets today?

A. I would say it's definitely a buyer's market. And I could give you a real good example. Williams got themselves into a cash flow problem. And I don't know if you're familiar with Mr. Warren Buffet. He's arguably probably one of the more, if not the most, successful investors in modern times. He loaned Williams some money at a 30 annual rate.

And I talked to my boss about that and he pondered what Board of Directors would approve borrowing, in today's interest rate environment, at 30 percent? And I said the only thing I can think of is they didn't have any other choice.

Q. Do some companies in order to continue to survive find themselves in that position, Mr. Bible?

A. Yes, they do.

Q. If you have an opinion, is this Commission charged with responsibility to ensure the survival of a utility company or of the service that they provide?

A. I -- I -- I don't believe that any regulatory body is charged with the survival of any entity. In fact, there's a Pennsylvania Supreme Court case that we typically -- when I say "we," my department -- when we do rate cases, we cite certain court cases.

And there's a Pennsylvania case. And I know it's -- hasn't been entered into evidence here and I have it here, but it talks to the fact that the regulatory body has no obligation that separates at any particular level to ensure the survival of any particular entity.

And that's just -- you know, that's one of the hazards of being in business. That if you can't manage to run your affairs as such to make a certain return or an adequate return, then you just can't manage to do that.

Q. Mr. Bible, we're not at that point yet, are we, in this case to have to make such a difficult decision?

A. No. I don't think we are. But -- I don't mean to interrupt, but --

Q. That's all right.

A. -- certainly I think there's a chain of events here that's in motion that certainly, you know, this specific request is part of that chain of events.

Q. Is there anyone with Staff that has examined the issue of what authority, if any, an entity would have to have in order to foreclose on assets once they are encumbered with the permission of this Commission?

A. I -- I have not and I'm not aware if anyone on Staff has looked at that.

Q. Okay. In your experience, have you ever seen that occur before where there was a foreclosure on assets that were encumbered with the permission of the Commission? Have you ever seen a case like that in front of the Commission?

A. Are you -- I can't say specifically that I have. I know PG&E when they were part of Enron, there were some things that was -- were quoted and some reports by Standard and Poor's that talked about that. And I know California Regulatory Commission was involved in that and put some certain requirements out there.

Q. You don't know whether there's been anything like that in Missouri? You don't recall anything in Missouri --

A. No. I don't recall anything in Missouri.

Q. It's really more of a question that I think I need to pose to the attorneys, but I wanted to ask you if you knew.

COMMISSIONER GAW: That's all I have. Thank you, Judge.

JUDGE PRIDGIN: Commissioner Gaw, thank you.

Commissioner Forbis?

COMMISSIONER FORBIS: Thank you, Judge.

QUESTIONS BY COMMISSIONER FORBIS:

Q. Good morning.

A. Good morning.

Q. A couple of questions. I'm still trying to wrap my mind around this thing, so a couple -- just -- if I'm being fair, sum-- and this is sort of along the lines of Commissioner Gaw's questions.

But the gist of your -- central focus of your testimony is that increasing the cost of capital for Aquila results in a detriment to the ratepayers; is that right?

A. No. What I'm --

Q. No?

A. Let me clarify that because that's --

Q. Okay.

A. -- a good issue. It is true -- it is possible that you can do certain things in a rate case and you can set rates at a certain -- in a certain fashion in a rate case so that certain things are not included in rates. And I'm not going to argue against that.

What I'm saying here, that is not the detriment -- or that -- that does not pose the potential detriment in this case. What poses the detriment here is there is no other -- whether rates are set at $15 per whatever unit or $10 per whatever unit, you only have one source to pay off these nonregulated obligations.

And it doesn't matter if they pay it off at $15 per unit or they pay it off at $10 per unit. It's the regulated ratepayers that are the only ones left to pay off those obligations.

Q. Okay. And in order for the regulatory ratepayers to be asked to pay off those obligations, how does that happen?

A. I don't think anybody's going to ask them to do it. I think the fact that the company has unlimited, unrestricted access to all of the rate monies that these utilities charge, they're going -- they have the ability to do whatever they want to with it.

Regardless of what they say they're going to do with it, they are not restricted physically from doing whatever they want to do with it. They get those monies directly from the customers of MoPub and St. Joe. Mo Pub and St. Joe have nothing to say about what happens with that money. Aquila controls it.

Q. Okay. So you're not talking about requests for a rate increase, you're not talking -- you're talking about just using the money that comes into corporate Aquila to pay for these financial issues?

A. That's correct.

Q. So help me understand where the detriment comes from so long as they're -- if there's not going to be perhaps -- absent a rate increase, where is the detriment?

A. Commissioner Forbis, are you an attorney?

Q. No.

A. Okay.

Q. Which we've talked about a lot up here. In some circles will be considered a plus and others might be a minus.

A. I was going to use the example of two attorneys that go into a partnership.

Q. I thought it was two attorneys go into a bar, but go right ahead.

A. They go into a partnership and they decide they need some office space and they need some furnishings, they need some clerical support. So they agree that they'll both contribute part of their income to pay for those things and they sign these legal documents that they've come up between themselves.

And one of them decides that, well, I'd rather live in South America on a banana ranch and raise, you know, llamas or something and he takes off. Well, he's no longer producing income to pay for the rent, the furniture and the clerical support. That's left to the other attorney to pay for. And if he hasn't signed and used his law skills to put those documents together correctly, he could be on the hook for the entire thing.

And that's the point I'm trying to make here. And if that's not a detriment to the other attorney, I don't know what is. If you only have one source of income to pay for obligations that have been set up through another source, I don't see how that's not a detriment to the first source.

In the normal course of business, you have nonregulated operations and you have debt associated with that and you have regulated operations and debt associated with that. So you have interest rate to pay on that debt.

You also have the cost of equity capital where you have investors that are expecting a return from those operations and they would expect the nonregulated operations to contribute some as well as the regulated operations to contribute some.

Now, the regulated operations are gone now. There's nothing there to contribute to pan off their debt, much less their portion of the dividend. That entire burden is shifted to the regulated ratepayer. And there is nothing in place now that prevents the company from taking all of the money that's provided by the ratepayers to take care of any or all of the regulated obligations.

Q. Let me struggle through your metaphor there. Not being an attorney and I haven't been to South America or been near llamas, I'll do what I can.

A. Have you ever eaten a banana?

Q. I have done that.

But we're not asking the ratepayers to work any harder to cover the debt. The risk would then be on the investor in your example. They might lose, but we're not asking the ratepayers to do anything extra unless Aquila would come and ask for a rate increase, in which case it's under this Commission's control to say yes or no.

A.   You may not be asking the -- the ratepayers to do anything extra, but you aren't preventing them from being obligated, vis-a-vis the company, Aquila, for paying something that -- for something that provides nothing for them.

Q.   Interesting philosophical questions there.

A.   I guess -- I guess the -- you know, I guess I could use the analogy then that is -- if it's all right with you, I would like to borrow some money from you and never pay it back and -- and, you know, you would never have to pay any more for that money than if you never loaned it to me. Because what you're saying is, you know, we're not asking them to pay at a higher rate.

Q.   Right.

A.   We shouldn't be asking them to pay it at all. It's a nonregulated obligation.

Q.   We aren't drawing a distinction between regulated and nonregulated, I'll give you that. Take that argument out for a minute. Companies make business decisions all the time and they decide how and where to allocate their resources.

Would you argue that generally we give them the latitude as businesses to do that and if it turns out that was a bad decision, then, shall we say, we make them pay by not giving them a rate increase to cover any loss, for example? How is this a different situation? Aquila making business decisions with the ratepayer money that they have at their disposal and the investor money they have at their disposal and then us seeing what happens?

A. To -- in my mind, the biggest difference is none of those companies have come in here with a B rating, which isn't very far away from C and D, which is default.

Q. So we shouldn't let Aquila do this because their ratings not as good as others? Even though it might be an equivalent business decision, because of their corporate position in the financial markets, we shouldn't let it happen?

A. I'm not saying that's the only reason. I'm saying, you know, you asked for -- for a reason why. I mean, you know, this company is -- has gotten themselves into a situation where I -- I don't think anybody can predict what the final outcome will be.

Like I said, we've got a chain of events that are in motion here. And just part of that chain is this request to collateralize with Missouri properties this working capital loan.

You know, what the final outcome will be, you know, what this thing will look like next year, 2005, 2006, nobody knows. And certainly, in my mind, knowing what I do know, I think, you know, extra precautions should be taken. And part of those extra precautions, in my mind, is to not approve this collateralization request.

And knowing that, you know, where we're at now and where the company itself projects itself to be, there are nonregulated obligations out there with nobody else to pay for them but a ratepayer. And I just don't see how that's not a detriment.

The ratepayers didn't have any say-so in what the company did. And, you know, certainly I don't think it's the obligation of regulatory body to set rates and require ratepayers to pay for something that, you know, doesn't provide a service to them. That's just my opinion.

Q. And I appreciate it and that's what I was asking for. Because I am trying to get grips around -- get a grip on this detriment standard and where you find it.

A. I certainly wouldn't narrowly define it as -- and I think that's what's been happening is, well, if it's not in rates right now and if it's not -- you can't tell me it's impacting customer service right now, then it's not a detriment. And I just don't believe that. Again, I use the analogy that there's a chain of events that are in motion here and the outcomes are very uncertain. And --

Q. So, in your opinion, the detriment is in the uncertain outcome?

A. Well, that's -- that's part of it.

Q. The other part being?

A. Well, again, the only source of income to pay for the nonregulated obligations, according to the company's own plan, will be revenue produced by regulated ratepayers. I just don't see why regulated ratepayers would or should be obligated to pay nonregulated obligations. They should be providing their own way and they aren't.

Q. Just help me. I mean, have we -- has this Commission never allowed regulated ratepayer monies to be used for nonregulated activities in a corporation?

A. I -- I can't tell you whether they have or they haven't. But certainly -- and that's another one -- and I don't mean to come across as -- in any negative way to you, but I don't think that's a good reason why we shouldn't be looking at this one differently.

I mean, just -- you know, we reserve the right to get smarter, as my bosses told me, and we reserve the right to make better decisions going forward. And I certainly don't think that just because we haven't prevented somebody from doing something that cir-- situations and circumstances won't present themselves that we should, you know, reflect on that and maybe have second thoughts about whether we should going forward.

COMMISSIONER CLAYTON: I'll reserve the right to think about that then. And with that, I think I'm done. Thanks, Judge.

JUDGE PRIDGIN: Commissioner Forbis, thank you.

Commissioner Clayton, any questions?

Commissioner Murray?

COMMISSIONER MURRAY: I apologize.

FURTHER QUESTIONS BY COMMISSIONER MURRAY:

Q. Mr. Bible, I kind of hesitate to do this because I'm not sure if I'm going to confuse things more, I may confuse myself some more.

Your statement that only the regulated assets would be left to pay the debts of the unregulated -- you made that statement. Right?

A. The regulated ratepayers as -- as those people that pay their bills and produce the revenue for the company, according to the company's plan, if they're going to be a vertically integrated electric utility, any nonregulated operations would just be incidental to the operation as a whole.

Q. And is it your testimony that there won't be

any nonregulated activities left?
A. No. According to the company in the interview, I think they said there were some incidental operations. But, I mean, their stated intent is to be a vertically integrated electric utility. So, I mean, for all practical purposes, they're going to be focused on regulated utility operations.
Q. And as the nonregulated assets are sold off, are not the debts incurred by those assets paid?
A. Well, according to their plan, at the culmination of their plan with all that nonregulated debt that's still there, that is a result of their planned asset sales. I mean, there is still residual debt. Mr. Empson admitted that in the interviews. There is residual debt that is left after they've implemented their plan.
Q. Residual nonregulated debt?
A. That's correct.
Q. And will the pledging of the Missouri assets make any difference as to whether the ratepayers will be the only source of income to pay the obligations?
A. The specific act of pledging, you know, assets would have no impact on whether, you know, ratepayers are the only source. Again, there's a chain of events and certainly this is one event in that chain of events.
Q. Okay. So in looking for the detriment, we

can't say that pledging of the assets creates a detriment because that leaves the ratepayers as the only source of income; is that correct?

A. Well, if -- if somebody gave me an obligation to pay and -- and I had no say-so about entering into it and I had no say-so about what happened with those proceeds and they expected me to pay that off, whether they expected me to pay it off at $1 a year or $50 a year or whatever, I would consider that to be a detriment to me. And that's what we're talking about.

Q. That's not the question. That wasn't my question. My question was whether that detriment comes from pledging the assets?

A. Again, you know, the actual act of pledging assets, you know, would have -- would not have an impact on -- it's --

Q. But to deny this we're going to have to find that pledging the assets is a detriment. Where is that detriment?

A. Again, if -- if everything is so narrowly viewed as, you know, having to be tied specifically and not viewed in the course of a chain of events and circumstances, then -- then I can't -- I can't say that the actual, physical, narrowly defined action of pledging assets is going to be a detriment.

But an analogy that I've used in the past, if someone were to point a pistol at me, that's not a detriment to me. If someone were to pull the slide back and chamber a round with that pistol, that's not a detriment to me. Nothing's happened to me. If someone were to place their finger on the trigger of that pistol, again there is no detriment to me. Nothing has happened to me.

They could pull the trigger, the hammer could fall, the bullet could fly and that bullet could be right here (indicating) and there is still no detriment to me if I narrowly defined each of those actions. But that chain of events that has been unleashed, the detriment to be could be devastating.

Q. So you're saying it's the unleashing of the chain of the events. Correct?

A. I'm saying there is a chain of events that are in motion right now that the circumstances that we do know of I believe are detrimental.

Q. Okay.

A. We don't know of all the circumstances. And this is just one event in that chain of events.

Q. I've got to stop you there then. Because if the chain of events is already in motion, it's not the pledging of the assets that's setting the chain of events in motion. Correct?

A. I don't think the -- you know, the setting the chain of events is, you know, the real issue here. It's allowing the chain of events to -- I mean, you can stop the firing of the bullet any -- any stage along those separate steps that you -- that you have.

Q. But would not allowing the pledging of the assets stop that chain of events?

A. I -- I can't say it would and I can't say it wouldn't.

Q. We're being asked to approve the collateralization of the Missouri assets. And we're trying to figure out is that collateralization of those assets, is that creating a detriment, per se.

And I still -- you know, having heard all of the testimony and the analyses, like Commissioner Forbis was trying to pursue earlier, I'm still having trouble getting my hands around the detriment that is caused by -- specifically by collateralization of the Missouri assets. And I'm not saying it's not there. I'm saying I'm having trouble understanding that anyone has articulated it. And --

A. Well, I don't know if this will help. It's like when you buy a house and you have a mortgage and, you know, that could be considered a first. If you wanted to get a second on your house, certainly if you had any equity left, you could find a lender to loan you, but the amount that they would loan you is going to be significantly less than what the house is worth. And likely because they would be second in line, the interest rate that you would pay would typically be higher than your first. That certainly is the situation here.

And to me, my understanding is they're asking for all the Missouri assets to be put in the pool. And while, you know, maybe only a certain amount of the assets are actually physically tied to some debt, if they're in the pool -- if you approve them being put in the pool, you're approving them to be used ahead of time as collateral for anything else the company wants to use during the time period of that approval.

So to me, it's just like the unrestricted, unlimited cash flow that goes directly to Aquila from the customers of MoPub and St. Joe. You've lost that control for that say-so over what happens with those assets during that time period and the company is free to do whatever it wants to with it. That to me, would contribute to the detriment.

And, again, you have unknowns. I mean, regardless of what the company says they will do with it, they can -- they have a right to do whatever they want.

And another example is when a company comes in for a shelf registration for $500 million and they only show a pro forma of 250 but they say that's all we intend to borrow. Yeah, but you're asking for permission for the whole thing. You need to show the impact of the whole thing.

And the point I'm trying to make is you -- you give up control when you approve collateralization and all the assets being put into a pool.

COMMISSIONER MURRAY: Okay. Thank you.

JUDGE PRIDGIN: Thank you, Commissioner Murray.

Commissioner Gaw?

COMMISSIONER GAW: Thank you, Judge.

FURTHER QUESTIONS BY COMMISSIONER GAW:

Q. Mr. Bible, pardon me. Is it your position that analyzing this in regard to detriment is analyzing the transaction itself in light of where we are today from -- in regard to entering the agreement to begin with? I'm trying to understand what you're saying is -- is what you say it's not appropriate to just flash cut here and look at one little piece of this?

A. That's correct.

Q. What is the piece that you're looking at? What is the hole that you're looking at rather in analyzing whether there's -- the balance of public interest is weighed?

A. I -- I think that, you know, I just -- just rely on what I talked about as far as, you know, the culmination of the plan that the company has proposed.

And that when you get out to I think it's 2005 or 2006, I don't recall exactly, what it looks like, what the company envisions that things look like. And, you know, reading from Standard and Poor's and the comments that Standard and Poor's is making that I included in my testimony about, you know, in order to maintain your B rating -- credit rating depends on you being able to execute this plan.

So basically what they're -- my interpretation of that is Standard and Poor's is telling them, you know, you can keep this if you successfully implement this plan. If you don't, you're subject to further downgrades, have them on a negative watch.

Now, if you think about that, you get out to 2005, you've successfully implemented your plan, you're a vertically integrated utility with a B credit rating. That's pretty poor. That's below investment grade. And there -- there's a cost associated with that. There's an additional interest cost that investors, bond buyers would expect you to pay because of your lower creditworthiness.

You also have residual nonregulated debt out there. And -- and excuse me for being a little frustrated, but I just cannot see how you can't see -- not you personally, Commissioner, but anyone cannot see that with only the regulated ratepayer left to pay for that, regardless of what level rates are set, it's hard for me not to be able to see that that's a detriment.

Q. In examining whether there's a detriment, are you looking at whether or not this note and agreement to borrow the money with collateral is to the detriment -- overall to the detriment of -- when you're looking at public interest?

A. I -- I see it as it is, because I see it as an event in a chain of events. I see it as this Commission potentially giving up control by just allowing all the assets to be put into a pool and, you know, whatever the company decides they want to do with it, they do with it.

Q. All right. So it's established that the company's financial picture is not as good as other utilities in the state; is that correct?

A. That's correct.

Q. It's established that there's a request here before us that you -- to allow these assets to be used as collateral. Right?

A. Yes. Yes.

Q. All right. So in looking at the question of

whether or not it's to -- the public interest is harmed in any way by this transaction, you believe this has to do with giving up -- you're using the word "control" by the Commission, I assume; is that correct?
A. Yes. That's part of it.
Q. And would another term substitute for "control" be "supervision"?
A. That's a -- that's a better term, yes.
Q. In your opinion, if this -- well, this Commission is charged with overseeing utility companies in the state under Chapter 393, I believe; is that correct?
A. That's my understanding, yes.
Q. Dealing with electric and gas utilities; is that true?
A. That's my understanding, yes.
Q. If a utility company is in distress financially, would you say that the Commission should use more or less supervision than they would over a utility that was in good financial condition?
A. My opinion is that a Commission would be interested in having more supervision over a utility that was in financial difficulty.
Q. And if this Commission were to approve the use of regulated utility assets in regard to this application, would we be getting more or having less authority?

A. In my opinion, if the Commission were to approve this application to include Missouri's assets in the pool, they would be giving up supervision, they would have less supervision.

Q. All right. So in regard to that issue, is it your belief that there is a public interest factor there that has to do with this Commission ceding supervision over some interest in the regulated assets of the corporation?

A. I believe there is, yes.

Q. Earlier we were discussing ring fencing. Do you recall that?

A. Yes.

Q. If the Commission had some desire to try to insulate regulated assets at some point in the future from -- or regulated the regulated portions of Aquila from the remainder of the company, would allowing these regulated assets to be used as collateral affect the Commission's ability to insulate the regulated activities of the company or the regulated assets from the remainder of the company?

A. Yes, it would.

Q. So in allowing the use of this -- of regulated assets as collateral, are we moving toward more insulation or less insulation from the other portions of the company?

A. I think the -- what the company is proposing, it would be less likely to be considered insulation.

Q. And I don't want to put words in your mouth, but are you saying that this is taking away insulation instead of adding insulation?
A. Yes. If you -- if you look at what the credit rating agencies deem as insulation, this would be, you know -- they may not use the term "less insulating," but certainly it gets further away from the kind of criteria that they view as appropriate to be considered insulating.
Q. If the assets of the corporation are pledged -- excuse me, if the regulated assets are pledged as collateral, does this Commission have the ability later on to say we think that those assets should be separated from the obligation -- obligations that are entered into in this agreement that we've been asked to approve?
A. I think that probably gets more into some legal issues and I -- I really couldn't say.
Q. All right. That's fine. You don't know if this Commission can later on say we've decided we don't like this agreement --
A. No, I don't.
Q. -- now that we've approved it?
A. No.
Q. Mr. Bible, in a rate case if regulated assets are encumbered by -- encumbered for the use of -- under a note and security agreement, if they're encumbered, would

there be a stronger argument that the rates should be sufficient to allow the payment that those assets are pledged for?

A. Someone could make that argument, yes.

Q. And, in fact, that if you were in a situation where you were trying to say that the issue of paying those regulated assets was necessary in order for those assets to -- in order for those assets to be used for the benefit of the people that they serve, would it not make sense that you ought to have sufficient income in order to pay the note that they're pledged towards so that those assets could continue to be used for that purpose?

A. I think that would be a logical argument that would be made, yes.

Q. And, in fact, would the Commission not, by approving the use of these assets as collateral, be at least suggesting that in a future rate case anything that those -- that that collateral is pledged toward ought to be considered in regard to the rates that were necessary in order to allow those regulated assets to continue to used --

A. Yes.

Q. -- to be used?

A. Yes. I agree. I think that's an excellent point. And that's a point that's been problematic for me