

1 because I've often thought on a more conceptual level that,
2 you know, what would be the implication of this Commission's
3 approval of this collateralization given these
4 circumstances.

5 And certainly in my mind it seems like the
6 Commission, whether it was doing so intentionally or not,
7 was communicating to utilities that, you know, it's okay to
8 go out and do these nonregulated things and get into
9 problems because we'll -- we'll have these regulated assets
10 help you out here. And that's problematic for me.

11 Q. And the argument has been made that this has
12 not been -- this would not have an impact, if I understand
13 the argument correctly, in regard to a rate case whether or
14 not these assets were used as collateral. I think I've
15 heard that. Have you?

16 A. Yes.

17 Q. But it strikes me that if this Commission has
18 a responsibility to continue to see that ratepayers are
19 served, that if the assets are encumbered that are necessary
20 in order to serve them, that we also have a duty to make
21 sure that that service continues?

22 A. Yes.

23 Q. Would you agree with that?

24 A. I agree.

25 Q. And would you also agree with me that because

1 of that, it is more likely that this Commission would have
2 an obligation to ensure that the rates were sufficient to
3 cover the notes --

4 A. I --

5 Q. -- that --

6 A. I'm sorry.

7 Q. -- that might be -- that might be tied to that
8 regulated collateral?

9 A. I think that's the argument that would be made
10 and could be made.

11 Q. And if the notes that were tied to that
12 collateral were at 8.7 percent rather than the 3-some
13 percent that supposedly the company may be doing on its
14 internal books, but the reality of the world was that in
15 order to pay that note it had to be paid at 8.75 percent,
16 would it not be an argument that the full amount needed to
17 be considered in the rates in order for those -- in order
18 for the regulated assets to continue to be able to be
19 serving those customers that were out there that we have
20 been given authority to look after?

21 A. Yes. I -- I believe that's true. And to I
22 think carry -- and I don't mean to try to read your
23 thoughts, but maybe carry that thought process a little bit
24 further, let's say the company is successful in converting
25 the nonregulated debt through an equity issuance to equity

1 or convertible.

2 They could make that argument also that
3 certainly these investors deserve a return on this
4 investment and the costs associated with that and the
5 argument that those costs should be included in the rates.
6 That argument could be made too.

7 COMMISSIONER GAW: I want to stop there,
8 Judge. Thank you.

9 JUDGE PRIDGIN: Commissioner Gaw, thank you.
10 Commissioner Clayton?

11 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

12 Q. Mr. Bible, just very quickly just so I
13 understand. In the conversation that you had with
14 Commissioner Murray, you mentioned that we're talking a
15 chain of events that are occurring here.

16 And if you look forward to 2005 or 2006, the
17 year that you had mentioned earlier about -- about the end
18 result being a vertically integrated electric utility and
19 that your concern was that the regulated assets would be
20 paying on the debt, couldn't that occur right now since the
21 money has already changed hands?

22 A. Yes.

23 Q. Okay. Does it make a difference whether the
24 assets are encumbered?

25 A. You know, that's been problematic with me too

1 because I've heard the argument that, you know, whether --
2 whether you approve this or not, these lenders have access
3 to these assets in the event of bankruptcy.

4 And then -- but that makes me wonder then why
5 are they so interested -- if they already have access to it,
6 why are they so interested in having it pledged for
7 collateral? What's the big deal from their part? And
8 that's a question that I haven't -- you know, I haven't
9 heard the answer to and that's problematic with me.

10 I mean, okay. If they've already got access
11 to it, why are we even going through this case and having
12 the company come in and request that the assets be pledged?
13 I mean, 75 basis points is nothing when you consider the
14 dollar amount. And -- and any -- even if they, you know,
15 went from 8.75 to 8, if they're only going to charge the
16 utilities 3, they're not going to recover it anyway, so --
17 if that's the reality of it. So -- I'm sorry. It's just
18 problematic.

19 COMMISSIONER FORBIS: Okay. Thank you.

20 QUESTIONS BY JUDGE PRIDGIN:

21 Q. I think I just have just a few questions.
22 I'll try to make this as brief as I can because it's been a
23 long time since business school.

24 Is it your testimony, Mr. Bible, that
25 regardless of what the Commission might do in a rate case,

1 that it is the regulated ratepayers who will ultimately pay
2 the cost of whatever burden this proposed transaction might
3 incur?

4 A. I -- at the implementation of the company's
5 plan -- successful implementation of it and their return to
6 a vertically integrated utility with only incidental
7 nonregulated operations, I don't see any other source of
8 significant enough income to cover any of their costs except
9 the ratepayers.

10 Q. And is the basis of that theory, that even if
11 the Commission, for example, denied an increase in rates to
12 cover whatever costs it incurs, that the Commission cannot
13 control what Aquila does with whatever revenue it receives?

14 A. That's -- that's correct. Not the way they're
15 set up now.

16 JUDGE PRIDGIN: All right. Thank you.

17 This appears to be as convenient a time as any
18 to break for lunch since I have about 12:15.

19 And let me do just a couple of housekeeping
20 matters. Again, inform the parties I've been informed that
21 we're going to take witnesses out of order to accommodate
22 the Intervenor's witness, Mr. Gorman. And I understand he's
23 going to testify some time this afternoon. And I will leave
24 it up to the parties maybe after lunch to inform me of the
25 most convenient time, if we want to take him immediately

1 after Mr. Bible or whatever. I'll be glad to accommodate
2 the parties.

3 And also to let the parties know that this
4 room is going to be holding a local public hearing in a
5 separate case at five o'clock, so we will need to wrap up
6 before 5:00, probably somewhere -- I don't know, 4:00, 4:30
7 just to warn counsel to watch time and to let -- not just
8 immediately shut things down before five o'clock and you not
9 to know the reason why.

10 So I show about 12:15 on the clock. Can we
11 try to get back roughly 1:30 or so to resume? All right.
12 We will go in recess. We are off the record.

13 (A RECESS WAS TAKEN.)

14 JUDGE PRIDGIN: We'll go back on the record.
15 We have resumed the Aquila hearing. It is now 1:35 in the
16 afternoon. I believe that the Commission and the Bench has
17 finished questioning Mr. Bible, so I will let this witness I
18 guess be recrossed.

19 Let me see. Mr. Finnegan, did you have any
20 questions?

21 MR. FINNEGAN: No questions.

22 JUDGE PRIDGIN: Thank you.

23 Mr. Micheel?

24 MR. MICHEEL: No, your Honor.

25 JUDGE PRIDGIN: Mr. Molteni?

1 MR. MOLTENI: I think I have a couple.

2 RE CROSS-EXAMINATION BY MR. MOLTENI:

3 Q. Mr. Bible, you recall Commissioner Gaw, I

4 believe it was, asking you about if you sever MoPub from

5 Aquila, what remains. Do you recall that line of

6 questioning?

7 A. Yes.

8 Q. And one of the things you said was senior

9 management, I think. Do you remember that?

10 A. Yes.

11 Q. If you sever MoPub from Aquila, another thing

12 that remains is a huge debt caused by the nonregulated

13 assets; isn't that correct?

14 A. Yes.

15 Q. And do you recall Commissioner Murray asking

16 you what's the detriment in this case --

17 A. Yes.

18 Q. -- that line of questioning?

19 And coupled that with Commissioner Gaw's

20 questioning about oversight and control?

21 A. Supervision.

22 Q. Supervision, I think. That's right. That's

23 the term he was using.

24 A. Sure.

25 Q. Would you agree oversight is a --

1 A. Suitable term to use also, yes.

2 Q. Would you agree with me, Mr. Bible, that the

3 quality of management of a utility affects ratepayers?

4 A. I believe it does, yes.

5 Q. And that who controls the management of the

6 utility can impact ratepayers?

7 A. Yes. I believe it does.

8 Q. Would you agree with me that if a Missouri

9 regulated utility's assets are controlled by speculative

10 investors and junk bonds, that would be a detriment to

11 ratepayers or the public in general?

12 A. I certainly think their interests would not be

13 aligned with the interests of the ratepayers. And in such a

14 manner that I believe that there's a very strong potential

15 that it would be a detriment.

16 MR. MOLTENI: Thank you.

17 JUDGE PRIDGIN: Thank you, Mr. Molteni.

18 Mr. Boudreau -- or I'm sorry, Mr. Swearengen?

19 MR. BOUDREAU: Mr. Swearengen will handle it.

20 Thank you.

21 RE CROSS-EXAMINATION BY MR. SWEARENGEN:

22 Q. Good afternoon, Mr. Bible.

23 A. Afternoon.

24 Q. Is this on?

25 Let me start by visiting with you for a minute

1 about a topic that you addressed this morning in response to
2 a question from the Bench. And it concerned some of the
3 informal interviews that I think you and some of the other
4 Staff participants had with Aquila representatives in
5 connection with this proceeding.

6 Do you recall about when that was, when those
7 interviews took place, just approximately?

8 A. I believe it was some time around June or
9 July.

10 Q. And did they take place up in Kansas City,
11 Missouri?

12 A. I believe there was Staff in Kansas City,
13 Missouri, there was Staff here.

14 Q. And the Staff that was here in Jefferson City
15 participated by telephone?

16 A. Yes.

17 Q. And were you here in Jefferson City or did you
18 travel up to --

19 A. I participated here in Jefferson City by
20 telephone.

21 Q. Okay. And I've read a transcript or partial
22 transcript of one of those interviews. And I believe
23 Mr. Empson was involved and there were some questions from
24 you concerning generally the subject of Aquila's or
25 UtiliCorp's study, which was conducted back in the 1980's to

1 determine the appropriate capital structures for each of its
2 operating utility divisions. Do you recall some general
3 conversation about that topic in the context of those
4 interviews?

5 A. Yes. In general, I do, yes.

6 Q. And at that time, according to my reading of
7 the transcript of those interviews, you asked for a copy --
8 or someone on the Staff asked for a copy, I believe it was
9 you, asked for a copy of that study. And according to the
10 transcript, a copy was furnished to Steve Dottheim or Steve
11 Traxler of the Commission Staff. Is that your recollection
12 of --

13 A. Yes.

14 Q. -- what happened?

15 A. Yes.

16 Q. And this morning I think in response to a
17 question from the Bench, you indicated that you had not
18 received that study. And I wanted just to visit with you
19 for a second, hand you what I believe to be that study and
20 ask you if you, in fact, did receive that?

21 A. Okay.

22 Q. And for the purposes of the record, would you
23 just identify what I handed you, please?

24 A. It's titled UtiliCorp United, Inc. Business
25 Unit Capitalization Procedures. The next line is Executive

1 Summary.

2 Q. And did you, in fact, receive a copy of that
3 from one of your Staff colleagues some time after the
4 interviews in Kansas City?

5 A. This appears to be what I had received, yes.

6 Q. Fine. And in connection with that, did you
7 issue any follow-up data requests -- formal or informal data
8 requests to the company to inquire about any back-up
9 material or other material related to that study?

10 A. No, I didn't.

11 Q. Okay. Thanks.

12 Now, let me ask you one other question about
13 it. Turning to page 5 of that study under Objectives, would
14 you just read the one that's highlighted, please, No. 3?

15 A. Number 3 is to insulate each business unit
16 from the activities of other business unit and from
17 UtiliCorp operations.

18 Q. Okay. Thank you.

19 That was one of six objectives listed on
20 page 5 for the study that was performed. Is that your
21 understanding?

22 A. Yes.

23 Q. Mr. Bible, what is your understanding as to
24 how this capital allocation process that UtiliCorp put in
25 place back in the 1980's, what is your understanding of how

1 that worked?

2 A. It was my understanding that -- I think it was
3 a company consultant, Mr. Dunn, had done an analysis and
4 come up with -- I think the way it was referred to was a
5 capital structure allocation model. And the company had
6 implemented that, you know, for rate cases and various other
7 internal needs.

8 And when -- when we got into the discussion on
9 asking the questions on insulation and the model and stuff
10 like that, that's what I had envisioned when I asked for the
11 documentation on that.

12 And when I got this documentation, it talked
13 about that analysis and the model, but it did not include
14 it. Therefore, you know, I -- I was, you know, of the, I
15 guess, opinion that that was the extent of what the company
16 had done and that that analysis -- that was the extent of
17 the analysis, when in fact, I was looking for something more
18 extensive as far as an analysis.

19 Q. I understand. And, once again, you didn't
20 issue any follow-up requests to the company to provide any
21 additional data?

22 A. No. Because what I got was I thought the
23 extent of what the company had available.

24 Q. Let me ask you this, sir. Are you familiar
25 with the history of the litigation before this Commission on

1 the -- on Aquila/UtiliCorp's capital allocation process?

2 A. I can't say that I'm familiar with all of it.
3 There are a few cases where -- rate cases where the company
4 has proposed their capital allocation methodology be adopted
5 for setting rates.

6 I know a couple of cases were fully
7 adjudicated. One of them was not heard fully and was -- was
8 settled. And the two fully adjudicated cases the Commission
9 determined that the consolidated capital structure as
10 recommended by Staff should be used. In the not fully
11 adjudicated one where they didn't hear all the evidence,
12 they adopted the company's methodology.

13 Q. With respect to that case that you indicate
14 that was -- what you call not fully adjudicated, was that
15 Case No. ER-93-37?

16 A. That -- I believe that's correct.

17 MR. SWEARENGEN: Could I approach the witness?

18 JUDGE PRIDGIN: You may.

19 BY MR. SWEARENGEN:

20 Q. Mr. Bible, I'm going to hand you a copy of
21 that Report and Order in that case. And I'm going to ask
22 you to read into the record, if you would, the highlighted
23 paragraph at the end of page 38 of that order.

24 A. Because MoPub must raise capital through
25 UtiliCorp, the use of UtiliCorp's consolidated capital

1 structure may be a valid approach. However, this is not the
2 best approach for this case because UtiliCorp is comprised
3 of both operating utility divisions and unregulated
4 subsidiaries and its capital structure reflects that mix.

5 Use of MoPub's assigned capital structure will
6 help insulate it to some extent from UtiliCorp's unregulated
7 subsidiaries and the assigned structure is actually
8 analogous to the capital structures of comparable electric
9 utilities.

10 Q. Thank you.

11 I think the Bench asked you some questions
12 this morning about what I will call the Staff report on
13 Aquila dated December 2002, which was an attachment to Joan
14 Wandel's testimony. Are you familiar with that study --

15 A. Yes.

16 Q. -- and the questions in connection with that?

17 And you participated in the preparation of it
18 or you did not?

19 A. I contributed to it.

20 Q. Okay. I'm looking -- and I believe this is in
21 evidence already. I'm looking at Schedule 1-23. Do you
22 have -- do you have a copy of it there with you?

23 A. No, I don't.

24 MR. SWEARENGEN: Can I approach the witness?

25 JUDGE PRIDGIN: You may.

1 BY MR. SWEARENGEN:

2 Q. Mr. Bible, would you once again bear with me
3 and just read into the record so we have it at this point in
4 the transcript the material that begins at the paragraph
5 beginning, While Aquila's financial problems, and ends down
6 here with this sentence, please?

7 A. With this one?

8 Q. Right.

9 A. While Aquila's financial problems are
10 significant and these problems are expected to continue
11 through the next year, there's no immediate threat to
12 Aquila's Missouri ratepayers through an increase in rates.

13 If Aquila files for a rate increase for its
14 MPS or L&P service areas to recover Aquila's higher costs
15 related to problems generated from its nonregulated business
16 operations, the Commission has several rate-making options
17 it can employ to prevent a negative impact on Aquila's
18 Missouri ratepayers.

19 To prevent or mitigate Aquila's higher cost of
20 capital from being charged to Missouri ratepayers, the
21 Commission can order the use of a hypothetical capital
22 structure for rate-making purposes to determine the
23 appropriate mix of debt and equity that is appropriate for
24 MPs and/or L&P. This capital structure would not be
25 dependent on the capital structure currently in effect for

1 Aquila.

2 Q. Thank you.

3 Do you have your Rebuttal Testimony there with

4 you?

5 A. Yes.

6 Q. Would you take a look at -- turn to page 13,

7 please. Do you have that in front of you?

8 A. I have it.

9 Q. And do I understand correctly that starting on

10 line 12 -- excuse me, starting on line 11 you have a

11 question and answer concerning Standard and Poor's providing

12 examples of insulating conditions?

13 A. Yes.

14 Q. And then you go ahead and list the S&P

15 insulating conditions; is that correct?

16 A. Yes.

17 Q. And they're divided into two categories; is

18 that true? One is structural installation and the other is

19 regulatory installation; is that true?

20 A. Yes.

21 Q. What's your understanding of the meaning of

22 those two terms, structural insulation and regulatory

23 insulation?

24 A. To me, structural insulation is -- is the

25 structure, the physical relationships that the company has

1 with other entities. Regulatory insulation is restrictions
2 or conditions that would or could be put upon the company by
3 regulatory entities.

4 Q. I think this morning there was some question
5 to you about the possibility of putting -- of this
6 Commission ordering, I believe, that the Missouri utility
7 operations of Aquila be placed in a separate subsidiary. Do
8 you remember that? Was that your answer in response to a
9 question from the Bench?

10 A. I don't recall. I think there was -- the
11 reference was asking me if that was something that could be
12 done. I don't recall.

13 Q. Is that something you think that could be
14 done?

15 A. Would you repeat what you're referring to as
16 could be done?

17 Q. The Commission directing or ordering that
18 Aquila's Missouri operating utilities be placed in a
19 separate subsidiary.

20 A. I don't know if the Commission has the
21 authority to do that. I wouldn't know.

22 Q. Regulatory insulation under the -- under that
23 column you've got -- there are several items listed. The
24 second is entitled Restrictions on Debt as a Percentage of
25 Capital?

1 A. Yes.

2 Q. Would that concept be similar to the

3 hypothetical capital structure concept?

4 A. No. No.

5 Q. And why would it not be?

6 A. This is actual debt to total capital. Not

7 some hypothetical or allocated or assigned.

8 Q. Let me ask this question. From a regulatory

9 standpoint, has this Commission in the past ever utilized a

10 hypothetical capital structure?

11 A. I believe they have in a rate-making setting.

12 Q. And is that what we're talking about here with

13 S&P's insulation conditions under regulatory?

14 A. No.

15 Q. What are we talking about?

16 A. We're talking about S&P's view of the

17 creditworthiness of a business entity.

18 Q. So it's your understanding that S&P would say

19 from a regulatory standpoint, a regulatory body could not

20 use a hypothetical capital structure, but rather would have

21 to order that the entity that's regulating have some sort of

22 an actual capital structure with restrictions on debt as a

23 percentage of capital? Is that your testimony?

24 A. No. What I'm saying is for -- for Standard

25 and Poor's to recognize this condition as a means or a

1 condition that would contribute to insulation, there would
2 actually have to physically be a restriction on total debt
3 to total capital.

4 Q. And when you say "physically," explain how
5 that works.

6 A. Well, you know, it just has to be real, not
7 something that's assigned or allocated. I mean, it actually
8 has to physically exist.

9 Q. So that would be an actual capital structure?

10 A. Yes.

11 Q. The fourth item under Regulatory Insulation
12 says, Debt rating targets established by a Commission.
13 Could that be the same as the Commission saying for
14 rate-making purposes, we're going to allow cost of
15 short-term debt at a certain rate?

16 A. No.

17 Q. And why not?

18 A. That means -- that would be an order from the
19 Commission directing the company to do what it needed to do
20 to get a certain target credit rating from the credit rating
21 agency.

22 Q. The next item which appears at the top of
23 page 14 is entitled Limitations on the Amount of Investment
24 in Non-utility Businesses. Would a restriction in a
25 utility's loan covenant that limited the amount of

1 investment that the utility could make in non-utility
2 businesses meet that standard?

3 A. I -- I'd have to -- I mean, this is something
4 that the credit rating agency would have to evaluate and
5 tell you whether or not that was adequate for them to view
6 it as an insulating condition that they would recognize and
7 acknowledge that contributes to insulation. I couldn't tell
8 you if the specific covenant would -- would satisfy them.

9 Q. Turning to another topic, I think you and
10 Commissioner Gaw became engaged in a conversation that
11 suggested that if the Commission would approve a financing
12 of any utility, that it would somehow then become either
13 legally or morally obligated in a subsequent rate case to
14 reflect the actual costs of that financing in rates. Do you
15 remember that?

16 A. Yes.

17 Q. Is that your view of how this Commission has,
18 in the past, treated financing costs?

19 A. I can't speak to how the Commission has
20 treated financing costs in general in the past. I've been
21 here a little over six years.

22 Q. Are you familiar with any financing orders
23 that have been issued by this Commission that indicate that
24 they are not binding for rate-making purposes?

25 A. I am -- I am familiar with conditions being

1 put in to approvals of financing cases that address -- that
2 that would not be construed as binding for rate-making
3 purposes.

4 Q. So the answer is yes?

5 A. Well, you'd have to repeat the question. You
6 asked me a question in between --

7 Q. The question is, are you familiar with any
8 orders of this Commission in financing cases which state
9 that the orders are not binding for rate-making purposes?

10 A. In the financing cases?

11 Q. Yes.

12 A. Yes. I am familiar with conditions that state
13 that the orders in the financing cases are not binding for
14 rate-making purposes.

15 Q. So this dialogue that you had with
16 Commissioner Gaw this morning would be a departure from that
17 past Commission practice of those orders now becoming
18 binding for rate-making purposes. Is that what you're
19 saying?

20 A. No. I don't recall our conversation
21 addressing that at all.

22 Q. Well, I thought you just said a minute ago
23 that you and Commissioner Gaw had a dialogue where you
24 agreed that if the Commission approves a financing case,
25 they're either legally or morally bound in a subsequent rate

1 case to allow those costs to be passed on.

2 A. No. I believe I agreed that that -- the case
3 could be made for that. I don't believe I agreed that that
4 was the case, but that case could be made, an argument could
5 be made.

6 Q. That argument could be made by?

7 A. Anybody.

8 Q. Anybody. And let's talk about the company,
9 for example. Let's say that a company entered into a
10 financing arrangement but agreed that for purposes of
11 rate-making, whatever those actual costs were, they would
12 not seek recovery of those in a subsequent rate case, but
13 would seek some other level of costs.

14 Given that scenario, what issue would you have
15 with that sort of a condition in a financing case? Would
16 that not be similar to the statement that it's not binding
17 for rate-making purposes?

18 A. Well, first of all, you referred to financing
19 cases and this is not a financing case.

20 Q. No. I'm asking you about financing cases.
21 I'm not asking you about this case.

22 A. But you're drawing an analogy between
23 financing cases and the statement that it's not binding for
24 rate-making purposes. And this is not a financing case.

25 Q. I'm asking you about financing cases, because

1 that's what I understood your discussion this morning to
2 pertain to.

3 A. Okay. You just said this was about this case.

4 Q. No. I said it's not. I'm asking you about
5 financing cases in general.

6 A. Okay.

7 Q. What's the answer to my question?

8 A. Well, what's the question?

9 Q. Is that type of a condition -- if the company
10 says that they're willing to state, as a condition of
11 approval in a financing case, that they will not seek
12 recovery of those financing costs in the subsequent rate
13 case but they will seek some other lower level, isn't that
14 the same as the Commission directing that the order's not
15 binding for rate-making purposes?

16 A. I -- I don't see that it is. I mean --

17 Q. And why not? Why isn't that the same?

18 A. I see it as the Commission -- or the company
19 citing some sort of pledge, but I don't see anything coming
20 from the Commission.

21 Q. What if that pledge becomes a part of the
22 order?

23 A. It still doesn't address binding for
24 rate-making purposes. Just says we won't seek out a higher
25 rate.

1 Q. And you don't think that's the same?

2 A. I don't see it as the same. I mean --

3 Q. What kind of a pledge would the company have

4 to make, in your mind, to be the same as not binding for

5 rate-making purposes?

6 A. You've got me confused. To be honest with

7 you, I'm not -- I mean, I don't understand what you're

8 talking about.

9 Q. Well, I think that's probably true. Let me

10 ask this question. You and Commissioner Gaw talked this

11 morning about financing cases --

12 A. Yeah.

13 Q. -- and the concept that if the Commission

14 approves a financing case, it's somehow bound to allow those

15 costs to be recovered in rates in the future?

16 A. I -- see, what I remember is the discussion

17 was could someone argue -- could someone make a case that

18 that would be -- and I agreed with that. I -- I don't think

19 we were talking any definitive is it yes or no. That -- I

20 would think he would leave -- reserve the right to make that

21 judgment at the time. I think --

22 Q. That the Commission would reserve the right in

23 the rate case to decide whether or not --

24 A. Or in the approval of this to -- to decide

25 whether or not it should be binding for rate-making

1 purposes. I think he was -- at least that was my impression
2 of our discussion. He was proposing could that --
3 Q. And that's fair enough.
4 A. -- argument be made.
5 Q. So let me go back to my original question
6 then. In most cases does not the Commission say, this order
7 is not binding for rate-making purposes, in most financing
8 cases?
9 A. In -- in most cases I can't -- I can't say
10 that -- again, I've been here six years. I don't know.
11 Q. What about for the six years you've been here?
12 Has the Commission issued any financing orders that did not
13 contain that language?
14 A. I -- I don't recall. It's possible --
15 Q. You don't know?
16 A. -- they did, I just don't know.
17 Q. Okay. Do you monitor the financial condition
18 of Aquila on a regular basis in any respect?
19 A. I personally don't, no.
20 Q. Do you keep up with the financial literature
21 that talks about Aquila's circumstances and conditions?
22 A. Press releases and news releases, I do.
23 Q. Do you read any reports from entities like
24 rating agencies and --
25 A. Yeah.

1 Q. -- things of that sort?

2 A. Yes.

3 Q. I think you made the statement this morning in
4 response to a question that Aquila could successfully
5 implement a plan but end up with a B credit rating in
6 several years and have left over nonregulatory debt. Do you
7 recall making that statement?

8 A. Something to that effect, yes.

9 Q. Okay. Well, what did you say exactly?

10 A. I said that, you know, I have read reports
11 from Standard and Poor's that has indicated that for them to
12 maintain their current B credit rating was contingent upon
13 them successfully implementing their plan.

14 And that you could envision at the end of the
15 successful implementation of that plan, that you would have
16 a vertically integrated utility, which is the goal of the
17 company, with a B credit rating and a significant amount of
18 nonregulated debt.

19 Q. You could envision that?

20 A. Yes.

21 Q. The Standard and Poor's report that you're
22 referring to, how recent was that?

23 A. I don't recall the exact date. It might have
24 been April or October.

25 Q. Have you seen anything in the recent financial

1 literature that suggests or indicates that Aquila is making
2 some progress in restoring its financial condition?

3 A. Where -- where someone has stated that they
4 are making progress in restoring their financial condition?

5 Q. Sure.

6 A. No. I don't recall that.

7 Q. Let me refer you to -- again, to the Staff
8 report, if I could, please.

9 MR. SWEARENGEN: May I approach the witness?

10 JUDGE PRIDGIN: You may.

11 BY MR. SWEARENGEN:

12 Q. Mr. Bible, I have tabbed two pages here and
13 highlighted some language in blue. First, I'm looking at
14 Schedule 1-3 of that report. And I'm going to ask you to
15 read into the record the language I've highlighted and then
16 if you would do the same with the language over on page
17 1-10.

18 A. Just the highlighted part?

19 Q. Yes, please.

20 A. Following Enron's collapse last year, many
21 energy companies have suffered from falling power prices,
22 decreased trading activity and lowered investor confidence
23 as well as an industry-wide credit squeeze. This situation
24 has had significantly negative impact on Aquila's financial
25 condition forcing it to sell assets, cut costs and seek

1 other means to raise cash.

2 Aquila following the collapse of Enron. The
3 financial collapse of Enron saw the beginning of significant
4 impacts on the utility industry and specifically certain
5 electric companies. Aquila was a company that was
6 significantly impacted following Enron's financial demise.

7 Enron formalized its financial collapse by
8 filing for bankruptcy on December 2nd, 2001. The impacts on
9 Aquila of the Enron financial collapse can be illustrated by
10 the change in Aquila's debt credit ratings.

11 Q. Thank you.

12 Mr. Bible, are you aware of the requirements
13 that Aquila has with the Federal Energy Regulatory
14 Commission to obtain approval for financings that it
15 undertakes?

16 A. Not specifically any specific agreement
17 between Aquila and them, no.

18 Q. Well, what do you know about their requirement
19 to seek FERC approval for finances?

20 A. I'm aware that -- I believe it was either the
21 FERC or the SEC, I may be mixing them up, promulgated some
22 requirements as far as what the proceeds would be used for
23 for a regulated utility.

24 Q. Do you know whether or not Aquila obtained
25 approval from any federal agencies in connection with the

1 loan that's the subject of this case?

2 A. No, I don't.

3 Q. And to the extent that Aquila would like to do

4 any additional financings, would you agree with me that it

5 would have to first seek FERC approval?

6 A. I -- I don't know if Aquila has to

7 specifically seek FERC approval.

8 Q. To the extent that Aquila would undertake such

9 a financing which would be secured by assets in this state,

10 would you agree with me that it would have to come to this

11 Commission to get approval to do that?

12 A. Well, I guess it hasn't in this case because

13 they did it first. So I would have to say no. I mean --

14 Q. So it's your --

15 A. It's conceivable there is an instance where

16 Aquila can go out and do financing with the intent of

17 encumbering the assets here and not ask for permission to do

18 the financing first and then come in and ask for

19 encumbrance, which is what we have in the case here.

20 Q. Let me ask this question now. Let's assume

21 that Aquila is going to issue some debt that must be secured

22 by Missouri utility assets. Under those circumstances,

23 would you not agree with me that Aquila would have to come

24 to this Commission to get approval to issue that debt and

25 secure the assets -- excuse me, and secure the debt with the

1 Missouri assets?

2 A. Well, again, I see in this case they have done
3 the first step without securing that permission.

4 Q. So you think that the situation that I just
5 described to you in my question is the same as the
6 circumstance that's in front of the Commission in the
7 present case?

8 A. That's what it sounded like to me.

9 Q. Okay. So it's your understanding -- let me
10 ask you this. Is it your understanding that Aquila has an
11 obligation under its loan agreements to secure those loans
12 with Missouri assets?

13 A. I -- I don't know that it's Missouri assets.
14 I mean, I know they have been -- there has been a condition
15 put in their loan agreement that they would make their best
16 effort to secure those loans with regulated utility assets.
17 I don't know that I saw where Missouri was specifically
18 named in there.

19 Q. Hypothetically assume with me, if you would,
20 that instead of making their best efforts to secure a loan,
21 they're required to get approval of this Commission to
22 utilize their assets in Missouri to secure a loan. Wouldn't
23 you assume under those circumstances the company would come
24 to this Commission and get approval?

25 A. Well, and again, in the case that you've --

1 you're citing as that example, I mean, this lender has told
2 them to go get utility assets as collateral, but they loaned
3 them the money first --

4 Q. You're talking about --

5 A. -- to do that.

6 Q. -- the case that's before the Commission. I'm
7 talking about a hypothetical case where in the future Aquila
8 desires to go out and borrow some additional money, but is
9 required under the financial agreements to receive approval
10 of this Commission to pledge its Missouri assets as
11 collateral for the loan. Wouldn't you expect, under those
12 circumstances, that Aquila would come to this Commission to
13 get that approval?

14 A. I don't know that I would. I think it would
15 be up to the company to interpret what that means and they
16 would decide whether or not they're going to file for
17 permission.

18 Q. So you think that a lender would, under those
19 circumstances, loan them the proceeds without getting
20 approval of this Commission and the security that would come
21 with it?

22 A. I think that's possible.

23 Q. And what lender do you think would do that?

24 A. Well, I -- I don't have anybody particular in
25 mind.

1 Q. Are you aware that there is now a FERC
2 application pending by Aquila for authority to issue
3 convertible debt and equity?
4 A. I believe I saw something to that effect.
5 Q. Where did you see that?
6 A. It might have been in a news release.
7 Q. If the cost of doing business for a utility
8 such as Aquila is not covered by the rates that it charges
9 its customers, wouldn't you agree that the shareholders will
10 end up paying those costs perhaps by foregoing the dividend?
11 A. I -- shareholders are not entitled to a
12 dividend. The dividend is a discretionary item. Certainly
13 shareholders will look for a return on an equity investment,
14 but that can come in the form of capital appreciation and
15 growth also. It doesn't have to come in the form of a
16 dividend.
17 So, you know, I don't see how you can construe
18 foregoing something that you aren't really legally entitled
19 to as creating some kind of payback or paying off a
20 financial obligation that does have a legal requirement to
21 pay it. And by that I mean debt.
22 Q. If the cost of a utility doing business are
23 not covered by the rates which the utility charges its
24 company, would you not agree that the shareholders end up
25 paying for those costs or eating those costs or absorbing

1 those costs in one form or another?

2 A. No. I wouldn't agree that that would be the

3 situation.

4 Q. Have you done a study to show that the

5 retention of dividends by Aquila will not cover any costs

6 which it might experience in excess of the rate revenue it

7 receives from its customers?

8 A. No, I haven't.

9 MR. SWEARENGEN: I believe that's all I have.

10 Thank you.

11 JUDGE PRIDGIN: Mr. Swearengen, thank you.

12 Mr. Frey, any redirect?

13 MR. FREY: Yes. Thank you, your Honor.

14 MR. FREY: As an aside, I would like to credit

15 Mr. Conrad as the original source of that elephant in the

16 room comment.

17 MR. MICHEEL: It was a gorilla.

18 MR. FREY: I believe he used that in his

19 opening statement.

20 REDIRECT EXAMINATION BY MR. FREY:

21 Q. Mr. Bible, Mr. Finnegan asked you a couple of

22 questions concerning the debt rate to be associated with

23 Triple B indebtedness. Do you recall that?

24 A. Yes.

25 Q. When you discussed -- and I believe you

1 indicated the range would be 6 to 7 percent, did you not?

2 A. Yes. That's out of Moody's bond record.

3 Q. Okay. And was this rate associated with

4 short-term or long-term debt?

5 A. It was long-term debt.

6 Q. And what is the normal period of time

7 associated with 6 to 7 percent debt for a Triple B rated

8 utility?

9 A. That would typically be bonds of a maturity

10 15 to 20 years or greater.

11 Q. Okay. Thank you.

12 In response to a question from one of the

13 Commissioners, and I believe Commissioner Clayton reiterated

14 it in a statement he made, I believe you said that -- in

15 your testimony that Aquila was going -- its plan was to

16 return to a regulated utility structure and I think you said

17 electric utility. Do you understand -- do you acknowledge

18 as well that it will be a regulated natural gas utility as

19 well?

20 A. Yes. I understand that it will have electric

21 and natural gas operations.

22 Q. Commissioner Gaw I believe discussed with you

23 debt -- asked some questions concerning secured debt. He

24 asked you a number of questions regarding that.

25 And my question to you is, in your experience,

1 when a utility has requested approval for the issuance of
2 secured debt, have those approvals contained conditions
3 regarding the use of those funds?

4 A. Yes, they -- they do.

5 Q. Can you give some examples of those
6 conditions?

7 A. Typically there's an overall condition that
8 the use of the funds is restricted exclusively for the
9 regulated operations and not for regulated or other
10 operations of the company.

11 Q. Can you cite today some recent approvals of
12 this Commission of secured debt?

13 A. There's been recent Laclede Gas Company case,
14 recent Ameren case -- AmerenUE case where those conditions
15 have been -- among others, have been included and adopted or
16 approved by the company as well as the Commission.

17 Q. Thank you.

18 A point of clarification. With respect to
19 only -- with respect only to Missouri corporations, is it
20 your understanding that Missouri corporations need the
21 approval of this Commission to issue long-term debt
22 regardless of whether it's secured or unsecured debt?

23 A. That's -- that's my understanding.

24 Q. Is Aquila a Missouri corporation?

25 A. Not to my knowledge.

1 Q. Mr. Swearngen asked you a question or two
2 regarding UtiliCorp capital allocation procedures. Do you
3 recall that?

4 A. Yes.

5 Q. In your opinion, has UtiliCorp been successful
6 in protecting its regulated operations from the negative
7 impacts of its nonregulated operations?

8 A. Not in my opinion, it hasn't.

9 Q. With respect to financing cases, he asked you
10 a series of questions regarding financing cases. Do you
11 recall those?

12 A. Yes.

13 Q. To your knowledge, has the Commission -- has
14 this Commission disallowed the costs of any financing it has
15 approved?

16 A. In what context? In the context of approval
17 of the financing or rate case or --

18 Q. Rate case. Rate case.

19 A. Not to -- not to my knowledge. I don't recall
20 any specific disallowances of any particular cost for any
21 financings.

22 Q. Thank you.

23 And Mr. Swearngen asked you to read into the
24 record some language regarding the failure of Enron. Do you
25 recall that?

1 A. Yes.

2 Q. Is Aquila here today seeking relief in this
3 proceeding because of Enron's collapse or is it because of
4 the misadventures of its own nonregulated operations?

5 A. I don't think anybody can blame Enron for
6 their own particular specific circumstances.

7 MR. FREY: Thank you, Mr. Bible. I have no
8 further questions.

9 JUDGE PRIDGIN: Mr. Frey, thank you.

10 May this witness be excused?

11 Hearing no objections, Mr. Bible, thank you
12 very much, sir, for your time and your testimony.

13 I see next on the list is Lena Mantle from
14 Staff, but I also understand that we need to take Mr. Gorman
15 out of order. Do the parties have a specific time in which
16 they wanted to take Mr. Gorman?

17 MR. FINNEGAN: I'd like to do him now, your
18 Honor. Because if we're closing at 4:00 or 4:30, I'd like
19 to get him off. I don't know how many questions there are
20 going to be.

21 JUDGE PRIDGIN: Do I hear any objections or
22 preferences otherwise?

23 Hearing no objections, Mr. Gorman, if you
24 would, please come forward to be sworn.

25 (Witness sworn.)

1 JUDGE PRIDGIN: Thank you, Mr. Gorman. Please
2 have a seat.
3 Mr. Finnegan, when you're ready, sir.
4 MICHAEL GORMAN testified as follows:
5 DIRECT EXAMINATION BY MR. FINNEGAN:
6 Q. Would you state your name, please, for the
7 record?
8 A. Michael Gorman.
9 Q. And where do you reside?
10 A. Business address is 1215 Fern Ridge Parkway,
11 St. Louis, Missouri.
12 Q. And are you with the firm of Brubaker and
13 Associates, Inc.?
14 A. I am.
15 Q. Have you filed testimony in this case and some
16 exhibits?
17 A. Yes.
18 Q. Do you have before you that testimony and
19 exhibits, which I believe were marked Exhibit 38 in this
20 case?
21 A. I do have that, yes.
22 Q. Okay. And does this exhibit consist of eight
23 pages of testimony and Appendix A and several schedules?
24 A. One schedule with several pages, yes.
25 Q. Okay. One schedule -- index Schedule 1 and it

1 has several pages; is that correct?

2 A. Yes.

3 Q. Okay. Are there any changes or anything

4 different you'd say in this than you have said in this

5 testimony --

6 A. No.

7 Q. -- at this time?

8 No corrections?

9 And if I were to ask you the questions that

10 are here, would your answers be the same or substantially

11 the same as they were when you wrote this testimony?

12 A. They would.

13 MR. FINNEGAN: At this time I'd like to offer

14 Exhibit 38 and to tender the witness for cross-examination.

15 JUDGE PRIDGIN: Mr. Finnegan, thank you.

16 Any objections to Exhibit 38?

17 MR. BOUDREAU: I would ask the Bench to

18 reserve ruling on admission until I have a chance to ask

19 some questions. I may have an objection.

20 JUDGE PRIDGIN: We'll withhold and give you

21 the chance to ask.

22 MR. BOUDREAU: I may have some questions that

23 go to admissibility.

24 JUDGE PRIDGIN: Do you need to voir dire the

25 witness now or do you want to wait and do that on your

1 cross?

2 MR. BOUDREAU: I was planning on doing it at
3 the time of my cross, but I can do it now.

4 JUDGE PRIDGIN: I mean, why don't you do it
5 now because I think otherwise it may become pointless to let
6 him testify and then you don't have a proper and timely
7 objection.

8 MR. BOUDREAU: Very good.

9 VOIR DIRE EXAMINATION BY MR. BOUDREAU:

10 Q. Good afternoon, Mr. Gorman.

11 A. Good afternoon.

12 Q. I always have to check my watch. I just have
13 a few questions for you.

14 My name is Paul Boudreau. I'm attorney for
15 the applicant, Aquila, Inc.

16 A. Afternoon, Paul.

17 Q. I wanted to ask you if you're being asked to
18 testify here today as a fact witness or an expert witness?

19 A. An expert witness.

20 Q. Okay. And am I to understand that your expert
21 opinion deals with whether encumbering -- whether Aquila
22 being permitted to encumber its Missouri utility properties
23 to secure the first mortgage bonds under the term loan would
24 preclude Aquila from establishing a dedicated line of credit
25 for Missouri utility operations? Is that the crux of your

1 testimony?

2 A. Well, that's the company's proposal, but my
3 rec -- or my testimony outlines the risk I believe the
4 company is exposing its customers to by eliminating the
5 possible financing options if its recommendation is adopted
6 by the Commission.

7 Q. And the financing option is what?

8 A. Financing option is to have a dedicated line
9 of credit for Missouri utility assets to fund Missouri
10 utility working capital requirements.

11 Q. Okay. That was my understanding as well.
12 With that in mind, I want to visit with you a little bit
13 about your Appendix A, which I believe is your
14 qualifications.

15 A. Yes.

16 Q. Now, I assume that that statement is a
17 complete and accurate statement of your qualifications?

18 A. I believe so, yes.

19 Q. Okay. And my understanding is you have an MBA
20 from the University of Illinois; is that correct?

21 A. Yes.

22 Q. Chicago campus?

23 A. Springfield.

24 Q. Springfield. Excuse me. You're right.

25 Do you have any degree in business finance?

1 A. Concentration in finance. The MBA
2 concentrated in finance classes, yes.

3 Q. Which financing class or which finance
4 classes?

5 A. Classes I took in seeking my MBA degree.

6 Q. So it wasn't a specialty finance degree, it
7 was an MBA? It's just the way you've presented it, right,
8 master of business administration; is that correct?

9 A. The degree itself did not specifically say
10 master of business administration --

11 Q. Okay.

12 A. -- financing specialty.

13 Q. Okay.

14 A. That's correct.

15 Q. All right. You are currently a consultant
16 with Brubaker and Associates?

17 A. That is correct.

18 Q. And in looking at your qualifications, it
19 appears that your current activities involve -- correct me
20 if I'm wrong, but it appears it involves negotiating and
21 advising clients with respect to gas supply contracts; is
22 that correct?

23 A. Are you looking at a specific page on my
24 Appendix A?

25 Q. I will direct you to --

1 A. I can say competitive procurement is one area
2 we do advise.

3 Q. I'm just going through a series of them. What
4 did you characterize it as?

5 A. Competitive procurement.

6 Q. Competitive procurement. Thank you.

7 Also certain feasibility studies. What are
8 the nature of the feasibility studies?

9 A. Economic viability of the competitive or
10 regulated utility company under investigation.

11 Q. Okay. Commodity pricing analysis?

12 A. Yes.

13 Q. Commodity would be what, gas?

14 A. Gas and electric power.

15 Q. Okay. And you do electric market forecasts --

16 A. Yes.

17 Q. -- for your clients as well?

18 Okay. So these are generally operational or
19 pricing or regulatory sort of issues that you deal with?

20 A. Those are some of the issues I deal with, yes.

21 Q. What are the other issues you deal with?

22 A. Financial integrity of public utilities,
23 assessing their -- look at the top of page 2 where I state
24 that among other things I conducted -- did analysis --

25 Q. I'm asking you about your responsibilities

1 with Brubaker and Associates. So I'm looking at the bottom
2 of page 2.

3 A. Well, I think you found a hole in my
4 Appendix A, because I do do financial integrity analysis of
5 public utilities with Brubaker and Associates.

6 It's an important part of our analysis and
7 recommending rates for utilities that may have consequences
8 for the utility's ability to secure capital to continue to
9 provide reliable and safe service. And it's also important
10 when we evaluate competitive suppliers because counter-party
11 credit risk is a significant concern in developing its
12 contracts.

13 Q. So that goes back to your experience with the
14 Illinois Commerce Commission as a financial analyst and your
15 responsibilities in the regulatory proceedings concerning
16 financing and rate cases. Do I have your background roughly
17 correctly?

18 A. No. I think I -- I said that you found a hole
19 in my Appendix A, because I continue to do financial
20 integrity analyses at Brubaker and Associates.

21 Q. Okay. But in the same general context? In
22 the context of regulatory proceedings associated with
23 utility financings and perhaps rate cases? Tell me if I'm
24 wrong. I mean, I'm just trying to get the context of your
25 responsibilities.

1 A. As I said, those are two areas where we look
2 at the financial integrity and ability of the utility to
3 attract capital. We also look at the -- for competitive
4 procurement activities, the supplier's ability to deliver
5 their side of the contract.

6 Q. Let me ask you this. Do you have any
7 investment banking experience with mergers and acquisitions?

8 A. Not as an investment banker. We have -- I
9 have worked on mergers and acquisition proposals before
10 regulatory commissions.

11 Q. I'm asking if you have any investment banking
12 experience with respect to that particular area of
13 transactional utility operations?

14 A. I have no experience as an investment banker.

15 Q. Okay. Do you have any -- okay.

16 None at all with respect to loans or equity
17 placements, anything like that?

18 A. I've never worked as an investment banker.

19 Q. Let me talk about your capacity or background
20 in a lender capacity. Have you ever worked for a bank or
21 other lending institution?

22 A. No.

23 Q. Have you ever been involved in the issuance of
24 a term sheet?

25 A. With respect to a loan?

1 Q. With respect to a loan.
2 A. No.
3 Q. Have you ever negotiated a financing package?
4 A. No.
5 Q. Have you ever closed a financing in your
6 capacity as or on behalf of a lender?
7 A. No.
8 Q. Have you ever sat on a credit committee?
9 A. No.
10 Q. Have you ever negotiated any financial
11 covenants in the context of a secured or unsecured
12 financing?
13 A. No.
14 Q. Let's move onto whether or not you've got any
15 background in the capacity of debtor representation. Have
16 you ever held the position as the chief financial officer
17 with any private or public organization?
18 A. No.
19 Q. Ever held a position as comptroller?
20 A. No.
21 Q. Ever worked in the treasury department of any
22 business entity, whether public or private?
23 A. If I had done any of these, it would be listed
24 in my Appendix.
25 Q. I figured as much, which is why I'm asking

1 these questions.

2 Is it fair then to short -- to cut right to

3 the chase, have you -- well, let me ask you this before I go

4 there. Have you ever worked for a rating agency?

5 A. No.

6 Q. And you're not a lawyer?

7 A. That's correct.

8 Q. Okay. So would you agree with me that you've

9 never had any experience working in a capital market

10 situation?

11 A. No. I would not agree with you.

12 Q. Well, I believe we just went through -- okay.

13 In what capacity have you been involved in the capital

14 market situation?

15 A. Well, I -- I did work directly in the advising

16 of investment securities while I worked at Merrill-Lynch.

17 Also my tenure at the Illinois Commission as director of

18 financial analysis, we oversaw utility financing proposals,

19 which included utilities' request to issue both debt and

20 equity securities.

21 Q. My question is whether or not you had worked

22 in a capital market circumstance, not a regulatory

23 circumstance --

24 A. And my --

25 THE COURT REPORTER: I can only get one of you

1 at a time.

2 BY MR. BOUDREAU:

3 Q. Let me back up. My question is -- or at least

4 let me try and give a synopsis of this. You haven't been

5 involved in an investment bank or had any -- held any

6 position in the capacity of an employee of or representative

7 of an investment bank; is that correct?

8 A. Yes.

9 Q. Never done any negotiations in a lender

10 capacity; is that correct?

11 A. Yes.

12 Q. Never done any negotiations in the context of

13 a debtor capacity; is that correct?

14 A. Yes.

15 Q. Never worked for a rating agency. Right?

16 MR. FINNEGAN: Objection. Asked and answered,

17 your Honor.

18 MR. BOUDREAU: Well, I'm just trying to get

19 back to the basic question of whether or not this gentleman

20 has ever had any involvement working in a capital market

21 situation, directly in a capital market situation.

22 JUDGE PRIDGIN: For the record, I'll sustain

23 it. It was asked and answered but you can continue

24 questioning.

25 THE WITNESS: Is there a pending question or

1 were you --

2 MR. BOUDREAU: May I repeat the question?

3 JUDGE PRIDGIN: Well, I sustained

4 Mr. Finnegan's objection, but I think you're asking a

5 different question, Mr. Boudreau.

6 MR. BOUDREAU: I'm just trying to figure out.

7 This gentleman is being offered for an expert opinion, I

8 assume. And I'm trying to figure out the degree and scope

9 and nature of his expertise with respect to that.

10 BY MR. BOUDREAU:

11 Q. Well, let me ask you this. What is your

12 understanding about the relief that's being requested by my

13 client in this case?

14 A. Your client is seeking authority from the

15 Regulatory Commission to encumber its Missouri utility

16 assets to collateralize a term loan facility.

17 Q. And you're giving the opinion, I believe, or

18 you've been asked to give the opinion that doing so would

19 preclude my client from establishing a dedicated line of

20 credit for Missouri utility operations; is that correct?

21 A. Yes.

22 Q. And that would suggest to me that you have

23 some expertise about lines of credit being extended to

24 private companies. Now --

25 A. That's correct.

1 Q. And that was my series of questions. You
2 haven't been involved in investment banking, you haven't
3 been in a debtor or lender capacity and you haven't worked
4 for a rating agency. And my question is, in what capacity
5 in the capital markets of actually placing debt or equity,
6 what capacity have you had any experience?

7 A. Well, I guess I want you to define for me what
8 you mean by capital markets.

9 Q. Well, the capital markets, I would assume,
10 sir, would be the markets or the arenas in which debt and
11 equity placements are made.

12 A. As I just testified, I have not worked for an
13 investment bank or commercial bank in those functions.

14 Q. Okay. Just a few more questions and I think
15 I'll be in a position to bring this to a close.

16 My understanding is if I look -- let me direct
17 you to page 5 of your -- what's been marked for
18 identification as Exhibit 38. And there's a question and
19 answer that appear in the middle of that page. And I'm
20 looking specifically at the last sentence of your answer,
21 which reads: Given Aquila's precarious financial condition,
22 it is problematic whether the lender would be willing to
23 extend a line of credit to the Missouri utilities as you've
24 defined them under those conditions.

25 Do you see that?

1 A. Yes.

2 Q. Okay. Is the term "problematic," that's not a
3 technical one, is it?

4 A. It's -- it's a -- pardon me?

5 Q. Is it a technical term in, you know --

6 A. It's a term I find in the dictionary that
7 indicates that it is uncertain.

8 Q. Okay. It is uncertain.

9 MR. BOUDREAU: All right. At this point what
10 I will do is I will object to the admission of this exhibit
11 on the grounds that Mr. Gorman doesn't have any
12 experience -- the experience necessary to render an expert
13 opinion in this matter.

14 And, moreover, he doesn't even offer an
15 opinion. If his opinion is problematic, in his own terms
16 uncertain, that's not an opinion. And I'd refer the Bench
17 to Section 490.065 which sets forth the requirements for
18 expert testimony -- the admissibility of expert testimony,
19 which requires a special scientific, technical or other
20 specialized knowledge with respect to the matters at hand.

21 And I don't think Mr. Gorman possesses those.
22 And even if he did, I don't think he's offering an opinion.
23 He's just saying it's uncertain.

24 JUDGE PRIDGIN: All right. Thank you,
25 Mr. Boudreau.

1 Mr. Finnegan, any response?

2 MR. FINNEGAN: Is there one necessary, your

3 Honor? I don't think anyone in this room -- any witness in

4 this room, including the company's, has been an investment

5 banker or worked for a rating agency or did anything else,

6 yet they're giving opinions.

7 This gentleman is very experienced in the

8 regulatory background. He's worked with utility

9 commissions, he's been working with utilities for some

10 period of time now. And I believe his record -- his

11 qualifications stand for themselves and he is qualified to

12 testify in this case.

13 JUDGE PRIDGIN: All right, Mr. Finnegan.

14 Thank you.

15 I will overrule the objection. Exhibit 38 is

16 admitted into evidence.

17 (Exhibit No. 38 was received into evidence.)

18 JUDGE PRIDGIN: And let me see if we have any

19 cross-examination at this time. Mr. Frey, any cross?

20 MR. FREY: No, your Honor.

21 JUDGE PRIDGIN: Thank you.

22 Mr. Molteni?

23 MR. MOLTENI: No, sir.

24 JUDGE PRIDGIN: Mr. Micheel?

25 MR. MICHEEL: No.

1 JUDGE PRIDGIN: All right. Mr. Boudreau?

2 MR. BOUDREAU: Just a few. Thank you.

3 CROSS-EXAMINATION BY MR. BOUDREAU:

4 Q. Let me replot some ground we just plowed.

5 Your opinion is that it would be problematic, which by your

6 own definition means uncertain; is that correct?

7 A. Your question's a little unclear. Would you

8 be more specific for me?

9 Q. Let's go through it again. Direct you to

10 page 5 of your Surrebuttal Testimony. There's a question

11 and answer that appear in the middle of the page.

12 The last sentence, your opinion I believe --

13 this is ultimately your opinion, correct me if I'm wrong:

14 Given Aquila's precarious financial condition, it is

15 problematic -- your word -- problematic whether a lender

16 would be willing to extend a line of credit to the Missouri

17 utilities under these conditions.

18 A. In that question and answer I'm asking whether

19 or not given the company's proposal to encumber its Missouri

20 utility assets under Aquila's Aquila-wide line of credit,

21 would it be likely that another lender would be willing to

22 enter into a line of credit for Missouri utility working

23 capital purposes only.

24 And in response to that proposition I found it

25 to be problematic whether or not a lender would be willing

1 to undertake that type of loan.

2 Q. All right. And problematic means uncertain?

3 A. Uncertain.

4 Q. Okay. So you don't know whether a lender
5 would or wouldn't?

6 A. Well, I attempted to investigate that by data
7 requests to the company to find out just what investigations
8 the company had performed to see whether or not it was
9 possible. And, if so, whether or not it was more
10 advantageous for it to use its Missouri utility assets to
11 collateralize a working capital loan for Missouri utility
12 purposes. And the company apparently didn't even consider
13 that financing alternative, so --

14 MR. BOUDREAU: I'm going to object to the
15 answer. He's not answering the question.

16 BY MR. BOUDREAU:

17 Q. The question is whether or not -- I mean, the
18 question is, you don't know whether or not a lender is going
19 to be more or less likely to lend this company money if this
20 application is granted; is that correct?

21 A. Based on my exploration with the company,
22 discovery with the company, I was not able to determine
23 whether or not there was a definitive probability that a
24 lender would be willing to extend a loan to the company
25 under these conditions.

1 Q. So you did discovery and your conclusion is
2 you don't know?

3 A. That's correct.

4 Q. Okay. Let's talk about this Missouri
5 utility's line of credit. You're not a lawyer and that's
6 not meant to be a criticism. But you're not a lawyer.
7 Right?

8 A. No criticism accepted.

9 Q. Do you know whether given -- well, let me ask
10 you this. Let me do a little bit of background. Do you
11 have some knowledge about Aquila's corporate structure?

12 A. I believe so, yes.

13 Q. What is your understanding about how they are
14 structured as a company, Aquila, vis-a-vis its utility
15 operations?

16 A. They are structured in a single-entity type of
17 corporate arrangement, whereas there's no clear subdivision
18 between Aquila, the parent company, and Aquila, the
19 operating subsidiaries. They're all one corporate-wide
20 entity.

21 As compared to something like Ameren, which is
22 a holding company structure which has a parent company and
23 legal -- separate legal entities which are their operating
24 utility companies and nonregulated companies.

25 Q. The reason I ask you that question is I wanted

1 to ask you whether or not you knew it was possible given --
2 possible -- legally possible given that structure that the
3 company could structure a dedicated line of credit just for
4 the utility operations given the fact that the utility
5 operations are really just part of the corporate entity? Do
6 you have any views or any knowledge about that?

7 A. Well, based on the discovery I've done with
8 the company, you have been able to enter into collateralized
9 agreement for specific assets within the Aquila structure.
10 So based on what you've already done, it leads me to believe
11 that it is possible.

12 Q. Which assets are you referring to?

13 A. Refer you to page 3 of your Schedule 1 when I
14 asked the question: Please provide a summary of all legal
15 and financial analyses that describe or address the
16 following, A, all mortgages and/or collateral contracts that
17 rely only on Missouri utility assets to support loans, bonds
18 or other borrowing facilities.

19 And under A you identify a promissory note
20 that was executed to fund the acquisition of a Ralph Green
21 generating unit located in Missouri. You also identify a
22 first mortgage indenture originally entered into by
23 St. Joseph Power & Light.

24 So based on that response, it appears that it
25 is possible for you to use specific company assets to secure

1 loans for funding for specific company asset requirements,
2 funding requirements.

3 Q. Okay. All right. Fair enough. Let me ask
4 you this just for -- because I'm still -- are you using the
5 line of credit language interchangeably with the term loan?
6 Well, let me ask you more straightforward. What do you mean
7 when you say line of credit?

8 A. It is a borrowing facility which the company
9 can draw upon or pay down as its cash working capital
10 requirements --

11 Q. Okay.

12 A. -- require.

13 Q. Kind of like a revolver? Is that the concept
14 that you're touching on?

15 A. Yes.

16 Q. Okay.

17 A. Revolving loan agreement.

18 Q. And the two items that you looked at, the
19 promissory note for the Green facility and the first
20 mortgage bonds for the old St. Joe Light & Power territory,
21 those aren't lines of credit in the context that you're
22 using the term; is that correct?

23 A. They are collateralized loan agreements.

24 Q. Okay. So to you the term -- the line of
25 credit is a collateralized loan. Is that what -- is that --

1 I'm just trying to get the idea of how you're using the
2 phrase "line of credit."
3 A. You could have a line of credit that is not
4 collateralized.
5 Q. Okay. But are you using the term "line of
6 credit" in a limited sense -- in the limited sense that it's
7 collateralized --
8 A. No.
9 Q. -- or are you using it in a more generic
10 sense?
11 A. Line of credit differentiates between a
12 long-term borrowing facility where an amount is loaned up
13 front. The entire proceeds of the loan go to the company
14 and the company makes principal and interest payments to the
15 lender under the terms of the loan agreement.
16 Q. Would --
17 A. Line of credit or revolving credit facility is
18 a borrowing capacity which the company can either draw upon
19 or pay down as the company's internal cash flows allow it to
20 do.
21 Q. What category do the St. Joe Light & Power
22 company bonds fall into?
23 A. My --
24 Q. By your definition.
25 A. I understand it's a long-term borrowing

1 facility.

2 Q. Okay. And the promissory note, the other one
3 that was identified, what's your understanding -- where
4 would that fit? What category would that fit in the
5 distinction that you've made?

6 A. Well, it would be -- probably be an
7 intermediate borrowing facility --

8 Q. Okay.

9 A. -- designated as a note that would suggest to
10 me that it was not long term.

11 Q. Okay. So there may be a distinction between
12 those two and the line of credit that you've identified as a
13 facility that might or might not be available for Missouri
14 utilities; is that correct?

15 A. The distinction between a bond and note and
16 line of credit deals with how much cash is exchanged up
17 front and what the repayment terms are of a
18 collateralization for either a note, a bond or a line of
19 credit or revolving credit facility as a credit enhancement
20 that the lender would require to improve the likelihood that
21 it will receive full repayment of principal and interest
22 under the loan agreement.

23 Q. Well, let me just cut to the chase then. Do
24 you know -- sitting there, do you know whether my client can
25 go to the capital markets and obtain a line of credit that's

1 dedicated just to Missouri utility operations given its
2 corporate structure and the relationship of the utilities in
3 that corporate structure?

4 A. Because your company has not investigated that
5 possibility, it's not possible -- possible for me to
6 definitively conclude whether or not that's possible or not.

7 Q. Okay. Fair enough. Thank you, sir.

8 MR. BOUDREAU: I have no further questions.

9 JUDGE PRIDGIN: Mr. Boudreau, thank you.

10 Let me see if we have any questions from the
11 Bench. Commissioner Clayton? And I don't have any
12 questions.

13 Mr. Finnegan, do you wish any redirect?

14 MR. FINNEGAN: No, your Honor.

15 JUDGE PRIDGIN: Thank you.

16 May this witness be excused?

17 Hearing no objection, thank you, Mr. Gorman,
18 for your time and your testimony.

19 I see as the next scheduled witness Lena
20 Mantle from Staff.

21 (Witness sworn.)

22 JUDGE PRIDGIN: Thank you very much. Please
23 have a seat.

24 Mr. Dottheim, when you're ready, sir.

25 MR. DOTTHEIM: Thank you.

1 LENA MANTLE testified as follows:
2 DIRECT EXAMINATION BY MR. DOTTHEIM:
3 Q. Would you please again state your full name
4 for the record?
5 A. Lena M. Mantle.
6 Q. And would you please state your business
7 address?
8 A. PO Box 360, Jefferson City, Missouri 65102.
9 Q. And would you state the nature of your
10 employment?
11 A. I'm employed as an engineering supervisor in
12 the energy department, utility operations division of the
13 Missouri Public Service Commission Staff.
14 Q. Ms. Mantle, do you have with you what has been
15 premarked as Exhibit No. 18-HC and 17-NP?
16 A. Yes, I do.
17 Q. Are Exhibit Nos. 17 and 18 your Rebuttal
18 Testimony in this proceeding?
19 A. Yes, they are.
20 Q. At this time do you have any corrections to
21 make to your Rebuttal Testimony?
22 A. No, I do not.
23 Q. If I asked you the same questions that are
24 contained therein, would your answers there be the same?
25 A. Yes, they would.

1 Q. Is the information that's contained therein
2 true and correct, to the best of your knowledge and belief?
3 A. Yes, it is.
4 MR. DOTTHEIM: At this time I'd like to tender
5 Ms. Mantle for cross-examination and I'd also like to offer
6 Exhibit No. 17-NP and Exhibit No. 18-HC.
7 JUDGE PRIDGIN: All right. Mr. Dottheim,
8 thank you.
9 Any objections to Exhibits 17 and 18?
10 MR. BOUDREAU: None. Thank you.
11 JUDGE PRIDGIN: All right. Hearing none,
12 Exhibits 17 and 18 are admitted.
13 (Exhibit Nos. 17 and 18 were received into
14 evidence.)
15 JUDGE PRIDGIN: Mr. Finnegan, any
16 cross-examination?
17 MR. FINNEGAN: No questions.
18 JUDGE PRIDGIN: Mr. Micheel?
19 MR. MICHEEL: No.
20 JUDGE PRIDGIN: Mr. Molteni?
21 MR. MOLTENI: No, sir.
22 JUDGE BOUDREAU: Mr. Boudreau?
23 MR. BOUDREAU: I have no questions. But thank
24 you.
25 JUDGE PRIDGIN: Very good.

1 Commissioner Clayton?

2 COMMISSIONER CLAYTON: As much as I don't want

3 her to get off the hook that easily, I have no questions.

4 JUDGE PRIDGIN: Can I think of anything to

5 ask?

6 All right. I have no questions. I'm assuming

7 no redirect, Mr. Dottheim since we have no cross --

8 MR. DOTTHEIM: That's correct.

9 JUDGE PRIDGIN: -- just to clarify.

10 May this witness be excused?

11 Ms. Mantle, thank you very much for both

12 minutes you spent on the stand. Thank you very much.

13 I see the next scheduled Staff witness is

14 David Sommerer.

15 (Witness sworn.)

16 JUDGE PRIDGIN: Thank you very much, sir.

17 Please have a seat.

18 Mr. Frey, are you going to lay a foundation?

19 MR. FREY: Yes. Thank you.

20 JUDGE PRIDGIN: Whenever you're ready, sir.

21 MR. FREY: Your Honor, just as a point of

22 housekeeping before we lay this foundation, Mr. Sommerer has

23 filed testimony -- highly confidential testimony and Staff

24 has discussed with the company -- counsel for the company

25 the possibility of declassifying all or at least most of

1 that testimony.

2 And we have an agreement with the company and
3 provided there are no objections from the other parties, of
4 course, that none of Mr. Sommerer's testimony is to be
5 classified highly confidential with the exception of
6 Schedule 3-3 that's attached to his testimony.

7 And Mr. Boudreau and I have agreed, again with
8 the non-objection of the other parties and assuming it's
9 okay with the Bench, to file a letter essentially
10 memorializing this agreement. So that, in effect, what we
11 filed today as highly confidential testimony will just refer
12 to that Section 3--- Schedule 3-3 as the highly confidential
13 portion.

14 The remainder of the testimony, the body of
15 the testimony, will not be confidential for purposes of --
16 for any purposes and certainly for purposes of
17 cross-examination here.

18 JUDGE PRIDGIN: All right. Thank you. I
19 believe I understand your announcement. Do I hear any
20 objections or any comments on that?

21 MR. BOUDREAU: The only comment is I concur
22 that the characterization of the agreement between the
23 company and Staff, and that's all.

24 JUDGE PRIDGIN: All right. Thank you,
25 Mr. Boudreau.

1 I'll certainly allow testimony to be treated
2 as public and would certainly expect the parties to file a
3 pleading memorializing this and, you know, certainly signed
4 or at least indicated that it's not objected to by any of
5 the parties so we can clean up the record.

6 MR. FREY: Thank you, your Honor.

7 JUDGE PRIDGIN: Whenever you're ready, sir.

8 DAVID SOMMERER testified as follows:

9 DIRECT EXAMINATION BY MR. FREY:

10 Q. Could you please state your name for the
11 record, sir?

12 A. David Sommerer.

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

15 A. I'm employed by the Missouri Public Service
16 Commission. And I'm the manager of the procurement analysis
17 department.

18 Q. And are you the same David Sommerer who
19 prepared and caused to be filed in this proceeding what has
20 been marked for identification purposes as Exhibits 19 and
21 20, David M. Sommerer Rebuttal 19 nonproprietary and 20
22 highly confidential?

23 A. Yes.

24 Q. And do you have any corrections to make to
25 that testimony, Mr. Sommerer?

1 A. No.

2 Q. If I were to ask you today the same questions
3 as are in that testimony, would your answers be
4 substantially the same?

5 A. Yes.

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

8 A. Yes.

9 MR. FREY: With that, your Honor, I would
10 offer Exhibits 19 and 20 into the record, again, subject to
11 the modification of the degree to which the highly
12 confidential portion of the testimony will be treated as
13 highly confidential.

14 JUDGE PRIDGIN: All right. Thank you.

15 Any objection to Exhibits 19 or 20 coming into
16 evidence?

17 MR. FREY: And I would tender the witness for
18 cross.

19 JUDGE PRIDGIN: All right. Thank you.

20 Exhibits 19 and 20 are admitted.

21 (Exhibit Nos. 19 and 20 were received into
22 evidence.)

23 JUDGE PRIDGIN: Mr. Finnegan, any cross?

24 MR. FINNEGAN: No cross.

25 JUDGE PRIDGIN: Mr. Micheel?

1 MR. MICHEEL: No.

2 JUDGE PRIDGIN: Mr. Molteni?

3 MR. MOLTENI: No, your Honor.

4 JUDGE PRIDGIN: Mr. Boudreau?

5 MR. BOUDREAU: I have no questions. Thank

6 you.

7 JUDGE PRIDGIN: All right. Thank you.

8 COMMISSIONER CLAYTON: All mine?

9 JUDGE PRIDGIN: All yours, Commissioner

10 Clayton.

11 All right. I don't believe I have any

12 questions. Obviously we have no need for redirect. May

13 this witness be excused?

14 All right. Mr. Sommerer, thank you very much

15 for your time, sir.

16 THE WITNESS: Thank you.

17 JUDGE PRIDGIN: I see as the next scheduled

18 witness Kay Niemeier.

19 (Witness sworn.)

20 JUDGE PRIDGIN: Thank you very much. Please

21 have a seat.

22 Mr. Dottheim, when you're ready, sir.

23 MR. DOTTHEIM: Thank you. I would first note

24 that Ms. Niemeier's testimony has been marked Exhibit

25 No. 21-NP and Exhibit No. 22-HC, but the company has

1 indicated to the Staff that there is nothing in
2 Ms. Niemeier's testimony that need be treated highly
3 confidential. Excuse me, Mr. Boudreau, have I stated that
4 correctly?

5 MR. BOUDREAU: Actually, no, but through no
6 fault of your own. I've just spoken with my client,
7 Mr. Empson, and he said he's had an opportunity to look
8 through Ms. Niemeier's -- highly confidential version of
9 Ms. Niemeier's testimony and we are no longer asserting that
10 any of the information that was previously designated highly
11 confidential is, in fact, highly confidential.

12 And I'd be willing to do exactly the same
13 thing that we did with Mr. Sommerer's testimony and work
14 with Mr. Dottheim or whoever on the Staff to file something
15 to memorialize that understanding.

16 JUDGE PRIDGIN: All right. That would be
17 fine. If I can get the parties to do that, that would be
18 great.

19 MR. DOTTHEIM: Also too, I indicated on Monday
20 that, as a consequence, if the company might indicate that
21 Ms. Niemeier's testimony, certain portions of it or all of
22 it, was not highly confidential, some of the exhibits that
23 were marked and received into evidence on Monday respecting
24 my cross of Mr. Keefe and Mr. Carter might be able to be
25 declassified. So I will visit further with the company and

1 if that is the case, submit something to the Commission.

2 JUDGE PRIDGIN: That would be great. Thank

3 you.

4 J. KAY NIEMEIER testified as follows:

5 DIRECT EXAMINATION BY MR. DOTTHEIM:

6 Q. Ms. Niemeier, would you please state your full

7 name again for the record?

8 A. J. Kay Niemeier.

9 Q. And would you state your business address?

10 A. Post Office Box 362, Jefferson City, Missouri

11 65102.

12 Q. Would you please state the nature of your

13 employment?

14 A. I'm a management analyst three with the

15 Missouri Public Service Commission.

16 Q. Ms. Niemeier, do you have with you copies of

17 what have been marked previously as Exhibit No. 21-NP and

18 Exhibit No. 22-HC?

19 A. Yes.

20 Q. And those documents are your Rebuttal

21 Testimony filed in this proceeding, are they not?

22 A. That's correct.

23 Q. Do you have any corrections at this time to

24 make to your Rebuttal Testimony?

25 A. Yes, I do.

1 Q. Would you please identify them by page and
2 line number?

3 A. Page 13, line 15 insert the two words "service
4 level" after the word "targeted" and service level would be
5 capitalized. The sentence would read: In response to Staff
6 Data Request No. 3904, the company stated that its targeted
7 Service Level goal for answering emergency calls.

8 Line -- or page 13, line 19 the word "service
9 level" should be capitalized.

10 Q. When you say "service level should be
11 capitalized," the letter "S" for service and the letter "L"
12 for level?

13 A. That's correct. On page 14, line 8 insert the
14 word -- the two words "service level" capital "S" and "L"
15 after the word "targeted." And the sentence would read: In
16 response to Staff Data Request No. 3904, the company stated
17 that its targeted Service Level goal for answering all other
18 calls.

19 And on page 14, line 12 the words "service
20 level" would be capitalized, the "S" and the "L." On page
21 14, line 17 insert the two words "service level," "S" and
22 "L" capitalized after the word "targeted." And the sentence
23 would read: For the period stated in Staff Data Request
24 No. 3903, the company has yet to realize its targeted
25 Service Level goal for answering all other calls.

1 And on page 17, line 2 the word "service
2 level," "S" and "L" should be capitalized.

3 Q. Ms. Niemeier, if I were to ask you the same
4 questions that are contained in your Rebuttal Testimony
5 today, would your answers be the same as you have corrected
6 them?

7 A. Yes.

8 Q. Is the information that is contained therein
9 true and correct to the best of your knowledge and belief?

10 A. Yes.

11 Q. And, again, you adopt Exhibit No. 21-NP and
12 Exhibit No. 22-HC as your Rebuttal Testimony in this
13 proceeding?

14 A. That's correct.

15 MR. DOTTHEIM: At this time I would tender
16 Ms. Niemeier for cross-examination and offer Exhibit No.
17 21-NP and Exhibit No. 22-HC.

18 JUDGE PRIDGIN: All right. Any objections?
19 Hearing none, Exhibits No. 21 and 22 are
20 admitted.

21 (Exhibit Nos. 21 and 22 were received into
22 evidence.)

23 JUDGE PRIDGIN: Mr. Finnegan?

24 MR. FINNEGAN: No questions, your Honor.

25 JUDGE PRIDGIN: Thank you.

1 Mr. Micheel?

2 MR. MICHEEL: No.

3 JUDGE PRIDGIN: Mr. Molteni?

4 MR. MOLTENI: None, sir.

5 JUDGE PRIDGIN: Mr. Boudreau?

6 MR. BOUDREAU: I have just a few. Thank you.

7 JUDGE PRIDGIN: All right.

8 CROSS-EXAMINATION BY MR. BOUDREAU:

9 Q. Good afternoon, Ms. Niemeier.

10 A. Good afternoon.

11 Q. I wanted to ask you a few questions about your

12 Rebuttal Testimony. I want to direct your attention to

13 pages 9 and 10, bottom of 9 and top of 10. And happily,

14 since this is declassified, I can use the numbers too.

15 Would you agree with me that Aquila's ACR

16 performance goal of 5 percent is a good deal more ambitious

17 and objective than Staff's recommended 8 percent?

18 A. It's less than, yes.

19 Q. And also with respect to the ASA performance

20 standard and, you address that on page 11 I believe, of your

21 Rebuttal Testimony, would you likewise agree with me that

22 Aquila's ASA performance goal of 30 seconds is a good deal

23 more ambitious and objective than Staff's recommended

24 objective of 65 seconds?

25 A. That's the ASA for all other calls. And yes.

1 Q. Yes?

2 A. Uh-huh.

3 Q. Is there anything wrong with Aquila setting an
4 extremely high performance objective for itself?

5 A. When you say "high," you mean a less -- like
6 the 30 seconds as opposed to the --

7 Q. Yes.

8 A. No. There's nothing wrong with that.

9 Q. Even if these objectives are difficult to
10 achieve. Would you agree with me?

11 A. The objectives set by the company are
12 objectives set by the company, and that's about all I can
13 say about them.

14 Q. I guess I'm asking you, there's nothing wrong
15 with setting an objective -- the company setting an
16 objective for itself that is actually difficult to achieve?

17 A. It's their prerogative for them to set the
18 objective where they would like for it to be set.

19 Q. Okay. Would you agree with me that the ACR
20 and ASA objectives that we've just discussed and which have
21 been established by Aquila, reflect the importance placed on
22 good customer service by its management?

23 A. Yes.

24 Q. I want to visit with you a little bit about
25 the actual ACR performance, which you address at page 10 of

1 your Rebuttal Testimony. And there's a tabulation there,
2 which we can now discuss freely. And as I understand it,
3 the tabulation is Aquila's ACR performance for the years
4 2000 through May of 2003; is that correct?

5 A. That's correct.

6 Q. And you've concluded thereafter, and I think
7 it carries over onto the next page if I'm not mistaken, that
8 the company's ACR performance has dramatically declined. Do
9 you see that language?

10 A. That's correct, uh-huh.

11 Q. Over that period of time, I assume, which
12 would be years 2000 through May of 2003?

13 A. Yes.

14 Q. Okay. Now, let me ask you this. In
15 performing that -- or reaching that conclusion or performing
16 that analysis, did you do any statistical analysis of those
17 numbers?

18 A. It's based upon the information, the
19 measurements that are provided us by the company.

20 Q. So if you'll forgive the commonality of the
21 term, it was just by eyeballing the numbers you've reached
22 that conclusion?

23 A. It's by looking at the numbers and seeing them
24 increase from 4 percent to 11 percent.

25 Q. Okay. Fair enough. Have you had an

1 opportunity to familiarize yourself with the pre-filed
2 Rebuttal Testimony of James Ketter?

3 A. Yes.

4 Q. And he's addressed reliab-- certain
5 reliability indices?

6 A. Uh-huh.

7 Q. Do you recall that in his testimony that he
8 makes reference to the 2002 ice storm?

9 A. Yes.

10 Q. And he also makes reference, I believe, to a
11 number of tornados that ripped through the western part of
12 the state I think in May of 2003 --

13 A. Uh-huh.

14 Q. -- is that correct?

15 He also talks about the benefit gained by
16 adjusting reliability data to remove the effects of major
17 storms like ice storms and tornados. Do you recall that?

18 A. Uh-huh.

19 Q. And I believe he concludes that doing so will
20 better reflect the operation of the system under normal
21 conditions. Do you recall that?

22 A. Yes.

23 Q. Do you agree with that statement?

24 A. We take that into consideration when we
25 analyze the information provided by the company.

1 Q. Okay. Well, was there an ice storm in
2 Aquila's electric service territory in the winter of 2002?
3 A. Yes.
4 Q. And would you agree that such an event would
5 have an adverse impact on the ACR data collected during that
6 year?
7 A. Yes.
8 Q. Okay. Did you make any adjustments in making
9 your analysis to the AS -- excuse me, ACR performance data
10 in 2002 to normalize it for the effects of the ice storm?
11 A. No. It was just the information provided by
12 the company is what I went by.
13 Q. Okay. And, likewise, was Aquila's electric
14 service system affected by the tornados that ripped through
15 the western part of the state in May of 2003?
16 A. Yes, it was.
17 Q. Would you agree that these events would also
18 have an adverse effect on the actual ACR performance data?
19 A. Yes. I'd agree.
20 Q. Okay. And this data includes the month of May
21 2003; isn't that correct?
22 A. Yes.
23 Q. And this will be a similar question. You can
24 see where I'm going.
25 Did you make any adjustments to your analysis

1 to back that effect out of those numbers?

2 A. No.

3 Q. Okay. Would you agree with me then that the

4 analysis that you've presented of Aquila's actual ACR and

5 ASA performance data for the years 2000 through May of 2003

6 does not reflect the operations of Aquila's call center

7 under normal conditions?

8 A. It doesn't take into consideration the ice

9 storm for the tornado that affected the area.

10 Q. This information you provided -- this seems

11 obvious, but I'm going to ask the question anyway. This is

12 all historical data; isn't that right?

13 A. Yes.

14 Q. And so any trend that you believe that you've

15 identified hasn't been caused by Aquila's request in this

16 case to mortgage its properties to back the term loan, has

17 it?

18 A. I did not address that. What I have looked at

19 in my testimony is their customer service standards only.

20 Q. Okay.

21 A. And --

22 Q. Okay.

23 A. So you're not trying to draw cause and

24 effect --

25 A. No.

1 Q. -- between the trend you've identified --
2 A. No.
3 Q. -- and the relief the company --
4 A. No.
5 Q. -- is asking for in this case --
6 A. No.
7 Q. -- fair enough?
8 A. It's strictly to state the measurements are --
9 or their performance is declining.
10 Q. Okay. Have you had a chance to visit with
11 Brett Carter and his staff at Aquila about issues concerning
12 the call center?
13 A. Yes, we have.
14 Q. Over what period of time roughly?
15 A. I've been there twice recently.
16 Q. Okay. How would you characterize the
17 responsiveness of Mr. Carter and his staff to your inquiries
18 and expressions of concern?
19 A. We have been informed they are addressing some
20 of their business issues. One of the issues that they've
21 addressed is their service level on emergency calls. It's
22 something that they knew that -- they're aware -- the
23 company is very much aware that their customer service
24 performance measurements are declining and they are
25 addressing them.

1 That's the service level on emergency calls
2 answered within 10 seconds, they have addressed. They have
3 informed us that they are going to be addressing further
4 customer service quality measurements.

5 Q. Okay. Do you believe that they've been
6 cooperative and responsive to your expressions of concern
7 and areas of inquiry?

8 A. They've made us aware that they are as
9 concerned as we are about their customer service
10 measurements declining.

11 Q. Okay. Very good.

12 MR. BOUDREAU: I have no further questions of
13 this witness. Thank you.

14 JUDGE PRIDGIN: Mr. Boudreau, thank you.

15 Open it up for questioning from the Bench.
16 Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. What will Staff do with the information that
22 it receives on a monthly basis under your proposal versus
23 what it does with the information that you receive
24 quarterly?

25 A. It will be evaluated upon receipt of the

1 information. It will more than likely be sent to me. I
2 would analyze it immediately, probably send it out to other
3 staff within our department.

4 We would probably track it from month to
5 month, put some charts and that together so at a glance we
6 could see if there is a continuing decline or if the
7 deterioration had stopped, whether there's improvement in
8 any of their customer service standards.

9 Q. What period of time would you look at in order
10 to determine a trend?

11 A. It's ongoing. This information that we --
12 that we have goes back to 2000. And we -- what we're seeing
13 now is a continuous decline. And we're wanting that to --
14 to stop and we're wanting to see improvement. So that's
15 what we would be looking for.

16 Q. And what I'm trying to get at is why is it
17 important to you to have that information monthly versus
18 quarterly?

19 A. If it's provided to us monthly, we've asked
20 for it for the 21st day after the end of the month. It's
21 much more timely to receive it then than we would quarterly,
22 which would be some time after the end of the third month.

23 Q. And I understand it's more timely, but what is
24 the practical effect of your getting it?

25 A. We would be able to address the issue. If

1 there is -- if we're seeing a decline -- a -- the decline
2 continues, we would make a decision -- we would probably
3 gather staff and make a decision as to how to handle the
4 situation.

5 Q. But you're evaluating it over a period of time
6 on a continuum. Correct?

7 A. That's correct.

8 Q. So what you're saying is that a change in a
9 one-month period could cause you to take some action?

10 A. Probably not in a one-month period. If we
11 saw -- like I said, what we're wanting is for the
12 performance -- for the performance -- to discontinue
13 deterioration.

14 If we would continue to see deterioration, we
15 would probably make a determination as to how to handle the
16 situation. We could possibly call the company. If we would
17 get information at the end -- after one month that caused
18 alarm, we could possibly call the company, they could maybe
19 possibly provide us an explanation, we could meet with the
20 company.

21 Q. And you don't think that a quarterly basis is
22 adequate?

23 A. I think a monthly basis is much more timely.
24 And I think we would be -- as Staff, we would be closely
25 monitoring the performance standards of a company in the

1 financial situation that Aquila is in in a much better
2 manner.

3 Q. Are there likely to be blips from month to
4 month that might be easier to evaluate if you were looking
5 at a three-month period?

6 A. Well, the three-month period that they provide
7 to us on a -- quarterly, is divided out by month. It's
8 three numbers, not one number.

9 Q. But you can look at that on a continuum --

10 A. That's correct.

11 Q. -- three-month continuum?

12 A. Uh-huh.

13 Q. And are there sometimes months that are worse
14 than others and then you have a month after that --

15 A. That's correct.

16 Q. -- that's better because something got
17 corrected?

18 A. That's correct.

19 Q. And that's what I'm talking about with blips
20 that maybe you could evaluate on a quarterly continuum
21 versus month by month.

22 A. If we -- if a blip did occur, the company --
23 if we would call the company, I'm sure they could explain
24 that, why that occurred in that month. And we'd take that
25 into consideration in our evaluation.

1 Q. And would that create extra work for the Staff
2 and for the company?

3 A. This is information that we are currently
4 receiving informally from the company on a quarterly basis.
5 It would -- it would not create a burden for our Staff.

6 Q. And your testimony indicated that the company
7 had not met the performance measures of Staff or the
8 company; is that right?

9 A. On various occasions, yes.

10 Q. And how many times were they below the Staff's
11 recommended measures?

12 A. Well, on the abandoned call rate they were --
13 on -- according to my testimony, they did not meet Staff's
14 objective in the year 2002 or current through May. And that
15 abandoned call rate has continued to decline. It has
16 ranged -- it has been as high as 20 percent in the third --
17 in the second quarter of 2003.

18 Q. They didn't meet those at any time in 2002?

19 A. Well, I -- this is an average is what this is.
20 This is for the year. I would have to look at each month
21 individually.

22 Q. And --

23 A. The only months that I have in front of me now
24 are for the year 2003. And their abandoned call rate for
25 2003 ranges from 6 percent to 20 percent each month.

1 Q. And what about the other measurements?

2 A. For the year 2003?

3 Q. For whichever period of time you have.

4 A. The -- for the year 2003, their average speed

5 of answer ranges from 30 seconds to 160 seconds. And they

6 measure their average speed of answer two ways. They

7 measure it for emergency calls and then for all other calls.

8 The numbers I just gave you, 30 to 160, are for all other

9 calls. For emergency calls, the range was 9 seconds to

10 25 seconds.

11 Q. And what was the level that Staff had set

12 there?

13 A. Average speed of answer was 65 seconds.

14 Q. For emergency calls?

15 A. No. For average -- we just gave them an

16 objective of 65 seconds for average speed of answer. And we

17 did not designate all other calls and emergency calls.

18 Q. So they were well below -- well below that on

19 the emergency calls?

20 A. Well, yes. Yes. Well below the 65, yes.

21 Q. Okay. What others?

22 A. The company measures for themselves their

23 service level. And that is the amount -- or the percentage

24 of emergency calls that are answered within 10 seconds.

25 Q. All right. I'm just asking Staff's

1 standards --

2 A. Okay.

3 Q. -- that were not met.

4 A. Right. And we have not set them a standard

5 for that. This is something they just began measuring

6 that -- for emergency calls answered within 10 seconds.

7 They began measuring that in 2002.

8 Q. Anything else?

9 A. No.

10 COMMISSIONER MURRAY: Thank you.

11 JUDGE PRIDGIN: Commissioner Murray, thank

12 you.

13 Commissioner Gaw, any questions?

14 COMMISSIONER GAW: No. Thank you.

15 JUDGE PRIDGIN: I don't believe I have any

16 questions.

17 Let me see if we have any recross.

18 Mr. Finnegan?

19 MR. FINNEGAN: No recross.

20 JUDGE PRIDGIN: Mr. Micheel?

21 MR. MICHEEL: No, your Honor.

22 JUDGE PRIDGIN: Mr. Molteni?

23 MR. MOLTENI: No, sir.

24 JUDGE PRIDGIN: Mr. Boudreau?

25 MR. BOUDREAU: I have none. Thank you.

1 JUDGE PRIDGIN: Mr. Dottheim, any redirect?
2 MR. DOTTHEIM: No redirect.
3 JUDGE PRIDGIN: May this witness be excused?
4 Hearing no objections, Ms. Niemeier, thank you
5 for your time and testimony.
6 I think this would be a good time for a quick
7 break. if we can break for about 10 minutes or so and we'll
8 reconvene at 3:35 or so by the clock on the back of the
9 wall.
10 (A RECESS WAS TAKEN.)
11 JUDGE PRIDGIN: We are back on the record. I
12 see the next witness listed is James Ketter. Mr. Ketter, if
13 you would, please come forward to be sworn.
14 (Witness sworn.)
15 JUDGE PRIDGIN: Thank you very much, sir.
16 Please have a seat.
17 Mr. Dottheim, when you're ready, sir.
18 JAMES KETTER testified as follows:
19 DIRECT EXAMINATION BY MR. DOTTHEIM:
20 Q. Mr. Ketter, would you state your full name for
21 the record?
22 A. James L. Ketter.
23 Q. And would you identify your business address?
24 A. Post Office Box 360, Jefferson City, Missouri
25 65102.

1 Q. And would you indicate the nature of your
2 employment?

3 A. I'm employed in the Staff of the Missouri
4 Public Service Commission in the energy department, the
5 energy analysis section as an engineer.

6 Q. Mr. Ketter, do you have a copy of what has
7 been marked as Exhibit No. 23?

8 A. Yes, I do.

9 Q. And that is your Rebuttal Testimony in this
10 proceeding?

11 A. Yes, it is.

12 Q. Do you have any corrections to make to Exhibit
13 No. 23 at this time?

14 A. No.

15 Q. If I were to ask you the same questions that
16 are contained therein, would your answers today be the same?

17 A. Yes.

18 Q. Is the information contained therein true and
19 correct to the best of your knowledge and belief?

20 A. Yes, it is.

21 Q. And, again, Exhibit No. 23 is your Rebuttal
22 Testimony in this proceeding. Correct?

23 A. That's correct.

24 MR. DOTTHEIM: At this time I'd like to tender
25 Mr. Ketter for cross-examination and offer Exhibit No. 23.

1 JUDGE PRIDGIN: Mr. Dottheim, thank you. Any
2 objections to Exhibit 23?
3 Hearing none, Exhibit 23 is admitted into
4 evidence.
5 (Exhibit No. 23 was received into evidence.)
6 JUDGE PRIDGIN: Mr. Finnegan, any questions?
7 MR. FINNEGAN: No questions.
8 JUDGE PRIDGIN: Mr. Micheel?
9 MR. MICHEEL: No.
10 JUDGE PRIDGIN: Mr. Molteni?
11 MR. MOLTENI: None, sir.
12 JUDGE PRIDGIN: Mr. Boudreau?
13 MR. BOUDREAU: No questions. Thank you.
14 JUDGE PRIDGIN: See if we have anything from
15 the Bench. Commissioner Murray?
16 COMMISSIONER MURRAY: I don't have any.
17 JUDGE PRIDGIN: Commissioner Gaw, Commissioner
18 Clayton?
19 I don't believe I have any questions.
20 May this witness be excused?
21 Mr. Ketter, thank you, sir.
22 I see I have no more Staff witnesses. We'll
23 go ahead and move --
24 MR. BOUDREAU: Could I interrupt just for a
25 housekeeping matter?

1 JUDGE PRIDGIN: Yes, sir.

2 MR. BOUDREAU: I've discussed this with the
3 other parties here today. As you will recall, the Joint
4 Movants filed a motion for reconsideration of the order
5 denying motion for summary disposition. I believe that was
6 last Thursday.

7 And if I've done my math correctly, that makes
8 the 10 days run this weekend, which makes it due the
9 following Monday. I've discussed with the other parties
10 whether they would be willing to grant an extension for us
11 to respond to that motion until the Friday following, which
12 would be the 31st. And they have indicated no opposition.

13 So what I'd like to do at this time is make an
14 oral entry for extension of time for the company to file its
15 response to the motion for reconsideration until Friday,
16 October the 31st.

17 JUDGE PRIDGIN: Mr. Boudreau, I have your oral
18 motion and I understood it's your understanding that no
19 parties objected; is that correct?

20 MR. BOUDREAU: That was my understanding.

21 JUDGE PRIDGIN: Do I hear any objections to
22 this motion?

23 MR. MOLTENI: By the virtue of the fact --
24 actually, can I have one moment with my colleagues?

25 JUDGE PRIDGIN: Certainly.

1 MR. WILLIAMS: Staff has no objection.

2 MR. MOLTENI: Your Honor --

3 JUDGE PRIDGIN: Mr. Molteni?

4 MR. MOLTENI: Your Honor, by virtue of the

5 fact we're going to go through five days of hearing before

6 they even have to respond, I don't have a problem if they

7 don't even respond to the motion for reconsideration on our

8 summary judgment.

9 JUDGE PRIDGIN: So are you withdrawing?

10 MR. MOLTENI: Not withdrawing it. i don't

11 know if Mr. Boudreau has any -- feels the need to respond.

12 I guess I'm kind of looking to the Bench for some guidance

13 as to the fact that we've had five days of hearing. Does

14 that mean our summary judgment motion is still alive or not?

15 JUDGE PRIDGIN: I wonder myself when you filed

16 it if it were moot or not. But failing that, I guess the

17 easiest way to clean this up is to go ahead and grant the

18 motion. And obviously if a party thinks -- Mr. Molteni, if

19 you think it's moot, you can withdraw it. Mr. Boudreau, if

20 you think it's moot, you can argue that.

21 MR. BOUDREAU: I was going to say the word

22 "moot" might show up somewhere in what I file.

23 JUDGE PRIDGIN: I'll extend it to October

24 31st. And, Mr. Boudreau, if you don't mind, perhaps by

25 Monday could you file an extremely brief pleading

1 memorializing this to remind me that your deadline has been
2 extended to October 31st?

3 MR. BOUDREAU: Certainly.

4 JUDGE PRIDGIN: All right. Thank you.

5 Mr. Burdette, would you please raise your
6 right hand and be sworn.

7 (Witness sworn.)

8 JUDGE PRIDGIN: Thank you very much. Please
9 have a seat.

10 Mr. Micheel, when you're ready.

11 MARK BURDETTE testified as follows:

12 DIRECT EXAMINATION BY MR. MICHEEL:

13 Q. Would you state your name for the record and
14 your address, business address?

15 A. Mark Burdette, PO Box 7800, Jefferson City,
16 Missouri 65102.

17 Q. And are you the same Mark Burdette who caused
18 to be filed your Rebuttal Testimony which has been marked as
19 Exhibit 31?

20 A. Yes.

21 Q. Do you have any corrections or additions to
22 that testimony?

23 A. No.

24 Q. If I ask you those questions, would your
25 answers be the same?

1 A. Yes.

2 MR. MICHEEL: I would move the admission of

3 Exhibit 31 and tender Mr. Burdette for cross-examination,

4 your Honor.

5 JUDGE PRIDGIN: Mr. Micheel, thank you.

6 Any objections?

7 Hearing none, Exhibit No. 31 is admitted.

8 (Exhibit No. 31 was received into evidence.)

9 JUDGE PRIDGIN: Mr. Finnegan, any questions?

10 MR. FINNEGAN: No questions.

11 JUDGE PRIDGIN: Mr. Molteni?

12 MR. MOLTENI: No.

13 JUDGE PRIDGIN: And, Mr. Boudreau, has stepped

14 out. I'm sorry. Mr. Williams, let me ask you first.

15 MR. WILLIAMS: No questions.

16 JUDGE PRIDGIN: Mr. Swearengen, any questions?

17 MR. SWEARENGEN: Yes, your Honor. I have a

18 few.

19 JUDGE PRIDGIN: Thank you.

20 CROSS-EXAMINATION BY MR. SWEARENGEN:

21 Q. Good afternoon, Mr. Burdette.

22 A. Good afternoon.

23 Q. How are you doing?

24 A. Good. How are you?

25 Q. Fine. Thank you.

1 Let me ask you, does the Office of Public
2 Counsel generally intervene in and participate in Commission
3 proceedings in which electric, gas, water utilities are
4 seeking to encumber their Missouri assets in order to secure
5 a financing?

6 A. Did you say do we normally do that?

7 Q. Yes.

8 A. Do we usually do that? This is the first case
9 I have been involved in which a company was seeking to
10 encumber assets that I can recall.

11 Q. How long have you been with the Office of
12 Public Counsel?

13 A. Eight and a half years.

14 Q. And during that period of time, this is the
15 first instance that you can recall that the Public Counsel
16 has intervened and participated in one of these proceedings?

17 A. I believe so.

18 Q. Has the Public Counsel ever opposed a request
19 by a utility to encumber its assets?

20 A. I don't think we could have done that if we
21 weren't involved in a case.

22 Q. Okay. Would you agree with me that in the not
23 too distant past Aquila or its predecessor, UtiliCorp
24 United, Inc. or perhaps even earlier Missouri Public Service
25 Company, commonly financed their operations and business

1 through the issuance of secured debt?

2 A. I believe that's true.

3 Q. And since those events -- some of those events

4 may have predated your employment with the Public Counsel,

5 am I correct in assuming you don't have any knowledge as to

6 whether your office was involved in any of those cases, or

7 do you know?

8 A. If it was before I came to the Office, I -- I

9 may have reviewed a case very early, but I don't -- I don't

10 remember specifically.

11 Q. Would you agree that electric, gas and water

12 utilities subject to the Commission's jurisdiction

13 historically have used secured debt to finance their

14 operations and their businesses? And when I say "secured

15 debt," I'm talking about debt secured by a mortgage lien or

16 encumbrance --

17 A. Like first mortgage bonds?

18 Q. -- on Missouri utility assets such as first

19 mortgage bonds?

20 A. Yes.

21 Q. Would you agree that it is and has been a

22 pretty common practice?

23 A. Common's a relative term, but it happens,

24 yeah.

25 Q. In connection with your preparation for this

1 case, did you review or become familiar with any past
2 Commission cases involving requests by Aquila or its
3 predecessors or for that matter other Missouri utilities to
4 encumber their assets in connection with securing a debt
5 obligation?

6 A. No.

7 Q. What then is your knowledge of the utility
8 encumbrance process based on?

9 A. It would be based on my eight and a half years
10 of general experience and evidence presented in this case
11 and any research or reading I would have done in preparation
12 for this case.

13 Q. Have you ever been involved in the debt
14 negotiations that gave rise to a secured loan transaction
15 for a utility?

16 A. No.

17 Q. Do you have any knowledge of that process, the
18 secured debt negotiation process?

19 A. I think I have a general idea of what a
20 company and a bank would go through to reach -- to go
21 through negotiations, but I have not participated.

22 Q. What is the source of that knowledge that you
23 do have?

24 A. I have -- before coming here, I've interviewed
25 with, for example, the Principle Financial Group and that's

1 exactly what they did. So we discussed it at that point. I
2 have acquaintances that work in various aspects of business.

3 Q. I take it you've reviewed the application that
4 Aquila filed in this case and appendices and attachments?

5 A. I did.

6 Q. And the testimony?

7 A. Yes.

8 Q. Let me ask you -- and were you in the hearing
9 room this morning when I asked Ms. Wandel about the cases
10 which the company cited in its application as examples of
11 first mortgage bond or secured financing cases?

12 A. I -- I don't remember. I don't know.

13 Q. Okay. Let me, if I could, hand you Exhibit 6
14 to the company's application, which is a document that sets
15 out a series of Missouri Public Service Commission financing
16 cases and ask you if you've seen that before?

17 A. If it was attached to the application, I would
18 have seen it.

19 Q. And then I'm going to hand you the application
20 and refer you to paragraph 18, which lists a series of
21 financing cases that have been before this Commission. Do
22 you recall reading that application and that paragraph in
23 particular?

24 A. Again, I read the application so I read it at
25 some point.

1 Q. Do you have any specific knowledge about any
2 of these cases that are referenced in either the application
3 or the attachment?

4 A. None off the top of my head by looking at case
5 numbers.

6 Q. Have you done a study to determine the use of
7 the proceeds which resulted in connection with the asset
8 encumbrance cases that are set out in the application?

9 A. You're asking me if I know what they did with
10 the money?

11 Q. That's right.

12 A. It would have been something I looked into on
13 the company's next rate case.

14 Q. Excuse me?

15 A. It would have been something that I looked
16 into. I routinely ask about capitalization and expenses
17 during rate case DRs.

18 Q. So with respect to Aquila, you would have some
19 knowledge of the use of proceeds that they would have made
20 from any secured financings. Is that what you're saying?

21 A. Not specifically. You asked me if I ever
22 looked into it. I -- I have looked into it. I don't
23 remember specifics or I couldn't give you a list.

24 Q. My question was really broader than that. It
25 was with respect to the '60-some cases that were cited in

1 the application. You haven't looked at those and made a
2 study to determine the use of the proceeds from those cases,
3 have you?

4 A. Generally the companies specify what they're
5 going to use the proceeds for in their financing
6 application.

7 Q. And the orders that would be issued would
8 probably reflect that. Is that a fair --

9 A. I would think so. It often just mirrors the
10 language of the application.

11 Q. So right now you couldn't, off the top of your
12 head, refer to any financing case involving Aquila or any
13 company and tell us what the use of the proceeds might have
14 been? And that's okay.

15 A. Well, Ameren -- Ameren just filed a case --
16 financing case that they are going to lose their 365-day
17 revolver and they're issuing first mortgage bonds to pay off
18 old higher interest debt.

19 Q. To do what?

20 A. Pay off older higher interest debt.

21 Q. And has the Commission approved that?

22 A. I don't believe so. I think I just read that
23 application.

24 Q. When first mortgage bonds have been issued as
25 a result of past Commission encumbrance cases, who buys

1 those bonds, do you know, just generally speaking?

2 A. They would be issued to the public through the

3 investment bank. The investment bank would have lined up

4 investors, whether pension firms or insurance companies or

5 whoever they found to buy the bonds.

6 Q. And over the period of time that those bonds

7 are issued and outstanding, can the ownership change?

8 A. Yes.

9 Q. And how would that work?

10 A. You would sell your bond and somebody else

11 would buy it.

12 Q. If there is some other evidence of a secured

13 indebtedness issue other than a first mortgage bond, who

14 would own that security?

15 A. Can you ask that again?

16 Q. Yes. If there's a secured financing and

17 instead of first mortgage bonds being issued some other

18 evidence of indebtedness is issued, who would own that

19 evidence of indebtedness?

20 A. If I understand your question, I would think

21 it would be the creditor.

22 Q. The who?

23 A. The creditor.

24 Q. Okay. And could the creditor change? Could

25 that evidence of indebtedness be sold or traded?

1 A. I would think that would be terms specific to
2 the contract. The company might specifically request or say
3 that you cannot get rid of that.

4 Q. But if the contract allowed it, that evidence
5 of indebtedness could be sold?

6 A. I would think so.

7 Q. Are there any first mortgage bonds issued by
8 Missouri utilities outstanding at the present time that
9 you're aware of?

10 A. Yes.

11 Q. And can you give me some examples, please?

12 A. AmerenUE, Laclede, Empire.

13 Q. Are those securities being traded in the
14 market, as far as you know?

15 A. Yes.

16 Q. Is first mortgage bond financing or secured
17 financing oftentimes the cheapest source of financing for a
18 utility company?

19 A. It could be the cheapest long-term form of
20 financing. Chances are the short-term or commercial paper
21 market would be lower interest rate.

22 Q. Turn to page 16 of your testimony, please. Do
23 you have that in front of you?

24 A. I do.

25 Q. Am I correct in understanding that at page 16

1 of your testimony you make the point that, in your opinion,
2 regulated assets should not be used to support operations
3 that do not provide utility service to those customers; is
4 that correct?

5 A. Can you repeat that?

6 Q. Yes. Are you making a point on page 16 of
7 your testimony that --

8 A. You have line numbers specifically?

9 Q. No. Just generally.

10 A. Okay.

11 Q. That, in your opinion, regulated assets should
12 not be used to support operations that do not provide
13 utility service to the customers who are served by those
14 regulated assets?

15 A. Generally, yes.

16 Q. Is it your understanding that in all instances
17 in the past, the proceeds in connection with Missouri
18 Commission encumbrance cases have been used only to support
19 Missouri jurisdictional utility operations?

20 A. I -- I thought we had decided before that
21 there were not any encumbrance cases, but we were talking
22 about financing cases.

23 Q. Well, would you agree with me that in a
24 financing case, the utility assets are sometimes encumbered?

25 A. Okay. Sure.

1 Q. You would agree with that?

2 A. Sure.

3 Q. And in this particular case that's in front of

4 the Commission today, the financing has already occurred but

5 the company is seeking to encumber the assets to support

6 that financing. Is that not true?

7 A. Correct. Excuse me. Correct.

8 Q. Now, back to my question, which is past

9 Missouri cases in which encumbrances have been authorized,

10 is it your testimony that the proceeds from those cases have

11 been used only to support Missouri jurisdictional utility

12 operations?

13 A. Once the funds are received by the company,

14 the company's free to do with them as they please.

15 Q. Are you familiar with any encumbrance case

16 before this Commission in which some or all of the proceeds

17 were used for something other than supporting Missouri

18 jurisdictional operations?

19 A. You mean financing cases?

20 Q. Financing cases in which an encumbrance is

21 involved.

22 A. Can you repeat your question?

23 Q. Yes. Are you familiar with any encumbrance

24 case before this Commission, a case in which an encumbrance

25 is authorized, in which some or all of the proceeds were

1 used for something other than supporting Missouri
2 jurisdictional operations?

3 A. Since I'm unaware of what the company does
4 with the funds after they receive them, I wouldn't be aware
5 of a case where that has occurred. I wouldn't know for
6 sure.

7 Q. Do you think it's possible that those types of
8 cases do, in fact, exist?

9 A. I guess that would depend on the character of
10 the company.

11 Q. Okay. Are you familiar with any such case
12 with respect to Aquila or its predecessor, UtiliCorp?

13 A. I don't know specifics, so I wouldn't know
14 specifics about Aquila or its predecessor.

15 Q. I'm looking at page 14 of your testimony, if
16 you could turn to that.

17 A. Okay.

18 Q. Is it your position as set out on that page
19 that the collateralization which Aquila is requesting in
20 this case is not needed?

21 A. Correct. Well, do you have line numbers that
22 you're referring to? In general, I believe the collateral
23 the company is requesting in this case is not needed.

24 Q. Okay. Thank you.

25 And then following on that, if it's your

1 opinion that the collateralization is not needed, is it also
2 your opinion that it would reduce the financial flexibility
3 of Aquila?

4 A. Would what reduce the financial flexibility?

5 Q. The collateralization which, in your view,
6 would be unnecessary.

7 A. Yes.

8 Q. At page 14, if you look at line 18, there is a
9 question that begins there and the answer. And in that
10 question and answer am I correct in understanding that you
11 characterize the situation of over-collateralization as a
12 potential detriment?

13 A. Correct.

14 Q. Have you read the testimony filed by your
15 colleagues in the Office of Public Counsel in this case?

16 A. Yes.

17 Q. You have? Do you have that testimony with you
18 today?

19 A. I do not.

20 Q. Let me ask you, do you recall the testimony of
21 Ted Robertson?

22 A. I read it.

23 Q. And let me ask you this question. At page 34
24 of his testimony he makes the statement that it would not be
25 hard to imagine that Aquila will be at a disadvantage in

1 future net -- debt negotiations if the requested authority
2 is granted. Do you recall him making a statement of that
3 sort in his testimony?

4 A. I read his testimony. If that statement is in
5 his testimony, then I would have read it.

6 Q. Let me ask you this question. If that's what
7 his testimony reflects, would you agree with him on that
8 point?

9 A. Can you read the line again?

10 Q. Yes. Page 34 of his testimony he makes --

11 A. I don't have his testimony.

12 Q. What's that?

13 A. I don't have his testimony.

14 Q. Would you like me to hand it to you?

15 A. That would be -- that would be swell.

16 Q. Sure.

17 MR. SWEARENGEN: May I approach, please?

18 JUDGE PRIDGIN: You may.

19 THE WITNESS: Do you want these back?

20 BY MR. SWEARENGEN:

21 Q. Sure. Thanks.

22 Mr. Robertson's testimony --

23 A. Okay.

24 Q. -- it's Exhibit 35, which is the HC version.

25 And then on that page talks about the financial plan.

1 A. Okay. What -- do you want me to read it?
2 Q. The last line, line 20 --
3 A. Okay.
4 Q. -- it doesn't take much imagination to
5 understand that if a lien is placed upon all the assets of
6 the Missouri regulated utilities, those operations will be
7 at a severe disadvantage in future debt negotiations.
8 A. Okay. It does say that.
9 Q. Do you agree with that statement?
10 A. Yes.
11 Q. And I think you said earlier that you had not
12 ever been involved in utility debt negotiations; is that
13 true?
14 A. I've been involved in utility debt
15 negotiations with utilities before the Commission in
16 financing cases --
17 Q. And --
18 A. -- where companies are wanting certain
19 financing or to issue certain securities.
20 Q. But that's not the same as the negotiations
21 that the utilities would enter into with the lenders, is it?
22 A. No. Those wouldn't be the same.
23 Q. Okay. What evidence do you have from any
24 prior financing or encumbrance case that the resulting
25 encumbrance put the company at a disadvantage with respect

1 to future debt negotiations?

2 A. I understand that when you have securitized an
3 asset, you don't have the freedom you had before. And I
4 understand if you have an asset posted as collateral and you
5 want to try to use it as collateral for a second loan,
6 you're going to have to look harder to find a lender and
7 you're going to have to pay a higher interest rate.

8 Q. Is that understanding you have based on any
9 prior financing or encumbrance case before this Commission?

10 A. I have an MBA in finance and I've worked here
11 for eight and a half years. I guess a lot of it's based on
12 that. And I teach business finance.

13 Q. Okay. But it's not based on any case, any
14 specific case that you can point to?

15 A. Not that I recall.

16 Q. Now, you've indicated that you don't have a
17 lot of specific knowledge of prior encumbrance cases, but
18 let me ask you, with respect to those cases that you do have
19 knowledge of, in which cases did the value of the collateral
20 exactly equal the amount of the loan, do you know?

21 A. I do not.

22 Q. Can you tell the Commission that in no prior
23 encumbrance case did the value of the collateral exceed the
24 loan amount?

25 A. If there haven't been prior encumbrance cases,

1 no, I couldn't say that.

2 Q. So is it possible that having excess
3 collateral to support a loan is not really anything new?

4 A. I think that would depend on the specific
5 negotiations between the company and the creditor. I -- I
6 don't know if it's new or not new.

7 Q. Okay. Has this Commission ever found that
8 excess collateralization reduced the financial flexibility
9 of a utility?

10 A. I don't know that that question has been
11 considered.

12 Q. Can you point me to any case in which this
13 Commission found an encumbrance to be detrimental to the
14 public interest?

15 A. Well, in the sense that the Commission has
16 limited the amount of debt a utility has been able to issue,
17 and it would be first mortgage bonds, if you're going to
18 construe a financing case as an encumbrance case, then I
19 think I could construe that as the Commission limiting the
20 amount of collateral being put up in terms of limiting the
21 debt that's being issued.

22 Q. Well, that really wasn't my question. My
23 question was, can you point to any case in which the
24 Commission found an encumbrance to be detrimental to the
25 public interest?

1 A. I think that answer still stands, but I don't
2 have a specific case number for you.

3 Q. Okay. Do you have any knowledge of any cases
4 in which this Commission denied the request of a utility to
5 encumber assets?

6 A. In the sense of a financing case in first
7 mortgage bonds, yes, the Commission has limited or denied
8 the utility's ability to issue securities.

9 Q. And which case is that?

10 A. I believe most recently Ameren was going to
11 issue some debt and the Commission limited the amount. I'm
12 not sure it was Ameren, but they asked for a higher amount
13 than was ultimately granted.

14 Q. And you regard that as a denial. Do you know
15 of any case in which the Commission just simply said, We're
16 not going to allow this company to issue any secured debt?

17 A. Not that I recall.

18 Q. Would you agree with the statement that what
19 happens to Aquila from a financial standpoint doesn't really
20 matter because the Missouri operating utilities of Aquila
21 are operating efficiently and providing net income?

22 A. Would I agree what happens to Aquila doesn't
23 really matter? No. I don't think I would agree with that.

24 Q. So from that I can assume that the Office of
25 Public Counsel is, in fact, interested in the financial

1 integrity of Aquila?

2 A. Are we interested? Yeah. We're interested.

3 Q. Is that a positive interest or a negative

4 interest?

5 A. Depends on what's best for the ratepayers.

6 Q. In your mind, is there a distinction between

7 the Missouri operating utilities and Aquila itself?

8 A. Not legally.

9 Q. Then you would agree then that Aquila's

10 Missouri operating utilities are simply operating divisions

11 of the corporation?

12 A. Yes.

13 Q. And would you agree that the financial health

14 of Aquila's Missouri utilities are dependent upon the

15 financial health of Aquila?

16 A. I guess that would depend on the terms of a

17 bankruptcy proceeding if Aquila failed. I don't know

18 exactly what would happen to the utility operations or the

19 assets.

20 Q. Is Aquila unique in regard to the way it is

21 structured?

22 A. What do you mean by "structured"?

23 Q. Well, are you familiar with any other

24 operating utilities in this state that are divisions of

25 corporations?

1 A. I know of companies that are divisions. I
2 don't know of companies that were so involved in unregulated
3 operations with that structure.

4 Q. What are the companies that you're familiar
5 with that are operated as divisions of a corporation?

6 A. I'm not sure it's large enough to even be
7 divisions, but I know Empire District Electric is not a
8 holding company. Laclede has formed a holding company.
9 Ameren has formed a holding company. St. Joe got Heaton.
10 Missouri American Water is part of a large holding company.
11 At this time off the top of my head, Empire is the one I
12 would know for sure.

13 Q. What about Missouri Gas Energy? Would you
14 agree that that's an operating division of Southern Union
15 Company?

16 A. Yes. Yes. I forgot. Yeah. You're right.

17 Q. Now, you mentioned Empire. Is it your view
18 that Empire operates in a similar fashion as Missouri Gas
19 Energy or Aquila? And if you don't know, that's okay.

20 A. Well, since Aquila is the overall large
21 company and it has utility operations underneath it, I don't
22 know that I would say that Aquila and MGE are really that
23 similar. The answer for Empire was that it's the one
24 company I can think of that is not broken up into specific
25 separate legal entities or is not a holding company.

1 Q. Well, I think you just said that Aquila is the
2 corporation and operates as divisions in Missouri and other
3 states; is that not true?

4 A. Aquila is one large company that has utility
5 operations in other states.

6 Q. And those operations are conducted through
7 divisions. Is that your understanding? And if you don't
8 know, that's okay.

9 A. I believe so.

10 Q. Okay. Is the same true for Southern Union
11 Company? It conducts its utility operations in Missouri
12 through the Missouri Gas Energy operating division?

13 A. I believe that is true. I'm trying to
14 remember rate cases.

15 Q. Okay.

16 A. I believe that's true.

17 Q. Other than Aquila, are you aware of any
18 Missouri jurisdictional utilities that have operations in
19 states other than Missouri?

20 A. Ameren has operations in other states. Atmos,
21 I was thinking maybe even Empire had some operations in
22 Oklahoma or -- so that's -- that's about the extent I can
23 answer. Yes. I do know of some companies that have
24 operations in other states besides Missouri.

25 Q. Let's say Empire, for example, which does, in

1 fact, have operations in Missouri, Arkansas, Oklahoma and
2 Kansas. When a multi-jurisdictional utility such as Empire
3 issues first mortgage bonds, is it your understanding that
4 the company encumbers its assets in all of the states in
5 which it operates?

6 A. If it's general first mortgage bonds issued
7 under the name of the overall company, then the bonds would
8 represent all of the assets.

9 Q. And this would be true regardless of the use
10 of the proceeds from the financing of the related
11 encumbrance?

12 A. If they were general first mortgage bonds
13 issued by the overall company, yes.

14 Q. Would you turn to page 10 of your testimony,
15 please? Do you have that in front of you?

16 A. I do.

17 Q. At page 10, line 3 you set out a question
18 posed in Office of Public Counsel Data Request 633; is that
19 true?

20 A. Yes.

21 Q. But you only set out part of Aquila's response
22 to that data request; is that not true?

23 A. I don't know.

24 Q. Well, look at line 3 of your testimony.

25 A. And part of Aquila's response. Yes, I can see

1 that.

2 MR. SWEARENGEN: May I approach the witness?

3 JUDGE PRIDGIN: You may.

4 BY MR. SWEARENGEN:

5 Q. Mr. Burdette, I'm going to hand you what is

6 identified as Surrebuttal Schedule JRE-2, which is OPC Data

7 Request 633. Do you recognize that?

8 A. Yes.

9 Q. Would you please read into the record the last

10 sentence in Aquila's response, which you chose to omit from

11 your testimony?

12 A. While there are opportunity costs associated

13 with having to make prepayments, Aquila has committed to

14 using a lead lag calculation in rate cases that will

15 neutralize any potential impact of prepayment for gas

16 supplies and pipeline capacity and will not be translated in

17 any -- in any cost to be borne by our customers.

18 Q. Let me ask you this. Is that sentence, which

19 is a statement of Aquila as to its intentions, something

20 that you didn't want the Commission to know about?

21 A. I didn't think it was relevant to my question.

22 Since it's on a data request and you have access to the data

23 request, I think the Commission can probably be aware of it.

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

25 have.

1 JUDGE PRIDGIN: Mr. Swearengen, thank you.
2 Commissioner Murray, any questions?
3 COMMISSIONER MURRAY: I'll pass. Thank you.
4 JUDGE PRIDGIN: Thank you.
5 Commissioner Gaw?
6 COMMISSIONER GAW: No, thank you.
7 JUDGE PRIDGIN: I don't believe I have any
8 questions for Mr. Burdette.
9 Open this back up for recross. Mr. Finnegan?
10 MR. FINNEGAN: No questions.
11 JUDGE PRIDGIN: Thank you.
12 Mr. Molteni?
13 MR. MOLTENI: No questions, sir.
14 JUDGE PRIDGIN: Mr. Williams?
15 MR. WILLIAMS: No questions.
16 JUDGE PRIDGIN: All right. Thank you. May
17 this witness be excused?
18 MR. MICHEEL: I get recross, don't I?
19 JUDGE PRIDGIN: I'm sorry.
20 MR. WILLIAMS: Redirect.
21 JUDGE PRIDGIN: Redirect.
22 MR. MICHEEL: I'll do it in the method of
23 cross-examination labeled direct.
24 REDIRECT EXAMINATION BY MR. MICHEEL:
25 Q. Mr. Burdette, do you recall that

1 Mr. Swearengen asked you numerous times about financing
2 cases?

3 A. Yes.

4 Q. And whether or not the Office of the Public
5 Counsel participated in those cases?

6 A. Yes.

7 Q. Do you know whether or not the Office of
8 Public Counsel is a party automatically to every case?

9 A. We are not.

10 I'm sorry. Automatically. Yes. I'm sorry.
11 I misunderstood your question. Yes, Public Counsel is
12 automatically a party to cases.

13 Q. Is this a financing case, Mr. Burdette?

14 A. I would not characterize it as a financing
15 case.

16 Q. What would you characterize this case as?

17 A. Collateralization case.

18 MR. MICHEEL: May I approach the witness?

19 JUDGE PRIDGIN: You may.

20 BY MR. MICHEEL:

21 Q. I'm going to hand you what's been admitted
22 into evidence as Exhibit No. 55 and ask you to read that
23 into the record, please?

24 A. This is OPC Data Request 5087 issued on
25 October 3rd, 2003. Question: Is Aquila aware of any

1 circumstances presented in any case referred to in paragraph
2 18 and Appendix 6 of its application wherein the utility
3 filed for approval to mortgage or encumber its properties to
4 secure a debt obligation that had already been incurred?

5 Response: No. Answered by Jon Empson.

6 Q. Has the debt already been issued in this case,
7 Mr. Burdette?

8 A. Yes.

9 Q. So do you have -- so is it safe to say the
10 Commission wouldn't be preventing Aquila from issuing that
11 debt?

12 A. Correct.

13 Q. And Mr. Swearngen asked you about numerous
14 first mortgage bond cases?

15 A. Yes.

16 Q. In your eight and a half years with the Office
17 of Public Counsel, are you aware of any first mortgage bond
18 cases where the utility was seeking to use the proceeds for
19 peak day working capital?

20 A. I'm not aware of any.

21 Q. Have you seen, in your work with the Office of
22 Public Counsel, any requests where first mortgage bonds have
23 been sought for any sort of working capital?

24 A. No.

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

1 JUDGE PRIDGIN: Mr. Micheel, thank you.
2 I do see as the next witness for Public
3 Counsel Mr. Busch. I'm wondering because of a local public
4 hearing that's scheduled at five o'clock if this isn't a
5 cleaner time to break. I don't know.
6 And the parties may not know to what extent
7 they intend to cross-examine him, but because we're
8 approaching 4:15 or so and the room needs to be available by
9 five o'clock, I'm thinking this is probably a better time to
10 break unless somebody's got compelling evidence to the
11 contrary. Mr. Swearengen?
12 MR. SWEARENGEN: I've never had what we'd call
13 compelling evidence -- at least recently.
14 I don't have any questions for any more of the
15 witnesses and I seem to be the guy asking most of the
16 questions.
17 JUDGE PRIDGIN: All right. And I don't
18 know --
19 MR. WILLIAMS: Staff has no questions for
20 either Mr. Robertson or Mr. Busch.
21 JUDGE PRIDGIN: Well, if that's the case, we
22 might be able to get Mr. Busch out of here rather quickly
23 then.
24 MR. MICHEEL: Your Honor, I would just say for
25 the record that our list of witnesses indicates that

1 Mr. Robertson is next. He's unavailable, he's had a death
2 in the family. If the Commissioners do indeed have
3 questions for Mr. Robertson, he is available -- he will be
4 available on October 31st, the last day of the hearing.

5 JUDGE PRIDGIN: That is a day we've already
6 reserved for the hearing.

7 MR. MICHEEL: And it is my understanding from
8 the parties that none of the parties have cross-examination
9 for Mr. Robertson.

10 JUDGE PRIDGIN: All right. Thank you.

11 THE WITNESS: Am I excused?

12 JUDGE PRIDGIN: I'm sorry. You may be
13 excused, Mr. Burdette. I didn't realize you were still
14 sitting there.

15 THE WITNESS: Thank you.

16 (Witness sworn.)

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

19 Mr. Micheel, when you're ready, sir.

20 JAMES BUSCH testified as follows:

21 DIRECT EXAMINATION BY MR. MICHEEL:

22 Q. Would you state your name and business
23 address?

24 A. My name is James A. Busch. My business
25 address is PO Box 7800, Jefferson City, Missouri 65102.

1 Q. And are you the same James A. Busch that
2 caused to be filed Exhibit 32, your Rebuttal Testimony
3 that's highly confidential, and Exhibit 33 your Rebuttal
4 Testimony that is nonproprietary?

5 A. Yes, I am.

6 Q. Do you have any corrections you'd like to make
7 to that testimony today?

8 A. Yes, I do.

9 Q. Could you let us know what those are?

10 A. The first correction, page 13, line 16,
11 240 million should read 241 million.

12 On page 16, line 17, that should read January
13 2002 instead of 2001.

14 Page 21, line 3 where it says Table 3, that
15 should say Table 4.

16 Page 23, line 20 that should read \$80 million
17 dollars, not 70 million.

18 And, finally, I have a correction on schedule
19 JAB-4. That was marked highly confidential and I had
20 forgotten that it is a FERC tariff and it is the public
21 domain. And we have asked the company if -- if this is
22 actually a public document and we had a letter from the
23 company's attorney that stated that this was a public
24 document and so this has been marked HC and it should be a
25 non-HC document.

1 Q. And that's all of your Schedule JAB-4, pages 1
2 through 5?

3 A. That is correct. And that's all my
4 corrections.

5 Q. With those corrections if I asked you those
6 same questions today, would your answers be the same?

7 A. Yes, they would.

8 MR. MICHEEL: With that, I would move the
9 admissions of Exhibits 32 and 33 and tender Mr. Busch for
10 cross.

11 JUDGE PRIDGIN: Mr. Micheel, thank you.
12 Any objection to Exhibits 32 or 33?
13 Hearing none, Exhibits 32 and 33 are admitted.
14 (Exhibit Nos. 32 and 33 were received into
15 evidence.)

16 JUDGE PRIDGIN: Go around the room just to
17 make sure.

18 Mr. Finnegan, any questions?

19 MR. FINNEGAN: No questions.

20 JUDGE PRIDGIN: Mr. Molteni?

21 MR. MOLTENI: No, sir.

22 JUDGE PRIDGIN: Mr. Williams?

23 MR. WILLIAMS: No, sir.

24 JUDGE PRIDGIN: Mr. Swearengen?

25 MR. SWEARENGEN: No questions. Thank you.

1 JUDGE PRIDGIN: No questions from counsel.
2 Commissioner Murray?

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Just so you're not up here for nothing.
5 Would you just briefly state what it is that,
6 in your opinion, would make our approval of this request
7 detrimental to the public interest?

8 A. In my testimony I focused on the cash working
9 capital model. And a lot of the basis for that cash working
10 capital was the prepayments that the company now has to make
11 because they are a non-investment grade company.

12 And approval of this, in my opinion, would
13 be -- it would be detrimental to the public interest in that
14 it would allow the companies to go out and get into
15 nonregulated activities and the company can be bailed out by
16 the Commission when they have to come back and get an
17 encumbrance to meet new obligations such as prepayments due
18 to those nonregulated activities.

19 If they weren't -- if they were an investment
20 grade company like they had been, they would not need to
21 make prepayments for natural gas supplies or pipeline
22 capacity, which is -- which is putting a drag then on the
23 cash that they need.

24 Q. I thought the company had agreed to insulate
25 the ratepayers from any costs of those prepayments?

1 A. Well, they may have made that commitment to
2 insulate from the cost. But, however, as the company has
3 stated that the ratepayers are better off by a stronger
4 overall company, then, therefore, do those prepayments, the
5 company is not as strong as it would be.

6 And so, therefore, if you follow the argument
7 through, the ratepayers are not as -- could be better off by
8 a stronger company since the company is not as strong by
9 making the prepayments.

10 Q. How does that change dependent on whether we
11 grant or deny this application?

12 A. That fact I guess doesn't change whether or
13 not you grant that or disallow that. That fact is a fact.
14 The -- the granting of it will just say that we're allowing
15 our assets to help -- Missouri assets to help out the
16 company's failures or business losses in nonregulated
17 activities.

18 Q. And how does that, sir, act as a detriment?

19 A. How does -- I'm sorry. How does what?

20 Q. Well, by granting the application you say we
21 would be allowing our Missouri assets to, quote, bail out --

22 A. How is that detrimental, Commissioner?

23 Q. Yes.

24 A. I just don't -- in my opinion, I wouldn't
25 think that -- I think that would be detrimental to Missouri

1 ratepayers if it gives other companies maybe the go-ahead to
2 get into more risky ventures and more -- in nonregulated
3 activities then they normally would have.

4 Q. So when you're looking at public detriment,
5 you're looking at ratepayers from all utilities of Missouri?

6 A. I think potentially it could be ratepayers of
7 all Missouri utilities.

8 Q. How is it a detriment to Aquila's utility
9 customers?

10 A. By granting this, Missouri assets would be
11 secured for this loan which could potentially count as
12 nonregulated activities and those activities are riskier.
13 And, therefore, maybe the chance of default could be greater
14 and that could harm the Missouri ratepayers.

15 Q. The chance of default is not dependent, is it,
16 on whether we grant this application? The chance of default
17 does not increase by us granting this application, does it?

18 A. I don't believe so. And like I said, a lot of
19 what I did was more on the cash working capital. Some of
20 these questions may be better answered by Mr. Robertson next
21 Friday when he is available.

22 Q. And for Missouri's cash working capital, would
23 granting this application jeopardize Missouri utilities
24 ability to have cash working capital?

25 A. I'm sorry, Commissioner. I don't believe I

1 followed your question.

2 Q. Maybe I didn't state it right.

3 If we grant this application, would that

4 jeopardize Missouri utilities ability to access cash working

5 capital?

6 A. If you approve this or --

7 Q. Yes.

8 A. They've already got the money, so I don't

9 believe it would.

10 Q. And you're here on cash working capital

11 issues. So from a cash working capital standpoint, do you

12 see any detriment to Aquila's utility customers?

13 A. Well, from their peak day city that they

14 provided, and they provided a negative \$241 million need,

15 Missouri ratepayers at the time had no cash working capital

16 needs. In fact, they are providers at that point in time.

17 So according to the peak day that the company has based this

18 request on, granting of this loan would be saying that our

19 assets are providing support to the other utilities.

20 Q. So you think it is subsidizing other

21 jurisdictional utilities?

22 A. It would be subsidizing other jurisdictional

23 utilities.

24 Q. And are the other jurisdictional utilities in

25 any way subsidizing Missouri utilities?

1 A. I have no idea.

2 COMMISSIONER MURRAY: I think that's all I

3 have. Thank you.

4 THE WITNESS: Thank you.

5 JUDGE PRIDGIN: Commissioner Murray, thank

6 you.

7 Commissioner Gaw?

8 All right. Thank you.

9 QUESTIONS BY JUDGE PRIDGIN:

10 Q. I think I just have one or two quick

11 questions. Mr. Busch, if I could direct you to page 7 of

12 your testimony, please --

13 A. Okay.

14 Q. -- and do I understand correctly that Aquila

15 now has to prepay for its fuel? I'm sorry. I guess I've

16 got a lead-in before I get you to look at page 7.

17 A. Okay.

18 Q. Is it correct that Aquila now has to prepay

19 for its fuel?

20 A. Are you referring to natural gas?

21 Q. Yes. I'm sorry.

22 A. Yes. They are prepaying for natural gas.

23 Q. And I'm looking at -- I guess starting at line

24 13 the question: How are the peak day cash working capital

25 requirements for Aquila's regulated operations determined

1 for January 2nd, 2004?

2 And the answer -- and I won't read it all, but
3 begins: On January 2nd, 2004, Aquila estimates that current
4 gas and purchased power costs will be -- and then we've got
5 an HC number -- and then previous gas and purchased power
6 costs will be -- and then we have an HC number.

7 A. Correct.

8 Q. I guess my question is, if the costs are
9 prepaid, why are both current month and previous month put
10 in the peak day cash working capital requirements?

11 A. The explanation that the company gave was that
12 now that they have to prepay for gas for January -- the --
13 the costs for December were prepaid on December -- will have
14 to be prepaid before December so they have to have an outlay
15 of cash.

16 They do not start receiving those receipts for
17 December's cash until late December, January. Then they
18 also have to make January's payments in advance. So
19 basically they've got two outstanding months of cash for
20 their gas and then -- before the receipt, so that was the
21 explanation that we were given.

22 JUDGE PRIDGIN: Okay. Thank you. I think
23 that's the only question that I had.

24 Let me see if we have any redirect -- or
25 excuse me, recross.

1 Mr. Finnegan?
2 MR. FINNEGAN: No questions.
3 JUDGE PRIDGIN: Thank you.
4 Mr. Molteni?
5 MR. MOLTENI: No, sir.
6 JUDGE PRIDGIN: Mr. Williams?
7 MR. WILLIAMS: No questions.
8 JUDGE PRIDGIN: Mr. Swearengen?
9 MR. SWEARENGEN: No questions. Thank you.
10 JUDGE PRIDGIN: Mr. Micheel?
11 MR. MICHEEL: Just a couple clarifications.
12 REDIRECT EXAMINATION BY MR. MICHEEL:
13 Q. Commissioner Murray asked you some questions
14 about your cash working capital study and the needs. Do you
15 recall those questions?
16 A. Yes, I do.
17 Q. You said other jurisdictional utilities. Were
18 you referring, when you said that in that answer, to the
19 other states that Aquila operates in?
20 A. Yes. I was referring to the other six states
21 that Aquila has utility operations.
22 MR. MICHEEL: Thank you.
23 JUDGE PRIDGIN: All right. Mr. Micheel, thank
24 you.
25 May this witness be excused?

1 All right. Hearing no objections, Mr. Busch,
2 thank you very much for your time and your testimony.

3 I see as the last remaining witness, if I'm
4 not mistaken, is Ted Robertson. And, Mr. Micheel, do I
5 understand that he is unavailable until October 31st?

6 MR. MICHEEL: Yes, your Honor. That's my
7 understanding. If for some reason he does make it back on
8 Friday, I'd be happy to let you know, but at this time the
9 only information I have is that I don't think he's going to
10 be back this week.

11 JUDGE PRIDGIN: All right. It sounds like the
12 cleanest thing to do from here is this. Mr. Robertson is
13 the only witness that I see left and we already have
14 October 31st reserved as a day we have the hearing room
15 reserved.

16 I think I would like to go ahead and wait
17 until the 31st, have Mr. Robertson come in and testify. And
18 I understand that counsel doesn't have any questions, but
19 that will make him available for any questions from the
20 Bench.

21 And I do believe that the Commission will also
22 probably have some questions to ask of counsel. And so if
23 we can have that day set aside. And I see no reason for
24 counsel to appear or really to do anything until the 31st.
25 Do I have any disagreements from counsel or any concerns?

1 Mr. Molteni?

2 MR. MOLTENI: Your Honor, I indicated to you
3 before that on the 31st I was going to be traveling out of
4 town. I have counsel available, but if the Commission has
5 questions for counsel, it won't be a counsel who is
6 knowledgeable in detail about the case.

7 Mr. Shansey at a prehearing conference
8 attended for me when I had a conflict, but -- subject to
9 that, I don't have any objection. I guess I would rather --
10 if the Commissioners have questions for the State of
11 Missouri, I would prefer one of the scheduled days, either
12 tomorrow or Friday, we reconvene to be able to answer those
13 questions.

14 JUDGE PRIDGIN: I'm sorry. Give me just a
15 minute, please.

16 We already have -- again, we have Thursday and
17 Friday blocked off for this hearing. After consulting with
18 Commissioners Murray and Gaw, I think the thing to do from
19 here is to set this coming Friday, October 24th, as time for
20 the Commission to ask questions.

21 And we've normally been starting at 8:30
22 because I've been wanting to drive ahead and get the
23 evidence in. Is 8:30 a convenient time for parties and the
24 Commission or we can certainly start at another time.

25 MR. FINNEGAN: For out-of-town counsel, it's

1 not really convenient because I have a hearing that morning
2 in court. And Mr. Conrad I'm not sure will be back until
3 noon from Washington. If we could start in the afternoon --

4 JUDGE PRIDGIN: I think we have a conflict
5 from the Bench in the afternoon.

6 All right. Change in plans. How about
7 instead we try tomorrow afternoon at 1:30 for counsel to be
8 available for oral argument? Mr. Finnegan, would either you
9 or Mr. Conrad be available then?

10 MR. FINNEGAN: For oral argument?

11 JUDGE PRIDGIN: I guess for questions from the
12 Bench for counsel.

13 MR. FINNEGAN: No. I'm sorry. I can't be
14 available tomorrow afternoon and Mr. Conrad is out of town.
15 I have no questions for Mr. Robertson.

16 JUDGE PRIDGIN: The Bench may have questions
17 for the attorneys is what I'm saying. And we had tomorrow
18 blocked off for the hearing so I assumed either you or
19 Mr. Conrad had planned to be here tomorrow; is that correct?

20 MR. FINNEGAN: I guess I can come back if I
21 have to, if he's available. Is Mr. Robertson going to be
22 available tomorrow?

23 JUDGE PRIDGIN: No, no. This is something
24 separate from Mr. Robertson. This is simply for the Bench
25 to have questions for the attorneys.

1 MR. FINNEGAN: I guess I can be available,
2 although Mr. Conrad could answer the questions better.
3 JUDGE PRIDGIN: I understand.
4 Let's go ahead, again, 1:30 tomorrow afternoon
5 for counsel to be available for questions from the Bench.
6 And then on October 31st we'll be available to put
7 Mr. Robertson and have him available for questions from the
8 Bench as well. October 31st I would think at 8:30 simply
9 because it would be easier for me to remember then. And
10 then at that time we might be able to discuss briefing more
11 intelligently as well.
12 Any other questions or concerns from the
13 Bench -- excuse me, from the Bench or from counsel?
14 All right. Hearing none, we are in recess
15 until tomorrow at 1:30 in the afternoon. We're off the
16 record.
17 WHEREUPON, the hearing was adjourned until
18 October 23rd, 1:30 p.m.
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