

1 A. I see it.

2 Q. Did I read that correctly, sir?

3 A. You did.

4 Q. Would you agree with me that fair and

5 reasonable rates is a dynamic concept based upon a multitude

6 of factors that change?

7 A. Sure.

8 Q. What may be fair and reasonable today may not

9 be fair and reasonable five years from now?

10 A. I think, as you look across markets and

11 industries, rates being frozen for five years then declining

12 is more than fair and reasonable.

13 Q. On page 4 of your surrebuttal testimony, you

14 respond to Public Counsel Witness Kind regarding UtiliCorp's

15 value cycle philosophy; is that correct?

16 A. Yes.

17 Q. Is it correct that UtiliCorp uses the value

18 cycle philosophy?

19 A. Yes.

20 Q. Further on down on that page you claim that

21 the break up of an integrated Missouri jurisdictional

22 utility would require Commission approval; is that correct?

23 A. Correct.

24 Q. Would the break up of the integrated Missouri

25 jurisdictional utility in any way -- for example, if you

1 decided to desegregate the generation assets of St. Joe,
2 would that in any way displace or invalidate the regulatory
3 plan that UtiliCorp has proposed in this proceeding?

4 A. If we were to segment out generation and sell
5 generation, we would be down here in front of the Commission
6 proposing that transaction.

7 Q. Would that alter the 10-year regulatory plan
8 that you're asking this Commission to approve in this
9 proceeding?

10 A. Depending on the terms and structure, it
11 could.

12 Q. Would we assign any part of the premium, the
13 \$92 million that we're talking about, to the -- assume we
14 spin off the generation assets, would we assign any amount
15 of the premium to those generation assets?

16 A. I think depending on the structure and the
17 terms, I would think that would be part of the discussion,
18 what amount of the premium should be allocated to the
19 generation assets.

20 Q. Has your company undertaken any study or do
21 you have a number with respect to what that premium would be
22 respecting St. Joe Light & Power's generation assets?

23 A. I have not participated in that discussion. I
24 don't think we really have gotten into that in any detail.
25 We know the premium in total is \$92 million. There are

1 several allocation methodologies we could use in the event
2 we decide to sell the generation. And that would be, I
3 think, the discussion in that proceeding if and when we made
4 a decision to sell the generation.

5 Q. Why shouldn't we just wait until that happened
6 or wait until we have the fifth-year moratorium case before
7 we make a decision about whether or not we're allowing
8 recovery of the acquisition premium?

9 A. Again, that -- would you invest \$92 million
10 not knowing what return you were going to earn on your
11 investment?

12 Q. Well, let me ask you this. Did your company
13 decide to invest the money it takes to purchase St. Joe
14 Light & Power on a guaranteed belief that it would recover
15 \$92 million acquisition adjustment?

16 A. We're not asking to recover the whole \$92
17 million acquisition adjustment. We looked at the precedent
18 of this jurisdiction and statements by Staff and believed
19 we'd get a fair and reasonable opportunity to earn a return
20 on the premium paid, which is essential to realize the
21 benefits received from the transaction and it's a net
22 positive.

23 Q. Let me ask you this question. Did your
24 company agree to purchase St. Joe Light & Power Company
25 based on its belief that you would be allowed to recover

1 50 percent of the acquisition adjustment?

2 A. I would just repeat my earlier answer. We
3 looked at the precedent. We looked at statements by Staff,
4 we looked at the changing nature of regulation and a
5 deregulating marketplace and made -- and believed we'd get a
6 fair and reasonable chance to earn a return on the premium
7 paid to realize the benefits of the transaction.

8 Q. Did you think you'd get that chance within the
9 bounds of the merger proceeding or in a rate proceeding?

10 A. In the merger proceeding because -- again, for
11 the same reasons.

12 Q. Are you aware of any Missouri Public Service
13 Commission merger decision that was contested wherein the
14 Commission determined the appropriate treatment of an
15 acquisition adjustment or any other rate-making matters
16 within the confines of the merger application proceeding?

17 A. We've cited the precedent we used and -- in
18 making our decision in the testimony.

19 Q. And those two cases that you cite in your
20 testimony, the KP&L case and the Missouri City's case, in
21 both of those cases the Commission made no rate-making
22 determinations in the merger proceedings; isn't that
23 correct?

24 A. We cited a lot more precedent than just those
25 two cases in my testimony. And Mr. McKinney is going to

1 testify at some length about some other precedents in other
2 jurisdictions. And, you know, it was -- it was all of that
3 that led to our decision.

4 Q. So it was what other jurisdictions did, not
5 what Missouri has done. Is that your testimony?

6 A. No. No. That wasn't my testimony at all. We
7 looked at the precedent set in Missouri. We looked at what
8 Staff had said in other proceedings and we looked at the
9 evolving nature of regulation in other jurisdictions and we
10 made, you know -- we made a judgment.

11 Q. Were you here for the opening statements
12 today?

13 A. Yes.

14 Q. Is it correct that your counsel indicated that
15 within the guise of a merger proceeding the Commission, to
16 the best of his knowledge, has never made a rate-making
17 determination?

18 A. I can't -- I'm sure it's in the record. I
19 can't recall precisely what he said on that point.

20 Q. Do you have any reason to disagree with that?

21 A. No.

22 MR. MICHEEL: Thank you very much for your
23 time, sir.

24 JUDGE WOODRUFF: Staff?

25 MR. DOTTHEIM: Yes, thank you.

1 CROSS-EXAMINATION BY MR. DOTTHEIM:

2 Q. Afternoon, Mr. Green.

3 A. Good afternoon.

4 Q. If I could direct you to your direct
5 testimony, which is Exhibit 2. And if I could direct you to
6 page 4, lines 10 to 12 where you make reference to the
7 electric combined cycle generation plant under construction
8 in Cass County by UtiliCorp's Aquila Merchant Energy Partner
9 business, do you not?

10 A. Yes.

11 Q. Is that the Aries power plant?

12 A. Yes.

13 Q. And that's a 600 megawatt natural gas, fire
14 combined cycle unit being constructed in Pleasant Hill,
15 Missouri?

16 A. Correct.

17 Q. Is the Aries power plant an exempt wholesale
18 generator?

19 A. Yes. Or I'm not sure that technically -- I'm
20 not positive technically if it's referred to as an EWG,
21 frankly. It's an independent power plant, unregulated power
22 plant.

23 Q. Does Missouri Public Service have a
24 purchase -- power purchase contract respecting a portion of
25 the output of that facility from June 2000 to May 31, 2005?

1 A. They do.

2 Q. Okay. Has Calpine Corporation acquired a

3 50 percent ownership interest in the Aires power plant?

4 A. They have.

5 Q. And did that occur in January of this year?

6 A. Yes.

7 Q. I'd like to direct you to page 7 of your

8 direct testimony, lines 21 -- 22 where you make reference to

9 your FERC filings respecting the St. Joseph Light & Power

10 and UtiliCorp merger case. What is the status of your FERC

11 merger filing at the moment?

12 A. We're on the consent agenda this Wednesday.

13 Q. And the consent agenda is? Could you provide

14 an explanation?

15 A. We're expecting approval on Wednesday

16 essentially.

17 Q. Okay. If I could direct you to page 9 of your

18 direct testimony, lines 8 to 9 where you state that the

19 competitive bid process was one of the factors on which

20 UtiliCorp's offer price for St. Joseph Light & Power was

21 based. You state that, do you not?

22 A. Yes.

23 Q. The merger agreement you have respecting

24 Empire, for comparison purposes, the price per share agreed

25 to by UtiliCorp respecting Empire was arrived at by

1 one-on-one negotiations between Empire and UtiliCorp, was it
2 not?

3 A. Do you mean to say St. Joe, or do you want to
4 talk about Empire?

5 Q. I was referring to Empire.

6 A. Yes. Correct.

7 Q. Okay. In considering merger and acquisition
8 opportunities, does UtiliCorp prefer to enter into auction
9 processes similar to the St. Joseph Light & Power procedure
10 or to undertake individual negotiations with target
11 acquisition companies?

12 A. You know, it just depends. There are
13 opportunities in auctions. I mean, in general, one prefers
14 to avoid a large auction process. St. Joe was a limited
15 auction process. So it -- you know, we've probably
16 experienced as much success and created as much value in
17 auction processes as negotiated deals, but oftentimes --
18 there's certainly less competitive pressure many times, but
19 not always in a negotiated process.

20 Q. Is it a reasonable expectation that the use of
21 auctions may lead to higher acquisition prices?

22 A. It can.

23 Q. St. Joseph Light & Power requested, did it
24 not, that UtiliCorp increase its bid of \$22.50 per share to
25 \$23 per share, did it not?

1 A. It did.

2 Q. What was the basis for UtiliCorp agreeing to
3 increase its fixed, binding bid for St. Joseph Light &
4 Power?

5 A. It was within our acceptable range, and there
6 was a belief on the part of the negotiating team that it was
7 necessary to close the transaction.

8 Q. If I could return to your FERC filing again.
9 Your FERC filing was filed as consolidated cases, was it
10 not? That is both -- is that both the St. Joseph Light &
11 Power and the Empire District Electric?

12 A. Before FERC?

13 Q. Yes.

14 A. I believe so.

15 Q. I'd like to refer you to page 10 of your
16 direct testimony, line 15 where the term "industry norms"
17 appears. Could you define "industry norm" or "industry
18 norms" as you use it in that context?

19 A. I mean, "industry norms" is referring to
20 looking at multiples of earnings of book value, premiums
21 over stock price, comparable transactions, comparable
22 companies, trading multiples to determine a range of value.

23 Q. And on that same line you use the term
24 "indicative reference point." Could you define that term as
25 you used it that context?

1 A. It's indicative of the value of the business
2 or the assets.

3 Q. I'd like to refer you to page 11 of your
4 direct testimony lines 14 to 18. You indicate therein, do
5 you not, that in establishing its bid price and making its
6 decision to acquire St. Joseph Light & Power, UtiliCorp
7 quote, Assumed that the Commission would provide UtiliCorp
8 with a reasonable opportunity to recover the acquisition
9 premium, closed quotes.

10 A. Yes. I mean, my answer's right there.

11 Q. Do you mean an opportunity to recover all of
12 the merger premium?

13 A. We need an opportunity to achieve what we
14 filed in the regulatory plan.

15 Q. What you filed in the regulatory plan, did
16 that include recovery of all of the merger premium?

17 A. No.

18 Q. If I could direct you to page 13 of your
19 direct testimony, lines 11 and 12. You state that
20 St. Joseph Light & Power is proposing a five-year rate
21 freeze, do you not?

22 A. Yes.

23 Q. Is that rate freeze that UtiliCorp is
24 proposing any different than the moratoriums that the Staff
25 has entered into in the past?

1 A. I don't believe so, but I don't -- I don't
2 know the specifics of the morator-- all the moratoriums the
3 Staff has entered into in the past.

4 Q. Okay. Is the rate freeze that UtiliCorp is
5 proposing any different than moratoriums or rate freezes
6 that the Commission has approved in the past?

7 A. Again, I'd have to look at all those -- what
8 the Commission's approved to answer the question. Basically
9 it's just we freeze rates and we've got five exceptions to
10 the rate freeze.

11 Q. Do you know whether any Missouri court has
12 found a rate moratorium or a rate freeze to be unlawful?

13 A. No. I mean, certainly we don't believe it's
14 unlawful or we wouldn't have proposed it.

15 Q. So, as a consequence, it would be your
16 testimony that no Missouri court has ever found a rate
17 moratorium or a rate freeze to be unlawful?

18 A. No. That's not what I said. We don't believe
19 it to be unlawful. I have not done an exhaustive review of,
20 you know, every court action on that issue, so I couldn't
21 respond to that.

22 Q. On what do you base your opinion that what
23 UtiliCorp is proposing is not unlawful?

24 A. My learned counsel.

25 Q. And your learned counsel is who?

1 A. Well, we -- he's sitting here at the table,
2 several of them, and our regulatory staff.

3 Q. Do you know whether the Staff has entered into
4 rate freezes, moratoriums in the past with a duration as
5 long as five years?

6 A. I don't for sure. I believe maybe four years
7 has maybe been -- I don't know for sure. I can't answer
8 that specifically.

9 Q. Do you know whether the Commission has ever
10 approved any rate freezes or moratoriums in the past as long
11 as five years of duration?

12 A. I don't believe they have. Not to my
13 knowledge.

14 Q. I'd like to direct you to page 14 of your
15 direct testimony, lines 6 to 7 where you state that the
16 proposed merger is in, quote, The best interest of the
17 customers and in the public interest of the state of
18 Missouri, closed quote.

19 Are the best interests of customers and the
20 public interest of the state of Missouri two different
21 things?

22 A. Not necessarily.

23 Q. When you wrote that statement, did you believe
24 that those were two different things?

25 A. No. Not in this instance.

1 Q. I'd like to direct you to page 15 of your
2 direct testimony, lines 13 through 20, where you cite the
3 Massachusetts Department of Telecommunications and Energy as
4 having changed its policy respecting acquisition premium.
5 What materials did you review as a basis for your
6 statements?

7 A. Referencing the Massachusetts example?

8 Q. Yes.

9 A. A copy of the case and, you know, our analysis
10 of it and the explanation from counsel and our regulatory
11 group.

12 Q. Can you identify the case any more
13 specifically than you have in your testimony there?

14 A. In what way?

15 Q. Oh, the caption of the case, if it's reported
16 anywhere, what utility specifically it may have involved.

17 A. Not as I sit here today.

18 Q. I'd like to refer you to page 16 of your
19 direct testimony, lines 14 to 33, where you site excerpts
20 from two decisions from Nebraska. Those are the decisions
21 of what body in Nebraska?

22 A. It's a different regulatory environment where
23 we've got three rate areas and, you know, there's a
24 negotiating team made up essentially of municipal entities
25 within that rate area.

1 Q. And could you explain that process any --
2 you've just --

3 A. Essentially a negotiated process where we go
4 through and make our case and listen to their case and --

5 Q. In that second paragraph, lines 24 through 33,
6 there's a reference to a rate area utility consultant.
7 Could you identify what is a rate area utility consultant?

8 A. What party is that consultant?

9 Q. Yes. If you could identify.

10 A. I assume that's probably the consultant to the
11 municipal -- the municipals that are engaged in the process.

12 Q. And is special counsel another party?

13 A. Yes.

14 Q. And special counsel represents who?

15 A. In this instance I don't know exactly who they
16 would represent. Could be special interested parties like
17 we have here in this proceeding.

18 Q. Okay. I'd like to direct you to page 21 of
19 your direct testimony. You make reference on line 17 to 18
20 about UtiliCorp looking to address in the 2000 Missouri
21 Legislature incentive regulation and tax barriers to merger
22 transactions, do you not?

23 A. Yes.

24 Q. Do you know whether UtiliCorp is looking to
25 address in the 2000 Missouri Legislature the matter of

1 stranded costs?

2 A. We haven't made a final decision, but
3 certainly we'd like to see the process move forward.

4 Q. And from UtiliCorp's perspective, what would
5 move the process forward?

6 A. I think we need to work with the Commission
7 and Staff to develop a framework to move forward, and
8 ultimately it will involve some legislation.

9 Q. Well, you may have answered my question, but
10 does UtiliCorp believe stranded costs is an issue for the
11 Commission or an issue for the legislature?

12 A. I'm not sure how we're approaching that issue
13 specifically. I mean, it really -- and how we will
14 ultimately address it.

15 Q. I'd like to refer you to page 22 of your
16 direct testimony, lines 1 to 3 where you state, quote, This
17 intra-Missouri consolidation also preserves jobs in the
18 state which would no doubt be lost if a non-Missouri based
19 utility or company were involved.

20 I'd like to ask you a hypothetical. If
21 UtiliCorp were a non-Missouri based utility, would this
22 proposed merger with St. Joseph Light & Power be detrimental
23 to the public interest?

24 A. Well, if the headquarters operation of the
25 acquiring company was in another state, that would certainly

1 eliminate a large number of jobs from the Missouri economy.

2 Q. Would that alone make that transaction
3 detrimental to the public interest?

4 A. You be the judge. You know, you'd lose the
5 headquarters jobs, good jobs, the centerized -- all those
6 jobs would go with the headquarters operation in another
7 state. And Missouri's benefited greatly by the growth of
8 UtiliCorp both in the regulated and unregulated side in
9 terms of bringing jobs to the state. And, you know, just
10 this past year we've added over 400 jobs in the state of
11 Missouri. So that to me is a significant benefit or
12 detriment depending if you're gaining or losing jobs.

13 Q. Are you familiar with the non-concluded
14 Western Resources/Kansas City Power & Light merger
15 transaction?

16 A. Certainly to some extent.

17 Q. As a part of that transaction, was the entity
18 West Star to be based in Kansas City, Missouri?

19 A. Was it?

20 Q. Yes.

21 A. Yes. I think the headquarters of the utility
22 was to be in Kansas City, Missouri.

23 Q. Would that in itself address some of the
24 concerns that you've expressed regarding a transaction with
25 a non-utility based company acquiring a Missouri utility?

1 A. To some -- to some extent in the short term,
2 but ultimately companies, you know, do what's rational and
3 economic, which is centralize support activities.

4 Q. I'd like to direct you to your surrebuttal
5 testimony, what's been marked as Exhibit 3. And I'd like to
6 direct you to page 2, lines 21 to 23, where you state,
7 quote, In fact, UtiliCorp is guaranteeing at least a
8 \$1.6 million reduction in the cost of service in the sixth
9 year post-merger.

10 If UtiliCorp guaranteed at least a \$1
11 reduction in the St. Joseph Light & Power cost of service in
12 the sixth year post-merger, would that merger be not
13 detrimental to the public interest?

14 A. Yes. I think so. Under the standard as
15 we've -- as we've explained it. But, I mean, the great news
16 with this transaction is not only are we getting a \$1.6
17 million benefit in year six, we're avoiding some significant
18 rate increases if St. Joe were to stand alone. So it's a
19 substantial benefit. And then you add the jobs and the
20 economic development to that and it --

21 Q. I -- Mr. Green, I think --

22 A. -- it's a win/win proposition.

23 MR. DOTTHEIM: I move to have Mr. Green's
24 response stricken, or at least have him instructed to limit
25 his answer.

1 JUDGE WOODRUFF: I will go ahead and instruct
2 you, go ahead and just answer the questions that are asked
3 of you and don't elaborate until asked to.

4 THE WITNESS: Okay.

5 JUDGE WOODRUFF: Thank you.

6 MR. DOTTHEIM: I don't mind providing
7 Mr. Green an opportunity to answer a yes or no answer, it's
8 the speeches that I think we can do without.

9 JUDGE WOODRUFF: That's fine. We can probably
10 do with more yes and no questions undoubtedly.

11 THE WITNESS: But just to address --

12 JUDGE WOODRUFF: You can't answer a question
13 until one is asked. I understand you want to be able to
14 explain yourself, but you'll just have to answer the
15 questions that are asked.

16 THE WITNESS: Okay.

17 MR. KEEVIL: Put an explanation point on that.

18 MR. SWEARENGEN: He might not ask you any more
19 questions.

20 MR. DOTTHEIM: I'm not that sane.

21 BY MR. DOTTHEIM:

22 Q. If UtiliCorp guaranteed a \$1 increase in the
23 St. Joseph Light & Power cost of service in the sixth year
24 post-merger, would that make the merger detrimental to the
25 public interest?

1 A. No. Because there are non-economic benefits
2 and I don't -- that I have described --

3 Q. Thank you.

4 A. -- previously.

5 Q. Thank you. I'd like to direct you to page 4
6 of your surrebuttal testimony, lines 19 to 20, wherein
7 responding to Mr. Kind you state, do you not, that whether
8 by UtiliCorp's initiative or as part of a changing industry,
9 the break up of the integrated Missouri jurisdictional
10 utility would require Commission approval.

11 You state that, do you not?

12 A. Yes.

13 Q. Okay.

14 A. That's our belief.

15 Q. Do you know, would some of the proposed
16 restructuring legislation introduced in the Missouri
17 Legislature this past session have removed Commission
18 jurisdiction over electric utility actions to divest or sell
19 their generating assets?

20 A. I'm not currently that familiar with that
21 legislation to address that precise issue.

22 Q. Mr. Green, I'm going to hand to you copies of
23 three different bills introduced in the last legislative
24 session, Senate Bill No. 882, House Bill No. 1895 and House
25 Bill No. 1842. And I'd like to direct you to where the

1 yellow flags are on the pages.

2 And on House Bill -- excuse me -- Senate Bill
3 No. 882, if I direct you to the yellow flag that's on
4 page 19, which I believe is Section 393.981.6, I'd like to
5 read that into the record.

6 It states, does it not, Following August 28,
7 2000, an electric utility may, without obtaining any
8 approval of the Commission other than that provided for in
9 this subsection and notwithstanding the requirements of
10 Sections 393.191, 393.200, 393.240 and 393.250 RSMo or any
11 other provision of Sections 393.916 to 393.1002 or Chapters
12 386 and 393 RSMo or any rule or regulation of the Commission
13 that would require such approval, implement a
14 reorganization, retire generating plants from service, sell,
15 assign, lease or otherwise transfer assets to an affiliated
16 or unaffiliated entity, and as part of such transaction
17 enter into such agreements, power purchase agreements or
18 other agreements with a transferee provided that the prices,
19 terms and conditions of any power purchase agreement must be
20 approved or allowed into effect by the Federal Energy
21 Regulatory Commission, or use any accelerated cost recovery
22 method including accelerated depreciation, accelerated
23 amortization or other capital recovery methods or required
24 reductions to the original cost of its assets.

25 Did I read that accurately?

1 A. I believe so.

2 Q. Would that proposed section remove
3 jurisdiction of the Missouri Public Service Commission
4 respecting reorganizations, retiring generating plants from
5 service, selling, assigning, leasing or otherwise
6 transferring assets to an affiliated or unaffiliated entity?

7 MR. SWEARENGEN: I'm going to object to that
8 question on the grounds of relevance. If it's proposed
9 legislation, I don't see that it has any bearing or should
10 be in front of the Commission today in this merger
11 proceeding. And, second, I think it's really unfair to hand
12 a witness a piece of legislation, read it to him, have him
13 look at it and ask him to render a legal opinion on what it
14 is.

15 JUDGE WOODRUFF: I'm going to sustain that
16 objection based on the second half of your objection.

17 MR. SWEARENGEN: Thank you.

18 JUDGE WOODRUFF: This is not a legal expert
19 and it's really unfair to ask -- to try and give a legal
20 opinion or any other sort of opinion on what a possible
21 piece of legislation might mean.

22 BY MR. DOTTHEIM:

23 Q. Mr. Green, does UtiliCorp retain lobbyists
24 that appear before the Missouri Legislature?

25 A. Yes.

1 Q. Has UtiliCorp, to your knowledge, in the past
2 legislative session supported any proposed legislation that
3 was introduced respecting restructuring of the electric
4 industry?

5 A. We've certainly supported deregulation and
6 restructuring.

7 Q. Do you know whether UtiliCorp has supported
8 restructuring that would remove the Missouri Public Service
9 Commission's jurisdiction over restructuring and/or the
10 transfer of assets whether they be generation or
11 transmission assets?

12 A. Not that I'm specifically aware of. And even
13 in the legislation you've presented, the Commission still
14 retained some approval authority.

15 Q. Is that your opinion as an attorney or --

16 A. Just as a layperson reading the exhibit you
17 handed me.

18 Q. You are an attorney, are you not?

19 A. I'm not practicing. It's been some time.

20 Q. You at one time were a practicing attorney?

21 A. I was.

22 Q. Do you happen to know whether UtiliCorp in the
23 past legislative session supported the introduction and
24 passage of either House Bill 1895, Senate Bill 882 or House
25 Bill No. 1842?

1 A. I don't know. You know, I don't have those
2 numbers down and --

3 MR. SWEARENGEN: Ask McKinney.

4 MR. DOTTHEIM: Is there anything that he
5 doesn't know?

6 BY MR. DOTTHEIM:

7 Q. Might you recognize any restructuring
8 legislation that was introduced in the Missouri Legislature
9 by some other terminology such as the Union Electric bill?

10 A. I've heard of that, yes.

11 Q. Do you know whether UtiliCorp supported the
12 introduction of the Union Electric bill and the passage of
13 the Union Electric bill?

14 A. I don't believe we formally supported it, but
15 I'm not certain, because we had -- we had some issues with
16 it, it's my recollection as we sit here at this moment.

17 Q. But you're not certain?

18 A. No.

19 Q. Mr. Micheel asked you earlier this afternoon
20 about a couple of the Commission Reports and Orders that
21 you've made reference to in your testimony, both your direct
22 and your rebuttal: Case No. EM-91-213, and WR-95-205 and
23 SR-95-206. Do you know whether either of those Reports and
24 Orders in those cases bind this Commission in the pending
25 merger case?

1 A. No. I don't know.

2 Q. If the present Commission were to approve the
3 UtiliCorp/St. Joseph Light & Power regulatory plan in its
4 Report and Order in this case, would the Commission that has
5 to deal with years six to ten of the regulatory plan be
6 bound by this Commission's decision in the present merger
7 case?

8 A. You know, I'm -- again, I'm not a legal expert
9 and I haven't, you know, studied that issue, but I think --
10 or believe at a minimum it is an extremely strong precedent.

11 Q. Do you know whether a contract would be
12 created by the Commission's acceptance in the pending
13 procedure of the UtiliCorp/St. Joseph Light & Power
14 regulatory plan?

15 A. No. I haven't done that -- that research.

16 Q. I'd like to direct you to page 13 of your
17 surrebuttal testimony, lines 9 to 11 where you discuss the
18 matter and whether UtiliCorp or a contractor will perform
19 construction and maintenance work for the St. Joseph Light &
20 Power division.

21 You state, quote, If we find at a later date
22 that a total out-sourcing arrangement makes economic sense
23 for our customers, we will seek the appropriate approvals
24 from the Missouri Commission, closed quotes.

25 Do you know what approvals UtiliCorp will seek

1 from the Missouri Commission in that circumstance?

2 A. No. We're not -- you know, throughout this
3 process we've never had any intention of that, and I don't
4 know what approvals would be required.

5 Q. So you're not aware of what statutes or rules
6 or Commission orders might require UtiliCorp to seek
7 approval?

8 A. No.

9 Q. I'd like to direct you again to your
10 surrebuttal testimony, page 13, line 3 where you're
11 referencing, I believe, the Quanta out-sourcing. And you
12 state that the preferred status requires Quanta to come in
13 with the low bid.

14 I'd like to hand you a copy of the strategic
15 alliance agreement between UtiliCorp and Quanta Services,
16 Inc. And I'd like to direct you to the second page, the
17 highlighted language. Do you recognize that document?

18 A. Yes.

19 Q. And on the page after the cover page on which
20 there's a table of contents, there's a page 1. And under
21 the heading Agreement it states, Parties agree as follows:
22 Section 1, Services to be performed by the company.
23 UtiliCorp will use the company subject to the company's
24 ability to perform services in designated locations as a
25 preferred contractor and out-source transmission in

1 distribution, infrastructure construction and maintenance
2 and natural gas distribution construction and maintenance in
3 all areas serviced by UtiliCorp provided that the company
4 provide such services at a competitive cost that is
5 demonstrably equal to or better than current market rates
6 for such services when the quality of the company's services
7 is considered.

8 Did I read that accurately?

9 A. Yes.

10 Q. In that sentence that I just read, is there a
11 term other than "price" that figures into the determination
12 as to whether Quanta is utilized by UtiliCorp?

13 A. Price is the driving factor, assuming the
14 quality is acceptable.

15 Q. But quality is a factor?

16 A. Absolutely. I mean, oftentimes out-source
17 providers of construction services can't deliver the
18 specifications at the price they bid.

19 Q. I'd like to direct you again to your
20 surrebuttal testimony, page 14, line -- starting at line 2.
21 And, in particular, I'd like to direct you to line 7 where
22 you state, Out-sourcing and deregulation are unregulated
23 concepts -- excuse me. I think I may have misstated that.

24 Out-sourcing and deregulation are unrelated
25 concepts.

1 I'd like to hand you a copy of a Quanta
2 Services, Inc., Form 10-K, filing date 3/30/2000. And I'd
3 like to direct you to page 4 of 57 that has an orange flag
4 on it. It has some highlighting. Do you recognize that
5 document?

6 A. I do.

7 Q. On page 4 of 57 under heading Industry
8 Overview, there's a subheading Deregulation. And the second
9 sentence under Deregulation states, Electric power companies
10 have responded to deregulation of the utility markets by
11 seeking new lines of business and innovative methods to
12 reduce their costs. The movement from a regulated business
13 environment to an environment exposed to market forces has
14 allowed our customers to increase out-sourcing of non-core
15 activities, particularly network development and has
16 facilitated a convergence of the telecommunications cable
17 television and electric power industries. Did I read that
18 accurately?

19 A. Yes.

20 Q. And I'd like to hand you one last document.
21 It's a copy of an article that appeared in the April/June
22 2000 issue of Leaders Magazine. And it's an article
23 featuring the interview of you as president and chief
24 operating officer of UtiliCorp. And I'd like to direct you
25 to page 2, highlighting in the middle of the page, there's a

1 paragraph.

2 The paragraph states, This is an attractive
3 market for UtiliCorp because we believe utilities are going
4 to out-source most of their construction and maintenance
5 activities. We've already seen it happen in Australia and
6 New Zealand and we believe this knowledge will be
7 transferred to the United States where the market isn't as
8 mature in terms of deregulation.

9 Ultimately, we think we've positioned
10 ourselves well in what's going to be a terrific market for
11 the next 10 years and beyond.

12 Did I read that accurately?

13 A. Yes.

14 MR. DOTTHEIM: Thank you, Mr. Green.

15 JUDGE WOODRUFF: That concludes the
16 cross-examination then. At this point it would be time for
17 the Bench to ask questions. We're going to take a break
18 before we do. Let's come back at 4:15.

19 (A RECESS WAS TAKEN.)

20 JUDGE WOODRUFF: We're back for questions from
21 the Bench, and we'll start with Chair Lumpe.

22 QUESTIONS BY CHAIR LUMPE:

23 Q. Mr. Green, on page 10 of your direct and it's
24 been -- you've discussed it earlier, about the industry norm
25 and what that meant. And as I understood it, you said it

1 was sort of a range; is that correct?

2 A. It's -- the multiples give you a range based
3 on where comparable companies trade and based on where
4 comparable transactions have occurred. And then you do a
5 discounted cash flow analysis to determine what price makes
6 sense.

7 Q. So the norm is not a range, but the
8 calculation using a range, etc., brings you to a specific
9 price?

10 A. Yes.

11 Q. Okay. Then that's what I didn't understand.
12 I thought maybe the norm was a range and then you went above
13 the range even. Okay. I think I understand that better.

14 But the next line there where it says, But the
15 drop in SJLP's stock price following the preliminary bids
16 provides some explanation, do I understand that to mean that
17 because of their drop following the bid, that that somewhat
18 required a higher price than the industry norm?

19 A. No. It -- it simply means if you were to look
20 at the price we paid right after that drop, the premium
21 appears larger than it is if you look over a longer period
22 of time, which is typically what an investment banker would
23 advise you to do. And if you look at their trading range
24 over a period of time, it gives you a premium of 29 percent,
25 which is very close to the average of 27 percent.

1 Q. But you're not saying that as a direct result
2 of the drop in the stock price that, therefore, you had to
3 give a higher premium --

4 A. No.

5 Q. -- or you had to increase what you were
6 offering?

7 A. No. In fact, we did not increase what we were
8 offering.

9 Q. That's what I didn't understand.

10 The time lines have been -- well, there's a
11 question in my mind. The moratorium of five years has
12 certain opt outs, as I understand it, acts of God, outages,
13 etc. I didn't see the passage of legislation in there.
14 Would the passage of legislation have an impact on this
15 moratorium?

16 A. It would depend on the legislation. I think
17 currently it's our belief that if we were to sell the
18 generation assets, which I think is the issue or the concern
19 here, we would have to be in front of this Commission
20 receiving approval and we'd have to decide, you know, what
21 portion of that \$92 million premium should go with the
22 generation assets that are being sold.

23 And I think any legislation that we would
24 anticipate and that, frankly, I've seen in any jurisdiction
25 around the country, you know, requires Commission approval

1 on the sale of generation. And this Commission would have
2 an opportunity to rule on what portion of the premium should
3 be attributed to the generation that's being sold.

4 Q. What if the legislation were to say that prior
5 to restructuring, every company would do a rate case to set
6 sort of the baseline and here we would have a moratorium on
7 rate cases for five years. Would that legislation, in your
8 mind -- and, again, you're not an attorney so they may not
9 want you to answer, but would that be something that should
10 be considered in terms of that moratorium?

11 In other words, if the legislation were to
12 tell us to do a rate case, would that supersede this
13 moratorium of five years where we were not allowed to do a
14 rate case?

15 A. I mean, I think what we'd need is just the
16 certainty -- if we needed to modify the moratorium due to
17 the legislation, that wouldn't -- that wouldn't pose a
18 problem for us as long as we, you know, effectively could
19 achieve the same recovery that is -- that is in the rate
20 plan as filed.

21 Q. I just didn't notice that in the list of opt
22 outs as they were being read. Okay. Oh, and maybe I
23 misunderstood this too, but I think you mentioned that the
24 agreements on what are savings and how they are measured
25 are -- need to be determined. Are they to be determined in

1 this case or in another proceeding how those measurements
2 are, what they specifically are? Is that intended to be
3 done in this case?

4 A. We need to agree on some principles. For
5 instance, a large portion of the savings comes from joint
6 dispatch and the sale of surplus energy. And if one were to
7 argue you can't count the sale of surplus energy as a
8 synergy of the transaction, this transaction would never
9 make sense.

10 Q. Is there somewhere in this testimony where I
11 could see a list, these are the things we call savings,
12 here's how we would measure them?

13 A. Yes. We've stated what we believe the savings
14 are. And then that's where we need some agreement, some
15 confidence that we're not going to count it another way in
16 five years and exclude some significant portions of the
17 savings.

18 Q. Would you direct me to the person's testimony
19 that outlines that for me specifically?

20 A. Vern Siemek is the --

21 Q. Mr. Siemek --

22 A. Yes.

23 Q. -- would be the one?

24 A. Yes.

25 Q. I will review that. I mean, I've seen various

1 things mentioned throughout testimony, but I haven't seen it
2 all in one place where it said, Here are the items for
3 savings. I will find it there?

4 A. And it's a table in his testimony.

5 Q. All right. I will -- thank you. And I will
6 look there then. Let's see.

7 CHAIR LUMPE: I think those are all my
8 questions. Thank you.

9 JUDGE WOODRUFF: Vice-chair Drainer?

10 QUESTIONS BY VICE-CHAIR DRAINER:

11 Q. Good afternoon, Mr. Green.

12 A. Good afternoon.

13 Q. I have some general actually conceptual-type
14 questions. I hear you saying that you believe this merger
15 would -- your regulatory plan presents a win/win?

16 A. Yes.

17 Q. St. Joseph's witness said that if we did not
18 approve the merger, it would result in increases in the next
19 couple of years for their customers. If this merger were
20 not approved, do you see increases for any of the Missouri
21 divisions of UtiliCorp and its customers?

22 A. Not in our regulatory plan as filed. Without
23 the merger we -- we would forfeit some of the savings. And
24 that inevitably would lead to increases sooner than if we're
25 able to enjoy the savings -- or the synergies of the

1 transaction.

2 Q. And I see you have been the president since
3 1996?

4 A. Yes.

5 Q. And the net revenues for UtiliCorp's
6 operations, have they been increasing?

7 A. Yes, they have.

8 Q. Well, just let me tell you -- since it's
9 getting late in the day -- what I'm struggling with here. I
10 guess I understand if there are no rate cases for five
11 years -- that if there's a moratorium on rate cases, that is
12 something the company would see as a win. Correct?

13 A. As a win?

14 Q. Yes.

15 A. Yes. The ability to --

16 Q. To not have --

17 A. -- keep those savings to justify the premium.

18 Q. But to also not have to come in for a rate
19 case before the Missouri Public Service Commission. Would
20 UtiliCorp consider that a win if they did not have to come
21 before this Commission on an earnings investigation?

22 A. Would we consider it a win?

23 Q. Yes.

24 A. I suppose so. But the idea -- the objective
25 there is simple. It's to keep the benefits to justify the

1 premium.

2 Q. Okay. But I just --

3 A. Not that we don't want to see the Commission.

4 Q. I don't think you mind seeing the Commission.

5 I'm not sure you like seeing our Staff in an earnings
6 investigation. I mean, would you rather go through an
7 earnings investigation or would you rather not go through
8 one?

9 A. I think in this proposal we'd rather not go
10 through one.

11 Q. Well, in general would you rather have to go
12 through an earnings investigation or would you rather not
13 have to go through an earnings investigation in any given
14 year?

15 A. Probably rather avoid an earnings
16 investigation.

17 Q. Sure. Thank you. So knowing that, isn't it
18 true that by not having an earnings investigation, that that
19 is a win for UtiliCorp, but it could be a loss for the
20 ratepayers should the earnings investigation prove that
21 UtiliCorp is over earning some guaranteed return on its
22 investment?

23 A. Yes. If you don't consider the premium paid.
24 And in five years we'll never -- we won't come close to
25 earning a return on that premium. That's why in year six

1 we're asking to put half the premium into rate base.

2 Q. Okay. Now, the next thing is -- I heard both
3 Mr. Comley and your attorney this morning, I believe,
4 mention that this case is looking at more issues than it
5 needs to look at with respect to the Commission approving
6 the merger.

7 A. Yes.

8 Q. That not all the issues need to be looked at.
9 I heard you say that too.

10 A. Yes.

11 Q. That there seems to be a micro emphasis in
12 this case. And so you would believe that there were many
13 areas that the Commission does not need to address in order
14 to approve the merger, such as -- let me give you an
15 example -- market power. Do I need to address market power?

16 A. No. We don't believe that's an issue for the
17 Commission.

18 Q. Okay. And yet UtiliCorp comes before us with
19 St. Joseph Light & Power and you ask us to look at -- have a
20 micro emphasis on something called a regulatory plan, that
21 you think that -- that type of micro emphasis on making
22 decisions on the process or procedure used in looking at
23 that acquisition premium is important. Correct?

24 A. Yes.

25 Q. Okay.

1 A. Essential.

2 Q. Thank you. Then the next thing would be how
3 essential? If this Commission were to determine that the
4 merger between St. Joseph Light & Power and UtiliCorp is not
5 detrimental to the public, but the Commission were to make
6 no determination in this case with respect to acquisition
7 premium until such time as a rate case, what would be the
8 position of UtiliCorp as far as going forward with this
9 merger, you speaking as the president?

10 A. That would create a great degree of
11 uncertainty about our ability to earn a return on the price
12 paid. It would be very troubling to our board of directors
13 and their responsibility to our shareholders. And, you
14 know, I -- they'd have to look at the totality of the
15 situation and make a judgment.

16 Q. But do you see it as a drop dead issue?

17 A. I think it raises serious concerns to not have
18 any certainty on a return -- on a \$92 million investment.
19 And we've said that from the beginning.

20 Q. It raises concerns, but it could be looked at
21 in another procedure? You have not definitely closed the
22 door?

23 A. No. You haven't definitely closed the door,
24 but the problem is you don't know --

25 Q. You won't sleep as well at night?

1 A. And nor will the financial analysts that
2 follow utili-- utilities.

3 Q. All right. Now, also with respect to the
4 \$92 million acquisition premium, did you hear the discussion
5 earlier today about St. Joseph asking for an AAO for
6 \$7 million?

7 A. Yes.

8 Q. Isn't it true that if we were to -- if this
9 Commission were to approve the merger and the regulatory
10 plan, that after some adjustments in taxes, that at least a
11 few million of that would end up as part of the premium?

12 A. Yes.

13 Q. And since that is a recent event that was not
14 expected, would UtiliCorp also be asking that 50 percent of
15 that part of the premium be recovered from ratepayers in a
16 future case?

17 A. Yes.

18 Q. You were asked some questions earlier with
19 respect to whether you were aware if a company had ever had
20 a Stipulation and Agreement with the Commission and not all
21 parties -- had that been accepted or rejected by another
22 court. And you said, no, your attorneys had not told you of
23 any.

24 So I guess what I want to know is, when you
25 had discussions, was there any discussion that you recall

1 about an agreement or a moratorium with Southwestern Bell
2 and the Commission and the Office of the Public Counsel that
3 was not upheld by a higher court because all the parties in
4 the case did not agree to it?

5 A. I'm not aware of that.

6 Q. Okay. So you have no knowledge of that?

7 A. No.

8 Q. But you do believe that this Commission can be
9 bound to a moratorium against having any earnings reviews if
10 it agrees with UtiliCorp and St. Joseph on this merger, even
11 though some parties to this proceeding would say that we
12 must -- they must be able to request earnings
13 investigations?

14 A. Yes.

15 Q. And you think that under the law your
16 attorneys have told you that that is binding?

17 A. That's my understanding.

18 VICE CHAIR DRAINER: Thank you. I have no
19 other questions.

20 JUDGE WOODRUFF: Commissioner Murray?

21 COMMISSIONER MURRAY: Thank you.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good afternoon --

24 A. Good afternoon.

25 Q. -- Mr. Green.

1 Back to the addition that would be -- that
2 would go into the acquisition adjustment if the merger goes
3 through due to the Lake Road plant incident. How would that
4 affect -- an additional amount included in the acquisition
5 premium affect the relationship to the market multiples and
6 industry norms that you testified about?

7 A. Not being a CPA, I don't believe it effects
8 that at all. The purchase price would stay the same. The
9 book value of St. Joe would decrease \$7.3 million. And
10 in -- therefore, the premium, the difference between book
11 value and the price we paid would increase.

12 Q. And isn't that what is reviewed by the market
13 multiples when you're looking at industry norms for amount
14 of purchase price over the book value?

15 A. The multiple of book would increase.

16 Q. So --

17 A. But, like, the premium over the share price
18 wouldn't change or the -- the multiple of EBIT DA wouldn't
19 change but the multiple of book would be the one measure
20 that would change.

21 Q. And do you know how much that would change it?

22 A. Well, book value's 190 million roughly. And
23 if you tax affect \$7 million, you get \$4 million. So
24 4 million on 190, it's not a -- wouldn't be a big movement.

25 Q. And with the opt out provisions for the rate

1 freeze, would a future incident at St. Joe be subject to an
2 exemption from that rate -- future incident such as the one
3 that occurred at the Lake Road plant be an exemption from
4 that freeze?

5 A. Yes. I think that's what we're proposing. I
6 mean, a catastrophic event that has, you know, serious
7 earnings impact would be one of the exceptions, a generation
8 plant goes down.

9 Q. And you would be -- the company would be
10 subject to providing proof that it was not a result of an
11 imprudent action on the company's part?

12 A. Yes. Yes.

13 Q. The other states that have been reviewing this
14 merger, is it correct that all of the other states have
15 approved it at this point?

16 A. That's correct.

17 Q. Okay. And I assume they have all put
18 conditions on the merger; is that correct?

19 A. Not too many conditions that I'm aware of.
20 Did you have any particular condition in mind?

21 Q. No. But it's just that I don't recall seeing
22 merger approvals without each regulatory agency that has to
23 approve it attaching some conditions, and that just seems to
24 be the norm. So I'm making an assumption. Maybe it's an
25 incorrect assumption.

1 A. There might be some, but there are no material
2 conditions that I've been made aware of from our regulatory
3 team.

4 Q. And would you agree that Missouri has -- when
5 we review this merger, that we have perhaps the most to
6 consider because both of the applicants are Missouri
7 regulated companies?

8 A. Absolutely.

9 COMMISSIONER MURRAY: I think that's all the
10 questions I have. Thank you.

11 JUDGE WOODRUFF: Commissioner Schemenauer?

12 COMMISSIONER SCHEMENAUER: Thank you, your
13 Honor.

14 QUESTIONS BY COMMISSIONER SCHEMENAUER:

15 Q. Good afternoon, Mr. Green.

16 A. Good afternoon.

17 Q. Just a few questions. On page 11 of your
18 direct testimony you state that if the bidding company is
19 successful, but then cannot recover the premium in their
20 regulatory process, then the shareholders of the acquiring
21 company bear the entire risk and cost for developing the
22 savings through the acquired company's customers.

23 Why wouldn't potential -- the potential for
24 increased profits be incentive enough for the company to
25 make an acquisition even if they do pay a premium? I mean,

1 isn't that normally how it's done outside the regulatory
2 world?

3 A. Absolutely. And that's exactly what we need,
4 an opportunity to create those benefits and retain them for
5 a period of time.

6 Q. Okay. Your plan -- I know your regulatory
7 plan is complex, but as I understand it, the first five
8 years this moratorium that you're proposing, the company
9 would keep 100 percent of the synergies; is that correct?

10 A. Yes.

11 Q. And that five years would not be enough to
12 recover your premium?

13 A. Correct.

14 Q. Okay. The premium, I think you mentioned, was
15 92 million with the provision that it could increase by
16 7 million because of the current situation at St. Joe if
17 they don't recover that?

18 A. I think it would be after -- it would be more
19 like 4 million if you tax affected that.

20 Q. Does that include -- I read in the testimony
21 there's another category of costs called costs to achieve.
22 Does that 92 million include those costs, or are those in
23 addition to the premium?

24 A. We need to earn -- recover and earn a return
25 on the premium and pay for the cost of it -- of achieving

1 the synergies. There's some capital costs required to
2 realize the operational savings.

3 Q. All right. But is the 92 million the total
4 cost or are there additional -- these costs to achieve, are
5 they in addition to the 92 million?

6 A. Yes.

7 Q. Okay. So those costs to achieve then which
8 aren't in your testimony, but they are all the costs for the
9 investment bankers, the attorneys, the cost of this case,
10 the --

11 A. Yes. But actually we didn't have investment
12 bankers, so we've avoided that cost on this transaction.

13 Q. Whatever all the other third parties are --

14 A. Yes.

15 Q. -- and the executive plan for the current
16 St. Joe directors, the advisory committee and all those,
17 they're part of the costs to achieve?

18 A. Yes.

19 Q. Okay. And I'll ask somebody else what those
20 total costs are, I assume.

21 A. They're laid out in Mr. Siemek's testimony in
22 that table.

23 Q. I remember reading them all. I don't know if
24 I read a total on them. And I'm sure there's some
25 disagreement as to what those costs are among the parties.

1 COMMISSIONER SCHEMENAUER: I think that's all
2 I have. Thank you.

3 JUDGE WOODRUFF: Commissioner Simmons?

4 QUESTIONS BY COMMISSIONER SIMMONS:

5 Q. Hello, Mr. Green.

6 A. Hello.

7 Q. You were here this morning for
8 Mr. Steinbecker's testimony, weren't you?

9 A. I was.

10 Q. I believe in his testimony this morning he
11 talked about some of the disadvantages of smaller companies
12 especially as it relates to future deregulated markets,
13 disadvantages in terms of, you know, scope of the market,
14 size and things of that nature. Do you feel that this is a
15 problem that we will be faced with with other companies in
16 the future?

17 A. Key point. If you look at utilit-- smaller
18 utilities in a deregulated marketplace where the wholesale
19 power market today is unregulated, we've seen 100 million
20 plus write-offs due to commodity price risk and the
21 volatility of wholesale power prices.

22 And it is much more difficult for a smaller
23 entity to manage the volatile power supply costs, and in
24 particular this transaction by putting St. Joe with
25 UtiliCorp in our -- and benefiting from our Aquila Merchant

1 operations. In one summer there have been -- in one week --
2 in a couple of days there have been a dozen events over the
3 past couple of years that would cost the ratepayers of
4 Missouri well in excess of the \$92 million premium we're
5 talking about in this case.

6 Q. So would you say that this future deregulated
7 market would be a driving force behind smaller companies
8 looking to merge?

9 A. Yes. It's classic industry consolidation due
10 to deregulation and economies of scale.

11 Q. Is there something that makes you believe that
12 we are moving in that area in the state of Missouri,
13 deregulated markets?

14 A. Yes. Like the -- Terry's testimony this
15 morning, it's inevitable.

16 Q. Is there something that gives you that
17 impression that the legislature may have signaled to us,
18 that that is coming down the road?

19 A. It's happening all around us and the
20 legislature's beginning to entertain it. It's very
21 difficult to predict what the legislature will do, but the
22 market all around us is deregulating and it's going to
23 eventually force Missouri to unbundle and introduce
24 competition.

25 Q. So would it be your assumption that that could

1 even happen within the next five years?

2 A. Absolutely.

3 Q. If it did not happen, would we have put the
4 cart before the horse, so to speak?

5 A. In terms of the regulatory plan in this
6 proceeding?

7 Q. Yes, sir.

8 A. No. The regulatory plan in the regulated
9 environment would provide us an opportunity to earn a return
10 on the premium. And in a deregulated environment, if we
11 were to sell generation or some other part of the business,
12 we would be before this Commission and modify that agreement
13 in whatever way made sense.

14 Q. Do you believe that if other companies
15 similarly situated as St. Joe were to be looking in the same
16 arena, that ultimately they would be in a position where
17 larger companies would look to buy them up, therefore,
18 instead of creating potential competition in the future,
19 we'd have larger monopolies?

20 A. In this country today we have -- and I don't
21 know the exact count. We have well over 100 investor-owned
22 utilities in over -- well over 200 other electric companies.
23 There's -- there are plenty of entities to create a
24 competitive environment. And there is enormous savings to
25 be realized by consolidation.

1 And if you look at the United Kingdom,
2 Australia, New Zealand, and Canada, other markets where
3 they've created a competitive marketplace, you know, we
4 don't need half the companies that exist today to realize
5 the benefits of consolidation, but also have robust
6 competition.

7 COMMISSIONER SIMMONS: That's all the
8 questions I have. Thank you, your Honor.

9 JUDGE WOODRUFF: Thank you. Vice-chair
10 Drainer, any more?

11 FURTHER QUESTIONS BY VICE-CHAIR DRAINER:

12 Q. Yes. I just wanted to follow-up on a question
13 from Commissioner Murray. She asked you about the approval
14 in other states. In the other states where you've had to
15 have approval on this merger, did you present a regulatory
16 plan and was it approved?

17 A. Nothing of the nature of this regulatory plan
18 here.

19 Q. Okay. Also, since you've been president since
20 1996, have you seen any significant changes in the
21 electricity utility marketplace or has it been just same
22 old, same old?

23 A. Phenomenal change here in the U.S., but
24 probably more pronounced in our international markets and it
25 will continue without a doubt.

1 Q. And in your regulatory plan, so I do
2 understand -- so you'll help me understand it, the
3 moratorium really would be that there would be no rate cases
4 for UtiliCorp's divisions that are operating in Missouri for
5 that five-year period. Would that include Missouri Public
6 Service?

7 A. That would pertain to St. Joe Power & Light
8 and Missouri Public Service.

9 MR. SWEARENGEN: No. That's not right.

10 THE WITNESS: The St. Joe Power & Light entity
11 in Missouri.

12 MR. SWEARENGEN: That's right.

13 THE WITNESS: Separate from the Missouri
14 Public Service.

15 BY VICE-CHAIR DRAINER:

16 Q. So Missouri Public Service could have a rate
17 case?

18 A. Yes.

19 Q. But St. Joe Power & Light would not have one?

20 A. Correct.

21 Q. And although there have been phenomenal
22 changes in the last four years since you've been president
23 of the company, you would ask us to not be concerned for
24 five years with reviewing St. Joseph Power & Light or
25 Light & Power?

1 A. Now, if we were to restructure St. Joe and
2 sell the generation, then we'd be before this Commission,
3 but we need to retain the benefits for that five-year period
4 to justify the premium. And its -- and it's not an unusual
5 time frame. It's what -- they have a five-year time frame
6 in the United Kingdom, they have that in Australia, in
7 several other jurisdictions, so it's not -- it's not a new
8 concept.

9 Q. I think we broke away from the United Kingdom
10 a couple years ago.

11 VICE-CHAIR DRAINER: I have no other
12 questions.

13 JUDGE WOODRUFF: Chair Lumpe?

14 FURTHER QUESTIONS BY CHAIR LUMPE:

15 Q. Just a couple. Again, along with Commissioner
16 Murray, wondering about conditions. Does the FERC set any
17 conditions on their approval?

18 A. We don't have their approval yet. We're on
19 the consent agenda this Wednesday.

20 Q. And you anticipate approval, but I'm assuming
21 in anticipation you would have known had they set any
22 conditions --

23 A. We don't anticipate any significant
24 conditions.

25 Q. And I have one more then following up on the

1 Commissioner Drainer's. If you could not have a rate
2 increase in St. Joe but you could have one in Missouri
3 Public Service, how would we be assured that there wouldn't
4 be a shift of costs between them in order to make the
5 premium?

6 A. Well, I think in the plan we -- we are
7 proposing that we track those costs and the savings realized
8 by the merger and account for the allocation as Missouri
9 Public Service separately. So it would -- it would be --
10 the burden would be on us to demonstrate that.

11 Q. But there would be no shifting of costs from
12 one to the other in order to --

13 A. Correct.

14 Q. -- get the premium?

15 A. Correct. And in year six this Commission
16 would have to rule on that and be comfortable with it. I
17 mean, it's really driven by the power supply needs of
18 Missouri Public Service where we have power supply contracts
19 coming up for renewal and we're going to have to make
20 significant investments in supply, so we just couldn't agree
21 to a rate freeze for Missouri Public Service.

22 Q. Am I correct this would sort of be district
23 specific pricing?

24 A. Yes.

25 CHAIR LUMPE: Thank you.

1 JUDGE WOODRUFF: Okay. I have no other
2 questions.

3 At the next point then would be recross;
4 however, it is almost five o'clock and rather than try to
5 get started on that and having some recross and some not,
6 we'll -- I'm going to end for the day.

7 MR. SWEARENGEN: Judge, Mr. Green needs to
8 leave today. This is the only day he could be here.

9 JUDGE WOODRUFF: How long do parties
10 anticipate recross will take?

11 MR. MICHEEL: How cooperative is the witness
12 going to be?

13 THE WITNESS: Completely.

14 JUDGE WOODRUFF: All right. I don't normally
15 like to go past five o'clock because it does put us into
16 overtime situations for both our staff as well as for the
17 court reporter, but we'll go ahead and try to do it today,
18 try to finish it up.

19 MR. SWEARENGEN: Thank you. Appreciate that.
20 I will tell you I have no questions.

21 JUDGE WOODRUFF: Well, thank you.

22 MR. SWEARENGEN: In the spirit of cooperation.

23 JUDGE WOODRUFF: Okay. UE? He's gone so
24 nothing there.

25 Natural Resources?

1 MS. WOODS: I have nothing.

2 JUDGE WOODRUFF: Thank you. AGP?

3 MR. CONRAD: Just a couple of things.

4 RECROSS-EXAMINATION BY MR. CONRAD:

5 Q. Mr. Green, I think actually three of the
6 Commissioners asked you questions about the moratorium. I
7 wanted to see if I could get something clear. I think your
8 testimony is it would apply to the SJLP division only?

9 A. Correct.

10 Q. And your position, I take it, would be that
11 even though my client is in opposition to your regulatory
12 plan, if it were nonetheless approved by the Commission over
13 the objection of my client, my client would not be able to
14 file a complaint with the Commission regarding your rates in
15 St. Joe during a five-year period?

16 A. That's correct and --

17 MR. SWEARENGEN: Go ahead. I was going to
18 make an objection on the basis that I think he's -- that
19 really probably calls for a legal conclusion I'm not sure
20 this witness can give.

21 JUDGE WOODRUFF: I'm not sure he can give a
22 legal conclusion, but I think he can give his opinion of
23 what the company's viewpoint is.

24 MR. SWEARENGEN: That's fine.

25 JUDGE WOODRUFF: Go ahead and answer.

1 THE WITNESS: You know, in effect with regard
2 to rate issues. I mean, if there was a customer service
3 issue, I would assume they would file a complaint as would
4 any other customer, so I think we're talking about rate
5 setting here. And I believe your client is on a special
6 contract at a discounted rate.

7 BY MR. CONRAD:

8 Q. For electric service, are they, sir?

9 A. I was speaking of the steam service.

10 Q. They take both.

11 A. Okay.

12 Q. I might have been speaking about electric.
13 Why did you make that assumption? Are you finished with
14 your answer?

15 A. I'm finished.

16 Q. Okay. Just with respect to the legal opinion
17 issue, Vanderbilt run a good law school?

18 A. I thought so.

19 Q. At the time?

20 A. Yes.

21 Q. Have you had anything that's happened since
22 then that has caused you to think that it didn't?

23 A. No.

24 Q. Are you a member of the Missouri Bar
25 currently?

1 A. I believe -- I'm a member, but not active.

2 Q. Are you a member of the Missouri Bar, sir?

3 A. I believe I am.

4 Q. Have you turned your law license into the
5 Supreme Court? Do you still hold it?

6 A. Yes. But I'm not -- I haven't kept up my
7 continuing legal education, so I -- I'm not precisely sure
8 what my technical status is.

9 Q. Now, is it also your position as president and
10 chief operating officer of UtiliCorp that if the Commission,
11 as the three Commissioners have suggested, were to approve
12 your regulatory plan, that 25 residential customers in the
13 St. Joe area could not collectively file a complaint and
14 have that complaint processed by the Commission alleging
15 that your rates were too high in St. Joe?

16 A. Again, I think that calls for me to draw a
17 legal conclusion about a lot of regulations and procedure
18 I'm not completely up to speed on.

19 Q. What is your company's position with respect
20 to the question?

21 A. I'll give you the same answer. I -- there are
22 probably other witnesses that can answer that question more
23 specifically and precisely.

24 Q. Who?

25 A. Mr. McKinney.

1 Q. Well, excuse me, sir. But I believe when
2 Commissioner Drainer was inquiring of you, you gave her an
3 answer to that. Does your expertise evaporate when a member
4 of the Bar is asking you as opposed to someone from the
5 Bench?

6 A. No. No, it doesn't. And I didn't understand
7 the question to be the same. And I'm just trying to get you
8 the best answer to your question. And I'm not up to speed
9 on all the technical aspects and procedures of complaint
10 filing.

11 Q. But is it or is it not your position that any
12 customer could file a complaint against the rates of St. Joe
13 Light & Power during that five-year so-called moratorium?

14 A. The rates would be frozen.

15 Q. The rates would be frozen. Is that a yes
16 answer to my question?

17 A. Well, restate your question.

18 Q. Your position is that none of the customers
19 would be able to file a complaint against the rates of
20 St. Joe Light & Power during that period of time if that
21 plan were approved?

22 A. That's correct.

23 Q. And I believe you indicated to Commissioner
24 Drainer that your authority for that was your counsel?

25 A. Yes.

1 Q. Where did he go to law school?
2 A. You know, I don't know.
3 Q. Did he give you an opinion to that effect?
4 A. Yes. Our regulatory team and our counsel.
5 Q. Is that opinion in writing, sir?
6 A. I'm not -- I'm not certain if -- I'm not
7 certain we have that in writing.
8 Q. Well, which counsel are you talking about?
9 Are you talking about your counsel here today in this room
10 or are you talking about someone else?
11 A. Talking about counsel here in this room and
12 our regulatory team. And it's been, you know, a product of
13 discussions in some written brief. I can't recall
14 precisely, you know, whether that was written --
15 Q. Which one gave --
16 A. -- or spoken.
17 Q. Who gave you that opinion, sir?
18 A. Mr. Swearengen, along with our regulatory team
19 who reviewed the situation and developed the regulatory
20 plan.
21 Q. And your testimony today is that that opinion
22 was given to you verbally?
23 A. Yes. And possibly in some written forms.
24 Q. If it exists in some written form, where would
25 it be located?

1 A. Probably our regulatory group would have it.

2 MR. CONRAD: Your Honor, I'd like to make a
3 request that an exhibit be reserved. I'll be glad to grant
4 them one of my 500 for a copy of that opinion.

5 MR. SWEARENGEN: Well, your Honor, you know,
6 you're really getting into an area here of attorney/client
7 privilege. And I would object to it on that basis.

8 MR. CONRAD: Well, ordinarily I would too,
9 your Honor, except that the witness has relied on that in
10 response not only to questions from Public Counsel but now
11 from me and from questions from three of the Commissioners.

12 So I think in relying on that and asserting as
13 to its content and the circumstances, I think any
14 attorney/client privilege with respect to that, which is
15 belonging -- which is something, as you know, that belongs
16 to the client, not to the attorney -- has been waived.

17 JUDGE WOODRUFF: Now, are you asking at this
18 point to ask them to file it as a late-filed exhibit, or are
19 you just asking to reserve a number?

20 MR. CONRAD: I'm asking to file the exhibit if
21 it exists. And I'd like to have -- I'd like to know -- the
22 witness seems to be vacillating about whether the document
23 exists or not.

24 JUDGE WOODRUFF: I believe he said he wasn't
25 sure.

1 MR. CONRAD: If we need to have compulsory
2 process to find out the answer to that question, I would
3 request that also.

4 JUDGE WOODRUFF: Do you have any response?

5 MR. SWEARENGEN: Well, what precisely is it
6 you're asking? Are you asking if I've given him a written
7 legal opinion to that effect? The answer to that is no, so
8 there isn't anything to file.

9 MR. CONRAD: Is that your testimony, counsel,
10 or is that your witness's?

11 MR. SWEARENGEN: That's my testimony.

12 MR. COMLEY: Yeah. We're all under oath here,
13 Stu.

14 MR. SWEARENGEN: Now, if he has something from
15 some other source, I'm not aware of it.

16 MR. CONRAD: Well, he referred also, I
17 believe, your Honor, to material from his regulatory team, I
18 think his phrase was.

19 JUDGE WOODRUFF: Now, as I understand it, he's
20 making a statement about what his view as president of the
21 corporation is.

22 MR. CONRAD: And I'm asking --

23 JUDGE WOODRUFF: He's not giving a legal
24 opinion.

25 MR. CONRAD: I didn't ask him for a legal

1 opinion. Now I've asked him for what the basis of that was,
2 as did Commissioner Drainer. And his response was that he
3 was told that by his attorneys, by his counsel. And now I'm
4 simply inquiring if that is verbal.

5 The witness has caviled about whether it was
6 verbal. It's kind of puzzling to me that you would stake
7 \$92 or \$93 million of recovery on verbal opinion from a
8 counsel, but perhaps they do business in a different way.

9 JUDGE WOODRUFF: Okay. Well, there's a couple
10 items out here. One was a request to reserve a number.

11 MR. CONRAD: If there's nothing coming in,
12 your Honor, there's no reason for the number.

13 JUDGE WOODRUFF: If you get something later
14 on, you can bring in a number.

15 Your second request was for compulsory process
16 to produce this document.

17 MR. CONRAD: If it exists.

18 JUDGE WOODRUFF: I'm going to deny that
19 request. It sounds like it's getting into attorney/client
20 privileges very deeply.

21 MR. SWEARENGEN: You know, I'd like to --

22 MR. CONRAD: Let the record then reflect,
23 please, an exception to that rule.

24 MR. SWEARENGEN: If I could just go back to
25 this morning to my opening statement when I talked about the

1 question of whether or not one Commission can bind another,
2 and I talked about that. And I said there is a question
3 about that.

4 But the point that I made this morning was
5 we're obviously much better off with a decision from this
6 Commission approving this regulatory plan and taking our
7 chances defending that in the future as opposed to a
8 decision from you which rejects it on the front end.

9 JUDGE WOODRUFF: Okay. Well, let's move on
10 then from that issue.

11 BY MR. CONRAD:

12 Q. Commissioner Schemenauer then asked you, sir,
13 about the -- again about the competitive aspects. Did
14 you -- strike that.

15 Would you agree with Mr. Steinbecker's
16 testimony this morning that none of the proposals that you
17 have seen insofar as restructuring have proposed to
18 deregulate the distribution portion of the operation?

19 A. No. The poles and wires portion has remained
20 a natural monopoly in most -- all jurisdictions that I'm
21 aware of.

22 Q. And it is correct that a major driver of this
23 whole transaction for both companies is the competitive side
24 of the business. Correct?

25 A. Yes. That's one driver.

1 MR. CONRAD: Thank you. That's all.

2 JUDGE WOODRUFF: Next item, Springfield?

3 MR. KEEVIL: I have no recross for either
4 Mr. Green or Mr. Swearengen at this time.

5 MR. SWEARENGEN: Thank you.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. MICHEEL: I only have recross for
8 Mr. Green.

9 RE CROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Commissioner Simmons asked you about the high
11 risk for small utilities leading them to merge. Do you
12 recall those questions?

13 A. Yes.

14 Q. Isn't it correct that St. Joe Light & Power
15 has long-term contracts in place to meet most of its power
16 supply needs over the next 10 years?

17 A. Yes.

18 Q. Vice-chair Drainer asked you some questions
19 about whether or not Missouri Public Service -- the Missouri
20 Public Service division had a rate case moratorium. Do you
21 recall those questions?

22 A. Yes.

23 Q. And I believe you said they do not; is that
24 correct?

25 A. That's correct.

1 Q. Is it correct pursuant to the regulatory plan,
2 assuming the Commission adopts the regulatory plan, if MPS
3 during that five-year period files for a rate increase, MPS
4 would exclude the St. Joe Light & Power factors from its
5 rate-making methodology covered by the regulatory plan?

6 A. Yes.

7 Q. So if they came in -- "they" being the MPS
8 division -- for a rate case, the economies of scale with
9 respect to integrating St. Joe Light & Power into the
10 UtiliCorp family would not be reflected in that rate case;
11 is that correct?

12 A. That's right.

13 Q. All else remaining the same in that rate case,
14 the cost to serve the Missouri Public Service customers
15 would be higher than; is that correct?

16 A. Higher than what?

17 Q. Than actual costs?

18 A. I think that's -- that would be possible.

19 Q. Because you're expecting some synergies from
20 this merger. Correct?

21 A. Correct. And those would flow to the St. Joe
22 entity.

23 Q. But you're expecting generally that all
24 corporate overheads will be spread among greater parties;
25 isn't that correct? Greater number of entities?

1 A. Yes.

2 Q. Commissioner Drainer also asked you how
3 essential it was for recovery of the regulatory plan or for
4 approval of the regulatory plan in this proceeding. Do you
5 recall those questions?

6 A. Yes.

7 Q. And I believe you said that would be a matter
8 for the board; is that correct?

9 A. I said it's -- it would be cri-- it is
10 critical.

11 Q. And that would be -- let's assume that the
12 Commission rejects the regulatory plan in this proceeding.
13 What would your recommendation to the board be?

14 A. That's one factor of many. And I couldn't
15 make that judgment as we sit here today.

16 Q. What other factors would you take into
17 account?

18 A. The totality of the order and its impact on
19 the transaction.

20 Q. So you have no other factors in mind
21 specifically?

22 A. We've -- we've listed the factors that are
23 critical in the regulatory plan, the elements of the
24 regulatory plan are what is critical to have some certainty
25 around the return we earn on the investment.

1 Q. So if the Commission denies the regulatory
2 plan --

3 A. It raises some very serious issues.

4 Q. And you'd have to wait until that occurred
5 before you'd make your recommendation to the board?

6 A. Absolutely. I wouldn't want to make a
7 recommendation without seeing the order.

8 Q. And assuming the regulatory plan isn't
9 approved, you don't want to venture what your recommendation
10 would be then?

11 A. No. To speculate about a situation that I
12 can't even describe? I don't think -- I don't think that
13 would be appropriate.

14 Q. So it's not appropriate for the Commission or
15 for you to be speculating about what's going to occur in the
16 future. Is that essentially what you're saying?

17 A. No. I think you're broadly generalizing what
18 I said. I wouldn't make a recommendation to my board about
19 an order I haven't even seen.

20 MR. MICHEEL: Thank you.

21 JUDGE WOODRUFF: Staff?

22 MR. DOTTHEIM: Yes. A question or two.

23 RECROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. In regards to a question or two that Chair
25 Lumpe asked you about cost shifting, Mr. Green, have you

1 seen either the list of issues that the parties filed on
2 May 25, setting out the issues in this proceeding, or the
3 statements of positions that the individual parties filed on
4 June 26th providing responses to the list of issues?

5 A. I have seen the statement of positions.

6 Q. Do you recall whether two of the issues are
7 conditions that Public Counsel has proposed regarding, one,
8 access to books and records; and, two, affiliate
9 transactions?

10 A. I recall that they were in there. I don't
11 recall precisely how they were stated.

12 Q. Do you recall what the response of UtiliCorp
13 was to those two conditions?

14 A. Not -- not precisely, no.

15 Q. And you're not aware of what St. Joseph
16 Light & Power's response was to those two conditions?

17 A. No.

18 Q. Are you aware that in addition to UtiliCorp,
19 St. Joseph Light & Power filed its own statements of
20 positions?

21 A. Yes.

22 Q. So you're not aware that Public Counsel --
23 excuse me -- that both UtiliCorp and St. Joseph Light &
24 Power are opposed to Public Counsel's conditions regarding
25 access to books and records and affiliate transactions?

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A. Not -- I'm certainly not surprised, but I wasn't specifically.

MR. DOTTHEIM: Thank you. I have no further questions.

JUDGE WOODRUFF: Redirect then?

MR. SWEARENGEN: I have no questions. Thank you.

JUDGE WOODRUFF: You may step down.

THE WITNESS: Thank you.

JUDGE WOODRUFF: And we are adjourned for the day. We'll be back at 8:30 tomorrow.

(WHEREUPON, the hearing of this case was adjourned until 8:30 a.m., June 30, 2000.)

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