

1 categories.

2 The only issue we have left with regard to
3 consolidation, corporate overheads is the appropriate
4 allocation -- or inflation rate to be assigned to
5 UtiliCorp's corporate overhead costs. That's the result for
6 the changes -- the need.

7 MR. MICHEEL: Thank you for clearing that up,
8 Mr. Traxler.

9 JUDGE WOODRUFF: Okay. Union Electric's not
10 here. UtiliCorp?

11 MR. SWEARENGEN: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. SWEARENGEN:

13 Q. Mr. Traxler, if you turn to page 7 of your
14 rebuttal testimony, please.

15 A. Yes, sir.

16 Q. On page 7 at lines 8 and 9 you state that the
17 joint applicants did not have to demonstrate net benefits,
18 savings exceeding costs or an improved customer service.
19 Correct?

20 A. Our interpretation of the not detrimental to
21 the public interest statute does not require a net benefit
22 to St. Joe Light & Power.

23 Q. Or to the present Missouri Public Service
24 customers of UtiliCorp?

25 A. That's not required, that's correct.

1 Q. Okay. Thank you. So I assume then that you
2 would agree that if UtiliCorp ended up keeping all of the
3 benefits from this proposed merger, that that would not run
4 afoul of the standard which the Commission must apply to
5 this transaction?

6 A. You're talking about net or gross benefits?

7 Q. Well, they keep all the benefits with no
8 detriment going to either the existing MPS customers or the
9 SJLP customers.

10 A. If there's no increase in rates for Missouri
11 Public Service and St. Joe Light & Power as a direct result
12 of the merger and no deterioration to an unacceptable level
13 of service, I would agree the answer's yes.

14 Q. Thank you. Then also on page 7 at lines 9
15 through 11 with reference to UtiliCorp and St. Joseph Light
16 & Power Company you say, They do have to demonstrate the
17 cost resulting from the merger will not exceed the savings
18 resulting in higher utility rates and that customer service
19 will not deteriorate.

20 My question is, the rates for the present
21 St. Joe Light & Power customers will not automatically
22 increase as a result of this merger, will it?

23 A. It is our belief that they will if the merger
24 proceeds. It is our estimate that the impact on the cost of
25 service from allocations, for example, will result in a net

1 increase in rates prior to any recognition of the merger
2 premium.

3 Q. And that will happen automatically without
4 this Commission having the opportunity to have any say in
5 that matter?

6 A. No. That's not -- that's not what I meant.

7 Q. Okay.

8 A. If those additional costs are reflected and
9 accepted by the Commission, that would be the result.

10 Q. So you would agree that higher utility rates
11 for the present SJLP customers cannot result from this
12 merger without Missouri Public Service Commission approving
13 it?

14 A. That's -- that's correct. From the result of
15 a rate case.

16 Q. And would you agree with me that any rates
17 approved by this Commission would be presumed to be just and
18 reasonable?

19 A. That's -- that's true.

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

22 JUDGE WOODRUFF: St. Joseph Life & Power?

23 MR. COMLEY: I have no questions for this
24 witness on this issue.

25 JUDGE WOODRUFF: We're ready for questions

1 from the Bench. Commissioner Murray?

2 COMMISSIONER MURRAY: Thank you.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good morning, Mr. Traxler.

5 A. Good morning.

6 Q. It's your testimony that the total merger
7 costs exceed the merger savings; is that correct?

8 A. Yes, it is.

9 Q. And is it your testimony that the total costs,
10 including acquisition costs and transaction costs, exceed
11 the merger benefits or the merger savings?

12 A. The Staff's position is that the merger costs
13 prior to any reflection of the merger premium amortization
14 and/or return on a premium, exceeds benefits. In addition,
15 the same would be true when the acquisition premium recovery
16 is reflected.

17 Q. Okay. So if you only looked at the cost --
18 what you call the cost to achieve the merger --

19 A. That's correct.

20 Q. -- they still exceed the total merger savings
21 in Staff's opinion?

22 A. My reference earlier to \$3.7 million on the
23 average, we expect -- after corrections are made to the
24 analysis done by the company, which we disagree with or
25 consider invalid, we expect on the average if these costs

1 were reflected in rates in that first rate case following
2 the moratorium, for St. Joe Light & Power's cost to go up by
3 approximately \$3.7 million every year on average for years
4 six through ten before any recognition of the acquisition
5 premium.

6 Q. And on your Schedule 8, I believe it was,
7 you're looking at MPS ratepayers under the proposed
8 regulatory plan?

9 A. That's correct.

10 Q. I'm on the wrong one. I need to be at your
11 corrected one. There you're showing an average annual
12 increase in MPS rates of 3.4 million?

13 A. That's correct.

14 Q. You're arriving at those merger saving
15 calculations by assuming that the stand-alone entities would
16 have achieved a good portion of what the company is claiming
17 as merger-related savings; is that correct?

18 A. Are you referring to Schedule 8 or are you
19 referring --

20 Q. I'm just referring in general --

21 A. General proposition.

22 Q. -- to your proposition that they exceed --

23 A. The largest issue in the case is the estimated
24 savings to occur from joint dispatch, which Mr. Proctor of
25 the -- is Staff's witness. That issue involves -- there are

1 two primary issues involved there. I can speak in a general
2 fashion. Mr. Proctor would have to answer any specific
3 questions.

4 But, in general, the largest issue there is
5 whether or not, in fact, the total level of additional
6 savings from additional interchange sales on the open
7 market, whether or not that would occur on a stand-alone
8 basis by St. Joe Light & Power.

9 The additional issue is the proper allocation
10 or whatever savings are considered to be merger related
11 between -- between MPS and St. Joe Light & Power. The
12 company's position is that 100 percent of the energy-related
13 savings be assigned to St. Joe Light & Power.

14 But the larger issue is whether or not, in
15 fact, it requires a merger to generate the \$60 million
16 reflected in the company's schedule for joint dispatch
17 savings -- Mr. Proctor's estimate is that only \$2 1/2
18 million -- roughly \$2.2 million are related to the merger,
19 that the other 58 are non-merger related.

20 COMMISSIONER MURRAY: I believe that's all.
21 Thank you, your Honor.

22 JUDGE WOODRUFF: Commissioner Schemenauer?

23 COMMISSIONER SCHEMENAUER: Thank you, your
24 Honor.

25 QUESTIONS BY COMMISSIONER SCHEMENAUER:

1 Q. Good morning.

2 A. Good morning.

3 Q. Just a general question. The regulatory plan
4 asked that 50 percent of the unamortized premium --
5 acquisition premium be included in rate base for the years
6 six through ten, thereby guaranteeing a recovery of that --
7 recovery on the premium and of the premium. If that's in
8 place, what incentive do they have to generate any
9 additional savings in those years?

10 A. The -- the proposal for the post-merger rate
11 case, if you will, the regulatory plan, according to
12 Mr. McKinney's testimony, provides for a post-moratorium --
13 or post-moratorium rate case for St. Joe Light & Power that
14 has an effective date consistent with the end of the
15 five-year moratorium.

16 Now, that -- at that time is when the company
17 says they will demonstrate that savings exceed merger costs
18 and 50 percent amortization return on a premium. But it --
19 it's -- the -- you have to understand that even that amount
20 of savings is going to be a projection at that time based on
21 the numbers we currently have.

22 In other words, the company's numbers for a
23 test year that would be consistent with an effective date
24 consistent with that plan under the company's proposal, even
25 if we assume 100 percent of the savings, 100 percent of the

1 correctness of the cost, do not show sufficient savings at
2 that point in time.

3 In other words, you're being asked to rely at
4 that point in time in the -- in the rate case on a projected
5 number based on a forward -- forward average level of
6 savings for years six through ten, which is projection.
7 That is addressed on lines 20 through 23, page 6 of
8 Mr. McKinney's testimony.

9 So that's the -- but the incentive for the
10 company to -- to try and demonstrate as much savings as
11 possible is for the very reason of providing support for the
12 recommendation, including the premium in the case. So
13 that's the incentive for them to show as much savings as
14 possible.

15 Q. In that six- to ten-year period you don't
16 think there would be a dis-incentive for them if they are
17 going to automatically recover the amortization, 50 percent
18 of the acquisition premium?

19 A. No. They're relying on your acceptance of
20 that projection in that rate case to include the acquisition
21 premium for rate-making purposes for St. Joe Light & Power.
22 And the incentive is just the opposite. Their incentive is
23 to project the highest level savings they can in the hopes
24 that you accept a projected number for purposes of recovery
25 unknown and certain costs in the acquisition premium in the

1 that case.

2 Q. Do you think from an accounting viewpoint that
3 any projections that far in the future could be relied upon?

4 A. No. The Commission -- it requires that the
5 Commission go off cost-based rates. It requires at that
6 point in time based on the projected numbers that the
7 company has right now and Mr. McKinney's testimony stating
8 that a projected number is going to be used, that a budgeted
9 assumption, if you will, a projected assumption is used for
10 rate-making purposes to justify the inclusion of a 93 --
11 50 percent of a \$93 million acquisition premium. That's the
12 proposal on the table.

13 COMMISSIONER SCHEMENAUER: Thank you. That's
14 all I have.

15 JUDGE WOODRUFF: Commissioner Simmons?

16 COMMISSIONER SIMMONS: No questions, your
17 Honor. Thank you.

18 JUDGE WOODRUFF: No more questions from the
19 Bench, so we'll go to recross. And starting with Natural
20 Resources?

21 MS. WOODS: I have nothing. Thank you.

22 JUDGE WOODRUFF: AGP?

23 MR. CONRAD: No, thank you.

24 JUDGE WOODRUFF: City of Springfield is not
25 here. Public Counsel?

1 REXCROSS-EXAMINATION BY MR. MICHEEL:

2 Q. Yes. Mr. Traxler, Commissioner Murray asked
3 you some questions about the costs to achieve. Do you
4 recall those questions?

5 A. Yes, I do.

6 Q. And I believe you indicated that your update
7 indicated that the net merger cost has increased to
8 \$3.7 million. Was that my understanding?

9 A. I'm saying in total the net merger cost -- in
10 other words, the excess of merger costs over benefits,
11 excluding any consideration for the merger premium, has
12 increased from an average of 2.3 million for the years six
13 through ten to an average of 3.7. So it's become more
14 detrimental by \$1.4 million on average in every year.

15 Q. Now, did you take into account in that
16 projection the projected rate increases that St. Joe has
17 mentioned in their surrebuttal testimony?

18 A. In other words, you're talking about the
19 assertion by Witness Pullen and other witnesses that have
20 been discussed today and yesterday with regard to a benefit
21 resulting from the merger because of an avoidance of two
22 rate cases in the years 2000 and 2004?

23 Q. Yes. Did that number take those into account?

24 A. That's -- that's not specifically in the
25 numbers. We -- we certainly have an opinion on that as well

1 as the likelihood of those things occurring.

2 Q. Well, why didn't that number take those into
3 account?

4 MR. COMLEY: Judge, let me object a moment. I
5 was thinking that we were going to have some of these
6 questions reserved for the issues list as they come about.
7 Merger cost and benefits is the issue under consideration
8 now, and I think we're stretching a little bit into the
9 regulatory plan overall issues with these lines of
10 questioning from the Public Counsel.

11 JUDGE WOODRUFF: Response?

12 MR. MICHEEL: I was just trying, your Honor,
13 to understand and follow-up on Commissioner Murray's
14 questions about what this \$3.7 million number includes or
15 doesn't include. I'm trying to understand if Witness
16 Traxler took those projections -- those projected rate cases
17 into account to see if this number's valid or why he didn't
18 do that in arriving at this number. I think -- you know, I
19 want to know what he assumed in getting this number.

20 JUDGE WOODRUFF: I think that's a fair
21 question. It's going to be overruled. The objection will
22 be overruled.

23 You can go ahead and answer the question. And
24 keep in mind we are trying to stay in that area.

25 MR. MICHEEL: Yeah. I understand.

1 BY MR. MICHEEL:

2 Q. And I guess my question to you is, did you or
3 did you not include those projections and why did you or did
4 you not include them?

5 A. A possibility of an avoidance of a rate case
6 as a result of having a five-year moratorium under the plan,
7 which is the assertion, does not really impact the projected
8 merger costs and savings from the merger. That's just an
9 additional benefit the company is asserting at this time.
10 But it's not related to looking at the impact on St. Joe
11 Light & Power's cost of service as a result of additional
12 merger costs and savings.

13 Q. So, if I understand, we should look at the
14 companies today, not sometime out in the future?

15 A. We have no choice in this -- in this
16 particular proceeding but to examine the 10-year analysis,
17 projected numbers provided by the company, because those are
18 the numbers that the company is suggesting that this
19 Commission rely on for this merger to proceed. So we don't
20 have an option there.

21 I'm just stating that with regard to Schedule
22 SMT-3, which is a summary of the projection merger cost and
23 savings expected by both the Staff and the company, that the
24 avoided cost, if you will, of two rate cases in years 2000
25 and 2004 is not something that should be reflected on that

1 schedule.

2 MR. MICHEEL: Thank you, Mr. Traxler.

3 JUDGE WOODRUFF: Union Electric is not here,
4 so UtiliCorp?

5 MR. SWEARENGEN: Thank you, your Honor.

6 RECROSS-EXAMINATION BY MR. SWEARENGEN:

7 Q. To follow-up on that, would you agree with me
8 that the rates that -- assuming the merger goes through,
9 that the rates that would be established by this Commission
10 in the post-moratorium rate case five years from now would
11 not be set based on the estimates that we're talking about
12 today, would they? They would be set on hard actual numbers
13 that we had in front of us at that time, would they not?

14 A. No. That's not correct.

15 Q. And why is that not correct?

16 A. If I can refer to Mr. McKinney's testimony and
17 Mr. Siemek's projected costs -- page 6 Mr. McKinney's filed
18 direct testimony beginning on line 20, No. 4 under the
19 regulatory plan -- and I'm going to read directly --
20 Included in these rate filings will be the complete flow
21 through of all test year O and M synergies adjusted to the
22 forward average level of savings for years six through ten
23 of the regulatory plan, none of the costs to achieve the
24 synergies resulting from the merger.

25 My statement is this. If we have a regulatory

1 plan which requires the effective date of a rate case at the
2 end of the moratorium, which is year five, any projections
3 after year five is -- six through ten is a projected number.

4 Mr. McKinney is stating the company expects to
5 have to rely on a budgeted number, projected number at that
6 point in time to demonstrate sufficient savings to cover
7 merger costs and the 50 percent amortization.

8 Now, consistent with that statement, if you
9 look at Mr. Siemek's projections, which are done on a yearly
10 basis, the likely test year under that assumption for
11 regulatory plan is the fourth year. If we're going to have
12 an effective date at the end of year five, the latest date,
13 in my view, that a test year could occur would be year four.

14 If we look at Mr. Siemek's projected merger
15 costs and savings supporting his schedule, the expectation
16 by this company at this point in time for the year 2004 is
17 that after reflecting 50 percent recovery of the premium,
18 the net savings will be a negative number, a negative
19 864,000.

20 In other words, the test year for that year is
21 projected to lack sufficient savings by \$864,000 to cover
22 all merger costs and the 50 percent premium recovery. That
23 would require a budgeted projected assumption of
24 \$2.5 million to the rate case in order to net the
25 1.6 million guaranteed.

1 If I'm negative by 864,000 and I'm I
2 guaranteeing a \$1.6 million benefit, the only way I can get
3 there is use a projected assumption of \$2.5 million. So the
4 testimony is consistent with that in addition to
5 Mr. Siemek's numbers.

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

8 JUDGE WOODRUFF: Nothing further? St. Joseph
9 Light & Power?

10 MR. COMLEY: With respect to maybe some of the
11 bleed over into the other areas of issues, I may have
12 cross-examination, but I'll reserve it until that time.

13 JUDGE WOODRUFF: And redirect from Staff?

14 MR. DOTTHEIM: Yes, thank you.

15 REDIRECT EXAMINATION BY MR. DOTTHEIM:

16 Q. Mr. Traxler, in follow-up to some questions
17 from Mr. Swearengen, what is the impact of the proposed
18 regulatory plan on Missouri Public Services' cost of
19 service?

20 A. There are two impacts, only one of which I've
21 addressed in testimony. One of which I didn't become aware
22 of until Sunday in preparation for cross-examination.

23 There -- the initial impact which has been
24 discussed in the last two days is freezing the pre-merger
25 allocation factors for cost allocated from UtiliCorp to MPS.

1 That factor is currently approximately 25 percent.

2 As soon as St. Joe Light & Power is added to
3 the corporate structure, under the allocation model used by
4 the company, a reduction in the allocation percentages for
5 MPS and every other non-regulated and regulated division of
6 UtiliCorp will immediately occur. Costs allocated for
7 financial reporting purposes will reflect a lower allocation
8 of UCU's corporate costs.

9 Freezing that allocation factor, in the
10 Staff's opinion, for all rate cases involving UtiliCorp --
11 or UtiliCorp's Missouri Public Service division during the
12 10-year time frame will result in an arbitrary and
13 non-existent cost level regarding UCU cost allocations.
14 That impact is estimated by myself on Schedule SMT-8.

15 The other thing which we didn't consider is
16 the fact that even if you freeze -- in addition to freezing
17 those allocation factors, both the company and Staff are
18 projecting on SMT-3 and Mr. Siemke's schedules, that the
19 pool of costs subject to allocation is going to increase
20 approximately \$39 million.

21 If you refer to SMT-3, line Nos. 12 and 13
22 representing the increase in UCU's corporate costs that are
23 required in order to add St. Joe Light & Power -- in other
24 words, they need additional people to some extent to add
25 this division -- it's expected that \$38 million increase to

1 the pool.

2 Even if you leave the allocation factors the
3 same for Missouri Public Service, we're talking about
4 allocating a higher level of cost. So even if you leave the
5 allocation factors the same, the regulatory plan is
6 detrimental to MPS because the higher pool will result in
7 additional \$10 million in cost allocated to the Missouri
8 Public Service division during the 10-year time frame.

9 The proposal, in effect, under the regulatory
10 plan is a have-your-cake-and-eat-it-too proposition. We
11 want to freeze the factors, which eliminates the savings or
12 reduction in cost to MPS, however, we're not suggesting to
13 do anything with the higher pool of costs which results from
14 the merger which will reflect and flow through to MPS even
15 with frozen allocation factors.

16 MR. DOTTHEIM: Thank you, Mr. Traxler.

17 JUDGE WOODRUFF: Okay. You may sit down.
18 Let's go ahead and do Mr. Brubaker before lunch.

19 MR. CONRAD: Your Honor, are we off for just a
20 second?

21 JUDGE WOODRUFF: Let's go off the record.

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

23 (Witness sworn.)

24 JUDGE WOODRUFF: You may inquire.

25 MAURICE BRUBAKER testified as follows:

1 DIRECT EXAMINATION BY MR. CONRAD:

2 Q. Please state your name.

3 A. My name is Maurice Brubaker.

4 Q. And what is your business address, sir?

5 A. My business address is 1215 Fern Ridge
6 Parkway, St. Louis, Missouri.

7 Q. Mr. Brubaker, we have caused to be marked the
8 pre-filed rebuttal testimony that you had submitted as
9 Exhibit 500, and I'm going to supply those to the reporter
10 at this time, in the public version. Is it also true that
11 you had in each of those copies two pages that contained
12 information that was asserted to be highly confidential?

13 A. That is correct.

14 Q. And would you accept that we have designated
15 those pages as an Exhibit 500-HC that's been provided to the
16 parties and will be provided to the court reporter over the
17 noon break?

18 A. Yes.

19 Q. Mr. Brubaker, let me direct you now to your
20 testimony, what's been marked as Exhibit 500. Do you have
21 any changes or corrections you care to make at this time?

22 A. No, I do not.

23 Q. Does that testimony also consist of several
24 schedules that are attached being data requests that we have
25 obtained from the joint applicants?

1 A. Yes, it does.

2 Q. And although those materials were not prepared
3 by you or under your direction or supervision, they were
4 supplied to us in response to data requests and are
5 materials on which you relied in your testimony; is that
6 correct?

7 A. That is correct.

8 Q. Your Honor -- or excuse me -- Mr. Brubaker, if
9 I were now to ask you the questions that are contained in
10 Exhibits 500 and the questions that would also be contained
11 in Exhibit 500-HC, would your answers thereto be the same?

12 A. Yes, they would.

13 MR. CONRAD: Your Honor, I would at this time
14 move the admission into the record of Exhibit 500-NP and
15 Exhibit 500-HC, the latter being those two highly
16 confidential pages together with the attached exhibits and
17 tender the witness for cross-examination.

18 Now, the witness has been -- I should mention
19 too, the witness is offered on this particular issue. We do
20 need to get Mr. Brubaker at least finished up, because we're
21 running a little bit behind, and we'll talk about that a
22 little bit over the noon break with your Honor's permission
23 with the other parties, but at this point in time I suppose
24 if anybody has questions for him on the other areas, it
25 would be all right if they want to go ahead, with us.

1 JUDGE WOODRUFF: Do you want to -- on the
2 previous exhibits that were offered by the other parties,
3 there's an agreement that objections and so forth will be
4 made after he's completed his testimony -- they've completed
5 their testimony. Do you want to do that on this one also?

6 MR. CONRAD: That's fine. I'd just like to be
7 able to deal with any objections that there might be before
8 he is called away to other jurisdictions.

9 JUDGE WOODRUFF: Do you want him to finish on
10 all issues today; is that --

11 MR. CONRAD: It would be very helpful if we
12 could do that, but we'll discuss that with the other
13 parties.

14 JUDGE WOODRUFF: At this time I'm not going to
15 ask for objections to this testimony and when we come back
16 from lunch, we'll discuss that.

17 MR. CONRAD: Based on the schedule, I think he
18 would be up again today.

19 JUDGE WOODRUFF: Yes, he would be. Is he up
20 for anything more than what is next today?

21 MR. CONRAD: We can do it that way or as I had
22 mentioned, it would be, I think, agreeable if people wanted
23 to ask questions on the other areas, but we'll go with the
24 flow here.

25 (EXHIBIT NO. 500-NP WAS MARKED FOR

1 IDENTIFICATION.)

2 JUDGE WOODRUFF: Okay. We'll get started with
3 him before lunch. We'll probably break in testimony anyway,
4 so we'll discuss it at lunch with the other parties. He's
5 been tendered for cross-examination and we'll start with
6 Natural Resources?

7 MS. WOODS: I have no questions. Thank you.

8 JUDGE WOODRUFF: And City of Springfield is
9 not here. Public Counsel?

10 MR. MICHEEL: No questions.

11 JUDGE WOODRUFF: For Staff?

12 MR. DOTTHEIM: No questions.

13 JUDGE WOODRUFF: Union Electric is not here.
14 UtiliCorp?

15 MR. SWEARENGEN: We have no questions on the
16 topic of merger costs slash benefits.

17 JUDGE WOODRUFF: Okay.

18 MR. COMLEY: Neither does St. Joseph.

19 JUDGE WOODRUFF: And we'll go to questions
20 from the Bench. Commissioner Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good morning.

23 A. Good morning.

24 Q. In your testimony on page 12 you speak about
25 the -- on line 15 you say, At a minimum any regulatory plan

1 associated with merger approval, if given, should provide
2 immediate rate reductions to customers.

3 Is that a general statement you're making?

4 A. Yes, it is.

5 Q. And is that what your understanding of the
6 standard of review being not detrimental to the public
7 interest requires?

8 A. No. I would agree that that particular
9 standard does not require immediate rate reductions. I just
10 think that in the context of a complicated transaction such
11 as we typically face with mergers, it's -- you know, it's
12 very hard to say that there wouldn't have been some
13 reductions for non-merger reasons during this moratorium
14 period. So one way to enhance the assurances that consumers
15 are not harmed is to provide some rate reductions on the
16 front end of that.

17 Q. But are you saying that the standard of review
18 that we are held to, that being not detrimental to the
19 public interest, does not require immediate rate reduction?

20 A. I am saying that it does not, that is correct.

21 Q. But you're saying that we should?

22 A. Well, I think when you look at the kinds of
23 numbers that you have and the proposition to freeze rates
24 for five years, you know, it's -- it's very possible that
25 there could be non-merger related cost reductions that would

1 occur during that five-year period but for a moratorium.

2 And it's very -- very difficult, as other
3 witnesses have indicated, to get a fine point on what the
4 costs would have been otherwise if you didn't have the
5 merger. So all I'm saying is that's one way to provide a
6 greater degree of assurance that you meet that standard in
7 fact.

8 You know, in theory it's real easy. In
9 theory you know exactly what the rates would be, both ways
10 it's very easy to meet. But in fact we do not know that.
11 My point just is that given that set of circumstances, one
12 way to enhance the assurances of not having a detriment for
13 the consumers is to provide some rate reduction as part of
14 the initial plan.

15 Q. And as I read your testimony, you say, At a
16 minimum any regulatory plan associated with merger approval,
17 if given, should provide immediate rate reductions to
18 customers. And I read that to indicate that any time we do
19 a merger approval, at a minimum we should provide for
20 immediate rate reductions to customers. Am I reading that
21 more broadly than you intended?

22 A. Probably. I think I said it's a general
23 statement and it is, but the specifics are probably
24 influenced by this case and the numbers and the contention
25 about savings.

1 Q. And is it your testimony that this merger
2 under the company's plan would be most detrimental to the
3 steam customers?

4 A. Yes. Based on the numbers that were given to
5 us, which are attached to my testimony, even before you get
6 to considering merger sav-- or before you get to considering
7 any recovery of the merger premium, it shows a net
8 detriment.

9 Q. And more of a detriment to steam customers?

10 A. Well, the particular exhibit I think showed
11 \$4,255,000 of gross benefits to the total St. Joe Light &
12 Power customers. I guess that's --

13 Q. So is it your testimony that some customers
14 would benefit from the merger?

15 A. It's Exhibit 503. I'm just looking here at
16 the gross -- the gross numbers. And if we accept or use the
17 company's calculated and asserted savings, the net synergies
18 before you deal with the merger premium are an average of
19 \$4,255,000 over the first five years, but that's a plus
20 \$4,370,000 or a savings for electric customers and a loss or
21 a dis-benefit, if you will, for both gas customers and steam
22 customers. Of course, if you add premium recovery on top of
23 that, it just becomes more of a negative.

24 So I guess what I'm saying is that if you
25 accept in total what they've said about gross savings and

1 look at it on a class of service basis, it is a detriment to
2 steam customers and gas customers.

3 Q. And, in your opinion, is there any way that
4 this merger could be structured or any conditions that could
5 be placed upon it that would make it, in your opinion, not
6 detrimental to the public interest?

7 A. If you deal with -- with the savings
8 calculations as put forth by the company, let me take that
9 first, there probably are ways to change the regulatory plan
10 or put conditions on that would give you assurances of not
11 having a detriment.

12 If you take the Staff's calculations of what
13 are the costs and the savings of the merger, then I think
14 the answer is no, because their calculations suggest that
15 the costs outweigh the savings. So there's no way to
16 condition that.

17 Q. And have you done any analysis that you would
18 have an opinion on which calculations we should rely upon?

19 A. No. I've not gone into the numbers deeply
20 enough to be able to express an opinion on that.

21 COMMISSIONER MURRAY: Thank you. That's all
22 my questions.

23 JUDGE WOODRUFF: Commissioner Schemenauer?

24 COMMISSIONER SCHEMENAUER: Thank you, your
25 Honor.

1 QUESTIONS BY COMMISSIONER SCHEMENAUER:

2 Q. Good morning, Mr. Brubaker.

3 A. Good morning.

4 Q. On pages 5 and 6 of your rebuttal testimony
5 you discuss the benefits that the stockholders would have
6 versus the ratepayers. And I think on page 6 you conclude
7 that stockholders would benefit by approximately 149 million
8 and the ratepayers by 10 million, and there's a 15 times
9 greater benefit to the stockholders. Assuming your figures
10 are correct, what would be an acceptable, not detrimental to
11 the public interest, split on these benefits?

12 A. I've noticed you ask a lot of tough questions.

13 Q. Sorry.

14 A. I see I'm not disappointed. Difficult,
15 Commissioner, to draw a precise line. I think in part you
16 have to make a judgment based on how good do you feel about
17 the numbers that you've been presented that underlie the
18 estimate of savings.

19 Certainly one -- you know, one standard that's
20 been applied and one that's been used is to have an earnings
21 sharing plan that has a 50/50 kind of sharing of enhanced
22 earnings. That's not a direct measure of merger costs and
23 benefits and not a direct recognition of acquisition
24 premium, but in the context of what we've discussed here and
25 recognizing the difficulty of measuring those things, some

1 kind of an earning sharing plan like that is a method that I
2 find a reasonable approach to the issue of accommodating the
3 mergers.

4 Q. So a 50/50 plan would be not detrimental to
5 stockholders or ratepayers?

6 A. Would not be detrimental to ratepayers
7 certainly. And to the extent --

8 Q. I stand corrected.

9 A. -- capture of merger acquisition premium and
10 other costs would depend upon the utility's efforts to
11 become more efficient and explore some new opportunities.

12 Q. The previous witness mentioned the freezing of
13 the allocation factors that UtiliCorp has proposed for
14 Missouri Public Service. And then he expounded on if you
15 freeze those factors and yet the base cost goes up, you're
16 actually increasing the assignment of the cost to a segment
17 of UtiliCorp that shouldn't be bearing the cost. Did you
18 follow that?

19 A. I think I did. That's an interesting --
20 interesting point. And I hadn't thought about that until
21 Mr. Traxler mentioned it.

22 Q. Do you agree with that? I mean,
23 mathematically it's --

24 A. It sounds logical mathematically, but, you
25 know, I haven't thought it through enough to be able to

1 express an opinion.

2 COMMISSIONER SCHEMENAUER: Thank you. That's
3 all I have.

4 JUDGE WOODRUFF: Commissioner Simmons?

5 COMMISSIONER SIMMONS: No questions, your
6 Honor. Thank you.

7 JUDGE WOODRUFF: No questions for myself, so
8 we'll go to recross.

9 MR. CONRAD: Redirect, whatever.

10 JUDGE WOODRUFF: No recross from the Bench --

11 MR. CONRAD: I'm sorry. Excuse me.

12 JUDGE WOODRUFF: Natural Resources?

13 MS. WOODS: I have nothing. Thank you.

14 JUDGE WOODRUFF: Springfield's not here.
15 Public Counsel?

16 MR. MICHEEL: No, your Honor.

17 JUDGE WOODRUFF: Staff?

18 MR. DOTTHEIM: No.

19 JUDGE WOODRUFF: UE's not here. UtiliCorp?

20 MR. SWEARENGEN: Just a couple.

21 RECROSS-EXAMINATION BY MR. SWEARENGEN:

22 Q. Mr. Brubaker, I think in response to a
23 question from Commissioner Murray you indicated that in your
24 view, the merger would result in a detriment to the St. Joe
25 Light & Power steam customers. And who is your steam

1 customer client in this case?

2 A. AG Processing is the client on whose behalf I
3 appear.

4 Q. And is AG Processing served under St. Joe's
5 steam tariffs or under a special contract?

6 A. It's a contract service.

7 Q. And are those contract rates above or below
8 the tariff rates, do you know?

9 A. They're below the tariff rates.

10 Q. And when does that contract end, do you know?

11 A. Sitting here right now, I don't.

12 Q. You have no idea?

13 A. It's been -- seems like to me within the next
14 two years roughly, two or three years.

15 MR. SWEARENGEN: Thank you.

16 JUDGE WOODRUFF: Okay. St. Joseph Light &
17 Power?

18 MR. COMLEY: No questions.

19 JUDGE WOODRUFF: Now redirect.

20 MR. CONRAD: I apologize, your Honor, for
21 that.

22 JUDGE WOODRUFF: That's okay.

23 REDIRECT EXAMINATION BY MR. CONRAD:

24 Q. Mr. Brubaker, you were asked the question
25 about detriment. How would you define detriment to a

1 ratepayer?

2 A. I would define detriment as the ratepayer
3 paying -- paying rates that were higher than otherwise would
4 have been paid but for the merger or other events that we're
5 talking about, assuming that the quality of service and the
6 adequacy of service remains constant.

7 Q. Following up on that comment, on a situation
8 where rates stay the same but the cost of service that
9 previously underlaid those rates declines, would that be a
10 detriment?

11 A. You'd have to look at it in the context of the
12 circumstances. If there were nothing else there other than
13 the fact that the rates -- that the cost went down, but
14 there was no way to push the rates down and there were no
15 offsetting factors, then that would, I think, be a
16 detriment.

17 MR. CONRAD: Thank you, your Honor. That's
18 all we have.

19 JUDGE WOODRUFF: You may step down.

20 And we will go ahead and break for lunch.
21 Let's come back at 1:30.

22 (A RECESS WAS TAKEN.)

23 (EXHIBIT NO. 500-HC WAS MARKED FOR
24 IDENTIFICATION.)

25 JUDGE WOODRUFF: I believe the next witness

1 will be Mr. McKinney.

2 MR. SWEARENGEN: John McKinney.

3 JUDGE WOODRUFF: Before we do that,
4 Mr. Conrad, did you --

5 MR. CONRAD: Yes. And I did supply the
6 reporter with the pages that you had requested in the
7 envelopes. That's been done. Thank you.

8 JUDGE WOODRUFF: And there was going to be
9 some discussion on Mr. Brubaker.

10 MR. CONRAD: Yes. We've had that discussion
11 although it hasn't been completed, your Honor. I had
12 indications from all counsel save one that they were
13 agreeable to at least dealing with Mr. Brubaker this next
14 time and letting him be completed.

15 The one that did not was counsel for St. Joe,
16 and he indicated to me that they might not know today, might
17 possibly have to wait until tomorrow to know, but he
18 could -- Mr. Comely can speak to that if he needs to.

19 MR. COMLEY: We'll make an effort to get that
20 done by this afternoon, but I didn't want to give Mr. Conrad
21 any false hope.

22 JUDGE WOODRUFF: Okay. Very good.

23 All right. Mr. McKinney's on the stand then.
24 Would you please raise your right hand?

25 THE WITNESS: I've already been sworn.

1 JUDGE WOODRUFF: You have already been sworn.
2 I'll remind you you are under oath.

3 MR. SWEARENGEN: He's been sworn and he's
4 prepared to undergo cross-examination on the regulatory plan
5 overall issue.

6 JUDGE WOODRUFF: Okay. Thank you very much.

7 MR. SWEARENGEN: I'll see you later, John.

8 JUDGE WOODRUFF: Okay. First
9 cross-examination attempt is -- it's going to be a long
10 afternoon.

11 THE WITNESS: Was that Freudian or
12 intentional?

13 JUDGE WOODRUFF: First opportunity goes to
14 St. Joseph Light & Power.

15 MR. COMLEY: No questions.

16 JUDGE WOODRUFF: UE, not here. Natural
17 Resources?

18 MS. WOODS: No questions. Thank you.

19 JUDGE WOODRUFF: AGP?

20 CROSS-EXAMINATION BY MR. CONRAD:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Mr. McKinney, you were on the stand earlier
24 today; is that correct?

25 A. That's correct.

1 Q. Have you mailed me any more updates to your
2 data requests since then?

3 A. I'm not aware of any. We're trying to get one
4 down here so we can give it to you today.

5 MR. CONRAD: Thank you. That's all I have.

6 JUDGE WOODRUFF: All right. City of
7 Springfield is not here. Public Counsel?

8 MR. MICHEEL: Yes.

9 CROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Mr. McKinney, given the large percentage of
11 total merger savings that UCU predicts to occur in the
12 generation supply area and the possibility that legislation
13 could pass which reduces or eliminates this Commission's
14 jurisdiction over the spin-off of generation resources,
15 would UCU be willing to add the following provision to your
16 regulatory plan: That if UtiliCorp decides to spin-off or
17 otherwise spin-off some or all of the generation resources,
18 both physical assets and long-term purchase power contracts
19 formerly belonging to St. Joe, then UCU agrees to initiate a
20 proceeding before the Commission to determine the following:
21 The portion of the acquisition premium that should be
22 allocated away from UtiliCorp's regulated operations and any
23 modifications to UtiliCorp's St. Joe merger regulatory plan
24 that are necessary due to the sale or spin-off of generation
25 resources formerly belonging to St. Joe.

1 And an additional part of the condition is
2 that UtiliCorp would agree not to challenge the jurisdiction
3 or legal authority of the Commission to make any
4 determinations that were made -- or challenge any of the
5 determinations that were made in the proceeding that was
6 initiated by UtiliCorp as part of the St. Joe merger
7 regulatory plan.

8 I have it written down. Would that help?

9 A. Could I read it, please?

10 Q. Thank you.

11 A. Is this a new condition for the Office of
12 Public Counsel?

13 Q. I'm just asking if that's something -- that
14 condition that I read that you have there -- I think the
15 record will reflect it -- is something you'd be willing to
16 consider?

17 A. Number one is, in my surrebuttal testimony
18 we've already said that we do that. In my surrebuttal
19 testimony I indicate if anything is allocated out of rate
20 base, the appropriate premium would go with it. So that's
21 already in our testimony.

22 Q. I understand that. But I think we've got a
23 couple other things that --

24 MR. SWEARENGEN: And the question, just so I
25 understand it, is would the company consider that?

1 MR. MICHEEL: Yes. Just as you've asked some
2 of the witnesses would you consider certain plans or --

3 MR. SWEARENGEN: Sure.

4 THE WITNESS: Of course we would consider it.
5 If UtiliCorp decides to sell or spin-off its generating
6 assets or really any assets belonging to St. Joe, UtiliCorp
7 would agree to initiate a proceeding before the Commission.
8 Well, we'd have to do that. That we don't have a choice.

9 One was a portion of the premium should be
10 allocated away. In my surrebuttal testimony I so state that
11 if anything goes, the appropriate amount of premium would go
12 with it. Two says, Any modification to the regulatory plan
13 necessary before the regulatory plan could be modified --
14 that would have to come before the Commission too. So those
15 are --

16 BY MR. MICHEEL:

17 Q. So would you be willing to make those
18 commitments even if legislation were passed that reduced or
19 eliminated the Commission's jurisdiction over the spin-off?
20 I mean, would you be willing to submit to a condition of
21 this merger? Not just talking about it now. A condition.

22 A. You gentlemen are all attorneys. I just came
23 from the school of hard knocks and the law that I do know.
24 But the state legislature can pass any laws they want.
25 Until a Public Utility Company Holding Act is passed, we

1 still have to come to this Commission no matter what state
2 legislation says.

3 The Public Utility Holding Act requires us
4 before we take assets and spin them off into an exempt
5 wholesale generator, which UtiliCorp would have to do, we
6 must come before this Commission to get permission to do so.
7 And the state legislature cannot waiver that jurisdiction.
8 That's a federal requirement.

9 MR. MICHEEL: Thank you very much,
10 Mr. McKinney. That's for you.

11 JUDGE WOODRUFF: Staff then?

12 CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. Yes. Good afternoon, Mr. McKinney.

14 A. Good afternoon.

15 Q. Mr. McKinney, if I could refer you to page 8
16 of your direct testimony, which I believe is marked as
17 Exhibit 4, and I'd like to refer you to lines 11 through 14.

18 A. This is on the moratorium versus the --

19 Q. Yes.

20 A. Okay.

21 Q. Yes. And you state therein on page 8 at
22 lines 11 to 14 of your direct testimony that UtiliCorp based
23 the language for its proposed moratorium on the language
24 found in the Stipulation and Agreement in Case No.
25 EM-97-515, the merger application of Western Resources and

1 Kansas City Power & Light Company?

2 A. That was a general basis for the language. Of
3 course, it had to be modified, but that was the general
4 location.

5 Q. Is UtiliCorp willing to adopt any of the other
6 provisions that are contained in the Western
7 Resources/Kansas City Power & Light Stipulation and
8 Agreement?

9 A. That's a fairly broad statement. Could you be
10 specific?

11 Q. Are you familiar with various provisions of
12 that Stipulation and Agreement, the Western Resources/Kansas
13 City Power & Light merger Stipulation and Agreement?

14 A. Yes. The Staff indicated that would be the
15 settlement needed in this case when we came down to talk to
16 them.

17 Q. Do you know whether any of the provisions of
18 that Stipulation and Agreement contain conditions that
19 either the Office of Public Counsel or the Staff has
20 proposed in their rebuttal filings in this case?

21 A. I think the Office of Public Counsel indicated
22 that there were some provisions of that that they would like
23 to see us adopt.

24 Q. Do you recall what UtiliCorp's response was in
25 the statement of positions regarding those conditions?

1 A. Those would not be acceptable.

2 Q. Offhand, are there any other provisions that
3 you recall contained in that Stipulation and Agreement
4 respecting the Western Resources/Kansas City Power & Light
5 Company merger that UtiliCorp would be willing to accept?

6 A. No. That stipulation was a stipulation
7 between two companies and the parties to that case and
8 really don't have a whole lot of bearing on this docket or
9 this case here. I can't recall any others that I would say
10 quickly that we could accept.

11 MR. DOTTHEIM: Excuse me. If I may have a few
12 minutes?

13 JUDGE WOODRUFF: That's fine.

14 BY MR. DOTTHEIM:

15 Q. Mr. McKinney, I'm going to hand you a copy of
16 the Commission's Order approving the Stipulation and
17 Agreement in Case No. EM-97-515. And I'd like you to take a
18 look at it. I'd like to ask you about some of the
19 provisions contained therein. If I could direct you to
20 page 20.

21 MR. SWEARENGEN: You said page 20?

22 MR. DOTTHEIM: I'm sorry. Yes. Page 20 of
23 the Stipulation and Agreement.

24 BY MR. DOTTHEIM:

25 Q. And it's Section 18, the Commission's rights.

1 If I could just read that into the record. On page 20 of
2 the Stipulation and Agreement accepted by the Commission in
3 Case No. EM-97-515 between the various signatory parties
4 and Western Resources and Kansas City Power & Light.

5 Under Section 18 there's a heading The
6 Commission's Rights. Acceptance of this Stipulation and
7 Agreement by the Commission shall not be deemed as
8 constituting an agreement on the part of the Commission to
9 forgo during the above-identified periods the use of any
10 discovery, investigative or other powers which the
11 Commission presently has.

12 For example, non-signatories to this
13 Stipulation and Agreement may file or request or encourage
14 or assist in any filing of a request for an earnings
15 investigation of West Star and in response or on its own
16 motion, the Commission may direct the Staff to conduct an
17 earnings investigation of West Star.

18 Thus, nothing in this Stipulation and
19 Agreement is intended to impinge or restrict in any manner
20 the exercise by the Commission of any statutory right,
21 including the right of accessed information or any statutory
22 obligation.

23 Nothing in this Stipulation and Agreement is
24 intended to impinge, restrict or limit in any way Public
25 Counsel's discovery powers, including the right to access --

1 to access information and to audit and investigate matters
2 related to West Star or its successors.

3 I realize I haven't asked you previously, but
4 if you know or have a belief, is Section 18, which I just
5 read, would that be a section that UtiliCorp would be
6 agreeable to respecting any Stipulation and Agreement or any
7 order of this Commission regarding the merger of UtiliCorp
8 and St. Joseph Light & Power?

9 A. I think my testimony in my direct on page 8
10 that we were at earlier addresses that point, if I could.
11 Where -- in my testimony where I talk about this area, the
12 only restriction that I do have there is a restriction on
13 the Staff of the Commission will not encourage or assist in
14 the filing of any case with a -- with the Commission
15 requesting a decrease in St. Joe's rates. And that is the
16 only limitation that I've put on in my testimony.

17 Q. Is this paragraph 18 a provision that makes
18 that limitation to which you are referring less inclusive?

19 A. It could be interpreted that way, because it
20 doesn't go into any other powers that the Commission has.
21 I'm not pretending to try to restrict any of the
22 Commission's powers to do anything or the powers of the
23 Office of the Public Counsel.

24 This is an agreement addressing West Star.
25 I'm not sure what the West Star organization really

1 included. I'm not sure it included all aspects of that new
2 company. I don't recall the corporate structure.

3 But in our regulatory plan, we are not
4 intending to try to restrict the Office of the Public
5 Counsel, as my testimony shows, or anybody else. We wish we
6 would -- we wish all parties would agree to that. It would
7 give us a lot more assurance, but you know the
8 practicalities of law.

9 Q. If I could refer you to page 21, lines 5 to 8
10 of your direct testimony.

11 A. Yes, sir.

12 Q. And you state there, do you not, the Western
13 Resources/KCPL merger case, quote, Rate freezes were
14 established for a period of time that allowed for a full or
15 partial recovery of the acquisition adjustment?

16 A. Yes. What I'm talking about there is really
17 the earnings -- are you talking about -- oh, for the Kansas
18 City Power & Light Case/Western --

19 Q. Yes.

20 A. Yes. I believe there was, what, a three-year
21 moratorium agreed to or something like that. I'm not sure
22 at this point. I don't recall. I'd have to look at the
23 agreement. I think there was a two- or three-year
24 moratorium agreed to.

25 Q. Yes. There was a moratorium --

1 A. And Kansas City Power & Light had already
2 agreed to one in the case and this just extended it.

3 Q. That's correct. I was just trying to see if I
4 could put --

5 A. I think it's on page 7, item 11 maybe of the
6 stipulation that you handed me earlier.

7 Q. Yes. Yeah. The moratorium in that case that
8 was agreed to --

9 A. Thirty months.

10 Q. -- I think it was stated as the alternative
11 dates. And the Stipulation and Agreement will speak for
12 itself and --

13 A. I agree.

14 Q. -- the alternative dates were limitations on
15 when the Staff or other signatories could file an earnings
16 investigation or when West Star could file a rate increase;
17 and then another specification of a time limit when a change
18 in rates actually would go into effect.

19 Is it possible that if UtiliCorp were
20 agreeable to a rate freeze for a period of time for the
21 St. Joseph Light & Power division without there being a
22 direct recovery of the acquisition adjustment, that the rate
23 freeze alone would allow UtiliCorp a full or partial
24 recovery of the acquisition adjustment?

25 A. Well, would allow for a partial, but it would

1 be a very small partial. These periods of time that are in
2 this agreement are not sufficient.

3 Q. The periods of time in which agreement are not
4 sufficient?

5 A. In the one that you had me reference here, the
6 West Star are not sufficient.

7 Q. But you indicated that -- regarding the West
8 Star agreement, the rate freezes that were established, that
9 is rate freezes alone, would have allowed a full or partial
10 recovery of the acquisition adjustment?

11 A. I think it was a small partial. I don't know
12 the exact amount. I know when they made this agreement,
13 they thought they had a much better stipulation in the state
14 of Kansas than what they ended up with. And I can't talk
15 about the case. I was not a party to it.

16 Q. You indicated that it would be a full or
17 partial recovery. Now you're indicating that it would be a
18 partial recovery?

19 A. No. I agreed that it would be a partial and a
20 small partial.

21 Q. If I could direct you to page 13.

22 A. Of which document?

23 Q. I'm sorry. Once again of your direct
24 testimony, which is Exhibit 4.

25 A. Thank you.

1 Q. And you make reference to modernizing the
2 electric utility industry in Missouri?

3 A. Yes. That's correct.

4 Q. What did you mean by modernizing the electric
5 utility industry in Missouri?

6 A. As the industry is moving foward, there is
7 various reasons for consolidation. One is the larger
8 utilities are able to do more things. As Mr. Steinbecker
9 testified yesterday, able to offer more products and more
10 services that today's customers want. We're also able to
11 offer more economies of scale, better services, better
12 products. And as Mr. Green testified, one of the drivers,
13 of course, is to better serve the customers as we move
14 towards competition.

15 Q. If I could direct you to page 27 of your
16 direct testimony. And on that page you use the term "fair
17 value"?

18 A. That's correct.

19 Q. And you've used the term "fair value" earlier
20 in your testimony. Do you know whether the term "fair
21 value" appears in any statutes applicable to the Commission?

22 A. Applicable to where? I'm sorry.

23 Q. Do you know whether the term "fair value"
24 appears in any statutes applicable to the Commission?

25 A. No. Only in these Supreme Court cases here in

1 Missouri that I was talking about.

2 Q. If I could refer you to page 3 of your
3 surrebuttal testimony, which is Exhibit 5.

4 MR. SWEARENGEN: Excuse me. What page, Steve?

5 MR. DOTTHEIM: Page 3, lines 10 to 15.

6 THE WITNESS: Yes.

7 BY MR. DOTTHEIM:

8 Q. And you make reference, do you not, to rates
9 will be frozen at existing levels for five years and the
10 status quo will be maintained at least for the immediate
11 future. Do you define "not detrimental to the public
12 interest" as maintaining the status quo?

13 A. That would be part of it, yes. As long as the
14 rates are not affected, yes.

15 Q. For what period of time must the status quo be
16 maintained in order for the merger to not be detrimental to
17 the public interest?

18 A. I'm not sure I can make that judgment for the
19 Commission. What I can say though is that in this
20 transaction, status quo will be maintained for five years.
21 And the regulatory plan we put in as almost an insurance
22 policy guaranteeing this merger causes no detriments to the
23 customer as far as their rates.

24 Q. UtiliCorp, in its proposal, is limiting its
25 requested recovery of the acquisition adjustment to

1 50 percent of the premium; is that correct?

2 A. There's been some confusion on that. We've
3 asked for 50 percent of the premium to be put into rate base
4 and that 50 percent to be amortized. Of course, the frozen
5 capital structure has an impact on premium recovery and the
6 other -- the MPS allocation -- now, that factors -- the MPS
7 allocation is not frozen, but the impact of the St. Joe
8 merger on the factor will have an impact also. So all
9 together it's a little different than 50 percent.

10 Q. Is there any expectation that non-regulated
11 merger benefits will result from the merger?

12 A. There may be someday. As I believe Mr. Green
13 talked about yesterday, if the generation assets go out,
14 those could, but we are willing to take the appropriate
15 premium with it if that would happen at that time. St. Joe
16 Light & Power doesn't have a huge non-regulated operation.

17 They had an equity investment in Exop, but
18 that's not a non-regulated operation of St. Joe itself. It
19 was an investment they had. Their other non-regulated
20 operations don't have a dominic bottom line today or we
21 don't foresee one in the future.

22 Q. If UtiliCorp's proposal to use a frozen
23 St. Joseph Light & Power capital structure in future
24 proceedings, rate cases, is accepted, will this allow the
25 same amount of indirect recovery of the acquisition

1 adjustment by UtiliCorp?

2 A. The same amount as compared to what?

3 Q. As you are proposing at the present.

4 A. Could you repeat that, please, Steve? I'm
5 sorry.

6 Q. Sure. If UtiliCorp's proposal to use a frozen
7 St. Joseph's Light & Power frozen structure in the future in
8 future rate cases is accepted, will that allow the same
9 amount of indirect recovery of the acquisition adjustment on
10 a going-forward basis?

11 A. Well, the frozen capital structure -- you mean
12 without a moratorium?

13 Q. Without a moratorium.

14 A. No, it would not.

15 Q. With a moratorium?

16 A. With a moratorium, it would allow for some to
17 be recovered. But it will not allow for the amount that
18 we're putting into rate base and amortizing in the cost of
19 service.

20 Q. If the entirety of UtiliCorp's proposed
21 regulatory plan is adopted by the Commission, how much of
22 the acquisition adjustment do you expect to recover directly
23 or indirectly for the period of the regulation -- of the
24 regulatory plan?

25 A. In the 10-year period?

1 Q. Yes.

2 A. Mr. Siemek can give you better details on that
3 if you can ask him, but I know it's less than 100 percent of
4 the whole picture from all jurisdictional areas. As we've
5 told the Staff and everybody in this case, the amount that
6 we're not putting in rate base we're hoping to be able to
7 recover from non-regulated operations and also from other
8 jurisdictional areas under the same allocation concept that
9 we're addressing for MPS in other states.

10 Q. Does Missouri Public Service plan to file for
11 rate relief with the Commission within the next five years?

12 A. Yes.

13 Q. Can you identify -- and I understand this
14 might be something that's highly confidential -- in what
15 years that might be?

16 A. Probably within the next 12 months.

17 Q. And any projections after the next 12 months
18 within a five-year period?

19 A. Yes. It would probably have to be within
20 three years after that, maybe four.

21 Q. And that would be -- that would take care of
22 the duration of the five-year period?

23 A. I believe that would take care of it as --
24 unless the economy goes in areas that I don't expect it to
25 go. But if Mr. Greenspan stays around, who I don't know if

1 the other economists like him, I do -- I think we'll be
2 okay.

3 MR. DOTTHEIM: If I could just have a moment.
4 Thank you, Mr. McKinney.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: All right. We're ready for
7 questions from the Bench then starting with Chair Lumpe.

8 QUESTIONS BY CHAIR LUMPE:

9 Q. Mr. McKinney -- is it McKinney?

10 A. Yes.

11 Q. Go back to page 8 where you were asked a
12 question, and I think your response was that you were only
13 recommending that the Staff not be allowed to assist in
14 filing any rate case. Would that prohibit the Commission
15 from asking the Staff to do an earnings investigation?

16 A. Yes. That's basically what is intended.
17 We've asked in this that the Commission and the Commission's
18 Staff go with the moratorium. We realize that under
19 statutes and regulation in this state that's the limit that
20 we could ask you to do by law. We can't ask you to bind
21 anybody that's not a party. But we can ask you not to
22 entertain an earnings investigation on the company during
23 the five-year period.

24 Q. So you would be prohibiting the Commission
25 from doing that; is that correct?

1 A. Yes.

2 Q. On page 19 of your direct down towards the
3 bottom, about line 17, maybe 15 talks about the utility
4 customer being deprived of benefits because the shareholders
5 are not permitted to recover reasonable investments that
6 include a premium and shareholders are not provided due
7 process in the review of their investment. Are the
8 shareholders Intervenors in this case? What do you mean by
9 due process for the shareholders?

10 A. Let me read that entire paragraph for context.
11 This basically is talking about commissions not
12 necessarily -- because it does not have a capital C here,
13 we're talking commissions in general.

14 Massachusetts would be a good example. In the
15 past they had a policy that they would disallow a premium no
16 matter what. They would just never entertain premium
17 recovery. And the case that is referred to in Mr. Green's
18 testimony and my direct, Massachusetts made the change. And
19 they realized that they needed to look at premium recovery
20 because transactions were not happening that might happen.

21 And those that might happen could develop
22 savings and benefits to customers. Some benefits would not
23 develop because these companies -- some companies would not
24 engage in mergers if they're not given an opportunity to
25 recover the premium for the investors, the investors being