

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

\_\_\_\_\_

TRANSCRIPT OF PROCEEDINGS

PREHEARING CONFERENCE

September 20, 2004

Jefferson City, Missouri

Volume 1

\_\_\_\_\_

In the Matter of the Application of                    ) Case No.  
Aquila, Inc. for an Accounting Authority    ) EU-2005-0041  
Order Concerning Fuel Purchases            )

\_\_\_\_\_

KENNARD L. JONES,  
REGULATORY LAW JUDGE.

\_\_\_\_\_

REPORTED BY:  
TRACY L. THORPE, CSR, CCR  
MIDWEST LITIGATION SERVICES

1 A P P E A R A N C E S

2 DEAN L. COOPER, Attorney at Law  
3 Brydon, Swearngen & England  
4 312 East Capitol Avenue  
Jefferson City, Missouri 65102  
573-635-7166

FOR: Aquila, Inc.

5  
6 STUART W. CONRAD, Attorney at Law  
Finnegan, Conrad & Peterson  
3100 Broadway, Suite 1209  
7 Kansas City, Missouri 64111  
816-753-1122

FOR: Sedalia Industrial Energy Users' Association

9 THOMAS M. BYRNE, Attorney at Law  
10 1901 Chouteau Avenue  
St. Louis, Missouri 63103  
314-554-2514

FOR: Union Electric Company

12 JOHN B. COFFMAN, Acting Public Counsel  
P.O. Box 2230  
13 Jefferson City, Missouri 65102  
573-751-5565

FOR: Office of Public Counsel and the Public

15 STEVEN DOTTHEIM, Chief Deputy General Counsel

DENNIS L. FREY, Senior Counsel

16 P.O. Box 360  
Jefferson City, Missouri 65102  
17 573-751-6651

FOR: Staff of the Missouri Public Service Commission

18

19

20

21

22

23

24

25

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

2 JUDGE JONES: This is Case No. EU-2005-0041 in  
3 the matter of the application of Aquila, Inc. for an  
4 Accounting Authority Order concerning fuel purchases. My name  
5 is Kennard Jones. I'm the regulatory law judge assigned to  
6 this matter. This is a prehearing conference, and at this  
7 time I'll take entries of appearance starting with Aquila.

8 MR. COOPER: Dean L. Cooper from the law firm  
9 of Brydon, Swearngen and England, PC, PO Box 456, Jefferson  
10 City, Missouri 65102 appearing on behalf of Aquila, Inc.

11 JUDGE JONES: And Staff of the Commission?

12 MR. FREY: Thank you, your Honor. Appearing on  
13 behalf of the Staff of the Missouri Public Service Commission,  
14 Dennis L. Frey and Steve Dottheim, who should be here  
15 momentarily, PO Box 360, Jefferson City, Missouri 65102.

16 JUDGE JONES: And the Office of Public Counsel?

17 MR. COFFMAN: John B. Coffman appearing on  
18 behalf of the Office of the Public Counsel, Box 2230,  
19 Jefferson City, Missouri 65102.

20 JUDGE JONES: And from Sedalia Industrial  
21 Energy Users' Association?

22 MR. CONRAD: For Sedalia Industrial Energy  
23 Users' Association, Stuart W. Conrad with the law firm of  
24 Finnegan, Conrad and Peterson, 3100 Broadway, Suite 1209,  
25 Kansas City, Missouri 64111.

1 JUDGE JONES: Okay. Thank you all.

2 I realize there have been Motions to Dismiss

3 filed, and in light of Aquila's response I believe on Friday,

4 the Commission will be issuing something soon.

5 Yes, sir?

6 MR. BYRNE: Your Honor, I'm Tom Byrne,

7 representing Union Electric Company, 1901 Chouteau Avenue,

8 St. Louis, Missouri 63103.

9 JUDGE JONES: Okay. I'll note that you are

10 present for this prehearing conference; however, your

11 application for intervention has not been ruled on.

12 MR. BYRNE: That's correct.

13 JUDGE JONES: Be ruled on very soon, probably

14 be something considered tomorrow by the Commission.

15 Okay. I realize that there's a Motion to

16 Dismiss -- two Motions to Dismiss along the same lines, it

17 appears to be, substantively that is. Those motions will be

18 ruled on soon, very soon.

19 Also, I realize there's a suggested procedural

20 schedule. Well, there seems to be opposition to that. You

21 all can use this day to either work through or work at that

22 procedural schedule.

23 I do want to ask all the parties others than

24 Aquila -- well, let me back up. Aquila seems that -- they

25 state that they just want this done by the 15th of January.

1       Is that something that you all see is feasible?

2                   MR. CONRAD:  Where did they say that, your  
3       Honor?

4                   JUDGE JONES:  In their response.

5                   MR. COFFMAN:  Something else they just filed.

6                   MR. COOPER:  I think that was in the Motion --  
7       in the Motion to Establish a Procedural Schedule we indicated  
8       that we were hoping for an order by January 15th or at least  
9       to provide the opportunity for the Commission to rule by  
10      January 15th of 2005.

11                  MR. CONRAD:  Well, I don't -- I don't know.  To  
12      answer your question, I guess I don't see that there's  
13      anything substantively that ought to be ruled on, whether by  
14      January the 15th of 2005 or January the 15th of 2025.

15                  JUDGE JONES:  Okay.  Let's assume that this  
16      goes to hearing.  Can this be done by the 15th of January?

17                  MR. CONRAD:  I don't know.

18                  JUDGE JONES:  Public Counsel?

19                  MR. COFFMAN:  Your Honor, if this case moves  
20      forward, and that is if the Motions to Dismiss are not  
21      granted, then I see so many issues opening up that I don't  
22      think that that's feasible.

23                  JUDGE JONES:  Okay.

24                  MR. COFFMAN:  Not only does the issue -- the  
25      relief requested by Aquila throw into doubt all of the

1 extraordinary litigation and matters in the rate case that  
2 most -- was most recently concluded and over which you  
3 presided, which I'm sure you're very aware of all those  
4 issues, Union Electric or AmerenUE's application to intervene  
5 in this case also throws open the possibility that they might  
6 file a similar application in that all of the monumental  
7 issues resolved in 2001 in its Stipulation and Agreement might  
8 somehow be thrown into question.

9 I just don't think that this is a simple matter  
10 at all or anything that I could at this point say that we  
11 could address all of the relevant issues in time for the  
12 Commission to reach a decision by January 15th.

13 JUDGE JONES: Thank you.

14 I realize the Staff of the Commission has not  
15 yet filed its recommendation in this matter. Are you able to  
16 say whether you think that this can be done before the 15th of  
17 January?

18 MR. FREY: Can we clarify, first of all, your  
19 Honor, whether this request is to have -- my understanding is  
20 that it's to have a Commission order issued at that time, it's  
21 not -- we're not talking about the effective date of the  
22 order; is that correct, January 15th or thereabouts?

23 MR. COOPER: That's correct. Certainly our  
24 pleadings have spoken in terms of an order issued by  
25 January 15th.

1                   MR. FREY: Well, in that event, the Staff would  
2 attempt to work within the parameters established by the  
3 Commission.

4                   JUDGE JONES: Now, Mr. Cooper, why is it that  
5 you all need this by the 15th?

6                   MR. COOPER: The nature of the Accounting  
7 Authority Order is to ask for accounting treatment that we  
8 would hope would be available to us when the year 2004 books  
9 are closed. That will happen in or around January of 2005.

10                  So January 15th is admittedly an approximate  
11 date, but it is a date whereby we think if we had an order,  
12 the order could be taken into account in the closing of those  
13 2004 books, so that's the significance of that time period.

14                  JUDGE JONES: Now, I want to be able to  
15 understand the pleadings that have been filed also up to this  
16 point. Aquila wants to treat the monthly expenses how? I  
17 mean, currently how are the expenses being treated?

18                  MR. COOPER: Yeah, currently on a monthly basis  
19 the company's being required to -- if it under-recovers --  
20 well, let me back up.

21                  On a monthly basis it's receiving an interim  
22 energy charge, the IEC amount. It also obviously has fuel  
23 costs on a monthly basis. Currently if those fuel costs  
24 exceed the recovery under the IEC in that given month, the  
25 company's being required to expense that difference. Okay?

1       And that's -- obviously that's the company's primary concern,  
2       is when it is required to expense that difference.

3               What the company proposes to do is to take that  
4       difference, establish a regulatory asset, put that  
5       under-recovery into the regulatory asset and each month allow  
6       that regulatory asset to essentially ride with whether there's  
7       an over-recovery or an under-recovery. The regulatory asset  
8       would increase, the way I understand it, if there's an  
9       under-recovery. If there's an over-recovery in a given month,  
10      which there likely will be in what they call the shoulder  
11      months, that regulatory asset would decrease. And then at the  
12      end of the two-year period, figure out what it is we're going  
13      to do with it when we know what those numbers look like.

14             The company's position is that doing that  
15      better reflects that the IEC is a two-year period -- or is a  
16      two-year plan. In terms of the IEC recoveries and fuel  
17      expenses, the objective -- at least the company believes the  
18      objective was to provide this two-year period to allow -- or  
19      to acknowledge that in some months there would be  
20      over-recovery and in some months there would be  
21      under-recovery, and the question would be in terms of refund  
22      or what have you where all those numbers were at the end of  
23      the two-year period.

24             The company does not believe that its current  
25      accounting treatment, being required to apply this



1 month-to-month expensing, accurately reflects the nature of  
2 the IEC.

3 JUDGE JONES: Well, as I'm sure you all know,  
4 this case is intimately tied to the agreement that was --

5 MR. CONRAD: That's correct.

6 JUDGE JONES: -- approved in the recent rate  
7 case. I know that the price volatility of gas was considered.  
8 The reason for the IEC. How is it that the accounting for  
9 that volatility not -- how could that happen?

10 MR. COOPER: Well, the company -- and it  
11 indicates this in its application -- believes that the  
12 magnitude of that volatility has exceeded the bounds of what  
13 was anticipated at the time of the case. Obviously Mr. Conrad  
14 disagrees with that, as do other parties.

15 MR. CONRAD: Where were the bounds, Counsel --

16 MR. COOPER: Well --

17 MR. CONRAD: -- that were agreed to?

18 MR. COOPER: Well --

19 MR. CONRAD: What were the bounds that were  
20 agreed to, Counsel?

21 JUDGE JONES: Just a minute. I'm not going to  
22 let you all get into an argument right now. You all can argue  
23 after I leave because I don't want to hear it.

24 MR. CONRAD: And we will.

25 JUDGE JONES: That's fine.

1                   MR. COOPER: Your Honor, in the application we  
2 point out -- and we focused in on natural gas prices, but we  
3 point out that parties were in the range of three-ninety-nine,  
4 four-thirty-five per mcf, and we are way outside those bounds.

5                   JUDGE JONES: Okay. I understand that you all  
6 set a range. That range was just what you thought it might  
7 be, maybe. It doesn't even matter to me that you -- somebody  
8 may have thought, well, it could be beyond this range but I'll  
9 agree with this; somebody may have thought it could be below  
10 this, but this is the range you all agreed on in the  
11 Stipulation and Agreement.

12                   Now, Aquila had to know that it was possible  
13 gas prices would go outside of that range too.

14                   MR. COOPER: Certainly possible, yeah. That  
15 certainly was contemplated, your Honor.

16                   JUDGE JONES: My question is, are you arguing  
17 that -- I mean, I shouldn't say arguing. Is it your position  
18 then that how the accounting would be done for this variance,  
19 you're saying that that wasn't considered in the agreement?

20                   MR. COOPER: I don't think it's -- I don't  
21 think it's treated in the agreement, no, your Honor.

22                   JUDGE JONES: Well, now I know that different  
23 accounting numbers for those have to be placed in some account  
24 with FERC. I've been seeing these FERC account numbers.  
25 There are FERC account numbers in the Stipulation and

1 Agreement and then there are FERC numbers in your application  
2 that are different than the ones that are in the Stipulation  
3 and Agreement. So that makes me think that accounting was  
4 thought about at some point.

5 MR. COOPER: Yeah, I can't -- I don't think  
6 that the specific issue that we're trying to address here --  
7 and let me back up.

8 Certainly in this application, the company's  
9 not attempting to change that collar, the bounds of the IEC  
10 itself. Okay? What the company is trying to do is to change  
11 what seems to be a perverse result from the accounting  
12 treatment; and that is that it conceivably can be required to  
13 write off more than it ever, I guess, loses on the IEC because  
14 of this month-to-month treatment of the fuel cost.

15 JUDGE JONES: Well, on its -- well, not  
16 necessarily on its face, but it seems that Aquila needs to  
17 make itself look better to the general public through this  
18 application.

19 MR. CONRAD: That's right.

20 JUDGE JONES: Is that essentially what's going  
21 on? I don't know whether there's anything wrong or right with  
22 that. I'm just trying to understand what is going on, why is  
23 this happening now.

24 MR. COOPER: From the company's perspective,  
25 the implication of the Accounting Authority Order is a change

1       in the accounting and the numbers that would be viewed I  
2       suppose by the general public.

3               JUDGE JONES: Well, otherwise you'd be taking  
4       monthly losses. If nothing happens with this case, you'll  
5       have monthly losses perhaps --

6               MR. COOPER: During some months.

7               JUDGE JONES: -- reflected. Right?

8               MR. COOPER: Right.

9               JUDGE JONES: And those losses look bad for  
10      your bond rating, your stocks, what?

11              MR. COOPER: Any purpose that the company's  
12      financial statements are reviewed.

13              JUDGE JONES: Now, Mr. Conrad, you seem most  
14      eager to speak.

15              MR. CONRAD: Yeah, I do. This is a shell game.  
16      Counsel stated that he was going to -- they were going to have  
17      to expense the part of their fuel costs over the cap. They're  
18      expensing whatever their fuel cost is right now regardless of  
19      what this is. He wants to seize a month or two in which the  
20      fuel cost varied above the cap, but wrongly he now says that,  
21      oh, somehow that gets offset.

22              What we've got is a situation that when the  
23      fuel cost drops below the cap, they continue to recover at the  
24      level of the cap. Do you want me to come in here and say in  
25      those two months or those three or four months that we ought

1       to drop the rate to match it? By God, if we're going to do it  
2       this way, then we'll -- that's why I've asked that it be  
3       consolidated with the rate case. Reopen the rate case. If  
4       we're going to reopen the settlement for one party, then let's  
5       reopen it for everybody.

6               My client spent thousands of dollars on me and  
7       on consultants and on time to get through that rate case. And  
8       we all sweat blood to get this thing settled. I see no reason  
9       why they should spend another several thousand dollars and  
10      potentially several thousand dollars more to settle what has  
11      already been settled. That's what those motions are about and  
12      that's what I want stopped. I don't want to spend any more  
13      time on this. We resolved it, case closed.

14             JUDGE JONES: Well, go ahead, Mr. Cooper.

15             MR. COOPER: I want to correct one thing  
16      though. I think Mr. Conrad made reference to a rate. And at  
17      this point in time, there is no proposal by the company to  
18      change a rate.

19             MR. CONRAD: Of course there isn't --

20             MR. COOPER: There is no rate --

21             MR. CONRAD: -- because you're -- because you  
22      otherwise have to --

23             JUDGE JONES: Whoa, whoa, whoa. Stop for a  
24      second.

25             MR. CONRAD: You'd otherwise have to reduce it.

1 JUDGE JONES: Mr. Conrad --

2 MR. CONRAD: Do you want me to -- answer my  
3 question.

4 JUDGE JONES: Mr. Conrad --

5 MR. CONRAD: Do you want me to come in when the  
6 thing drops?

7 JUDGE JONES: Mr. Conrad --

8 MR. CONRAD: It's time for --

9 JUDGE JONES: Vigilantly representing your  
10 client has got to mean one thing. Yelling I can tolerate to a  
11 certain extent because I know that men get hyped up and they  
12 need to express themselves, but when you yell and approach  
13 him, that can be construed -- I know people that would have  
14 stood up and punched you in your lip for doing that.

15 MR. CONRAD: Well, fine.

16 JUDGE JONES: I'm just telling you that, that  
17 that goes beyond the line. Also, the court reporter can only  
18 record one voice at a time.

19 MR. CONRAD: Okay. I apologize.

20 JUDGE JONES: You'll have more time to talk --  
21 after he says something, than you can talk some more and you  
22 can yell while you do it, but you can't yell while he's  
23 talking. That's the point I need to make.

24 MR. CONRAD: I apologize.

25 JUDGE JONES: Go ahead, Mr. Cooper.

1                   MR. COOPER: I don't think -- I think I made my  
2     point.

3                   JUDGE JONES: You're saying that this doesn't  
4     have --

5                   MR. COOPER: There's no rate to be changed. I  
6     think I heard Mr. Conrad say that we were attempting to raise  
7     a rate, and there is no attempt in this case to raise a rate.

8                   JUDGE JONES: Well, you say "in this case."  
9     Does that mean you want to do that in a future rate case?

10                  MR. COOPER: It means that certainly --  
11     certainly the application as it stands has that possibility at  
12     a future date in time. Now, will the company ask for it? I  
13     don't know. Will there be any dollars there to ask for? I  
14     don't know. Would the Commission ever grant such a thing? I  
15     don't know. Those are all points that are made in our  
16     response that was filed on Friday to the Motions to Dismiss.

17                  I think there's many unknowns and -- which are  
18     unknown because, again, as I stated earlier, this is a  
19     two-year program and we don't know where things will be until  
20     the end of that two years.

21                  MR. COFFMAN: Your Honor, may I just make a  
22     couple points?

23                  JUDGE JONES: Yes, you may.

24                  MR. COFFMAN: Thank you. I am very concerned  
25     about this application and I'm quite -- I was quite shocked

1       about it and I think it is kind of an outrageous request. I'm  
2       going to be calm in my comments, but I do share some of  
3       Mr. Conrad's emotion about this, because I do think the matter  
4       was settled in the last rate case, and I think you are correct  
5       that accounting was discussed and addressed in the appendix to  
6       the stipulation.

7                       And I think that what Aquila is asking for is  
8       indeed a modification of that settlement or the addition of a  
9       new term to that settlement that would not have been something  
10      that my office would have agreed to.

11                     If the parties had intended -- it was my  
12      understanding the parties intended that for this period,  
13      particularly the interim energy charge period, this is what  
14      the deal would be and this is what the rates were. And I  
15      understand that Aquila is not asking that there be a different  
16      rate during that period, but they are asking for the  
17      opportunity to charge perhaps the opportunity, as they say,  
18      the possibility of asking in a future rate case for the  
19      expenses that were covered by this period, and that was not my  
20      intent in entering into that agreement.

21                     And I just think that the Commission needs to  
22      address this up front if, in fact -- as I believe they are  
23      asking to do something that would violate the agreement,  
24      simply saying that we aren't ask-- we aren't violating it yet,  
25      we're simply asking for the permission to violate it, that's



1       really sort of a semantical game. If they are given  
2       permission to ask for something that would violate the  
3       agreement, I think that that is a collateral attack and it  
4       needs to be addressed now and in the context of the ER case  
5       that was most recently concluded.

6                   And, in fact, if this case is allowed to go  
7       forward and the Motions to Dismiss are not granted, I think  
8       it's very possible that my office might not even -- you might  
9       not see my office even entering into Stipulations and  
10      Agreements in the future. If we can't make a deal and count  
11      on it, it really throws into doubt a lot of the understandings  
12      that we've had over the past and trust that has been built up  
13      that parties will live up to their agreement.

14                   JUDGE JONES: So is it my understanding then  
15      that you're concerned that they're both changing the agreement  
16      and that they may try to recover this cost in a future rate  
17      case, both of those concerns?

18                   MR. COFFMAN: Yes. That's --

19                   JUDGE JONES: Mr. Conrad?

20                   MR. CONRAD: What would otherwise be the  
21      purpose of creating a regulatory asset if you had no intention  
22      of trying to recover it?

23                   JUDGE JONES: Okay. Now --

24                   MR. CONRAD: There's no point. Let me take --  
25      let me answer the question I asked that he doesn't want to

1       answer. Let's take the case where instead of the last two or  
2       three months out of a two-year period being above the cap,  
3       let's take the case of it being below the cap. Let's take it  
4       being below the cap above the three-fifty level -- above the  
5       17-dollars-and-some-odd cents --

6                   JUDGE JONES: Within the range.

7                   MR. CONRAD: -- per megawatt hour. But within  
8       the -- let's say it's down there. Now, what would be the  
9       Aquila's -- what would be Aquila's reaction if I came in and  
10      said, well, looks to me like we settled too -- too cheap, I  
11      want to file a case to complain because they're recovering  
12      rates at a \$19 level when they, in fact, should be recovering  
13      at an 18 or 17.50 level?

14                   Do you suppose they might say back to me, well,  
15      wait a minute, this is a deal that was done, we settled that  
16      problem, we settled that case and the settlement stipulation  
17      has a paragraph that says this covers all issues. You suppose  
18      they might make that same argument?

19                   Well, again, if it's sauce for the goose, then  
20      it's sauce for the gander. If they want to reopen it, I have  
21      got some clients that would dearly love to reopen that  
22      settlement stipulation because they do think they settled too  
23      cheap. So let's get it on, you know. If we want to do  
24      that -- if we want to do it for them, that's fine, then let's  
25      do it for everybody and we'll just reopen the record in the

1       034 case and go at it. There's a lot of the record already  
2       there that we don't have very much more to complete.

3               JUDGE JONES: Well, this is my question to  
4       Mr. Coffman and Mr. Conrad. If rate-making treatment is  
5       sought in the future as a result of the approval of this  
6       application, couldn't the Commission just respond  
7       appropriately and say, No, you can't do that? Can't the  
8       Commission do that? Or do you not want to leave it up to the  
9       Commission to be able to do that?

10              MR. CONRAD: That goes to my comment, Judge,  
11       about why I'm saying we -- my client spent thousands of  
12       dollars to litigate and to resolve that case. Now what we  
13       have is an end-run around it, a retrade around it. Why should  
14       we have to incur those expenses to battle that again? It's  
15       over. It's over and done with. If they don't like the deal,  
16       well, I'm sorry, we don't like the deal either. Then let's  
17       reopen the whole mishmash and go at it again.

18              MR. COFFMAN: Your Honor --

19              JUDGE JONES: Mr. Coffman?

20              MR. COFFMAN: -- I would submit that this is  
21       not the type of case where you have -- and, of course, we  
22       haven't even gotten to the merits of whether this would be  
23       something that would be an appropriate, extraordinary and  
24       nonrecurring cost and we will -- would and would -- will  
25       dispute that if this case goes forward.

1                   But this is not a situation where you set up a  
2                   regulatory asset through an Accounting Authority Order  
3                   deferral and you -- you don't know exactly if or how much that  
4                   might be recovered because of what's going to happen in the  
5                   test year, how much is going to be amortized, what are some of  
6                   the underlying assumptions.

7                   This is a situation where what they are asking  
8                   to put into the regulatory asset, I believe, can only be put  
9                   into the regulatory asset if you invalidate the settlement and  
10                  reopen the rate case that we had. I mean, they're asking for  
11                  something that I think would be illegal or violative of that  
12                  Stipulation and Agreement. For that reason, I don't think the  
13                  Commission can simply set up an AAO and defer all these issues  
14                  to a future rate case.

15                  JUDGE JONES: I see.

16                  Mr. Cooper?

17                  MR. COOPER: A couple of points. I suppose we  
18                  could argue for most of the day, but a couple of quick points.  
19                  Again, contrary to Mr. Conrad's statements, we do believe that  
20                  the Accounting Authority Order that we're asking for would run  
21                  for the entire two-year period, would contemplate both the  
22                  asset being increased when dollars exceed the IEC in a given  
23                  month, but also would be decreased, would go both directions  
24                  over this two-year period. That's the first point.

25                  Second point is -- and I think you asked a

1 question that is along these lines, but the company believes  
2 that the question as to whether this AAO violates or doesn't  
3 violate the Stipulation and Agreement is one that arises when  
4 and if the company requests recovery of the dollars; that  
5 accounting for the dollars in the short term does not violate  
6 that agreement, it does not change the parameters of the IEC.  
7 And, you know, whether it does at some point arises if the  
8 company requests recovery and only then would it be a decision  
9 for the Commission to make.

10 MR. CONRAD: Well, I've said it about three  
11 times now, so I'll say it at least one more time then I'll  
12 shut up. There is no reason why my client should suffer  
13 further damage, further cost, further expense to retrade -- to  
14 litigate about retrading a contract. That's what a  
15 stipulation is.

16 They don't want to accept it. For now they  
17 don't like their deal. I say again, other people don't like  
18 the deal. If we want to reopen it, fine, we're ready -- I  
19 don't mean today, but we're ready to go. But let's not do it  
20 one sided. And there's no reason why our people should have  
21 to incur loss and damage and risk and everything else.

22 The whole purpose of this was to put risk above  
23 the cap on the utility and to put risk below the cap on the  
24 share-- on the ratepayers. It was an allocated deal. Now  
25 they want to retrade that and put risk back on us above the

1 cost.

2 MR. COFFMAN: Your Honor --

3 JUDGE JONES: Mr. Coffman?

4 MR. COFFMAN: -- I guess this is somewhat new  
5 information to me that this deferral would somehow, I guess,  
6 include amounts that went above the ceiling as well as below  
7 the floor. That's what --

8 MR. COOPER: It's not even going to have to go  
9 below the floor to change the amount of the asset.

10 MR. COOPER: One point I would make is that if  
11 that new modification is made to the interim energy charge,  
12 the agreement on fuel and purchased power seems to become  
13 something much different than an interim energy charge.

14 In my mind, an interim energy charge --  
15 inherent in the concept of an interim energy charge is that  
16 there is a ceiling and that there is a floor and that there  
17 are consequences and I thought understandings that if the cost  
18 over the two years are above the ceiling, those costs are  
19 eaten by the company and shareholders; if they're below, the  
20 company gets to keep the amounts that are below the floor of  
21 that charge.

22 If, in fact, these charges are then somehow  
23 included in a future case and trued up or in some way  
24 recovered from ratepayers, it becomes much closer to an  
25 illegal fuel adjustment clause instead of an interim energy

1 charge and raising even other legal issues.

2 MR. COOPER: But, you know, again, your  
3 argument goes to what-if. And it's a what-if that goes to  
4 that next rate case. And that's the company's point.

5 MR. COFFMAN: But, your Honor, even assuming  
6 all facts favorable to the company, even assuming either  
7 their -- over the two years their amounts will not be above  
8 the ceiling or, as they phrase it, there will not be an  
9 under-recovery and it would not be moot, if it's over the  
10 ceiling, it's my understanding and I think pretty clear from  
11 the transcript of the presentation to the Commission, that the  
12 agreement was any amounts over the ceiling would be eaten by  
13 the company. And in that case, you know --

14 JUDGE JONES: As an expense when you say eaten  
15 by the company?

16 MR. COFFMAN: Yes.

17 JUDGE JONES: Not recorded as an asset.

18 MR. COFFMAN: Right. So assuming that's the  
19 situation in the current stipulation, unless the current  
20 Stipulation and Agreement is somehow undone, it's clear to me  
21 that those amounts are eaten and they cannot be recovered.

22 JUDGE JONES: Okay. Mr. Cooper, do you agree  
23 that if your request is a request to change the agreement,  
24 then the application should be dismissed?

25 MR. COOPER: No.

1 JUDGE JONES: Why not?

2 MR. COOPER: Because there are -- there are  
3 provisions under the agreement whereby the agreement can be  
4 undone.

5 JUDGE JONES: Okay. So let me understand this.  
6 In the agreement there's a provision that says if we want to  
7 change this, we can?

8 MR. COOPER: It says that under extraordinary  
9 circumstances, that an -- that things can change, that -- and  
10 that's -- that's a little too simple. My memory is that those  
11 provisions relate to the rate moratorium.

12 MR. COFFMAN: Yes.

13 MR. CONRAD: That's correct.

14 MR. COOPER: And it probably indicates that the  
15 company could file a rate case more immediately than it  
16 otherwise could under the moratorium provisions that are in  
17 place.

18 JUDGE JONES: That's not applicable to what  
19 we're talking about here.

20 MR. COOPER: It could be.

21 JUDGE JONES: I don't mean theoretically. I  
22 mean legally, practically.

23 MR. COOPER: Well, but -- I guess we're  
24 answering a theoretical question too, so --

25 JUDGE JONES: Well, no. They're saying that



1       you're trying to change the deal. My question is, if you're  
2       trying to change the deal, should the application be  
3       dismissed? And your response is, well, there is a provision  
4       that talks about changing the deal that has to do with  
5       something else that could have something to do with what we're  
6       talking about. Is that pretty much what you're saying?

7               MR. COOPER: Yeah. Well, I think my answer is  
8       going to be similar to what the answer was to your question  
9       about the procedural schedule when some of the parties said,  
10      you know, they could not fathom the possibility that the  
11      Commission would go forward with this case so they couldn't  
12      really answer the question about the procedural schedule.

13             I guess I'm similar. I'm having a hard time  
14      seeing that the application changes the stipulation and, thus,  
15      it's tough for me to contemplate the possibility.

16             JUDGE JONES: Well, I don't know whether it  
17      does or not. My question is, if it does, do you think it's  
18      right for Aquila to be able to change the agreement with  
19      regard to the interim energy charge, the treatment of costs  
20      above the ceiling or below the floor or would --

21             MR. COOPER: I think Aquila has contractual  
22      obligations related to the agreement. And then that agreement  
23      has been obviously approved by the Commission so it has other  
24      obligations on top of, I suppose, its contractual obligations.  
25      So -- and Aquila does not believe that it's attempting to

1       violate either of those obligations.

2                   JUDGE JONES:  So it sounds like your answer is  
3       non-responsive.

4                   MR. COOPER:  I can't say, your Honor, that I  
5       have -- that I've contemplated your question previously and  
6       I'd hate to answer it here.  I certainly -- if you would like  
7       for me to provide an answer to that -- to provide a pleading  
8       that answers that, I can do that.

9                   JUDGE JONES:  I'll re-read --

10                  MR. COOPER:  I'm not prepared today to answer  
11       that question.

12                  JUDGE JONES:  I'll re-read your suggestions in  
13       opposition to the Motions to Dismiss, but it seems like you  
14       would had to have contemplated that from their Motions to  
15       Dismiss because they say you're trying to change the  
16       agreement.  Did you discuss that in your motion -- in your  
17       response?

18                  MR. COOPER:  I think we discussed that we do  
19       not believe that there's any attempt or that there's any  
20       question that we're attempting to change the agreement until  
21       such time, if that time ever comes about, that the company  
22       requests recovery of dollars outside the parameters of the  
23       IEC.

24                  JUDGE JONES:  Well, when I first got your  
25       application, my knee-jerk reaction was, okay, yeah, they do

1       have an agreement about what supposed the costs were and what  
2       you could charge, but did that agreement contemplate the  
3       accounting treatment for those numbers? And if not, then how  
4       is it a violation of the agreement or trying to change it?  
5       And then I thought, well, does it contemplate it?

6               And I'm asking you, if what you want will  
7       change the agreement -- I mean, do you know whether it will  
8       change the agreement? Does it change the agreement?

9               MR. COOPER: I don't think I know. I mean, I  
10      think that's a question for the Commission to decide.

11              JUDGE JONES: All right. Now, it sounds like  
12      we're going to go into things that are more substantive things  
13      that may need an evidentiary hearing, I don't know, but I do  
14      have another question for you. Sedalia Industrial Users'  
15      Association has intervened, the basis of which is as being a  
16      party to the agreement.

17              There are, I guess, maybe four other parties to  
18      the agreement -- let's see.

19              MR. CONRAD: Well, without going back and  
20      looking, I think that was a -- it was either unanimous or  
21      became unanimous by non-opposition. Ag Processing was there.  
22      I believe, Judge, DNR --

23              JUDGE JONES: DNR.

24              MR. CONRAD: -- was there. Obviously Office of  
25      Public Counsel. I also think if --

1 JUDGE JONES: Kansas City.

2 MR. CONRAD: -- my recollection is correct, the  
3 Air Force and Kansas City are --

4 MR. COFFMAN: Federal executive agencies.

5 MR. CONRAD: Federal executive agencies. It  
6 wasn't the Air Force explicitly, but they were represented by  
7 a General in the Air Force.

8 MR. COFFMAN: And he was active in the  
9 settlement of the interim energy charge.

10 JUDGE JONES: Well, all the parties are  
11 signatories to the agreement. Does Aquila -- it's apparent  
12 that this application has some effect or some impact on the  
13 agreement. They are related in some way.

14 MR. COOPER: I would certainly agree, your  
15 Honor, that it flows from the agreement, yes.

16 JUDGE JONES: Do you agree then that parties to  
17 the agreement have an interest in your application?

18 MR. COOPER: They could have, yes.

19 JUDGE JONES: Well, I understand what you're  
20 saying. They may have been a party to the agreement and they  
21 just don't care that you're filing the application. But if  
22 they say that they have an interest, do you agree that they  
23 do?

24 MR. COOPER: I'd have to see what they state  
25 their interest is, but --

1 JUDGE JONES: I was a party to the agreement  
2 and you filed this application and I want to be in this case.  
3 That's what they're saying. Do you agree with that?

4 MR. COOPER: We wouldn't object to that, your  
5 Honor. We didn't object to that -- which is essentially what  
6 Mr. Conrad said when he sought to intervene. So we have a  
7 history of not objecting to that reasoning I guess is what I  
8 would say.

9 JUDGE JONES: Mr. Conrad?

10 MR. CONRAD: Yeah. And I'll try to be quick  
11 because I appreciate your Honor's time this morning. The  
12 provision to which Mr. Cooper makes reference as an  
13 exculpatory clause to the agreement is not an exculpatory  
14 clause to the agreement. It is an exculpatory clause that  
15 allows Aquila in certain exigent, very extreme circumstances  
16 to file a rate case ahead of the moratorium period.

17 And that kind of an exception to a moratorium  
18 is quite common because you say, well, we won't file a rate  
19 case for fill-the-blank years unless all hell freezes over  
20 and, you know, we have a huge ice storm or we have some plant  
21 blow up or some such like that that puts us in a situation  
22 where, you know, we might, frankly, have to file a rate case  
23 to keep the thing going.

24 Now, that's, you know, a day-to-day proposition  
25 with Aquila, but that's beside the point. That is not an

1       exculpatory clause or exception clause or an escape clause for  
2       the entire agreement. Once the Commission approved it, we put  
3       evidence in subject to the Commission's acceptance of the  
4       stipulation. Mr. Coffman and I relied on that acceptance and  
5       their signatures and their -- and the binding effect of that  
6       to dismiss certain litigation.

7                       Now, if he wants to re-open, if he wants to do  
8       a retrade, then there is a mechanism to do it. And that is to  
9       file in the 034 case a motion that shows what the  
10      circumstances are that should justify them somehow re-opening  
11      this closed up deal. And then all the parties in the 034 case  
12      would have the opportunity to look at that.

13                      That's the -- if there is a proper process  
14      here, that's what it is because that's what this is aimed at.  
15      It is aimed at that stipulation. That was a balanced deal.  
16      It was a balanced deal again such that -- that they're used to  
17      be a sign up -- without being blue about it, there used to be  
18      a sign up in a Staff person's office that the essence of a  
19      compromise is that everybody feels like they're getting  
20      equally screwed.

21                      Well, what's happening here is that balance  
22      that was deemed by all parties for whatever reason as an  
23      acceptable balance of the interests to present it to you and  
24      to the Commission as resolution of it, they now want to  
25      disturb. And it is simply unfair.

1                   And I again apologize for -- for getting upset  
2           about it, but if there is one thing that I think a little  
3           righteous indignation is justified on is when somebody comes  
4           in not hardly even six months after the deal is done, when  
5           they knew what they were signing, when their guy gets on the  
6           stand and says, yes, if it's above this level, we eat it and  
7           now they want to set up a process so they don't have to eat  
8           it.

9                   And I say to you again if -- we talked about  
10          and this deal could have been done any number of ways, but it  
11          was set up on a two-year average so that above the line could  
12          very well be matched with costs below the line and they  
13          wouldn't be asked to go in on a month-by-month basis and say,  
14          okay, month April was low, so we want a refund for that and  
15          month June was high so you have to eat that, and then month  
16          July was low and so we want a refund for that.

17                  That wouldn't be an appropriate process,  
18          although parties could agree to that. But that wasn't the  
19          process that was chosen. It was an average cost over two  
20          years. And now the average is the best of the worst and the  
21          worst of the best. And just like you don't go into the  
22          haberdasher and say, I'd like to see the clothes that's  
23          average size, please -- there are going to be excursions.  
24          There are going to be excursions above, there are going to be  
25          excursions below that level.

1                   And the purpose of an average is to look at  
2           that entire two-year period and say, well, what was the --  
3           what was the cost on an average over that two-year period.  
4           And if it's above a certain line, then they eat it and if it's  
5           right at that level, then they don't have a refund even though  
6           maybe for six or nine months of that, the costs were way below  
7           the cap level. If they're offset by six or nine months in  
8           which it was way above the cap level, we look at the average.  
9           And if the average says you give money back, you give money  
10          back; if it says you don't, you don't. That's the end of the  
11          story.

12                   And that's how the risk was allocated between  
13          the parties to the rate case. And bluntly they now want to  
14          disturb that balance. And they want to disturb it  
15          unilaterally, they want to disturb it to their favor. And as  
16          Mr. Coffman says, that's not the deal that we did.

17                   And we keep -- this application keeps  
18          amoeba-like changing its constituents as we move forward here  
19          even this morning. This is just not something that the  
20          Commission ought to be getting into doing. They ought to be  
21          thinking about what are the consequences of reopening  
22          something like this. You know, if they had a plant blow up --  
23          whatever, you come in and you talk about it, but that's not  
24          what we have here. This is just crying in their beer.

25                   MR. COFFMAN: Could I --



1 JUDGE JONES: Mr. Coffman?

2 MR. COFFMAN: Just a couple quick points. I

3 think I concur in what Mr. Conrad has said, although he said a

4 lot, but I think that -- I certainly think it's important to

5 point out that the out-clause relating to the moratorium in

6 the agreement probably doesn't apply exactly to the interim

7 energy charge. I mean, it applies to the -- if one of those

8 extraordinary conditions were met, it would allow Empire to

9 file a rate case --

10 MR. COOPER: Aquila.

11 MR. COFFMAN: -- there may be dispute about

12 whether one of those conditions were met -- I'm sorry, would

13 allow Aquila, I'm sorry, to file a rate case. And presumably

14 the interim energy charge would then still continue to be in

15 effect even though another rate case would re-establish what

16 happens to the base rates.

17 But even though that may not be applicable, I

18 think that there probably is a mechanism that would allow a

19 Stipulation and Agreement to be reopened, but that has not --

20 you know, that has not been pled by Aquila, has not been filed

21 in the rate case as it should be in the ER-2004-0034 case.

22 And if that is the case, then I think all parties should be

23 relieved of their obligations on all sides.

24 And, frankly, there have been times since this

25 Stipulation and Agreement was approved by the Commission that

1 I've often thought that I got the wrong end of the deal and  
2 that I wished I hadn't settled and given up as much as I did  
3 in that case, but my reluctance to go back and undo that is  
4 partly based on the fact that there was some extraordinary  
5 litigation that was foregone in order to get into that case.

6 And I imagine it will be extraordinarily  
7 difficult to then go back and revive my rights in the circuit  
8 court and say, yes, this company does not have a properly  
9 authorized order approving the merger between UtiliCorp and  
10 St. Joe Light & Power and that this company does not have the  
11 right to raise its rates in the St. Joe Light & Power area.

12 In fact, rates have now already been charged to  
13 consumers in that area and it's going to be very difficult for  
14 me to get -- if Aquila is relieved from its obligation under  
15 the IEC cap, for me to be able to realize the benefit of what  
16 I gave up and get that back.

17 JUDGE JONES: Do you agree, Mr. Cooper, that a  
18 change to the agreement is as OPC and SIEU have stated, that  
19 only when there is something extraordinary like this that you  
20 can come back and file a rate case?

21 MR. COOPER: I agree that that's the essence of  
22 that moratorium and the out-clause under the moratorium, yes,  
23 your Honor.

24 JUDGE JONES: Are you saying then -- are you in  
25 agreement with that or are you saying that the agreement can

1       be changed in other circumstances also?

2                   MR. COOPER:  Well, I suppose it could always be  
3       changed by agreement of the parties, but --

4                   JUDGE JONES:  Well --

5                   MR. COOPER:  -- I think that that's the primary  
6       way that the agreement can be changed is that -- is that under  
7       certain extraordinary circumstances there's the possibility  
8       that the moratorium will go -- could go away and that the  
9       company could refile a rate case.

10                  JUDGE JONES:  And is that the only way you see  
11       the agreement being changed other than, of course, by all the  
12       parties to the agreement?

13                  MR. COOPER:  I think that's the only way on the  
14       face of the agreement that it could be changed.

15                  JUDGE JONES:  What other part of the agreement  
16       is --

17                  MR. COOPER:  Well, I think that there's a  
18       certain amount of tension between the moratorium provisions  
19       and the Commission's duty to establish just and reasonable  
20       rates and those sort of things, that -- that are kind of  
21       unspoken generally and not specific terms to the agreement,  
22       but that -- but that are out there as potential, I guess, ways  
23       that a -- that a stipulation could be changed.

24                  JUDGE JONES:  Is it also your understanding  
25       that costs above the ceiling were to be recorded as expenses?

1                   MR. COOPER: Certainly they're to be recorded  
2                   as expenses. In fact --

3                   JUDGE JONES: I mean, as the agreement put it?

4                   MR. COOPER: Yeah. In fact, as amazing as it  
5                   may seem, there was a portion of Mr. Conrad's last statements  
6                   that I certainly agree with, and that is that the IEC was  
7                   designed as a two-year -- a two-year program. The question as  
8                   to what gets eaten by the company, what gets refunded to  
9                   customers, what may get kept by the company depending on  
10                  whether you're above -- the ultimate average over that  
11                  two-year period is above, in the collar or below is a question  
12                  that arises at the end of the two-year period.

13                  And we certainly believe that under the terms  
14                  of the Stipulation and Agreement, that if the average over  
15                  that two-year period was above the top end of the IEC, that  
16                  the company was to eat that and agreed to eat that. And I  
17                  think the essence of our application is that we would like for  
18                  the accounting treatment that we're required to utilize to  
19                  also reflect the two-year nature of that IEC.

20                  JUDGE JONES: Now, I know that in the agreement  
21                  those costs had to be prudently incurred. If you're allowed  
22                  to treat those costs above the ceiling as an asset as opposed  
23                  to an expense, that means we have to come back every month and  
24                  decide whether or not those costs were prudently incurred.

25                  MR. COOPER: Well, I think whether those costs

1       were prudently incurred or not would be an issue for that rate  
2       case. And I think it will be either way, with or without the  
3       Accounting Authority Order. And, in fact, I mean, our  
4       application -- we have a proposed condition at the end of our  
5       application that's then repeated in Mr. Williams' Direct  
6       Testimony that we filed. And I think it as well acknowledges  
7       that question as to whether the company's actions are prudent  
8       or not and --

9                   JUDGE JONES: I guess what I'm saying is --  
10       well, I don't guess what I'm saying. What I'm saying is that  
11       it leaves it up to Aquila each month to determine whether  
12       costs are prudently incurred.

13                  MR. COOPER: I'm sorry?

14                  JUDGE JONES: It leaves it up to Aquila to  
15       determine each month whether costs have been prudently  
16       incurred for you to expense them as such as assets.

17                  MR. COOPER: I suppose that's the case. I  
18       don't think that's any different though than any other --

19                  JUDGE JONES: Well, this is something that's  
20       subject to all the parties coming in after two years and  
21       saying, okay, this was okay, this was okay. But if the AAO is  
22       approved, the application is approved, then that means there's  
23       going to be treatment -- there's going to be things going on  
24       monthly now by Aquila, something different than what you would  
25       normally do.

1                   MR. COOPER: But the question would still be --  
2           if we set the AAO aside for a moment, without the AAO, I think  
3           still come the end of the IEC period, the parties are not  
4           necessarily going to just automatically sign off on what  
5           Aquila says its average fuel costs were for that year period.  
6           I would assume that parties would want to examine those fuel  
7           purchases, perhaps make arguments as to whether those fuel  
8           purchases were prudent or not. And that would be a question,  
9           I think, that would exist, as I say, with or without the  
10          Accounting Authority Order. I think that on --

11                 JUDGE JONES: That's for purposes of refund,  
12          right, that you're talking about? What about treatment of  
13          those costs during the interim energy charge period?

14                 MR. COOPER: Well, if the Accounting Authority  
15          Order is granted, the company -- it's going to be more in the  
16          nature of a ministerial act on a monthly basis. It's going to  
17          be a comparison of what the company computes its fuel price to  
18          be versus what it received in IEC charges for that particular  
19          month and then a plus or minus over on the -- over on the  
20          regulatory assets.

21                 JUDGE JONES: So instead of putting it in an  
22          expense column, you'll put it in an asset column and then we  
23          have -- then two years from now, when trying to determine  
24          whether or not the costs you incurred were prudent, we're  
25          going to be looking at assets instead of expenses. I don't --

1 I've got to see an accounting. You got to help me out here.

2 MR. COOPER: Yeah, I -- we've probably gone  
3 farther than I should as -- with my accounting background,  
4 which is fairly non-existent. But at the end of the two-year  
5 period, I think either way, with or without the Accounting  
6 Authority Order, we've got the question of what was prudent,  
7 what wasn't prudent and what are the numbers really for  
8 purposes of refund or where are we in relation to the IEC  
9 dollars that have been received over the two-year period.

10 JUDGE JONES: Mr. Conrad?

11 MR. CONRAD: This is a concept that seems to  
12 have eluded Aquila, but part of the reason for a cap and  
13 subjecting them to risk for average costs over that cap is to  
14 create an incentive for them to stay away from that cap, to do  
15 everything that they can possibly do. And then if they cannot  
16 on an average basis at the end of a three-year, two-year  
17 period here, then they will have realized that they're  
18 spending their money, that we limited the risk.

19 Well, if you create by this patchwork an escape  
20 clause for them to say, okay, well, I don't really have to  
21 worry about that incentive because all I've got to do is just  
22 put this over in a regulatory asset program and then I get  
23 another bite at the apple in other rate case, there's -- you  
24 know, again, as Mr. Coffman pointed out, that disturbs the  
25 balance. And his office and my clients gave up valuable

1       consideration. This Commission was sweating bullets about  
2       what to do about the merger case.

3               And in the transcript of the presentation it  
4       was pointed out to the Commission and the Commission agreed  
5       that it settled complicated litigation. Value was given --  
6       value has already been given. And as Mr. Coffman points out,  
7       I'm not sure -- I think it would be difficult -- since those  
8       actions were dismissed with prejudice, I don't know that I can  
9       be restored to a status quo antebellum. So my consideration  
10      on that part of it has been given.

11             But here we have one party that wants to do a  
12      retrade and wants to rebalance the equation and wants to set  
13      up -- instead of an incentive that was built into this package  
14      and at a level that they accepted, they now want an escape  
15      clause. It's, oh, yeah, well, by the way, let's reach out,  
16      get -- you know, grab this little excess up out here as an  
17      asset. And then, oh, gosh, what we've got when we get at the  
18      end of the moratorium period, we've got a regulatory asset.

19             And your Honor has quite correctly pointed out  
20      that the whole situation changes there and now we've got a new  
21      issue in a new rate case that shouldn't have been there at  
22      all.

23             JUDGE JONES: Okay. I have another question.  
24      I hope it's simpler than the previous questions. I understand  
25      how this case relates to the Aquila rate case that I presided



1 over. However, you all have requested that this matter be  
2 consolidated with not only that case but other cases with  
3 which I'm not very familiar. Why? Why do you want these  
4 other cases involved in this? Mr. Coffman.

5 MR. COFFMAN: Your Honor, if you will refer to  
6 the Stipulation and Agreement, you'll see under that  
7 extraordinary litigation paragraph that there were -- there  
8 were outstanding legal issues that were resolved not only in  
9 that rate case but also in other ones.

10 The natural gas Aquila rate case that was  
11 pending at the same time had the identical issue regarding  
12 whether there was authority to increase rates in the St. Joe  
13 Light & Power service territory and that was given up as a  
14 settlement of the electric case. And the foundation for those  
15 arguments were the -- whether the Commission had properly  
16 authorized the merger in 2000 involving UtiliCorp and St. Joe  
17 Light & Power. So that was the other case for which all  
18 outstanding appeals were foregone as part of the package deal  
19 in the electric rate case.

20 MR. CONRAD: And you did have the steam case,  
21 which was HR--

22 MR. COFFMAN: And they're all mentioned in the  
23 electric rate case stipulation.

24 JUDGE JONES: Okay. Is there anything else  
25 from any parties? Does Staff have a response?

1                   MR. FREY: Just a couple of comments, your  
2 Honor. On the moratorium we want to concur or echo what  
3 people are saying. If the company thinks that there are  
4 extraordinary circumstances developed under the Stipulation  
5 and Agreement and that it does provide for the company to come  
6 in and file a new rate case, but I would point out that then,  
7 of course, the parties are free to oppose that. And certainly  
8 the Staff -- we don't know what position we would take at this  
9 point if the company were to file the new rate case to, in  
10 effect, sever the moratorium.

11                   Another thing I would mention, there was  
12 discussion of the -- concerning the parties to the rate case.  
13 And this morning one of our attorneys received a call from  
14 Major Paulson. It was forwarded to me and if I could just  
15 indicate the thrust of it was that he thought that the parties  
16 to the rate case should be made automatically parties to this  
17 case if it's to proceed because of the implications for the  
18 Stipulation and Agreement to which he was a signatory.

19                   JUDGE JONES: You're saying that that's what he  
20 said, that they should automatically be made a party?

21                   MR. FREY: Yes. As a suggestion.

22                   JUDGE JONES: Without filing anything?

23                   MR. FREY: Well, I would assume he does plan at  
24 some point to file, but I'm not sure of that.

25                   I believe Mr. Cooper made a representation a

1       little bit earlier on this question of whether or not the  
2       company was to eat any under-collection at the end of this  
3       two-year period. And I guess I would just ask him if he  
4       endorses the sworn testimony of his Witness Clemmons, I  
5       believe, which has been mentioned in both Mr. Conrad's  
6       pleading on this as well as Mr. Coffman's, if he endorses  
7       that.

8                       And as I say, I think he made a representation  
9       just a little while ago, but I didn't catch the gist of it,  
10      whether he endorses Mr. Clemmons' comment under oath that they  
11      would -- the company would eat any amount of under-collection  
12      or whether this application somehow disavows Mr. Clemmons'  
13      testimony.

14                     The other thing I would ask you is I believe  
15      you indicated the Commission is going to rule on these motions  
16      very soon. And I was wondering if you could give us a little  
17      bit better idea? Are they planning on ruling, for example,  
18      before September 24th, perhaps tomorrow or perhaps Thursday?

19                     JUDGE JONES: You mean before Staff files its  
20      memorandum?

21                     MR. FREY: Yes.

22                     JUDGE JONES: No. And after discussing this  
23      even more, I realize this could have been treated as a  
24      motion -- a hearing on the motion. And I was reluctant before  
25      coming down here to even ask questions, but I needed to get a

1 better understanding of what was going on here. I am  
2 contemplating now suggesting to the Commission that we have a  
3 motion -- a hearing on the motion where they can be here to  
4 ask questions and we can deal with the Motion to Dismiss  
5 before moving forward. Yes, Mr. Coffman?

6 MR. COFFMAN: Perhaps an alternative suggestion  
7 might be for the transcript of today's discussion to be  
8 expedited -- the transcript be prepared on an expedited basis  
9 and that the Commission be permitted to review the transcript  
10 of what's been said already here today before -- at least --  
11 at least review that before they make a decision on the  
12 Motions to Dismiss. I think there's have been some important  
13 acknowledgments made and some points that --

14 JUDGE JONES: That's a good suggestion. I  
15 think they should be able to quickly review the transcript.  
16 I guess my response to that is if the transcript doesn't  
17 adequately answer any questions they may have --

18 MR. COFFMAN: Certainly if the Commission wants  
19 to listen to more of this, we will all comply and make a day  
20 of it.

21 MR. COOPER: Your Honor, in the end I think  
22 that the issues -- while perhaps not easy answers to these  
23 issues, the issues have been fairly well drawn by the  
24 pleadings, by our discussion today. I think that obviously if  
25 the Commission wants to have a hearing, we'll have a hearing,

1 but going back to the timing concerns that were mentioned  
2 early on, the company has a timing issue whereby it certainly  
3 would like for the Commission to have the opportunity to make  
4 a decision, if it chooses to do so, by January 15th.

5 In order to get there or to find out that we  
6 don't need to get there, I think the Commission is going to  
7 have to rule one way or the other on the Motion to Dismiss.  
8 And if it denies the Motions to Dismiss, to perhaps set a  
9 hearing date or in some other fashion deal with the procedural  
10 schedule issue as well. And I would encourage, I guess, the  
11 Commission to move forward on those two fronts and then allow  
12 the parties to react as they see fit.

13 JUDGE JONES: I understand Aquila's desire to  
14 get this application ruled on or granted or denied by the 15th  
15 of January. And, let's see. The Stip and Agreement was  
16 approved in March. Since that time, however, Aquila, on a  
17 monthly basis, has been treating these expenses in some way  
18 and they've been aware of how they've been treating them and  
19 how those -- how the treatment of that expense affects them in  
20 any way you want to imagine.

21 And for Aquila to come in and -- the whole  
22 season has passed. I mean, it's spring and summer and now  
23 we're into fall since March. So you've been treating these  
24 things -- this expense a certain way all this time, haven't  
25 you?

1                   MR. COOPER: Well, no. I think the tariffs  
2                   that resulted from that agreement became effective in late  
3                   April -- April 22nd of this year.

4                   JUDGE JONES: So April.

5                   MR. COOPER: And by August 4th this application  
6                   had been filed.

7                   JUDGE JONES: May, June, July, August. Now,  
8                   I've never ran a company before, but it seems like the first  
9                   month that the expenses were treated in a certain way should  
10                  have raised an eyebrow and said whoa, whoa, whoa, wait a  
11                  minute, maybe we don't like this, let's do something now. But  
12                  then several more months pass and then Aquila says, can you  
13                  all hurry up and do this for us.

14                  I realize you're saying it's 164 days since you  
15                  filed your application until then, but if time were an issue,  
16                  it seems like you would have -- it would be over 200 days, I  
17                  don't know, three more months the Commission might have to  
18                  consider it. Do you see what I'm saying? Why did you wait?

19                  MR. COOPER: I certainly understand your  
20                  position, your Honor. I guess I don't agree that from  
21                  April 22nd to August 4th is an extraordinary amount of time.

22                  JUDGE JONES: That's why I said I don't know if  
23                  that's a long time, but I know it's several months of treating  
24                  something a certain way. So you just disagree that you all  
25                  didn't -- you all jumped on this as soon as you could is what

1       you're saying?

2                   MR. COOPER: I certainly believe the company

3       did, yes.

4                   JUDGE JONES: Mr. Conrad, you had something you

5       wanted to add?

6                   MR. CONRAD: Well, I think we may -- if this

7       goes forward, we may get into the motivation for why this was

8       filed in August -- on August the 4th. And I think it will be

9       provable that the motivation for it was other than the

10      accounting treatment to which counsel is referring. That it

11      has more to do with the timing of a certain document that was

12      filed with the FCC to which I have made reference in my

13      pleading.

14                  JUDGE JONES: Okay. Well --

15                  MR. CONRAD: You know, if we go forward,

16      there's going to be some --

17                  JUDGE JONES: I understand that their

18      motivations could be for some other reason, but does that go

19      to the legality of how the Commission rules on the

20      application?

21                  MR. CONRAD: Yeah, I take your point.

22                  JUDGE JONES: Mr. Coffman, anything else?

23                  MR. COFFMAN: The only thing I think is

24      probably lacking from the transcript of today's discussion is

25      yet an answer from Aquila to the question Mr. Frey put, and

1       that is, does the company now disavow what it said to the  
2       Commission, to Commissioner Chair Gaw in a direct question  
3       relating to the ceiling on the IEC, whether that is to be  
4       eaten by the company or not.

5                   JUDGE JONES:  Are you able to answer that,  
6       Mr. Cooper?

7                   MR. COOPER:  Well, I think we go back to what I  
8       said earlier, which is the company does not believe that its  
9       Accounting Authority Order changes the Stipulation and  
10      Agreement and, therefore, the company is not disavowing  
11      anything that was said to the Commission at the stipulation  
12      presentation to include Mr. Clemmons' comment.

13                  JUDGE JONES:  So you do agree then  
14      Mr. Clemmons' comment was that the company would eat, which I  
15      assume means treat as an expense, anything over the ceiling,  
16      any cost above the ceiling.  Is that what you recall?

17                  MR. COOPER:  Certainly I -- that was  
18      Mr. Clemmons' statement.  And I don't -- I don't believe that  
19      the company has done anything nor has it -- has it done  
20      anything nor alleged anything that it -- in its mind changes  
21      the stipulation or is contrary to Mr. Clemmons' statement.

22                  JUDGE JONES:  And right now Aquila is treating  
23      those costs above the ceiling as an expense; is that correct?

24                  MR. COOPER:  Yes.

25                  JUDGE JONES:  If the Accounting Authority Order



1 is granted, Aquila will then treat those costs above the  
2 ceiling as an asset; is that correct?

3 MR. COOPER: In months where they  
4 under-recovered in regard to their expenses, they would. In  
5 months where they over-recovered in regard to their expenses,  
6 it would be a liability.

7 JUDGE JONES: So when there's under-recovery,  
8 it won't be treated as an expense, it will be treated as an  
9 asset?

10 MR. COOPER: It's always -- my reluctance has  
11 to do with the fact that I'm not an accountant. But that's  
12 certainly my -- my take on it, yes, is that it will not in  
13 that particular month be an expense, it will be -- it would be  
14 added to a regulatory asset in a different account  
15 essentially.

16 JUDGE JONES: And if that happens, then Aquila  
17 will not have eaten the cost above the ceiling?

18 MR. COOPER: The question will still be out  
19 whether it eats the cost above the ceiling, yeah.

20 JUDGE JONES: Okay. I don't have anything  
21 else. Does anyone have anything to add? Mr. Frey?

22 MR. FREY: I do, your Honor. The Staff in its  
23 last pleading, which was a response to the company's filing  
24 for a procedural schedule, indicated that it would file a  
25 response to OPC's motion in a timely fashion, which would be

1       today. And we would move to have four extra days to file our  
2       response.

3                   JUDGE JONES: To Aquila's Motion to Dismiss?

4                   MR. FREY: To OPC's Motion to Dismiss. I  
5       believe that was filed on the --

6                   JUDGE JONES: The 8th.

7                   MR. FREY: -- 8th of September.

8                   MR. COFFMAN: Yes.

9                   JUDGE JONES: It was the 8th of September.

10                  MR. FREY: And we would respectfully move for  
11       an additional four days to file that on the basis of any  
12       discussions that might occur once we go off the record in this  
13       proceeding and it would be also in connection with our filing  
14       with regard to the procedural schedule itself.

15                  JUDGE JONES: Now, Staff intends to file their  
16       recommendation in this matter when?

17                  MR. FREY: We said we would file a pleading on  
18       the 24th. I don't -- I don't think we said it would be a  
19       recommendation at that point.

20                  JUDGE JONES: Or what other pleading -- well,  
21       I'll tell you this, Mr. Frey. My concern with Staff given  
22       extra time to respond to the motion and being able to include  
23       the benefit of these discussions and any discussion you have  
24       after I leave, just on its face it doesn't seem fair to the  
25       other parties because Staff has more information than

1       everybody else had. Do you follow?

2                   MR. FREY: Yes, I do.

3                   JUDGE JONES: I mean, do you agree or disagree

4       with that?

5                   MR. FREY: I think it probably would be -- the

6       Staff would be better able to formulate its response at that

7       time, but I understand your point.

8                   JUDGE JONES: Okay.

9                   MR. CONRAD: Judge, let me offer a suggestion

10      here.

11                  JUDGE JONES: Please do.

12                  MR. CONRAD: Counsel for the Staff I think is

13      correct. I have not seen the September 8 date, but I don't --

14      I don't question the timing of it. Our motion was filed on

15      the 13th, I believe. And a timely response to that would be

16      due Thursday, the 23rd.

17                  JUDGE JONES: The 23rd.

18                  MR. CONRAD: Which would be not four, but three

19      additional days. So it might make sense to permit Staff to

20      respond -- it's not my motion, it would be Mr. Coffman's

21      motion -- but to grant them to the 23rd to respond to his so

22      that they just respond to both of them together and that might

23      be more efficient.

24                  JUDGE JONES: That makes sense. Mr. Cooper, do

25      you have a problem with that?

1                   MR. COOPER: No, I do not, your Honor.

2                   JUDGE JONES: And I say that because I believe

3           Aquila responded to both your-all's motion. Okay?

4                   MR. COOPER: We did, yes.

5                   JUDGE JONES: Mr. Frey, did you follow that?

6                   MR. FREY: Yes, sir. Mr. Conrad's suggestion

7           is well taken, but into that mix I would point out that the

8           company filed last Friday and I would ask when responses to

9           the company's pleading would be due?

10                  JUDGE JONES: Well, I suppose you could respond

11           to the company in your response to OPC and SIEUA. However,

12           that would shorten your time for responding to Aquila's. If

13           everything were kept clean and you filed responses to both

14           their motions, Aquila and Sedalia Industrial Users'

15           Association motions at the same time, then you can make a

16           second filing to Aquila's motion 10 days after -- or their

17           response 10 days after. That way we don't have to change any

18           rules.

19                  MR. FREY: Again, this goes back, to an extent,

20           to the question of when the Commission is going to rule on

21           these motions.

22                  JUDGE JONES: Well, I can't answer that

23           question because I'm not the Commission, for one.

24                  Okay. Staff says it will file its

25           recommendation no latter than the 24th. It seems like -- I

1       don't know -- in the recommendation -- in order to recommend  
2       what the Commission should do in this matter, Staff would have  
3       to consider the motion filed by OPC and Sedalia Industrial  
4       Users' Association, the response by Aquila, all of those  
5       things have to be considered in that response. It seems like  
6       you'd be able to file the recommendation -- make one filing  
7       that just encompasses everything on the 24th. Does that --  
8                 MR. FREY: Yes, your Honor.  
9                 JUDGE JONES: Does that seem feasible to you?  
10       Does anybody agree with that? Mr. Cooper, you're all right  
11       with that?  
12                MR. COOPER: Yes, your Honor.  
13                JUDGE JONES: That solves that problem, one of  
14       the many problems we have.  
15                MR. FREY: Thank you, your Honor.  
16                JUDGE JONES: I don't have anything else.  
17       Does anyone have anything to add? Mr. Cooper?  
18                MR. COOPER: I do, your Honor. At the risk of  
19       reopening some discussions, I think before we entered upon the  
20       discussion about when Staff would file its response, you and I  
21       had had a discussion about Mr. Clemmons' comments about eating  
22       amounts outside the cap.  
23                The only thing I would want to make sure is on  
24       the record is that certainly the company believes that that  
25       question as to what the company would eat or not eat under the

1 terms of the Stipulation and Agreement is a two-year question.  
2 That that IEC is designed to operate for two years and what  
3 the company, as I say, eats or doesn't eat is determined at  
4 the end of that two-year period, we don't believe on a  
5 month-to-month basis. So that's the only thing I would add.

6 JUDGE JONES: Okay. In all fairness, do either  
7 of you want to respond? Mr. Coffman?

8 MR. COFFMAN: I certainly agree that the  
9 interim energy charge is set up to determine what's above a  
10 ceiling or below a floor or somewhere in between including a  
11 refundable amount. It's all to be determined after a two-year  
12 period is concluded and is averaged out over that period.

13 I don't -- I'm not sure whether or not any  
14 alternative accounting would be so controversial if Aquila  
15 would simply commit that it would not ask for any recovery of  
16 the regulatory asset that it's asking for here. But I think  
17 they've not been able to do that yet and have stated here  
18 today that it is a possibility that they're going to ask that  
19 some -- that if it is over the two-year period above the cap,  
20 that they would ask that ratepayers pay that amount in a  
21 future rate case and that's -- that's the road.

22 JUDGE JONES: Well, I think we're going to stop  
23 at that point. That sounds like a good way for you all to  
24 enter into settlement negotiations. In light of the lunch  
25 hour, maybe you should go eat over settlement discussions.

1       That way you won't be able to yell and throw things at each  
2       other because you'll be out in public somewhere, not in one of  
3       these rooms.

4                       As far as expediting the transcript is  
5       concerned, that's well taken. I think that we should do that.  
6       Maybe expedite it until day after tomorrow, that would be  
7       Wednesday.

8                       MR. COFFMAN: Thank you.

9                       JUDGE JONES: Hearing nothing else -- oh,  
10      Mr. Frey?

11                      MR. FREY: Yeah. I would just say that the  
12      Staff concurs with what Mr. Cooper said, the question of what  
13      the company eats or doesn't eat is determined at the end of  
14      the two-year period, but the issue is if they have to eat  
15      something, are they going to eat it. And that was the  
16      agreement per the testimony -- sworn testimony of Mr. Clemmons  
17      at the presentation of the hearing of the stip. Thank you.

18                      JUDGE JONES: Okay. Well, with that then, we  
19      will conclude the prehearing conference.

20                      (PREHEARING CONFERENCE ADJOURNED.)

21

22

23

24

25