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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
April 6, 2017
Jefferson City, Missouri
Volume 3

In The Matter of the)
Application of Great Plains)
Energy Incorporated for) File No. EM-2017-0226
Approval of its Acquisition)
of Westar Energy, Inc.)

KIM S. BURTON, Presiding
SENIOR REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
SCOTT T. RUPP
COMMISSIONERS

REPORTED BY:
AMANDA N. FARRAR, CCR
MIDWEST LITIGATION SERVICES

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APPEARANCES

For Great Plains Energy, Incorporated;
Kansas City Power & Light Company; and
KCP&L Greater Missouri Operations
Company:

MR. JAMES M. FISCHER
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, Missouri 65101
jfisherpc@aol.com
(573) 636-6758

For Great Plains Energy, Incorporated;
Kansas City Power & Light Company; and
KCP&L Greater Missouri Operations
Company:

MR. ROBERT J. HACK
Kansas City Power & Light Company
1200 Main Street, 19th Floor
Kansas City, Missouri 64141
rob.hack@kcpl.com
(816) 556-2791

For Great Plains Energy, Incorporated;
Kansas City Power & Light Company; and
KCP&L Greater Missouri Operations
Company:

MR. ROGER W. STEINER
Kansas City Power & Light Company
1200 Main Street, 19th Floor
Kansas City, Missouri 64141
roger.steiner@kcpl.com
(816) 556-2791

1 APPEARANCES CONTINUED
2 For Great Plains Energy, Incorporated;
3 Kansas City Power & Light Company; and
4 KCP&L Greater Missouri Operations
5 Company:

6 MR. LARRY W. DORITY
7 Fischer & DORITY, P.C.
8 101 Madison Street, Suite 400
9 Jefferson City, Missouri 65101
10 lwdORITY@sprintmail.com
11 (573) 636-6758

12 For Great Plains Energy, Incorporated;
13 Kansas City Power & Light Company; and
14 KCP&L Greater Missouri Operations
15 Company:

16 MR. KARL ZOBRIST
17 Dentons US LLP
18 4520 Main Street, Suite 1100
19 Kansas City, Missouri 64111
20 karl.zobrist@dentons.com
21 (816) 519-0848

22 For the Staff of the Missouri Public
23 Service Commission:

24 MR. KEVIN A. THOMPSON
25 Missouri Public Service Commission
200 Madison Street
Jefferson City, Missouri 65102
kevin.thompson@psc.mo.gov
(573) 751-6514

For the Office of the Public Counsel:

MR. TIMOTHY OPITZ
Office of the Public Counsel
200 Madison Street, Suite 650
Jefferson City, Missouri 65102
timothy.opitz@ded.mo.gov
(573) 751-5324

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APPEARANCES CONTINUED

For the City of Independence, Missouri:

MS. DEBRA D. ROBY
Jennings, Strouss & Salmon
1350 I Street, NW, Suite 810
Washington, D.C. 20005
droby@jsslaw.com
(202) 464-0539

For the City of Independence, Missouri:

MR. ALAN ROBBINS
Jennings, Strouss & Salmon
1350 I Street, NW, Suite 810
Washington, D.C. 20005
arobbins@jsslaw.com
(202) 464-0539

For the City of Independence, Missouri:

MR. DAYLA BISHOP SCHWARTZ
City of Independence, Missouri
111 East Maple Avenue
Independence, Missouri 64050
dschwartz@indepmo.org
(816) 325-7220

For the Missouri Joint Municipal
Electric Utility Commission:

MR. TERRY M. JARRETT
Healy Law Offices, LLC
514 East High Street, Suite 22
Jefferson City, Missouri 65101
terry@healylawoffices.com
(573) 415-8379

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

2 (The hearing commenced at 8:01 a.m.)

3 JUDGE BURTON: Good morning, everyone.

4 We are back on the record in Case No. EM-2017-0226

5 et al. It is 8 o'clock in the morning on April 6th,

6 2017. And I would, again, remind everyone to,

7 please, silence your electronic devices.

8 And I believe, Mr. Hack, we were

9 ready --

10 MR. HACK: Yes.

11 JUDGE BURTON: -- for the last witness.

12 MR. HACK: And we would call Mr. Chuck

13 Caisley.

14 JUDGE BURTON: And he is already ready

15 and anxious to testify I see.

16 MR. HACK: Off and running.

17 JUDGE BURTON: Would you, please, raise

18 your right hand. Do you swear or affirm that the

19 statements you're about to give will be the truth,

20 the whole truth and nothing but the truth?

21 THE WITNESS: I do.

22 JUDGE BURTON: Thank you.

23

24

25

1 CHUCK CAISLEY,
2 having been called as a witness herein, having been
3 first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. HACK

7 Q. State your name for the record, please.

8 A. Charles Caisley.

9 Q. And, Mr. Caisley, by whom are you
10 employed and in what capacity?

11 A. Kansas City Power & Light, and I'm the
12 vice president of marketing and public affairs.

13 Q. And did you cause to be prepared and
14 filed in Case No. EE-2017-0113 last October certain
15 direct testimony?

16 A. I did.

17 Q. And I will represent to you that that
18 has been marked as Exhibit 16. And are you aware
19 that Case No. EE-27-0113 has been consolidated with
20 Case No. EM-2017-0226?

21 A. I am.

22 Q. If I were to ask you the questions -- I
23 would ask you today the questions that are posed in
24 Exhibit 16, your direct testimony, would your
25 answers be substantially the same?

1 A. They would.

2 Q. And are those answers true and correct
3 to the best of your information, knowledge and
4 belief?

5 A. They are.

6 Q. And I should ask do you have any
7 corrections to make to that testimony?

8 A. I do not.

9 MR. HACK: With that I would offer into
10 evidence Exhibit 16, and tender Mr. Caisley for
11 cross-examination.

12 (KCP&L's Exhibit 16 was offered into
13 evidence.)

14 JUDGE BURTON: Exhibit 16 has been
15 offered. Are there any objections?

16 Seeing none. Exhibit 16 is admitted.

17 (KCP&L's Exhibit 16 was admitted into
18 evidence.)

19 JUDGE BURTON: Staff, do you have any
20 cross?

21 MR. THOMPSON: No questions. Thank you,
22 Judge.

23 MR. OPITZ: No, thank you, Judge.

24 JUDGE BURTON: Mr. Jarrett?

25 MR. JARRETT: No questions. Thanks.

1 JUDGE BURTON: Ms. Roby?

2 MS. ROBY: No questions. Thank you.

3 JUDGE BURTON: Any questions from the
4 Commission?

5 CHAIRMAN HALL: No questions. Thank
6 you.

7 COMMISSIONER KENNEY: No questions.
8 Thank you.

9 JUDGE BURTON: Well, thank you for your
10 attendance today. You're excused.

11 THE WITNESS: Thank you.

12 JUDGE BURTON: Next we have scheduled
13 staff's witnesses, but before we begin I want to
14 resume discussion about Gorman's testimony and go
15 ahead and get that marked. There was a motion
16 yesterday from the City of Independence to have the
17 rebuttal testimony that was initially prefiled by
18 MECG admitted into the record and there were no
19 objections to that request. Now, Mr. Gorman has
20 submitted two separate rebuttals. We have the
21 February 14th, 2017, prefiled testimony in case
22 EE-2017-0113. Unless there's any conflict with
23 staff already having premarked any exhibits, I would
24 like to identify that as Exhibit 17.

25 MR. HACK: Your Honor, when we prepared

1 our surrebuttal testimony, I had contacted counsel
2 for MECG who was a party at the time and asked
3 whether we should respond to both pieces of
4 testimony or simply the second piece of testimony
5 and the representation was made by Mr. Woodsmall at
6 that time that he would intend to offer only the
7 second piece of testimony. So, all of our page
8 references in our surrebuttal testimony correlate to
9 that testimony that was filed in EM-27 -- 27 -- the
10 226 docket, and I would suggest to you that that's
11 the only piece that should be admitted into this
12 record.

13 JUDGE BURTON: Okay. Any responses?

14 MS. ROBY: I have no objection to that.
15 That's fine.

16 JUDGE BURTON: Okay. Then we will
17 ignore that February 14th, 2017, version of the
18 rebuttal testimony and we will instead mark as
19 Exhibit 17 Michael P. Gorman's rebuttal testimony
20 and schedule in Case No. EM-2017-0226, et al., that
21 was prepared and filed on March 23rd, 2017.

22 (Independence's Exhibit 17 was offered
23 into evidence.)

24 JUDGE BURTON: So, that has been
25 offered, and by consent of the parties will be

1 admitted into the record.

2 (Independence's Exhibit 17 was admitted
3 into evidence.)

4 JUDGE BURTON: Next we will resume with
5 staff and I believe your first witness is
6 Ms. Dietrich.

7 MR. THOMPSON: Thank you, Judge.

8 JUDGE BURTON: Would you, please, raise
9 your right hand. Do you swear or affirm that the
10 statements you're about to give will be the truth,
11 the whole truth and nothing but the truth?

12 THE WITNESS: I do.

13 JUDGE BURTON: You may be seated.

14 NATELLE DIETRICH,
15 having been called as a witness herein, having been
16 first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. THOMPSON

20 **Q. Please state your name and spell it for**
21 **the reporter.**

22 A. Natelle, N-A-T-E-L-L-E, Dietrich,
23 D-I-E-T-R-I-C-H.

24 **Q. And how are you employed?**

25 A. Commission staff director.

1 **Q. And are you the same Natelle Dietrich**
2 **that prepared or caused to be prepared certain**
3 **pieces of testimony, in particular direct testimony**
4 **that was filed in Case No. EE-2017-0113; is that**
5 **correct?**

6 A. That's correct.

7 **Q. And also surrebuttal testimony filed in**
8 **Case EM-2017-0226?**

9 A. That's correct.

10 MR. THOMPSON: And I guess we'll mark
11 the direct testimony as Exhibit 18 and the
12 surrebuttal testimony as Exhibit 19. Is that
13 correct, Judge?

14 JUDGE BURTON: Yes.

15 **Q. (By Mr. Thompson) Do you have any**
16 **changes or corrections to that testimony?**

17 A. Just one to my --

18 **Q. And what is --**

19 A. -- to my surrebuttal testimony. At page
20 3, line 14 it's discussing the Condition No. 12 and
21 it says, Provision that KCPL/GMO or Westar, so on
22 and so forth. I would like to add the word
23 "neither" after -- between that and KCPL/GMO. So,
24 it would read, Provision that neither KCPL/GMO or
25 Westar and so on and so forth.

1 Q. Very well.

2 With that correction in mind, if you
3 were asked the same questions today, would your
4 answers be the same?

5 A. Yes, they would.

6 Q. And is the information contained in your
7 testimony true and correct to the best of your
8 knowledge and belief?

9 A. Yes, it is.

10 MR. FISCHER: Now, we'll proceed
11 separately with the attachments to your surrebuttal,
12 but I would offer Exhibits 18 and 19 at this time.

13 (Staff's Exhibit 18 and Exhibit 19 were
14 offered into evidence.)

15 JUDGE BURTON: Exhibits 18 and 19 have
16 been offered. Are there any objections?

17 Seeing none. They are admitted.

18 (Staff's Exhibit 18 and Exhibit 19 were
19 admitted into evidence.)

20 Q. (By Mr. Thompson) Now, attached to your
21 surrebuttal testimony, Exhibit 19, are two rather
22 large exhibits. And Exhibit A, which is highly
23 confidential, is labeled as staff's investigation
24 report filed in Case EM-2016-0324?

25 A. That's correct.

1 Q. And you're familiar with that document?

2 A. Yes, I am.

3 Q. Now, did you -- are you the author of
4 that document?

5 A. No. It was prepared under my oversight.

6 Q. Prepared under your oversight, but
7 various staff members contributed to it; is that
8 correct?

9 A. That's correct.

10 Q. And they're going to be here today
11 available for cross-examination.

12 MR. THOMPSON: Judge, I would propose
13 that we mark Exhibit A to Ms. Dietrich's surrebuttal
14 testimony as Exhibit 20 HC and NP, if that's
15 acceptable to you.

16 JUDGE BURTON: That is fine.

17 MR. THOMPSON: And I will offer that
18 after we have had a chance to inquire of all the
19 authors.

20 Q. (By Mr. Thompson) Now, there's a second
21 large attachment to your testimony, Exhibit B, also
22 HC and NP, which is a staff report filed in
23 Case EE-2017-0113. Are you familiar with that
24 report?

25 A. Yes, I am.

1 Q. Are you the author of that report?

2 A. Yes.

3 Q. And to the best of your knowledge, is
4 everything contained therein true and correct?

5 A. Yes, it is.

6 Q. Do you have any changes or corrections
7 to it?

8 A. No.

9 Q. And you would give the same testimony --
10 I realize it's in narrative form rather than
11 question-and-answer, but if you were asked questions
12 along those lines, would your testimony be the same
13 today?

14 A. Yes, it would.

15 MR. THOMPSON: At this time I would
16 offer Exhibit B HC and NP, which we'll mark as
17 Exhibit 21, if that's acceptable, Judge.

18 (Staff's Exhibit 21-HC and Exhibit 21-NP
19 were offered into evidence.)

20 JUDGE BURTON: That's fine.

21 Exhibit 21-HC and NP have been offered.
22 Are there any objections?

23 Seeing none. They are admitted in HC
24 and NP versions.

25

1 (Staff's Exhibit 21-HC and Exhibit 21-NP
2 were admitted into evidence.)

3 MR. THOMPSON: Thank you, Judge. I will
4 tender Ms. Dietrich for cross-examination.

5 JUDGE BURTON: Thank you, Mr. Johnson.
6 Any cross from GPE, KCPL, GMO?

7 MR. FISCHER: Yes, just briefly.

8 CROSS-EXAMINATION

9 BY MR. FISCHER

10 Q. Good morning, Ms. Dietrich.

11 A. Good morning.

12 Q. Let's go to your surrebuttal testimony,
13 the page number 2.

14 A. Okay.

15 Q. And if you look at line three there,
16 you're asked the question, Has staff's concerns been
17 mitigated? Do you see that?

18 A. Yes, I do.

19 Q. As I understand your testimony, here
20 you're talking about the concerns about the merger
21 of GPE and Westar Energy; is that right?

22 A. That's correct.

23 Q. Okay. And then if I look at the answer
24 there below on line four you say, Yes, as indicated
25 in my direct testimony filed in Case

1 No. EE-2017-0113, staff's concerns have been
2 mitigated by the stipulations and agreement between
3 the joint applicants and staff and the joint
4 applicants and the Office of the Public Counsel
5 filed in Case No. EE-2017-0113 on October the 12th,
6 2016, and October 26th, 2016, respectively; is that
7 right?

8 A. That's correct.

9 Q. Now, at the bottom of this page, on page
10 2 there are lines 21 and 22. You mention that the
11 additional conditions from the KCC, that staff
12 recommends the Commission include the additional
13 conditions that Mr. Ives commented or committed to
14 at the KCC proceeding in response to the KCC staff
15 testimony in approving the stipulations and
16 agreement in the proposed transaction; is that
17 right? I mean, what I'm talking -- certain of those
18 conditions and you list those on page 3, the ones
19 that you're agreeing should be included?

20 A. I'm recommending that those additional
21 conditions listed on page 3 be included in an order
22 approving any merger.

23 Q. Yeah. And I actually I guess it goes
24 over to page 4 as well; is that right?

25 A. That's correct.

1 Q. Now, have you also read the surrebuttal
2 testimony of Mr. Ives that he filed in this case?

3 A. Yes, I have.

4 Q. And did you review his schedule DRI-4?

5 A. Yes, I have.

6 Q. Does schedule DRI-4 incorporate the KCC
7 commitments you list on pages 3 and 4 of your
8 surrebuttal testimony, recognizing you made one
9 change to that this morning?

10 A. It incorporates the items that -- or the
11 conditions that I recommend. It includes an
12 additional one which is No. 18 and then, as Mr. Ives
13 testified, there are some changes making it more
14 Missouri specific. I just took the conditions as
15 proposed.

16 Q. And that additional commitment that you
17 mentioned, commitment 18, is it your understanding
18 that that one was added in response to a suggestion
19 for Mr. Gorman in Kansas?

20 A. That's correct.

21 Q. If the Commission adopts the conditions
22 contained in the stipulations and agreements entered
23 into between GPE, KCPL, GMO and the staff, and the
24 similar stipulation between the joint applicants and
25 the Office of the Public Counsel, as well as these

1 additional commitments that are shown on schedule
2 DRI-4 to Mr. Ives' surrebuttal testimony, is it
3 correct that staff recommends the Commission find
4 that the proposed transaction is not detrimental to
5 the public interest?

6 A. That's correct.

7 Q. And under those circumstances, staff
8 recommends that the Commission approve the proposed
9 transaction between GPE and Westar; is that correct?

10 A. Subject to all the conditions that we've
11 discussed.

12 Q. And under those circumstances, staff
13 also recommends that the Commission approve the
14 limited waiver request by GPE, KCPL and GMO for the
15 Commission's affiliate transaction rule; is that
16 correct?

17 A. Correct.

18 MR. FISCHER: Thank you, Judge. That's
19 all I have.

20 JUDGE BURTON: OPC?

21 CROSS-EXAMINATION

22 BY MR. OPITZ

23 Q. Just to clarify something for myself.
24 Ms. Dietrich, in your testimony you did not include
25 what KC -- what GPE refers to as condition 18?

1 A. That's correct?

2 Q. And so, you -- is it your position that
3 the Commission should incorporate Condition No. 18
4 proposed by GPE?

5 A. Staff does not object to condition 18.

6 Q. But that's not one that you've
7 recommended, correct?

8 A. The reason I did not recommend it was
9 because we had a stipulation with GPE that included
10 some capital structure language and I was concerned
11 that it would be deemed as going against our
12 stipulation if I incorporated that one.

13 MR. OPITZ: Thank you.

14 JUDGE BURTON: MJMEUC?

15 MR. JARRETT: Yes, just very briefly.

16 CROSS-EXAMINATION

17 BY MR. JARRETT

18 Q. Ms. Dietrich, you were in the hearing
19 room yesterday and heard all of the testimony; is
20 that correct?

21 A. That's correct.

22 Q. Do you remember the discussions about
23 MJMEUC's two conditions that they were proposing?

24 A. Yes, I do.

25 Q. Would staff have any objection or oppose

1 inclusion of those two conditions if the Commission
2 were to approve this transaction?

3 A. Staff would not object to them or oppose
4 to them.

5 MR. JARRETT: Thank you very much.

6 JUDGE BURTON: City of Independence?

7 MS. ROBY: Thank you.

8 CROSS-EXAMINATION

9 BY MS. ROBY

10 Q. Ms. Dietrich, the Item No. 26 on the
11 list of merger commitments that applicants have
12 proposed in KCC is a commitment by GPE that they
13 would in future rate case proceedings support their
14 assurances, the commitment assurances provided in
15 this document with analysis, testimony and necessary
16 journal entries, clarify and explaining how any of
17 the determinations were made. Do you believe that
18 that would be something that would be useful for
19 staff in future rate proceedings?

20 A. I think it's largely covered by what we
21 already have, but I would not be opposed to it being
22 included.

23 Q. And are you familiar with Mr. Herz's
24 condition suggesting that municipal utilities in the
25 event of a downgrade to the regulatory or the

1 **regulated companies, that municipal utilities should**
2 **have an opportunity to invest in capital in**
3 **transmission projects as a way of mitigating that**
4 **downgrade?**

5 A. I'm not aware of it being tied to the
6 downgrade. I am aware of the condition or the
7 suggestion that the municipal utilities be able to
8 invest.

9 **Q. Would staff have a concern about rates**
10 **if there was an adverse impact to the regulated**
11 **companies?**

12 A. With, with the conditions that are
13 included in the stipulation, I think we've addressed
14 that issue. I mean, generally, yes, staff would
15 have a concern, but I think we have some mitigation
16 factors.

17 MS. ROBY: Okay. Thank you very much.

18 JUDGE BURTON: Questions from the
19 Commission?

20 CHAIRMAN HALL: Yes. Good morning.

21 THE WITNESS: Good morning.

22 CHAIRMAN HALL: I'd like to start with
23 your surrebuttal testimony and it's exactly where
24 Mr. Fischer started as well. On lines three, four,
25 and five of page 2.

1 THE WITNESS: Okay.

2 CHAIRMAN HALL: The question on line
3 three is, Have staff's concerns been mitigated?
4 Mitigated is a very interesting word. That doesn't
5 mean eliminated, does it?

6 THE WITNESS: That's correct.

7 CHAIRMAN HALL: Can you explain the
8 distinction?

9 THE WITNESS: I think there's always an
10 opportunity for issues to arise that people did not
11 anticipate and, so, the concerns that we were aware
12 of that we've identified we've attempted to
13 negotiate a stipulation that would mitigate the
14 concerns, reduce the possibility of an impact to
15 Missouri ratepayers, Missouri consumers.

16 CHAIRMAN HALL: Is it possible to
17 eliminate those concerns other than not approve the
18 transaction?

19 THE WITNESS: I don't think it's
20 possible to eliminate all potential concerns. I
21 think you do the best you can to reduce the
22 possibilities of concerns or of issues arising.

23 CHAIRMAN HALL: Does staff believe that
24 there are potential benefits from the transaction?

25 THE WITNESS: We did not do a benefit

1 analysis. So, I can't say that there are or there
2 are not benefits. I think -- I don't think we
3 dispute some of the benefits that have been put
4 forth by the company, but we have not independently
5 verified them.

6 CHAIRMAN HALL: Have you or has anyone
7 in staff reviewed the testimony of Mr. Kemp?

8 THE WITNESS: Yes, yes.

9 CHAIRMAN HALL: You have as well?

10 THE WITNESS: Yes.

11 CHAIRMAN HALL: And do you believe that
12 his conclusions are reasonable?

13 THE WITNESS: I think they're
14 reasonable, especially when you consider the
15 conditions that we've agreed to.

16 CHAIRMAN HALL: So, you think that a
17 9 percent cost savings GPE-wide is a reasonable
18 estimate for the savings that could result from the
19 transaction?

20 THE WITNESS: I don't know that I can
21 say that the actual percent is reasonable or
22 accurate, but his approach to it and what he did to
23 come to that number is reasonable.

24 CHAIRMAN HALL: Do you believe that his
25 testimony that 7 to 10 percent is a reasonable range

1 for transactions of this nature in terms of savings
2 or synergies that could result?

3 THE WITNESS: I just don't know. Like I
4 said, we didn't do an independent analysis. I have
5 no reason to doubt it, but we didn't independently
6 verify.

7 CHAIRMAN HALL: Which of the staff
8 witnesses that were involved in the staff
9 investigative report would be best equipped to
10 comment on those cost savings?

11 THE WITNESS: Perhaps Mr. Murray or
12 Mr. Oligschlaeger. I don't know if they could or
13 not.

14 CHAIRMAN HALL: So, if I understand your
15 testimony, you believe that the conditions that were
16 part of the staff stipulation, the OPC stipulation
17 and those additional conditions that are set forth
18 in your surrebuttal, with those conditions all of
19 the concerns that staff has identified in its
20 investigative report are mitigated, but not
21 eliminated?

22 THE WITNESS: Correct.

23 CHAIRMAN HALL: But you have not engaged
24 in an analysis comparing those concerns with the
25 possible benefits that could result from the

1 transaction?

2 THE WITNESS: That's correct.

3 CHAIRMAN HALL: How come?

4 THE WITNESS: Largely due to the way
5 this case has proceeded or the cases have proceeded
6 and the timing and the fact that we entered in
7 stipulation and agreement early on and, so, normally
8 when we enter a stipulation and agreement we move
9 forward with that as opposed to doing additional
10 analysis.

11 CHAIRMAN HALL: Is it fair to say that
12 with these conditions staff does not oppose the
13 transaction, but is not necessarily supportive of
14 the transaction?

15 THE WITNESS: I think that's fair. I
16 think the conditions allow the Commission to approve
17 it, but staff is not taking a position one way or
18 another specifically saying approve or deny it.

19 CHAIRMAN HALL: If the Commission
20 believes, ultimately determines that the benefits
21 set forth in Mr. Kemp's testimony are well-founded,
22 do you believe that the transaction -- that approval
23 of the transaction is appropriate as opposed to just
24 not being opposed to the approval?

25 THE WITNESS: Subject to all the

1 conditions we've discussed, yes.

2 CHAIRMAN HALL: All right. My
3 understanding of the Kansas staff's opposition to
4 the transaction and then also consistent with some
5 testimony from KCP&L witnesses yesterday is that the
6 conditions offered by the company will not insulate
7 Kansas ratepayers from certain adverse impacts from
8 the transaction, particularly that the acquisition
9 premium will one way or another be recovered in
10 rates. Is that similar to your understanding of
11 what the Kansas staff concluded?

12 THE WITNESS: I guess I would clarify it
13 a little bit. I agree with your interpretation of
14 what the Kansas staff recommended or included in its
15 testimony, but they did also offer conditions that
16 the Commission could consider should the Commission
17 determine that it was appropriate to approve the
18 transaction. So, I guess where I'm making the
19 clarification is that yes, they said do not approve
20 it, but then they also offered additional
21 conditions. The conditions that Mr. Ives offered
22 was offered -- they were offered in rebuttal
23 testimony, which was after the summary of the KCC
24 staff testimony. So, they weren't specifically
25 responding to those conditions.

1 CHAIRMAN HALL: Did you review those,
2 those conditions?

3 THE WITNESS: Yes.

4 CHAIRMAN HALL: And how do they compare
5 to conditions at issue in this case?

6 THE WITNESS: For the ones that are
7 applicable, they're very similar. They have some --
8 as was explained yesterday, they have a different
9 standard in Kansas than Missouri standard. So, the
10 KCC has listed, I believe, it's 12 items that they
11 require their staff to look at, similar to how
12 Missouri staff looks at the Tartan criteria for CCN
13 applications and, so, they had to address those
14 additional factors that Missouri typically doesn't
15 look at. Things such as what will happen to jobs in
16 the cities where the company or the utility is
17 employed, some environmental factors, some
18 conditions related to IRP process, which we already
19 have an IRP process. Some things like that that
20 just weren't applicable, but the ones that were
21 similar to the issues that we identified the
22 conditions are very similar.

23 CHAIRMAN HALL: So, getting back to the
24 fundamental concern that the Kansas staff has that
25 none of these conditions can really insulate Kansas

1 ratepayers from an increase in rates as a result of
2 the transaction. You are confident that the
3 conditions in place that we've mentioned that are at
4 issue in this case, those will properly insulate
5 Missouri ratepayers from the trans -- from any
6 increase in rates as a result of the transaction.

7 THE WITNESS: Yes. As a result of the
8 transaction, yes. And in the stipulation between
9 staff and the company there is a provision that
10 specifically says rates will not increase as a
11 result of the transaction.

12 CHAIRMAN HALL: Do you have any sense as
13 to why -- other than a different standard for the
14 approval of the transaction, do you have any
15 understanding as to why Missouri staff is confident
16 that these conditions can insulate Missouri
17 consumers, Missouri ratepayers, and the Kansas staff
18 is not confident that similar conditions can
19 insulate Kansas ratepayers?

20 THE WITNESS: Well, I think one of the
21 differences is, like I said, in the Missouri -- or
22 in the staff GPE stip there is the provision that
23 says rates cannot increase as a result of the
24 transaction. I don't recall that being an issue --
25 or being offered in the Kansas testimony. As far as

1 their view on it, I don't know any more than just
2 what I've read. So, I can't say.

3 CHAIRMAN HALL: You don't know if
4 there's something different about how rate cases
5 proceed in Kansas versus rate cases in Missouri or
6 the law being different in Kansas versus Missouri?

7 THE WITNESS: Well, I mean, we've
8 already discussed the law and I thought your
9 question was putting that --

10 CHAIRMAN HALL: Right. The standard.

11 THE WITNESS: Right.

12 CHAIRMAN HALL: I'm just talking about
13 how rate cases proceed because, I mean, it's going
14 to be an issue of evidence and -- it's going to be
15 an issue of evidence as to whether or not a rate
16 increase request is specifically tied to the
17 transaction or not.

18 THE WITNESS: Correct.

19 CHAIRMAN HALL: And five years from now
20 when KCP&L comes -- every rate case when KCP&L or
21 GMO comes here, there's going to be arguments that's
22 related to the transaction; no, it's not related to
23 the transaction. Then the Commission will have to
24 make that decision. But you have confidence that
25 the Commission, based on the evidence, is going to

1 be able to discern whether or not that rate increase
2 request is related to the transaction or not?

3 THE WITNESS: Yes. I think -- I mean,
4 as we've seen with stipulations in the past, what
5 people interpret the language as is always subject
6 to being brought before the Commission, one party
7 saying, well, it says this and the other party
8 saying, well, it says that. So, I think you're
9 always going to have the potential no matter what
10 the language says where the Commission will have to
11 determine issues. But I think that the way some of
12 this is structured and the talk -- the language
13 about how they keep their books and being able to
14 audit their books and, of course, we have the
15 statute for that also, I think evidence will be able
16 to be provided that the Commission will be able to
17 make a determination.

18 CHAIRMAN HALL: Okay. Then turning to
19 the different standards in Missouri and Kansas for
20 mergers or acquisitions such as -- such as this, and
21 I know you're not a lawyer, but can you explain to
22 me how that different standard affects staff's
23 evaluation of the merger?

24 THE WITNESS: I don't think it affects
25 staff's evaluation. It affects, perhaps, the weight

1 that is given to the evaluation. To me the Missouri
2 standard of not detrimental to the public interest
3 is a lower bar, excuse me, a lower bar than the
4 Kansas standard of providing benefits. So, I don't
5 think -- if we had a different standard, I don't
6 think we would approach it any differently. It
7 would just be a different weight, perhaps, or a
8 different value placed on the items that were
9 reviewed. And like I said, Kansas has additional
10 items that the Commission has incorporated in orders
11 that specifically spell out things that the Kansas
12 staff has to look at.

13 CHAIRMAN HALL: Turning to MJMEUC's two
14 additional conditions proposed in this case. I
15 believe you responded to questions from counsel that
16 staff does not oppose those two additional
17 conditions; is that correct?

18 THE WITNESS: Well, his question was if
19 the Commission ordered them, would we oppose them.
20 I mean --

21 CHAIRMAN HALL: Well, okay. Well,
22 that's a different question.

23 THE WITNESS: Right.

24 CHAIRMAN HALL: Of course, if we order
25 them, you would not oppose them, but in this case do

1 you -- what's your position on those in terms of
2 what you are recommending to the Commission?

3 THE WITNESS: If I were to recommend or
4 not recommend these, I would not have a problem with
5 them. I'm just not sure that the Commission has the
6 authority to order them or how they would work.
7 For --

8 CHAIRMAN HALL: Well, in terms of
9 authority I assume you're talking about the first
10 one, because there's no question we have authority
11 on the second one.

12 THE WITNESS: Right.

13 CHAIRMAN HALL: In my opinion.

14 THE WITNESS: Right.

15 CHAIRMAN HALL: Okay.

16 THE WITNESS: So, the first one I'm not
17 sure the Commission -- and by first one I mean the
18 SPP pricing zones.

19 CHAIRMAN HALL: Yes.

20 THE WITNESS: I'm not sure that the
21 Commission can order GPE or KCPL, whichever entity
22 you want to use, to do something in the SPP pricing
23 zones, but I realize that the condition is that they
24 would basically not take a position if SPP would
25 take this up. So, I don't know that that harms

1 anything other than, like Mr. Ives was explaining,
2 if it's something that would be beneficial to
3 Missouri customers and KCPL is precluded from
4 weighing in, then that may be a detriment.

5 On the operational costs at Iatan, I'm
6 just not sure technically, functionally,
7 operationally how that would work where you would
8 isolate just to that plant.

9 CHAIRMAN HALL: Well, my understanding
10 on the -- on the second condition is that GPE would
11 be prohibited from passing along costs attributed to
12 the merger, which -- and as Mr. Ives and I
13 discussed, under basic rate-making principles
14 related to cost causation and prudence they'd be
15 prohibited from doing that anyway. Right?

16 THE WITNESS: Right.

17 CHAIRMAN HALL: So, and I believe this
18 was a question asked by Mr. Jarrett of Mr. Ives. If
19 they can't do it under basic rate-making principles,
20 is there any harm from staff's perspective for us to
21 make that condition part of the approval?

22 THE WITNESS: I'm not aware of any -- I
23 can't think of any harm.

24 CHAIRMAN HALL: And then concerning the
25 first condition, I'd be interested in staff

1 counsel's legal analysis in the post-hearing briefs
2 as to whether or not -- actually, I'm interested in
3 everyone's legal analysis, as to whether or not the
4 Commission has that authority concerning SPP pricing
5 zones.

6 Okay. Concerning the City of
7 Independence additional conditions that were
8 requested. Do you have -- do you have thoughts on
9 whether or not any of those are appropriate, whether
10 any of those are harmful or whether any of those are
11 unnecessary?

12 THE WITNESS: On the municipal utility
13 being able to participate in the funding, again, I
14 don't necessarily see an issue with it. I'm not
15 sure that the Commission can order that. The
16 general condition about adopting other transparency
17 and protective measures, that's rather broad and I'm
18 not sure what that would be. Based on the testimony
19 that we've heard so far and in the couple days, it
20 seems like everybody is supportive of the conditions
21 that have already been negotiated and agreed to, and
22 some of the additional ones that have been
23 explicitly discussed people have different positions
24 on. So, I'm not sure what other conditions might be
25 proposed.

1 CHAIRMAN HALL: And then turning to
2 DRI-4, condition 18. You've already had a couple of
3 questions about this. Which -- I think you said
4 that that condition might be perceived as
5 conflicting with a condition in staff's stipulation;
6 is that correct?

7 THE WITNESS: No. What I was saying was
8 that I didn't specifically propose it because I was
9 concerned that if staff proposed it, it would be
10 perceived as going against a stipulated agree --
11 stipulated condition, not that it actually conflicts
12 with it. In our -- in the staff stipulation there
13 are provisions related to capital structure that
14 aren't as specific as this. So, I was concerned
15 that getting that specific would be viewed as
16 attempting to change the stipulation, not
17 negotiating in good faith, whatever you -- however
18 you want to phrase it.

19 CHAIRMAN HALL: Okay. Well, now that
20 GMO and KCP&L and GPE have indicated that they
21 support this additional provision, does staff also?

22 THE WITNESS: Yes.

23 CHAIRMAN HALL: I believe that's all I
24 have. Thank you.

25 THE WITNESS: Thank you.

1 COMMISSIONER STOLL: My questions have
2 been asked and answered. I appreciate your
3 testimony.

4 THE WITNESS: Thank you.

5 COMMISSIONER KENNEY: No questions.
6 Thank you.

7 JUDGE BURTON: I have a few questions
8 for you.

9 THE WITNESS: Okay.

10 JUDGE BURTON: In the stipulation --
11 well, let me back up a little bit. What is KCPL's
12 current credit rating for S&P and Moody's?

13 THE WITNESS: That would probably be
14 better for Mr. Murray.

15 JUDGE BURTON: Mr. Murray?

16 THE WITNESS: Yeah.

17 JUDGE BURTON: You had mentioned in
18 response to a question from the Chairman a statement
19 saying as a result of the transaction. Can you
20 define what as a result of the transaction means to
21 you when it comes to additional costs or recovery?

22 THE WITNESS: We were having a
23 discussion -- I think what you're referring to is
24 during a rate case parties would raise issues and
25 say certain costs, whatever it might be, should be

1 included because it was not a result of the
2 transaction, it should be excluded because it was a
3 result of the transaction. So, I think, you know,
4 it would just be a -- based on each party's view, a
5 determination or evidence would be presented for a
6 Commission determination as to whether whatever that
7 cost was was a direct cause or effect of the
8 transaction itself.

9 JUDGE BURTON: Does it have to be
10 direct?

11 THE WITNESS: I think it could be
12 indirect also, if that's your question.

13 JUDGE BURTON: And did you help prepare
14 the stipulation and agreement with GPE, KCPL and
15 OPC -- I mean GMO?

16 THE WITNESS: Yes.

17 JUDGE BURTON: Was there something that
18 you based the requirements or conditions on?

19 THE WITNESS: I'm sorry?

20 JUDGE BURTON: Was there a format or a
21 guideline or a principle or a prior case that you
22 used to base the stipulation and agreement on?

23 THE WITNESS: It started with, if I
24 remember correctly, GPE providing some suggested
25 language. We discussed and looked at previous

1 agreements, merger agreements such as the Empire
2 agreement that was recently approved.

3 JUDGE BURTON: Which case was that?

4 THE WITNESS: It was the Empire,
5 Algonquin, Liberty merger that just completed. I
6 don't remember the case number off the top of my
7 head. It was just in the last several months.

8 JUDGE BURTON: Okay.

9 THE WITNESS: And I know we talked about
10 different conditions, different cases that KCPL and
11 GMO have committed to over the years and those cases
12 are -- case numbers are included in the stipulation
13 to make sure that previous commitments continue
14 forward. So, those are the types of things that we
15 looked at. We had some draft language that we ran
16 by different staff members to receive input. And
17 then, of course, as with any negotiation, there's
18 give-and-take. So, as the staff director and
19 Mr. Thompson as the staff counsel, we determined
20 which areas were give-and-take areas.

21 JUDGE BURTON: Okay. Now, are you
22 familiar with the amount estimate, let's say, for
23 the acquisition premium of the proposed merger?

24 THE WITNESS: Yes. The --

25 JUDGE BURTON: And what would that be?

1 THE WITNESS: I believe it's
2 4.2 billion, million, billion.

3 JUDGE BURTON: In your opinion, would it
4 be detrimental to the public interest for that to
5 be -- that cost to in any way be recovered through
6 Missouri ratepayers?

7 THE WITNESS: Yes, but I recognize that
8 there are provisions in the stipulation that if
9 people -- if different parties propose imputing
10 certain things, that KCPL and GMO had reserved the
11 right to bring that before the Commission, but
12 generally yes.

13 JUDGE BURTON: In the Empire settlement
14 that you were discussing, was there any reference to
15 the recovery of acquisition premium?

16 THE WITNESS: I don't recall, but as was
17 testified yesterday, generally the Commission has
18 not allowed recovery of acquisition premiums, at
19 least in the recent past.

20 JUDGE BURTON: Is there another staff
21 member who's going to be testifying that might be
22 able to address that issue?

23 THE WITNESS: Mr. Oligschlaeger might be
24 able to.

25 JUDGE BURTON: I want to turn real

1 briefly to your surrebuttal testimony. It was
2 Exhibit B and we've already admitted it as Exhibit
3 21 here today.

4 THE WITNESS: Yes.

5 JUDGE BURTON: On page 14. Do you have
6 a copy of that with you?

7 THE WITNESS: Yes, I do.

8 JUDGE BURTON: And you can just on page
9 14 review that real briefly. Was this something
10 that you drafted as your own opinion or was this a
11 position or a statement of something that KCC staff
12 had indicated?

13 And I'm specifically referring to the
14 line that says, it's the last paragraph on page 14,
15 Given the above, the issuance of debt at GPE will
16 have at least an indirect impact on KCPL and now GMO
17 because the proposed transaction to acquire Westar
18 Energy will result in increased financial risk for
19 GPE on a consolidated basis, which will directly
20 impact S&P's rating of KCPL and GMO.

21 THE WITNESS: Yes. I was flipping back
22 to see which sections this was in, and this portion
23 of the report is Missouri staff analysis of some of
24 the issues that the KCC staff raised in their
25 testimony, and that particular section is relating

1 back to the investigation report, I believe, and
2 some of the concerns that Mr. Murray raised in the
3 investigation report.

4 JUDGE BURTON: Okay. So, although, you
5 stated that you had prepared this, you were
6 consolidating some of the statements from staff on
7 this?

8 THE WITNESS: Correct.

9 JUDGE BURTON: Okay. So, is this your
10 position as well?

11 THE WITNESS: As staff director, yes.

12 JUDGE BURTON: Okay. Would that be
13 detrimental to the public interest if the credit
14 rating for KCPL and GMO is reduced directly as an
15 impact?

16 THE WITNESS: Well, I think absent the
17 conditions that address the downgrade and those
18 types of things, it would be detrimental, but I
19 think we have conditions in place to -- that GPE has
20 to provide reporting, depending on exactly how
21 downgraded it gets, has to provide information to
22 the Commission, has to provide a plan for getting
23 back to above grade.

24 JUDGE BURTON: That's reactive, though,
25 isn't it? It's not proactive? It doesn't

1 prevent --

2 THE WITNESS: Correct.

3 JUDGE BURTON: -- a credit rating
4 decline?

5 THE WITNESS: It would be reactive, yes.

6 JUDGE BURTON: Is there anything in the
7 stipulation and agreement with staff or OPC that you
8 can say will prevent S&P, Moody's, Fitch from
9 factoring in GPE's merger costs when calculating
10 KCPL and GMO's credit rating?

11 THE WITNESS: I don't think I can say
12 that it would never happen, but --

13 JUDGE BURTON: From past experience in
14 your review of any of the stips and agreements that
15 you've prepared or used as a guidance for this stip
16 and agreement?

17 THE WITNESS: This language is very
18 similar to what is included in previous agreements.
19 So, I don't -- I can't recall anything that we've
20 added in other stips and agreements that would
21 specifically address your question. Mr. Murray,
22 since he's more directly involved with the financial
23 analysis and those types of things, he may recall
24 something, but I don't. And like I said, I know we
25 used other stipulations to come up with that

1 language.

2 JUDGE BURTON: I want to return to the
3 City of Independence's condition concerning the SPP.

4 THE WITNESS: MJMEUC's conditions
5 concerning SPP?

6 JUDGE BURTON: Oh, I apologize.
7 MJMEUC's position.

8 THE WITNESS: Okay.

9 JUDGE BURTON: If that position or that
10 condition or any form of that requirement was
11 approved by the Commission, can you see any benefit
12 to the rate-paying public?

13 THE WITNESS: I think, as I believe it
14 was Mr. Ives explained yesterday, it just depends on
15 how SPP would combine the pricing zones. There
16 could be benefit to Missouri ratepayers. There
17 could be detriment to Missouri ratepayers. It just
18 depends on, ultimately, what SPP would propose.

19 JUDGE BURTON: Is it possible that it
20 would be detrimental to the rate-paying public in
21 Missouri? They're members of SPP, correct?

22 THE WITNESS: Yes.

23 JUDGE BURTON: And they receive their
24 transmission through SPP, right?

25 THE WITNESS: Correct.

1 JUDGE BURTON: And that cost is
2 recovered and passed along to ratepayers, right?

3 THE WITNESS: Some of it, right.
4 There's a --

5 JUDGE BURTON: In a very --

6 THE WITNESS: -- offset. Right.

7 JUDGE BURTON: -- basic level?

8 THE WITNESS: Uh-huh.

9 JUDGE BURTON: In any way would the
10 condition that MJMEUC was referring to prevent a
11 detriment? For instance, if they were consolidated
12 with Westar, KCPL --

13 THE WITNESS: Right.

14 JUDGE BURTON: -- would there be some
15 negative potential impact for ratepayers in
16 Missouri?

17 THE WITNESS: The detriment that I can
18 see is if the way SPP proposed to combine the zones
19 would ultimately be a benefit for Missouri
20 ratepayers and the -- my understanding of the
21 condition is that KCPL would not be able to support
22 that, that proposal, that may be a detriment because
23 without their support it may not go forward. So, it
24 would be kind of a detriment because Missouri
25 ratepayers would not receive a benefit, if that

1 makes sense.

2 JUDGE BURTON: So, there's no detriment
3 to Missouri ratepayers from combining the
4 Westar/KCPL transmission pricing zones?

5 THE WITNESS: As of the prices today, I
6 don't think there would be, but we have --

7 JUDGE BURTON: In the future?

8 THE WITNESS: -- no idea what SPP would
9 do in the future or what the pricing zones would
10 look like in the future.

11 JUDGE BURTON: Okay. All right. Thank
12 you.

13 Any recross based on bench questions?
14 GPE?

15 MR. FISCHER: Yes, briefly.

16 RECROSS-EXAMINATION

17 BY MR. FISCHER

18 Q. Ms. Dietrich, you had a lot of
19 discussion with the bench regarding the various
20 conditions that are included in our stipulation, as
21 well as in the DRI-4. Is it correct that staff
22 spent a considerable amount of time looking at these
23 conditions and as we negotiated our stipulation and
24 agreement with staff?

25 A. Yes.

1 Q. Are those conditions similar to the
2 conditions that you looked at in the past related to
3 other merger and acquisition transactions that have
4 been before this Commission?

5 A. Yes, they are.

6 Q. And I know you've been around the
7 Commission quite a while. How long have you been
8 employed here at the Commission?

9 A. Almost 20 years.

10 Q. And during those 20 years, is it true
11 that the Commission has approved many merger and
12 acquisition transactions that have similar
13 conditions to what are included before the
14 Commission in this case?

15 A. Yes, that's true.

16 Q. Would you agree with me that -- well,
17 you mentioned the Empire case. I'd like to show you
18 the stipulation and agreement in that case, and we
19 can, therefore, get it in the record as far as what
20 the case number is, if that's all right.

21 I'd like to hand you a stipulation and
22 agreement in Case No. EM-2016-213. Is that the
23 stipulation you were talking about?

24 A. Yes, it is.

25 Q. And does that include many of the types

1 of conditions that we have in our stipulation,
2 particularly things like financing conditions, rate
3 making, accounting conditions, affiliate
4 transaction, cost allocation manual conditions,
5 service, customer service conditions, access to
6 books and records condition, parent condition and
7 general provisions? Are those types of things
8 included?

9 A. Generally, yes, without comparing them
10 right here and now one-for-one --

11 Q. Right.

12 A. -- with I have in the past.

13 Q. And then we've also got the Public
14 Counsel stipulation, which I understand staff is
15 supporting in this case, correct?

16 A. Correct.

17 Q. And that's added several more
18 stipulations and agreements which are somewhat
19 different than some of the conditions that have been
20 approved in the past; is that right?

21 A. I don't know that I would characterize
22 it as several, but yes, there are additional that
23 are different than in the past.

24 Q. Okay. Would you agree with me that in
25 your 20 years here at the Commission this

1 stipulation and agreement with the Public Counsel
2 stipulation and the 13 conditions that we've agreed
3 to in Kansas, they probably incorporate more
4 conditions related to this merger than most any
5 other that you've ever seen?

6 A. I don't know that I would say more, but
7 it's definitely similar to as many as and includes
8 some additional that are different than in the past.

9 Q. In your 20 years here at the Commission,
10 have you ever seen a transaction that included these
11 types of conditions where the Commission decided it
12 was not in the -- or was detrimental to the public
13 interest and turned it down?

14 A. Not that I can recall.

15 Q. Okay. Good.

16 Regarding the MJMEUC condition out at
17 Iatan, there was an example yesterday, I believe,
18 where someone asked if you added one worker out
19 there at Iatan after the merger, whether that would
20 violate that condition. Do you have an opinion
21 about that?

22 A. I think the answer was yes and I think
23 based on the way the condition is proposed that's a
24 likely result, that it would violate the condition.

25 Q. Aren't there practical problems with

1 that condition? I mean, if we added a worker out
2 there to make the plant safer, would -- but someone
3 could argue that is a violation of the stipulation
4 because we've added one additional worker out there
5 after the merger, correct?

6 A. Can you repeat the question? I forget
7 what the first part of it was.

8 Q. Yes. I was just asking aren't there
9 practical problems with that particular condition?

10 A. Yes.

11 Q. It may be quite difficult to decide what
12 is attributable to the merger when we're just
13 operating that power plant, correct?

14 A. Correct.

15 Q. And there was discussion about
16 Commitment No. 18. Do you happen to have that in
17 front of you there? It was on DRI-4. I've got a
18 copy of it, if you need it.

19 A. I have it. I just -- here it is. Okay.

20 Q. I was going to ask you just to look at
21 that and see if you would agree with me that this is
22 really a commitment of GMO and KCPL to use a
23 specific capital structure. It's not a restriction
24 on the Public Counsel or the staff or other parties
25 to suggest other capital structures, correct?

1 A. When combined what's already in the
2 stipulations, yes.

3 Q. Okay.

4 A. And actually, this says may petition.
5 So, even this as a stand-alone.

6 Q. It really puts a band around the equity
7 portion for KCPL's and GMO's request, 45 to no more
8 than 53 percent, correct?

9 A. No less than 45 percent and no more than
10 53 percent, yes.

11 Q. Right. And I think Judge Burton was
12 asking you some questions about -- well, there was a
13 discussion about whether the provisions were
14 proactive or reactive, and I think she was talking
15 about the financing conditions on pages 2 and 3 of
16 our stipulation. Do you recall that discussion?

17 A. Yes.

18 Q. Would you turn to page 3 of that
19 stipulation in paragraph two.

20 A. Okay.

21 Q. That would indicate that KCPL and GMO
22 have indicated an intent to utilize a specific
23 utility-specific capital structure, and we've agreed
24 that we would provide evidence demonstrating that
25 the transaction was not a result of the downgrade to

1 the utility's corporate credit rating that exists at
2 the time of the general rate case. That's an
3 obligation on KCPL to affirmatively provide the
4 evidence, correct?

5 A. Yes.

6 Q. And in that sense it's proactive. We
7 have -- we have the obligation upfront to do that?

8 A. Are you asking me?

9 Q. Oh, yeah. I guess so. Would you agree
10 with that it's proactive on our part? It's not
11 we --

12 A. It's proactive that you have to provide
13 the information if you request the specific capital
14 structure. I took her question as would this be
15 reactive -- excuse me, reactive because the
16 downgrade would have already happened.

17 Q. Oh, I see. Okay.

18 And we'd have to provide evidence
19 supporting the reasonableness of using the
20 utility-specific capital structure in that event?

21 A. Correct.

22 Q. Okay. I was trying to find a quote here
23 where you indicated that in answer to the Chairman,
24 I believe, that staff was not opposed -- was not
25 necessarily supportive of the transaction. But

1 isn't it true that you believe that with the
2 conditions that are contained in the S&A that have
3 been entered into with the company and the staff and
4 the Public Counsel and DRI-4 that it's not
5 detrimental to the public interest?

6 A. That's correct.

7 Q. And under those circumstances as you
8 understand the practices of the Commission and the
9 law that's been applied around here for years, that
10 would suggest that it needs to be approved, correct?

11 A. That I -- that would suggest that the
12 Commission could approve it. I don't know about
13 needs to be approved.

14 Q. Okay. Well, I think that's an argument
15 for lawyers.

16 A. All right.

17 Q. So, I won't worry about that, but...

18 And you had some questions from the
19 Chair regarding Mr. Kemp's savings estimates. Do
20 you recall that?

21 A. Yes.

22 Q. As I understand your testimony, you
23 don't as -- or the staff doesn't dispute that those
24 savings -- that there are substantial savings that
25 are likely to occur from this transaction, correct?

1 A. Correct. I just could not verify the
2 specific numbers that Mr. Kemp provided.

3 **Q. And you've been involved in other**
4 **transactions like the KCPL/Aquila transaction in the**
5 **past?**

6 A. Not directly in the hearing process and
7 all that, but indirectly as far as the transaction
8 and the aftereffects.

9 **Q. Were you in the hearing room when**
10 **someone was asked about that transaction and to**
11 **verify that there were savings associated with that**
12 **particular transaction?**

13 A. Yes.

14 **Q. And if I recall that testimony, the**
15 **savings that actually were -- that actually occurred**
16 **after that transaction were more than what were**
17 **estimated in the hearing room before the Commission?**

18 A. Correct.

19 **Q. Okay. And you really don't have any**
20 **reason to dispute that either?**

21 A. No, uh-uh.

22 **Q. And I believe you were asked questions**
23 **about whether you had an objection to the MJMEUC**
24 **conditions. Do you recall that?**

25 A. Yes.

1 Q. As the staff director, you wouldn't
2 recommend, though, that the Commission approve
3 conditions that are beyond their statutory
4 authority?

5 A. No, I would not.

6 MR. FISCHER: Okay. Thank you very
7 much. That's all I have.

8 JUDGE BURTON: OPC?

9 MR. OPITZ: No, thank you, Judge.

10 JUDGE BURTON: MJMEUC?

11 MR. JARRETT: Yes, thank you, Judge.
12 Just a few.

13 RE CROSS-EXAMINATION

14 BY MR. JARRETT

15 Q. Ms. Dietrich, you remember Chairman Hall
16 asked you several questions about MJMEUC's condition
17 on the transmission pricing zones, correct?

18 A. Correct.

19 Q. And two of your concerns were, number
20 one, the legal authority and, number two, the fact
21 that GPE would not be able to support any SPP
22 proposals to change the zones that would benefit
23 Missouri; is that correct?

24 A. That's correct.

25 Q. So, other than the legal authority, if

1 the condition -- if the Commission were to consider
2 revising that condition to the KCP&L or GMO or GPE
3 would not initiate or support any proposal to merge
4 the transmission pricing zones that would increase
5 transmission prices in Missouri, would that
6 alleviate your concerns?

7 A. Well, I think there's two ways you could
8 do it or the Commission could do it that would
9 alleviate my concern. They could just stop with
10 KCPL, GMO, GPE agree not to initiate, and leave --
11 stop the condition there, and perhaps instead of
12 wording it the way you said it, I would word it
13 would not be precluded from supporting a combining
14 the pricing zones if it were beneficial to Missouri.

15 Q. Okay. Thank you.

16 And then Judge Burton asked you some
17 questions about the costs that could be incurred as
18 far as between the Westar transmission pricing zones
19 and the Kansas City Power & Light and GMO zones. Do
20 you remember that exchange?

21 A. I remember discussions with her about
22 the pricing zones, yes.

23 Q. Okay. Are you aware that the Westar
24 transmission prices currently are higher than the
25 KCP&L and GMO transmission pricing zones?

1 A. Yes.

2 Q. And do you remember yesterday in
3 testimony that Mr. Ives indicated that any
4 combination of the zones would be revenue neutral to
5 the company?

6 A. Yes.

7 Q. So, then wouldn't it necessarily mean,
8 since it's revenue neutral to the country -- to the
9 company, that a combination of the zones since the
10 Westar zone is higher than the two Missouri zones,
11 that that would increase the costs in Missouri and
12 lower the costs in Westar?

13 A. Well, I think it goes back to how it's
14 being proposed, if it was blended versus if Missouri
15 was just raised to Westar or Westar was just lowered
16 to Missouri. So, I think it depends on how it was
17 done, but...

18 Q. But would you agree that at least -- at
19 least one scenario there would be an increase to
20 transmission prices in Missouri?

21 A. I'm not familiar enough with the revenue
22 neutral part of it to be able to say definitively,
23 but I think it's a potential based on your
24 hypothetical.

25 Q. Right.

1 MR. JARRETT: Okay. Thank you.

2 JUDGE BURTON: Independence?

3 MS. ROBY: Yes. Just a few follow-up
4 questions to MJMEUC's discussion on this.

5 RECROSS-EXAMINATION

6 BY MS. ROBY

7 Q. You just testified that you're aware
8 that the Westar transmission prices are higher,
9 correct?

10 A. Correct.

11 Q. Than either KCP&L or GMO?

12 A. Correct.

13 Q. Are you aware of on the order of
14 magnitude how much higher their revenue requirement
15 is as compared to KCP&L's or GMO's?

16 A. No, I'm not.

17 Q. Okay. There's been testimony in this
18 proceeding and at the hearing yesterday about the
19 relative size of Westar compared to Great Plains
20 Energy and its two regulated utilities, correct,
21 currently as being relatively similar in size?

22 A. Correct.

23 Q. Okay. So, let's -- I'll speak in terms
24 of hypothetical. If Westar's total revenue -- well,
25 let me back up. You're aware that transmission

1 rates are cost-based rates, correct?

2 A. Correct.

3 Q. And that because they are cost-based
4 rates, they have to be justified by the cost
5 incurred by the utility proposing to recover those
6 costs, yes?

7 A. That's generally the concept, yes.

8 Q. Okay. So, let's hypothetically say that
9 the Westar utility has a transmission revenue
10 requirement of roughly 150 million a year.

11 A. Okay.

12 Q. And let's say KCP&L for its service
13 territory has a revenue requirement of roughly 37 or
14 38 million for the joint zone, the KCP&L joint zone.

15 A. Okay.

16 Q. And then let's say GMO has a revenue
17 requirement of roughly 30 million. Would you say
18 that combining those zones, status quo, all else
19 being equal and just looking at the cost-based
20 rates, that Missouri ratepayers would not be harmed
21 as a result of combining those three zones?

22 A. I guess I'm not following your scenario
23 with the different numbers.

24 Q. Well, if you -- if you combine, in that
25 hypothetical, KCP&L's zonal rate of roughly -- or

1 zonal revenue requirement of roughly -- what did I
2 say? 37?

3 A. 37 million.

4 Q. And then GMO is, what did I say,
5 roughly?

6 A. 30.

7 Q. 30. So, you have 67 million. That's
8 nowhere near the Westar total revenue requirement,
9 correct?

10 A. Correct. It's 67 compared to 150 in
11 your hypothetical.

12 Q. And if the sizes of those two in terms
13 of customers are relatively -- are similar, would it
14 not follow that when you combine those, the Westar
15 revenue requirement largely shifts over to the
16 Missouri side of the total combined area?

17 A. Well, again, I think it depends on how
18 you combine them. If you're just comparing 67 to
19 150 and you're -- to make the numbers easy say 60
20 and 150, and you're shifting 90 million over to
21 Missouri, then yes, that would be more.

22 MS. ROBY: Okay. No further questions.

23 Thank you.

24 JUDGE BURTON: Redirect?

25 MR. THOMPSON: Thank you, Judge.

1 REDIRECT EXAMINATION

2 BY MR. THOMPSON

3 Q. There were a lot of questions from the
4 bench and from cross-examiners about how the
5 conditions could be used by staff to protect
6 Missouri ratepayers.

7 Do you recall the acquisition by Great
8 Plains Energy of Aquila?

9 A. Yes.

10 Q. And that happened some years ago,
11 correct?

12 A. Correct.

13 Q. And isn't it true that -- let me make
14 that a direct question.

15 Did staff take any particular -- use any
16 particular methodology to protect the ratepayers of
17 KCPL and what became GMO from the costs of the
18 legacy debt that Aquila was burdened with?

19 A. I can't get into the specifics, but
20 generally, yes.

21 Q. If you know, did staff use a
22 hypothetical cost of debt in rate making with GMO?

23 A. I don't recall.

24 Q. You don't recall. But you would not
25 have any reason to dispute it, if I suggested that,

1 in fact, staff did?

2 A. No, I would not.

3 Q. Okay. And there were also questions
4 about the difference between the Missouri merger
5 standard and the Kansas merger standard.

6 A. Correct.

7 Q. Okay. And the Missouri standard is not
8 detrimental to the public interest; is that correct?

9 A. Yes, it is.

10 Q. So, if all of the benefits from the
11 transaction could be ex -- could be quantified and
12 summed and all of the detriments could be quantified
13 and summed and the sums balanced exactly so that the
14 detriments were not larger than the benefits, would
15 that not be an example of not detrimental to the
16 public interest?

17 A. If the two equaled each other, then that
18 would not be detrimental.

19 Q. And applying the Kansas standard, that
20 would require that the sum of the benefits exceed
21 the sum of the detriments; isn't that correct?

22 A. Yes.

23 Q. Now, with respect to the additional
24 conditions proposed by the Missouri Joint Municipal
25 Utilities Commission, familiarly known as MJMEUC,

1 **were you present yesterday when Mr. Ives was**
 2 **testifying?**

3 A. Yes, I was.

4 Q. Do you recall Mr. Ives testified that
 5 **ten years is a long time given that one can't**
 6 **predict how conditions will change?**

7 A. Yes, I do.

8 Q. Do you agree that it might be imprudent
 9 **to impose conditions lasting ten years?**

10 A. Yes.

11 Q. And you admitted earlier that it might
 12 **be impractical to impose a condition where the**
 13 **staffing of the Iatan plant could not be altered?**

14 A. That's correct. And to clarify on
 15 imposing a condition for ten years specific to that
 16 one. I mean, there may be some condition that it
 17 wouldn't -- would not be detrimental to put a time
 18 frame on.

19 Q. Okay. And with respect to the
 20 **redistricting of the pricing districts, the SPP**
 21 **pricing districts condition, you agree that that**
 22 **condition as currently expressed might prevent the**
 23 **GPE entities from pursuing a redistricting that**
 24 **would be beneficial to Missouri ratepayers?**

25 A. That's correct.

1 MR. THOMPSON: I have no further
2 questions.

3 JUDGE BURTON: This witness is excused.

4 THE WITNESS: Thank you.

5 JUDGE BURTON: A little housecleaning.
6 Just want to confirm there was reference to the
7 Empire staff stip and agreement that was shown. Was
8 that going to be offered?

9 MR. FISCHER: I can offer that. I just
10 was providing the case number for you. I can offer
11 it, though, if you'd like to see it.

12 JUDGE BURTON: It's up to you. I just
13 wanted to clarify and make sure we weren't missing
14 anything.

15 MR. FISCHER: No, I didn't intend to
16 offer it, but it is Case No. EM-2016-0213, which the
17 Commission has approved.

18 JUDGE BURTON: Okay. Why don't we take
19 a 15-minute break and we will come back from recess
20 at 9:30.

21 (A short recess was taken.)

22 JUDGE BURTON: Let's go back on the
23 record.

24 Staff, you may call your next witness,
25 and I believe she's actually already ready.

1 MR. THOMPSON: Staff will call Lisa
2 Kremer.

3 JUDGE BURTON: Ms. Kremer, would you,
4 please, raise your right hand. Do you swear or
5 affirm that the statements you're about to give will
6 be the truth, the whole truth and nothing but the
7 truth?

8 THE WITNESS: I do.

9 JUDGE BURTON: Thank you.

10 LISA KREMER,
11 having been called as a witness herein, having been
12 first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. THOMPSON

16 Q. Ms. Kremer, would you spell your last
17 name for the reporter.

18 A. Yes. Kremer, K-R-E-M-E-R.

19 Q. And how are you employed?

20 A. I'm the manager of the consumer and
21 management analysis unit of the Missouri Public
22 Service Commission.

23 Q. Ms. Kremer, did you contribute to
24 staff's investigation report in Case EM-2016-0324,
25 which was an investigation of Great Plains Energy's

1 announcement that it would acquire Westar Energy in
2 Kansas?

3 A. Yes, I do.

4 Q. And did you, in fact, prepare the
5 portion of that Roman numeral II, letter C, number
6 3, service quality detriments?

7 A. Yes.

8 Q. And that contribution is true and
9 correct to the best of your knowledge, isn't it?

10 A. Yes.

11 Q. And if you were to write that today, you
12 would write the same?

13 A. Yes.

14 Q. Do you have any corrections to it?

15 A. No.

16 MR. THOMPSON: Okay. Thank you.

17 I would tender Ms. Kremer for
18 cross-examination.

19 JUDGE BURTON: GPE?

20 MR. DORITY: No questions at this time,
21 Judge.

22 JUDGE BURTON: OPC?

23 MR. OPITZ: No questions, Judge. Thank
24 you.

25 JUDGE BURTON: MJMEUC?

1 MR. JARRETT: No questions, Judge.

2 Thank you.

3 JUDGE BURTON: Independence?

4 MS. ROBY: No questions. Thank you.

5 JUDGE BURTON: Any questions from the
6 bench?

7 CHAIRMAN HALL: Yes.

8 Good morning, Ms. Kremer.

9 THE WITNESS: Good morning.

10 CHAIRMAN HALL: So, my understanding is
11 that your contribution to the investigative report
12 are pages 38 through 51?

13 THE WITNESS: I believe that's correct,
14 sir. I'll double -- yes.

15 CHAIRMAN HALL: Okay. When I -- when I
16 look through this portion of the report, I read a
17 narrative about potential detriments that can result
18 from mergers. Is that correct?

19 THE WITNESS: Yes.

20 CHAIRMAN HALL: I did not find specific
21 concerns about this particular merger from a
22 customer service perspective; is that correct?

23 THE WITNESS: Well, I guess I'm not sure
24 if it's correct or not.

25 CHAIRMAN HALL: Well, why don't you

1 characterize for me what potential customer service
2 concerns set forth in the report relate to this
3 particular transaction.

4 THE WITNESS: If you can give me just a
5 moment. I've read my section a couple of times
6 recently, but let me just -- let me glance back
7 through it just to make sure that what you're saying
8 is accurate.

9 I'm looking back through. Just a
10 moment. I don't know if I -- I can't -- let's see
11 here. I don't recall if I talked about the
12 acquisition premium or not. I think I did address
13 the fact that at least at the time of this report we
14 really had no specific plans on how KCPL and GPE
15 would operate in a post-merged Westar environment
16 and perhaps that was teed up as a potential concern,
17 but I think this was really to explain that there
18 can be detriments in mergers and acquisitions. I
19 think that was really the intent of it.

20 CHAIRMAN HALL: And in a nutshell, is
21 the potential detriment from a merger a function of
22 a -- largely a function of a reduction in head count
23 at call centers or a reduction in employees that are
24 focused on customer concerns?

25 THE WITNESS: Well, I think there's

1 several things. That's one of them certainly. When
2 there's a desire to reduce costs, obviously, there
3 can be head count loss and that can result in a
4 service decline. There can be outsourcing and
5 outsourcing in and of itself isn't necessarily a
6 concern, but it creates a different requirement, I
7 think, on the utility to manage that outsourced
8 entity. There's also system integration risks that
9 we've seen in the past with other utilities. When
10 you're merging billing systems, when you're merging
11 CIS systems, if you're merging meter reading, if
12 you're -- there can be other systems that I'm not
13 listing, but any -- and if you think of it, any type
14 of transition, you know, if you think -- I use the
15 example of changing lanes on the highway. You're
16 moving from one lane to the next. There's a risk
17 when you're not operating the way that you normally
18 have. So, that's -- but the cost-cutting is a, I
19 would say, the overarching significant concern.

20 CHAIRMAN HALL: I assume that you
21 were -- that you are familiar with the stipulation
22 and agreement entered into between staff and the
23 companies in the affiliate transaction case?

24 THE WITNESS: Yes.

25 CHAIRMAN HALL: Particularly those

1 related to customer service conditions?

2 THE WITNESS: Yes.

3 CHAIRMAN HALL: Is it -- is it your
4 belief that those conditions address all of your
5 concerns related to customer service as a result of
6 this transaction?

7 THE WITNESS: I'm struggling a little
8 bit with that, Chairman.

9 CHAIRMAN HALL: With the word "all"?

10 THE WITNESS: Pardon me?

11 CHAIRMAN HALL: Was the word "all"
12 what's causing you to struggle a little bit?

13 THE WITNESS: Yes. And -- yes.

14 CHAIRMAN HALL: Would you prefer to use
15 Ms. Dietrich's term "mitigate"?

16 THE WITNESS: And as you pointed out
17 this morning, that is a big word and I was trying to
18 think in my seat back there what does that mean.

19 The conditions may help possibly control
20 some risk. Let me think for just a moment how it
21 may be better to answer that.

22 It will give staff some information to
23 have in its hands, but I would say that that
24 information is after the fact, and I think the word
25 reactive was mentioned this morning, that we would

1 hopefully be in the position maybe to better react
2 if there are detriments.

3 CHAIRMAN HALL: So, the first customer
4 service condition is that KCP&L and GMO will meet or
5 exceed the customer service operational levels
6 currently provided.

7 THE WITNESS: Yes, sir.

8 CHAIRMAN HALL: So, those two companies
9 are obligated under -- would be obligated under
10 this -- under this condition to at a minimum offer
11 the same customer service that they currently offer?

12 THE WITNESS: That's what this says,
13 yes.

14 CHAIRMAN HALL: And so, the issue would
15 be whether or not they would actually comply with
16 that condition?

17 THE WITNESS: Yes.

18 CHAIRMAN HALL: And your concern as to
19 whether or not they could comply would be a function
20 of two issues, merging of systems and cost
21 cutting; is that fair enough?

22 THE WITNESS: I would say there could be
23 something else I'm not thinking of off the top of my
24 head, but I would say the financial pressure, yes.

25 CHAIRMAN HALL: Well, concerning the

1 cost-cutting, were you in the hearing room when
2 Mr. Noblet testified?

3 THE WITNESS: I was -- I was here for a
4 moment and then I went upstairs and listened to him
5 on the computer.

6 CHAIRMAN HALL: Well, he testified that
7 the -- that KCP&L and GMO have committed to keeping
8 its -- their 100-person contact center in Raytown
9 open and without any reduction in head count. Is
10 that your understanding as well?

11 THE WITNESS: I believe that's what he
12 said.

13 CHAIRMAN HALL: If that's, in fact,
14 true, does that alleviate your concern about
15 potential cost-cutting as it relates to customer
16 service?

17 THE WITNESS: On that particular issue.
18 If it proves -- if it comes to fruition as he says,
19 that would -- you know, all things being equal, that
20 would eliminate that or -- excuse me, mitigate that
21 concern if that -- if that occurs.

22 CHAIRMAN HALL: Now, I don't see in the
23 various stipulations that obligation. Have I missed
24 it somewhere; do you know?

25 THE WITNESS: I don't believe you have.

1 CHAIRMAN HALL: Would you be more
2 comfortable if we were to approve the transaction
3 and include a condition such as this that we make
4 that, that condition express that they keep that
5 contact center open and staff it as it's currently
6 staffed?

7 THE WITNESS: That would -- that would
8 be of comfort to me, and if it is -- and if it is
9 staffed with company employees. I don't know that
10 you can go that far, but that it is not outsourced.

11 CHAIRMAN HALL: Concerning the merging
12 of systems, billing, etc., are you aware of any
13 efforts or any plans that KCP&L and GMO might have
14 to do that?

15 THE WITNESS: I think, and I hope
16 this -- I don't believe this is an HC issue. I'm
17 sure the company will stop me if it is. But I
18 believe the purchase of the new CIS system that has
19 been addressed in this proceeding, my understanding
20 is is that I think Westar was about to engage in
21 something similar and I think the -- that system
22 will serve both Westar now, that is the plan I
23 believe, to serve both Westar and KCP&L, GMO. So,
24 that will be coming down.

25 CHAIRMAN HALL: And does that concern

1 you?

2 THE WITNESS: Well, any time you have a
3 new system -- and we meet with KCPL on a quarterly
4 basis or thereabouts, and it wouldn't take much
5 probably to look back through prior Commission cases
6 when there have been new systems installed and there
7 are always challenges. Often you'll hear people
8 say, well, it's going to be a seamless transition,
9 it will be seamless, and my experience is I don't
10 know that I've ever seen a seamless transition on a
11 major system like that. So, yes, there's, there's,
12 you know, there's, there's challenges for KCPL and
13 GMO just as they embark on a new CIS, so...

14 CHAIRMAN HALL: You describe at some
15 length in your portion of the report some of the
16 customer service concerns that existed at Aquila.

17 THE WITNESS: Yes.

18 CHAIRMAN HALL: But I think those
19 customer service concerns were ultimately addressed
20 sometime after the merger; is that correct?

21 THE WITNESS: No. After the purchase by
22 GPE of Aquila?

23 CHAIRMAN HALL: Yes.

24 THE WITNESS: No, I can't say that, sir,
25 because in going back into history, Aquila was in

1 trouble for quite a while and there had been a lot
2 of Commission attention placed on Aquila. The
3 Commission had ordered at least -- well, I would say
4 probably multiple investigations, and it wasn't just
5 the Missouri Commission. It was the Kansas
6 Corporation Commission. So, they were being pressed
7 both from the KCC and the MoPSC. We had at -- at
8 the time they were acquired, we had had the last two
9 years of performance, and this is just call center
10 and that's just one aspect of service quality, but
11 things had gotten much better at Aquila in terms of
12 that particular metric, but again, we had given it
13 our all in terms of trying to bring some of that to
14 a more reasonable level of performance. And I
15 believe I may have a chart or an attachment to my
16 report here, possibly, that will give you some of
17 those metrics on Aquila, the prior two years, I
18 think, before they were purchased, but I'm not sure
19 of that.

20 CHAIRMAN HALL: Well, what is --
21 what's -- what is the current status of various
22 customer service metrics at GMO versus KCP&L?

23 THE WITNESS: Well, and I -- you know,
24 they are combined. So, you know, if you have KCPL's
25 performance, you have GMO's performance, and they

1 are -- I'm very pleased right now with what I see.

2 JUDGE BURTON: Excuse me, Ms. Kremer.

3 THE WITNESS: I'm sorry.

4 JUDGE BURTON: Could you, please, move
5 the microphone closer.

6 THE WITNESS: Oh, I'm sorry.

7 I'm pleased with the performance that I
8 see, even though it is a little bit less, I'll be
9 honest with you, than where we were with Aquila in
10 terms of some of the basic things of call center
11 metrics, but it is certainly in the realm of reason.
12 It's very good. You know, the call deferral
13 technology. I am very appreciative of the way that
14 the customer service folks at KCPL on that
15 particular issue are managing that performance and
16 their philosophy of what they tell us in terms of
17 how they handle, how they view call deferral, how
18 they view abandoned call rates, average speed of
19 answer, the training of their reps and that type of
20 thing, so...

21 CHAIRMAN HALL: Are you on the
22 integration team from staff's integration team?

23 THE WITNESS: Staff's integration team?

24 CHAIRMAN HALL: Well, will you be
25 involved in monitoring the integration of, assuming

1 we approve the transaction, of Westar, GMO and
2 KCP&L?

3 THE WITNESS: I don't know. I will be
4 getting their performance numbers. So, I'm
5 assuming -- as I always have. So, but if there's a
6 particular team -- and it may just be wording. If
7 there's a particular team that's going to be doing
8 that, I'm not, not aware of that, that that's their
9 complete charge. But yes, I will be monitoring.
10 I'll be monitoring their performance.

11 CHAIRMAN HALL: Thank you.

12 THE WITNESS: You're welcome.

13 COMMISSIONER STOLL: I have no
14 questions. Thank you.

15 COMMISSIONER KENNEY: I have no
16 questions. Thank you.

17 COMMISSIONER RUPP: None for you today.

18 JUDGE BURTON: Any recross from GPE,
19 KCP&L and GMO?

20 MR. DORITY: Just a few. Thank you.

21 RECROSS-EXAMINATION

22 BY MR. DORITY

23 Q. Good morning, Ms. Kremer.

24 A. Good morning.

25 Q. There was some discussion with the bench

1 regarding the recent merger cases before the
2 Commission and I believe the Algonquin/Empire
3 stipulation in particular and I think Ms. Dietrich
4 addressed that when she was on the stand. Are
5 you -- you were involved with that particular case,
6 were you not?

7 A. I was.

8 MR. DORITY: May I approach?

9 JUDGE BURTON: You may.

10 Q. (By Mr. Dority) I'm going to hand you,
11 Ms. Kremer, a copy of the stipulation agreement that
12 was entered in Case No. EM-2016-0213.

13 A. Uh-huh.

14 Q. And I'll call your attention to
15 paragraph ten, which begins with customer service
16 condition.

17 You were also discussing with Chairman
18 Hall the staff stipulation and agreement with the
19 companies that's been entered in the EE case that,
20 of course, is now consolidated with this EM docket,
21 and I believe he referred you to page 10 of the
22 staff stipulation and agreement. Do you have that
23 in front of you or with you?

24 A. I do. Just one moment. The stip in the
25 current case?

1 Q. Yes.

2 A. I have that somewhere.

3 Yes.

4 Q. Could you turn to page 10?

5 A. Yes.

6 Q. And again, I think the Chairman read it,
7 but would you mind repeating for the record the very
8 first point under customer service conditions number
9 one.

10 A. Sure. KCP&L and GMO will meet or exceed
11 the customer service and operational levels
12 currently provided to their Missouri retail
13 customers.

14 Q. And then would you mind turning to the
15 Empire stipulation that I left with you --

16 A. Yes.

17 Q. -- and read the first paragraph from
18 that one?

19 A. Empire and Liberty will strive to meet
20 or exceed the customer service and operational
21 levels currently provided to their customers.

22 Q. So, for the Empire/Algonquin stipulation
23 and agreement the companies are to strive to meet,
24 and this one that we're looking at here applicable
25 to this transaction is KCP&L and GMO will meet or

1 exceed the customer service. Would you consider
2 that to be more stringent?

3 A. Yes.

4 Q. Thank you.

5 Would it surprise you to learn that in
6 the Laclede/MGE acquisition case, which I believe
7 you were also involved with, that was Case
8 No. GM-2013-0254.

9 A. And I have that one with me.

10 Q. Well, very good. If you wouldn't mind
11 again looking at the -- I believe it starts at page
12 17.

13 A. Yes.

14 Q. Well, I'm going to find it.

15 Yes. I'm sorry. At the bottom of page
16 17 I believe it's section 12 begins the service
17 quality conditions for that stip?

18 A. Yes.

19 Q. And A is customer service performance
20 reporting?

21 A. Yes.

22 Q. And again, the -- could you read the
23 second sentence in that particular paragraph?

24 A. Both Laclede Gas and its MGE division
25 will strive to meet or exceed the customer service

1 and operational performance levels currently
2 provided to its customers.

3 Q. Thank you.

4 And if -- do you have the staff
5 investigation report that's been discussed --

6 A. Yes.

7 Q. -- with you?

8 A. Give me just a moment.

9 Q. Could you, please, turn to page 42 in
10 that report.

11 A. I'm there.

12 Q. You indicate the metric information the
13 staff currently receives from the companies has
14 indicated performance that the staff considers to be
15 within an acceptable range for those specific
16 service indicators; is that correct?

17 A. Just one moment. Let me make sure I'm
18 at the right paragraph.

19 Q. Sure.

20 A. Yes.

21 Q. And following up on your -- I think it
22 was your final discussion with the Chairman. You
23 also indicate, and I think it's back on page 48 --

24 A. Okay.

25 Q. -- of the report. You make the

1 statement that in staff's opinion KCPL's performance
2 has been consistently and solidly acceptable and
3 reasonable and including its control of the minimal
4 usage of call deferral technology to date. Is that
5 an accurate reading?

6 A. That's an accurate reading.

7 Q. Thank you.

8 MR. DORITY: I believe that's all I
9 have. Thank you.

10 JUDGE BURTON: OPC?

11 MR. DORITY: Thank you, Ms. Kremer.

12 JUDGE BURTON: OPC?

13 MR. OPITZ: No, thank you, Judge.

14 JUDGE BURTON: MJMEUC?

15 MR. JARRETT: No, thank you.

16 JUDGE BURTON: Independence?

17 MS. ROBY: Nothing further. Thank you.

18 JUDGE BURTON: All right. Any redirect?

19 MR. THOMPSON: Thank you, Judge.

20 REDIRECT EXAMINATION

21 BY MR. THOMPSON

22 Q. Ms. Kremer, in the absence of any kind
23 of stipulation and agreement, does your department
24 have mechanisms and tools to enforce a company to
25 meet minimally acceptable levels of service quality?

1 A. Yes. And I made a note the other day
2 what tools we have available. I'm going to look at
3 my note for just a moment. We do have other tools.

4 **Q. So, even if there was no stipulation and**
5 **agreement concerning customer service quality, you**
6 **have methods available to you to require the Great**
7 **Plains entities to meet acceptable standards of**
8 **customer service quality?**

9 A. We try. We can try, yes.

10 **Q. Well, I understand that there might be**
11 **some give-and-take, but you have a means to go after**
12 **them --**

13 A. Yes.

14 **Q. -- if you feel the quality is**
15 **unacceptable?**

16 A. Yes.

17 **Q. Okay. And with respect to the**
18 **conditions in the stipulation and agreement that**
19 **staff negotiated with the company in this case on**
20 **page 10, the first provision which we've heard**
21 **repeatedly and I'm going to read it again, KCPL and**
22 **GMO will meet or exceed the customer service and**
23 **operational levels currently provided to their**
24 **Missouri retail customers. Do you see that?**

25 A. Let me get there.

1 Yes.

2 Q. That's a very broad commitment, wouldn't
3 you agree?

4 A. A broad commitment? Yes.

5 Q. Would you characterize it as a strong
6 commitment?

7 A. I would characterize it as a strong
8 commitment.

9 Q. And looking at paragraph two of that
10 section it says that these companies will continue
11 to meet with your staff on a periodic basis
12 quarterly or as staff deems necessary. Do you see
13 that?

14 A. Yes.

15 Q. So, that essentially says, wouldn't you
16 agree, that staff gets to decide how often you will
17 meet?

18 A. That's what this says, yes.

19 Q. And going to the next sentence, it says,
20 Staff may request additional periodic meetings. Do
21 you see that?

22 A. That's what it says.

23 Q. Paragraph three has to do with
24 information you will be provided after the closing
25 of the transaction. Do you see that?

1 A. Yes.

2 Q. And looking where that paragraph runs
3 over from page 10 to page 11 it says, This
4 information shall be provided on a monthly basis
5 thereafter. Do you see that?

6 A. Yes.

7 Q. In No. 4 do you see it says that nothing
8 in this stipulation prevents any party from
9 recommending additional conditions in a future case?

10 A. Yes.

11 Q. And if you flip over to page 14, would
12 you agree with me that in paragraph C and D on page
13 14 and running over onto page 15 there are
14 additional conditions reflecting what will happen
15 after the transaction is closed?

16 A. Mr. Thompson, I'll trust what you're
17 saying is correct. I'm trying to read through here
18 quickly. If you're saying it's in there, I'm sure
19 it is.

20 Q. Well, do you want to take a moment and
21 read those two paragraphs.

22 A. (The witness complied.)

23 And I'm -- what was your question?

24 Q. I was merely asking you to agree that in
25 these two paragraphs the stipulation and agreement

1 provides further conditions in the form of a
2 description of what will happen after the
3 transaction closes?

4 A. Yes.

5 Q. So, with all this in mind, tell the
6 Commission what is lacking? What is lacking that
7 would make you more comfortable with this
8 stipulation and agreement?

9 A. Well, I'm not even sure of the -- we
10 have a staff stip, Mr. Thompson, as you know. The
11 comments I have given you, our own staff back the
12 couple of times I saw the stip, that would make me
13 feel better.

14 Q. Okay. Tell the Commission what those
15 things are.

16 A. Well, all right.

17 Q. If there's something more that's
18 necessary to protect the public --

19 A. Well, and I went back -- I went back to
20 the stip in the Laclede/MGE merger.

21 Q. Okay.

22 A. That was my starting point for this. I
23 realize we had the Algonquin document after the
24 fact, and this proceeding has caused me to reflect
25 on when we're doing these types of things should we

1 try to be more boilerplate. I haven't taken that
2 approach until -- or even really thought about that.
3 There are some things, but we look at typically size
4 of utility, we look at risk, we look at our past
5 history with them and their past performance
6 history. And I would say that in my judgment, as I
7 have said in my comments the couple of times that I
8 had an opportunity, I would go back to what was
9 required of Laclede and MGE, which --

10 **Q. Was something required of Laclede and**
11 **MGE beyond what has been required here?**

12 A. In my opinion -- in my opinion, yes.
13 And then the other things that I raised through
14 internal staff communications that, as I understood,
15 were negotiated out. I totally respect and
16 appreciate that, but you've asked me and --

17 **Q. Do you have anything specific?**

18 A. I do. Give me just a moment. I made a
19 few notes.

20 One of the things that bothers me is the
21 period of time of reporting the head counts. You
22 want to stop me here?

23 **Q. I'm sorry. Continue.**

24 A. Okay. Instead of 45 days after a
25 quarter, nearly five months after there have been

1 staffing reductions, to go back to the Laclede/MGE
2 document that gives us 30 days after a month.

3 Q. Okay. So, you would prefer 30 days
4 rather than 45?

5 A. I would because it gives us a little
6 quicker opportunity to try to respond or mitigate
7 concerns.

8 The lack of detailed plans for
9 integration. Maybe those are becoming, and forgive
10 me if that's mentioned somewhere in the staff stip,
11 but the fact that we don't have a lot of information
12 about how things are going to be operated after the
13 fact and I think the company has, the last my memory
14 is, they're saying they're working on that. They
15 don't know. You know, another thing that bothers me
16 is the fact that, and again, this is my training
17 from 30 years, of, you know, you don't limit your
18 discovery ever, and the fact that on surveys we have
19 said after two years after the acquisition I think
20 has been approved we will only get survey -- we can
21 request for survey information during the course of
22 a rate case. That was a concern of mine. I sent
23 you some comments back, as you recall, in October.
24 The issues around customer data. I felt like this
25 was an opportunity for us to protect -- I'm sorry.

1 Go ahead.

2 Q. What I'd like you to do is tell the
3 Commission what additional conditions, if any,
4 should be imposed in this transaction from the point
5 of view of customer service. Not how unhappy you
6 might be with how the negotiation proceeded, but
7 what conditions, what specific conditions should be
8 imposed?

9 A. Mr. Thompson, I'm not -- if my intention
10 sounds like I'm unhappy or I'm trying to tell you
11 I'm unhappy with the way the negotiations were,
12 that's not my intent at all. I thought you had
13 asked me what could I possibly give, what could I
14 offer that would make me feel or, in my opinion, put
15 additional requirements on the stip. That's what I
16 was attempting to do. That's my intention.

17 Q. Okay.

18 A. Okay. Well, I'm not prepared with a
19 laundry list of conditions. I had made a few notes
20 in case the Commission asked these questions. But,
21 you know, a provision I had had in one of the
22 versions was to notify staff and OPC of all
23 deficiencies, failures or performance declines with
24 all customer-facing and impacting processes. For
25 them to have that requirement on them to tell us

1 when they know when they first see a deficiency to
2 let us know. I don't believe that made it into that
3 particular version. We had greater specificity in
4 the Laclede/MGE document on, again, the staffing
5 reductions and I would go back to that. There
6 were -- let's see. There were other provisions that
7 I had had in my prior draft that I don't see -- I
8 didn't see, but I don't have a good list with me,
9 but I just have a few things that I had offered
10 before.

11 MR. THOMPSON: Thank you. I have no
12 further questions.

13 JUDGE BURTON: All right. Thank you,
14 Ms. Kremer. You may be excused.

15 Staff can call its next witness. Just
16 want to let the parties know since agenda's at
17 11:30, I plan to take a recess at 11:00. So, if
18 that means staff wants to revise who it calls next
19 or if you need to plan accordingly for timing,
20 cross-examination.

21 MR. THOMPSON: Well, we can start and
22 then interrupt the examination; isn't that correct?

23 JUDGE BURTON: Yes.

24 MR. THOMPSON: Okay. Well, staff would
25 call Mark Oligschlaeger.

1 JUDGE BURTON: Would you, please, raise
2 your right hand. Do you swear or affirm that the
3 statements you're about to give will be the truth,
4 the whole truth and nothing but the truth?

5 THE WITNESS: I do.

6 JUDGE BURTON: Thank you. You may be
7 seated.

8 MARK OLIGSCHLAEGER,
9 having been called as a witness herein, having been
10 first duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. THOMPSON

14 Q. Please spell your last name for the
15 reporter.

16 A. Sure. My name is Mark L. Oligschlaeger,
17 O-L-I-G-S-C-H-L-A-E-G-E-R.

18 Q. And how are you employed?

19 A. I am the -- currently employed as the
20 manager of the auditing department for the Missouri
21 Public Service commission.

22 Q. Mr. Oligschlaeger, did you contribute to
23 the staff investigation report filed in Case
24 EM-2016-0324, which has been marked as Exhibit 20-HC
25 and NP in this case?

1 A. I did.

2 Q. And did you contribute the section on
3 resource and operational detriments?

4 A. I did.

5 Q. And if you were to -- first of all, do
6 you have any corrections or additions or changes to
7 that section?

8 A. I do not.

9 Q. And if you were to write it again today,
10 would you write it the same?

11 A. Based on the facts and knowledge I had
12 at the -- if I had the same facts and knowledge, I
13 would write it the same. I mean, since I know more
14 about certain things, there may be -- there might be
15 some changes.

16 Q. I understand. And to the best of your
17 knowledge and belief, is the information contained
18 in your contribution true and correct?

19 A. Yes.

20 MR. THOMPSON: Thank you. I would
21 tender Mr. Oligschlaeger for cross-examination.

22 JUDGE BURTON: Thank you.

23 I just want to remind all the parties
24 that if their microphones are on parties that are
25 listening can hear.

1 GPE?

2 MR. DORITY: No questions at this time.

3 Thank you.

4 JUDGE BURTON: OPC?

5 MR. OPITZ: No, thank you, Judge.

6 JUDGE BURTON: MJMEUC?

7 MR. JARRETT: No questions, Judge.

8 Thank you.

9 JUDGE BURTON: Independence?

10 MS. ROBY: No questions. Thank you.

11 JUDGE BURTON: Questions from the

12 Commission?

13 CHAIRMAN HALL: Good morning.

14 THE WITNESS: Good morning.

15 CHAIRMAN HALL: My understanding is that

16 you are responsible for pages 35 through 37 of

17 staff's investigative report; is that correct?

18 THE WITNESS: That's correct.

19 CHAIRMAN HALL: Were you directly

20 involved with any other portion of the report?

21 THE WITNESS: No, I was not.

22 CHAIRMAN HALL: Okay. So, looking at

23 pages 35 through 37, you conclude on page 37 with

24 staff fears that tasking these employees, and I

25 believe you're referring to KCP&L's employees, with,

1 first, the acquisition and integration of Westar
2 and, second, the operation of Westar would
3 necessarily result in a loss of operational
4 efficiency and the subsidization of GPE's
5 acquisition by Missouri ratepayers. Is that -- was
6 that your conclusion?

7 THE WITNESS: Yes.

8 CHAIRMAN HALL: Has that concern been
9 addressed -- has it -- has that concern been
10 addressed?

11 THE WITNESS: Yes, it has.

12 CHAIRMAN HALL: Explain.

13 THE WITNESS: All right. Well, two
14 things. First of all, the stipulation entered into
15 by the staff and GPE and later supplemented with the
16 additional provisions from OPC contained sections
17 which called for on a fast-track discussions of
18 revisions to the cost allocation manual, which would
19 in general address how the companies would allocate
20 payroll costs in particular in the future, not only
21 between regulated and nonregulated lines of
22 business, but also between regulated utilities
23 including Westar. In addition to that --

24 CHAIRMAN HALL: Well, before you move
25 on, what condition are you referring to? Can you

1 give me a page number?

2 THE WITNESS: Sure. It is section C,
3 paragraph six.

4 CHAIRMAN HALL: So, this provision
5 requires KCP&L and GMO to meet with staff to discuss
6 how employees will be allocated?

7 THE WITNESS: In general, yes.

8 CHAIRMAN HALL: It doesn't make any
9 commitment as to how they will be allocated. It
10 simply indicates that there will be a meeting?

11 THE WITNESS: That is correct, but there
12 is one additional thing that I think follows onto
13 that, which is since the time that this report was
14 prepared we have become aware that, unlike the
15 assumption that was reflected in the staff's report,
16 it is the intent of GPE to have a separate set of
17 Westar employees to which their payroll time would
18 be charged by default. There would still be some
19 need for further assignment and allocation of costs,
20 but that also mitigates the concern we expressed
21 here.

22 CHAIRMAN HALL: That's my understanding
23 as well. Is that -- is that commitment set forth
24 anywhere in this stipulation or elsewhere?

25 THE WITNESS: I don't believe that that

1 is a commitment within a, certainly, a Missouri
2 stipulation. I'm not sure about what happened in
3 Kansas, but that's our understanding of an
4 operational decision GPE has made.

5 CHAIRMAN HALL: Are you aware of
6 statements as to a head count reduction resulting
7 from this transaction?

8 THE WITNESS: In broad terms, yes.

9 CHAIRMAN HALL: And what is your
10 understanding of that head count reduction?

11 THE WITNESS: That there would be, as
12 part of the merger implementation process, across
13 all the companies there would be some head count
14 reductions, efficiencies, elimination of redundant
15 positions and it would be intent to have those
16 reductions in some proportionate manner between
17 Kansas and Missouri so neither jurisdiction, I
18 guess, suffers materially greater loss of employees
19 or perhaps quality of service than the other.

20 CHAIRMAN HALL: My understanding is that
21 that head count reduction is somewhere between six
22 and seven hundred. Is that yours as well?

23 THE WITNESS: To be honest, I'm not
24 familiar with the numbers.

25 CHAIRMAN HALL: Does that head count

1 reduction cause you any concerns as to a loss of
2 operational efficiency?

3 THE WITNESS: And I apologize. I've not
4 done any kind of in-death analysis of this question
5 in comparison to past transactions. It is expected
6 that there would be head count reductions from any
7 major merger.

8 CHAIRMAN HALL: But does that cause you
9 any concern as to operational efficiency?

10 THE WITNESS: I think that is something
11 we would need to look at following implementation of
12 the merger in terms of what areas of the company are
13 impacted and where.

14 CHAIRMAN HALL: Well, I'm not sure that
15 there will be a merger if we have concern about
16 operational efficiency. So, what I'm looking for is
17 whether or not staff has any recommendation or
18 understanding as to how operational efficiency might
19 be impacted by this merger with the plans of the six
20 to seven hundred reduction in head count.

21 THE WITNESS: Well, at the time we wrote
22 this, and I'm not sure how much that's different
23 today, there were no concrete plans to my knowledge
24 in terms of where exactly the company expected
25 specific savings in terms of employee reductions to

1 occur. Those plans may be farther along now. I
2 suspect they are to some degree. I am not
3 personally knowledgeable of those.

4 CHAIRMAN HALL: So, I think you were
5 starting down a path of ways in which your concern
6 about operational efficiency were addressed and the
7 first was in a provision on page 10 of the
8 stipulation and agreement and then I think you were
9 moving on to another location.

10 THE WITNESS: Well, what I intended to
11 express is, yeah, there is certainly provisions
12 within the stipulation which helped mitigate our
13 concerns in this area, and I also added to that
14 knowledge of the subsequent plans of the company not
15 to structure their, I guess, assignment of employees
16 in the way that we had assumed or perhaps feared
17 that they would do that.

18 CHAIRMAN HALL: So, are there any other
19 provisions in the stipulation, either staff's or
20 OPC's or in the additional conditions set forth in
21 Ms. Dietrich's surrebuttal, are there any additional
22 conditions that help mitigate that concern?

23 THE WITNESS: This is the prime -- the
24 one I identified in terms of CAM discussions was the
25 one from the staff stipulation. There were

1 subsequent provisions, I think, in the OPC
2 stipulation calling for an independent party review
3 and evaluation of cost allocation manual procedures,
4 cost allocation procedures in general that I think
5 also go to this.

6 CHAIRMAN HALL: Which also helps
7 mitigate that concern for you?

8 THE WITNESS: Yes.

9 CHAIRMAN HALL: Are you familiar with
10 Mr. Kemp's testimony on behalf of GPE, GMO and KCP&L
11 that the transaction's estimated savings over
12 three-and-a-half years to be approximately \$426
13 million and ongoing savings beyond that at
14 approximately \$200 million per year?

15 THE WITNESS: I have read the testimony.
16 I'm generally familiar with those numerical
17 statements. I've not done an in-depth review of
18 them.

19 CHAIRMAN HALL: Based on your review of
20 the testimony and your background in utility
21 regulation, are those estimates reasonable?

22 THE WITNESS: I'm not sure I've done
23 enough work to say they're reasonable or
24 unreasonable. What I can say is having reviewed the
25 testimony, it certainly is very evocative of prior

1 merger and acquisition stipulations in terms of the
2 types of savings that would be expected from a
3 merger of two electric utilities, and I think I can
4 say that certainly the estimates appear to be within
5 the same general broad ballpark of what we've seen
6 before.

7 CHAIRMAN HALL: And his testimony was
8 also that the industry average or the industry
9 ballpark for savings from transactions such as this
10 is somewhere between 7 and 10. Is that a range that
11 seems reasonable to you?

12 THE WITNESS: Again, based just on my
13 recollection of past transactions, yes, I would
14 agree that would be reasonable.

15 CHAIRMAN HALL: Were you involved in the
16 Aquila transaction?

17 THE WITNESS: The KCPL -- or the
18 GPE/Aquila transaction?

19 CHAIRMAN HALL: Yes.

20 THE WITNESS: I was not assigned to that
21 case. I'm somewhat familiar, obviously, with some
22 of the issues and the Commission's decisions.

23 CHAIRMAN HALL: Okay. As has been
24 discussed a couple of times in this -- in this
25 hearing, the Kansas staff has stated that it does

1 not believe that the conditions that were at issue
2 in that case could completely insulate Kansas
3 ratepayers from a rate increase resulting from the
4 transaction. Do you -- is that your understanding
5 as well?

6 THE WITNESS: Generally, yes.

7 CHAIRMAN HALL: Do you believe that the
8 conditions that have been agreed to by the companies
9 that were proposed by staff, OPC, that they will
10 insulate Missouri ratepayers from any detrimental
11 effect from this transaction?

12 THE WITNESS: Well, let me start out by
13 saying I think I was specifically tasked to in
14 particular look at the commitments made by the
15 company in regard to treatment in rate cases of
16 merger savings and merger costs, and the conditions
17 reflected in the stipulation regarding those areas
18 are generally consistent with what we have sought in
19 the past and have actually agreed to in stipulations
20 in which the Commission has subsequently adopted.
21 So, I mean, I cannot necessarily comment that much
22 on quality of service or, you know, the financial
23 aspects of it, but in the areas I would cover I
24 would say I'm satisfied that this would reasonably
25 mitigate the risk associated with treatment -- rate

1 treatment of merger savings and costs.

2 CHAIRMAN HALL: Okay. I'm going to ask
3 you now to first explain and then comment on some,
4 some testimony by Mr. Hempling in the Kansas
5 proceeding, and this concerns the issue of whether
6 or not Kansas ratepayers will end up having to pay
7 some portion of the acquisition premium. And
8 obviously, my concern is whether or not the
9 conditions that are at issue in this case will
10 properly insulate Missouri ratepayers from having to
11 pay any portion of the acquisition premium. So, the
12 first issue that he raises is that having Westar
13 charge rates based on equity level returns when part
14 of Westar's equity will be funded by lower-cost
15 debt. That is the first way that GPE may be able to
16 recover part of the acquisition premium from Kansas
17 ratepayers, or at least that's the allegation. So,
18 first of all, can you explain what he is saying
19 there?

20 THE WITNESS: I'm not totally certain,
21 but based just generally on my knowledge of some of
22 what's going on in Kansas, I think that is a general
23 reference to the capital structure issue, that it is
24 possible that the joint applicants may seek a
25 hypothetical capital structure or something other

1 than reflected in rates, something other than what
2 the total company debt and equity ratio would
3 provide for. If that is true, then that is
4 something that I think can be addressed in the next
5 rate case here with all parties being able to argue
6 back and forth in terms of how the capital structure
7 issue relates to an ability, perhaps, to recover
8 merger costs or maybe the acquisition premium in
9 particular.

10 CHAIRMAN HALL: The second is using
11 Westar's profit to extract value from GPE's net
12 operating losses.

13 THE WITNESS: That is -- again, I would
14 somewhat speculate or surmise that that may have to
15 do with the income tax implications of this
16 transaction and that is something, again, I think we
17 can fully -- will fully look at and examine in
18 subsequent rate proceedings to see how this all has
19 worked out in terms of the tax benefits available to
20 Missouri ratepayers.

21 CHAIRMAN HALL: The third is keeping
22 merger-related savings for themselves between rate
23 cases rather than passing them through to customers.

24 THE WITNESS: That one I think we have
25 in the past expressed a belief that there is nothing

1 improper, inherently wrong with allowing a company
2 to keep merger benefits for a reasonable period of
3 time through the normal regulatory lag process. So,
4 without necessarily understanding his point in
5 greater detail, I can't say what -- that that
6 particular part of the regulatory plan would bother
7 me that much.

8 CHAIRMAN HALL: He goes on to say that
9 if GPE were to absorb the premium, it would still
10 cause problems because it would require GPE to issue
11 more stock and to take on more debt, which would
12 weaken its financial profile.

13 THE WITNESS: Well, that's probably
14 somewhat speculating on what the company would do in
15 the future in regard to its merger-related debt.
16 Again, I think we have the ability under the
17 stipulation to take a look at that and raise
18 concerns with the Commission as need be in future
19 rate cases.

20 CHAIRMAN HALL: If the premium was
21 funded entirely with equity, it would require more
22 frequent rate cases and cost recovery mechanisms due
23 to the pressure on GPE's earned equity returns,
24 making it more difficult for GPE to raise equity
25 capital.

1 THE WITNESS: At some point you're
2 probably edging into areas in which perhaps
3 Mr. Murray would be better able to address.

4 CHAIRMAN HALL: I was actually
5 anticipating that.

6 THE WITNESS: Yeah, so...

7 CHAIRMAN HALL: I'm going through to see
8 if there's anything else.

9 And I don't think there is. Okay.
10 Thank you.

11 COMMISSIONER STOLL: I have no
12 questions. Thank you.

13 COMMISSIONER KENNEY: I have no
14 questions. Thank you.

15 JUDGE BURTON: Any recross, GPE?

16 MR. DORITY: Yes, just briefly. Thank
17 you.

18 RECROSS-EXAMINATION

19 BY MR. DORITY

20 Q. Good morning, Mr. Oligschlaeger.

21 A. Good morning.

22 Q. Do you have Ms. Dietrich's direct
23 testimony with you?

24 A. I do.

25 Q. When you get there, could you --

1 A. Let me -- actually, I have her
2 surrebuttal testimony with me. Don't have her
3 direct.

4 Q. I think I have an extra copy.

5 MR. DORITY: Do you have it, Kevin?
6 Thank you.

7 Q. (By Mr. Dority) Mr. Oligschlaeger, if
8 you could turn to page 4 of that testimony where
9 Ms. Dietrich outlines some of the key provisions of
10 the agreement addressing some of the possible
11 detriments that had been identified previously. She
12 states at page 4, There are provisions related to
13 affiliate transactions and the cost allocation
14 manual. There are also conditions related to
15 maintaining or exceeding customer service and
16 operational levels currently provided to Missouri
17 retail customers. Do you see that statement?

18 A. I do.

19 Q. And further quoting she states, Several
20 principles are included relating to the integration
21 process to ensure the availability of adequate
22 resources, including but not limited to personnel,
23 equipment and systems to enable a smooth transition,
24 including a requirement to keep rates lower than
25 they would have been absent the GPE acquisition of

1 Westar. The agreement includes deadlines for
2 meeting with staff to apprise it of the status of
3 implementation, organizational changes and
4 consolidation of processes affecting the customer's
5 experience. Again, are you familiar with
6 Ms. Dietrich's description of that key provision?

7 A. I agree with how you quoted from it.

8 Q. Okay. Well, indeed, those agreements
9 are provisions specifically set out in section C,
10 affiliate transactions and cost allocation manual
11 conditions; section D, customer service conditions;
12 section E, integration, principles, status updates
13 and information regarding operations; and section F,
14 access to record conditions, are they not?

15 A. These would appear to coincide with
16 those sections, yes.

17 Q. All right. Thank you.

18 And in fact -- do you have the staff
19 stipulation and agreement with you?

20 A. Yes, I do.

21 Q. Would you mind turning to page 11?

22 A. I'm there.

23 Q. And that is titled section E,
24 integration, principles, status updates and
25 information regarding operations, correct?

1 A. Yes.

2 **Q. And could you, please, read the first**
3 **sentence of that section?**

4 A. As GPE undertakes the process of
5 integrating Westar, KCPL and GMO, fundamental
6 principles have been adopted to ensure the
7 availability of adequate resources, including but
8 not limited to personnel, equipment and systems that
9 will enable a smooth transition to ownership and
10 operation of Westar by GPE.

11 **Q. And then I believe the stipulation goes**
12 **on for at least a couple of pages addressing those**
13 **specific principles that are referenced, correct?**

14 A. Yes.

15 **Q. You discussed GPE's savings estimates**
16 **with Chairman Hall very briefly. Do you recall?**

17 A. Yes.

18 **Q. And you heard Mr. Kemp's testimony**
19 **yesterday regarding savings; is that right?**

20 A. Actually, no, I did not hear his
21 testimony.

22 **Q. Okay. Have you reviewed any of his**
23 **testimony regarding savings?**

24 A. I read through it once, yes.

25 **Q. And you're not disputing any of the**

1 **conclusions he draws, are you?**

2 A. Well, I mean, all savings estimates are
3 somewhat subjective and speculative by nature, but
4 no, I'm not disputing those as particularly -- well,
5 let me put it this way. I've read a lot of
6 testimony about savings and estimates in future
7 savings from mergers.

8 **Q. Sure.**

9 A. This is fully consistent with what I've
10 read in the past.

11 **Q. You don't have any reason to dispute**
12 **Mr. Kemp's testimony that the actual savings from**
13 **the Aquila transaction were greater than the initial**
14 **estimates, do you?**

15 A. I cannot dispute that, no.

16 MR. DORITY: I believe that's all I
17 have. Thank you very much, Mr. Oligschlaeger.

18 JUDGE BURTON: OPC?

19 MR. OPITZ: No, thank you, Judge.

20 MR. JARRETT: No, thank you, Judge.

21 MS. ROBY: Nothing further. Thank you.

22 JUDGE BURTON: Redirect?

23 MR. THOMPSON: Not this time, Judge.

24 Thank you.

25 JUDGE BURTON: Thank you,

1 Mr. Oligschlaeger. You are excused.

2 I see it's 10:40 now. Why don't we go
3 ahead and just take a recess and break because I
4 don't want to get too far into a witness and then
5 have to stop for a little bit. With agenda and then
6 lunch break, let's reconvene at 1:30.

7 (A lunch recess was taken.)

8 JUDGE BURTON: Let's go back on the
9 record. And staff, I believe you were about to call
10 Mr. Schallenberg to the stand.

11 MR. THOMPSON: You are exactly right.
12 Staff calls Mr. Schallenberg.

13 JUDGE BURTON: Do you swear or affirm
14 that the statements you're about to give will be the
15 truth, the whole truth, and nothing but the truth?

16 THE WITNESS: I do.

17 JUDGE BURTON: Thank you.

18 BOB SCHALLENBERG,
19 having been called as a witness herein, having been
20 first duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. THOMPSON

24 Q. Good afternoon, Mr. Schallenberg.

25 A. Good afternoon.

1 Q. Spell your last name for the reporter,
2 if you would.

3 A. It's S-C-H-A-L-L-E-N-B-E-R-G.

4 Q. And how are you employed?

5 A. By the Missouri Public Service
6 Commission.

7 Q. And are you the same Robert Schallenberg
8 that contributed to staff's investigation report
9 filed in Case EM-2016-0326 -- 0324, excuse me?

10 A. Yes.

11 Q. And you wrote the section labeled
12 affiliate transaction detriments?

13 A. I did.

14 Q. And do you have any corrections to that
15 section?

16 A. Not at this time.

17 Q. And if you were to write it again today,
18 based on what you knew at that time, would you write
19 it the same say?

20 A. Yes.

21 Q. And is everything in there true and
22 correct to the best of your knowledge and belief?

23 A. Yes.

24 MR. THOMPSON: Thank you. I'll tender
25 the witness for cross-examination.

1 JUDGE BURTON: Thank you.

2 GPE, KCPL and GMO?

3 MR. FISCHER: No questions. Thank you.

4 JUDGE BURTON: OPC?

5 MR. OPITZ: No, thank you, Judge.

6 JUDGE BURTON: MJMEUC?

7 MR. JARRETT: No questions.

8 JUDGE BURTON: Independence?

9 MS. ROBY: No questions. Thank you.

10 JUDGE BURTON: Are there any questions
11 from the Commission?

12 CHAIRMAN HALL: Very briefly.

13 Good afternoon. My understanding is
14 that the affiliate transaction agreement or
15 waiver -- let me start over.

16 The agreement between staff and KCP&L,
17 GMO and Great Plains concerning a waiver of the
18 affiliate transaction rule that is set forth in the
19 stipulation and agreement, you are familiar with
20 that?

21 THE WITNESS: Yes.

22 CHAIRMAN HALL: And does that satisfy
23 all concerns that you raised in staff's
24 investigative report concerning affiliate
25 transaction?

1 THE WITNESS: I would say from the
2 staff's perspective that's true.

3 CHAIRMAN HALL: Does it satisfy all
4 concerns that you may have as you sit here today
5 related to affiliate transactions between KCP&L, GMO
6 and Westar?

7 THE WITNESS: No.

8 CHAIRMAN HALL: Okay. What additional
9 concerns do you have?

10 THE WITNESS: One concern I have is that
11 in the agreement in another section there is an
12 agreement to modify the rule's retention period from
13 six to five years.

14 CHAIRMAN HALL: Where is that?

15 THE WITNESS: It's in -- I have the -- I
16 think it's page 19, section -- paragraph four under
17 F, access to records conditions.

18 CHAIRMAN HALL: So, what is your concern
19 about the language that is set forth in the
20 stipulation?

21 THE WITNESS: The Commission -- the
22 Missouri Commission -- or the Missouri affiliate
23 transaction rules say that all the records related
24 to our conditions in our rules have to be maintained
25 for at least six years.

1 CHAIRMAN HALL: So, your concern is that
2 this stipulation actually reduces KCP&L and GMO's
3 obligations for the maintenance of records as set
4 forth in our rules?

5 THE WITNESS: Yes, and there hasn't been
6 any discussion as to the justification to move it
7 down. And, in fact, if anything, given the
8 uncertainty of the affiliate transactions and the
9 risk as we go forward, I would -- I wouldn't ask
10 that it should be more, but it certainly shouldn't
11 be less.

12 CHAIRMAN HALL: Well, I would be
13 interested perhaps in briefing as to whether or not
14 KCP&L, GMO and Great Plains are comfortable with
15 that potential modification. Are there any other,
16 as you sit here today, affiliate transaction
17 concerns with regard to the transaction at issue in
18 this case?

19 THE WITNESS: I have a concern about
20 granting the waiver at this time because we don't
21 have prior experience on the GPE system besides
22 KCP&L being the service company and them providing
23 services to everybody else, and there are some
24 charges that KCP&L pays for use of GMO's assets, but
25 generally speaking, KCP&L services the whole family.

1 So, there's really been no need for protection from
2 costs from labor costs or any costs coming from any
3 of the affiliates to KCP&L.

4 CHAIRMAN HALL: GMO, KCP&L related?

5 THE WITNESS: Right.

6 CHAIRMAN HALL: Okay. And so, this is
7 a -- this is a different beast.

8 THE WITNESS: Right. Well, if we add
9 Westar, and my understanding at the time we did this
10 that wasn't going to be the model. That Westar was
11 going to retain some operations, which is not a
12 problem if all those operations stayed in Westar and
13 didn't come to KCP&L or GMO, but that there was an
14 indication of some services unspecified that would
15 be coming from Westar and charged to KCP&L and GMO,
16 and there was no detail given about what those
17 services were, and at this time KCP&L is and GMO are
18 self-sufficient. So, if you're going to charge them
19 anything, you'd have to show that something got
20 taken away because right now our cost structure
21 would be such that there's nothing we need from
22 Westar that we currently don't have at KCP&L and is
23 currently in rates.

24 CHAIRMAN HALL: But my understanding of
25 the waiver is that everything that is transferred

1 between Westar and KCP&L, GMO would have to be
2 transferred at cost. That's still required,
3 correct?

4 THE WITNESS: Yes.

5 CHAIRMAN HALL: So, what additional
6 protections would be necessary?

7 THE WITNESS: Well, if you leave the
8 market condition as the rule has, that has a
9 protection, and we used it in the Empire case, that
10 it might cost you \$100 to do something, but if the
11 affiliate didn't need it, the market value is zero.
12 So, you can't actually send something to an
13 affiliate -- I mean, under our rules, you couldn't
14 send anything to KCP&L that wasn't, wasn't needed.

15 CHAIRMAN HALL: Can you give me an
16 example of where the variance could be employed in
17 such a way that would be harmful to KCP&L, GMO
18 ratepayers?

19 THE WITNESS: Well, I could say example
20 I'd have is if there's anything from Westar that is
21 charged to KCP&L --

22 CHAIRMAN HALL: Can you give me like an
23 actual example so I can really understand what your
24 concern is?

25 THE WITNESS: All right. If they want

1 to charge us for their board expense or some
2 executive expense that --

3 CHAIRMAN HALL: Okay. "They" being who?

4 THE WITNESS: Well, it would be KCP&L
5 and -- well, actually, ultimately it's KCP&L would
6 make the decision.

7 CHAIRMAN HALL: So, KCP&L would want to
8 charge who?

9 THE WITNESS: No. I'm sorry. I'm
10 answering your question from KCP&L's charges to
11 Westar would be consistent with the charges it makes
12 now to GMO. It is the service company of Great
13 Plains. Now, if you add Westar to it, but Westar
14 has a difference where it has its own employees and
15 they're going to do things that charge -- they're
16 going to charge back to KCP&L, that's where the
17 concern comes from, and I don't know -- like I said,
18 I don't know what they would be able to do for -- I
19 mean what they could charge them for and -- but
20 that's where the concern is and we had that in
21 Empire as well, and that's why we don't have this
22 waiver in Empire.

23 CHAIRMAN HALL: Was it requested?

24 THE WITNESS: It was discussed, but they
25 have a service company. So, that's the role KCP&L

1 plays right now, and it was maintained the lower or
2 higher cost of market so that Empire would have the
3 protection of getting the benefit of that on
4 transactions either way until we knew what the
5 transactions were and had the details.

6 CHAIRMAN HALL: Now, a similar affiliate
7 transaction waiver existed or exists between GMO and
8 KCP&L, correct?

9 THE WITNESS: Yes.

10 CHAIRMAN HALL: But you're saying that
11 that's not a concern because GMO doesn't have any
12 employees essentially, correct?

13 THE WITNESS: Yeah. KCP&L runs -- KCP&L
14 employees run GMO. There isn't any GMO -- there's
15 no labor from GMO that goes to KCP&L. There is some
16 charges that's on about a quarter of a sheet where
17 there's assets of GMO's that KCP&L uses and they get
18 some reimbursements for that. That's the charges
19 that flow from GMO to KCP&L.

20 CHAIRMAN HALL: Well, with that I look
21 forward to hearing your counsel's redirect.

22 COMMISSIONER STOLL: And good afternoon.

23 THE WITNESS: Good afternoon.

24 COMMISSIONER STOLL: I just wanted to
25 ask a couple questions and it relates to an earlier

1 line of questioning that was pursued by the Chairman
2 and I believe by counsel for KCP&L, and that is your
3 feelings about whether or not Missouri ratepayers
4 are adequately ring-fenced against any cost
5 associated with the acquisition of Westar by GPE.
6 How would you respond to that? What are your
7 feelings about that? Do you think that our folks
8 are adequately protected?

9 THE WITNESS: I would -- no. I would
10 say we attempted to ring-fence with the Enron, when
11 the Enron situation took place. In fact, that
12 holding company order that was the basis of whether
13 they had to come in here or not, it had some
14 intended-to-be ring-fencing provisions, how much
15 equity ratio they had to keep and things like that.
16 With that effort, and we did it for Laclede and for
17 some reason I think there might be another one, but
18 we attempted to implement ring-fencing at that time
19 and discovered that the rating agencies were not
20 going to recognize that a utility is ring-fenced by
21 regulatory conditions because the excuse -- well, I
22 mean, because they still see that the parent can
23 extract dividends or can charge them for expenses
24 and take money out of the utility, that there's
25 nothing that a commission can do to prevent that

1 from happening.

2 So, the only time we've seen it actually
3 done is when the utility actually works with the
4 ratings agencies and tells them that's what they
5 want and then works out the conditions so the rating
6 agency is satisfied. And in most cases, I think all
7 cases we've had that discussion, usually they want
8 law, they want legal restrictions that provide the
9 ring-fencing, that it had to be at that level or
10 they worked out specific conditions and promises
11 with the rating agency.

12 COMMISSIONER STOLL: I think in an
13 earlier line of questioning it was stated that the
14 ratepayers were -- there were provisions in there
15 which mitigated the risk, but didn't eliminate the
16 risk. Do you feel from what you've just said -- or
17 do you feel that the risks to Missouri ratepayers
18 have been mitigated then or is that just something
19 that can't -- is very difficult to actually
20 accomplish?

21 THE WITNESS: Well, if you use the word
22 mitigated, the answer is yes, they have been --

23 COMMISSIONER STOLL: Mitigated.

24 THE WITNESS: -- mitigated. Now, have
25 they been mitigated to a degree that you can feel

1 reasonably certain that the trouble won't happen,
2 that all depends on the factors and stuff that the
3 holding company gets into and the regulatory
4 decision. This, this case or this transaction is
5 very dependent on the Commission setting rates on a
6 company, company-specific capital structure and not
7 using a consolidated, a big source of the money to
8 serve the capital and debt from this transaction,
9 that's the main source.

10 COMMISSIONER STOLL: Okay. I think
11 that's it for now, and I'll look forward to maybe
12 some conversation from the other parties. Thank
13 you.

14 THE WITNESS: Thank you.

15 COMMISSIONER KENNEY: No questions.

16 JUDGE BURTON: First, I would like to
17 remind everyone that if your microphone is on,
18 people who are listening may be able to hear some of
19 your discussions or contacts over that of the
20 witness's.

21 Mr. Schallenberg, I just have a few
22 questions.

23 Are you stating that you don't feel the
24 request for the limited variance is in the best
25 interest of Missouri ratepayers?

1 THE WITNESS: I don't use that standard.
2 I use good cause. I would say I have not seen
3 anything that shows good cause for the variance
4 being extended between KCP&L and GMO and Westar at
5 this time since the nature of the transactions that
6 they want to use the waiver for is unknown.

7 JUDGE BURTON: Okay. There's been some
8 discussion about past stipulations and agreements
9 entered into from merger cases for the Commission's
10 approval. You had just mentioned with Commissioner
11 Stoll an issue about the use of a consolidated
12 capital structure. For this situation and this
13 specific merger -- let me back up.

14 Is there any difference or distinction
15 that you see between this type of merger that is
16 currently before the Commission and the prior issues
17 or the prior situations involving either size,
18 relationship of the companies, etc., in the Empire
19 stip and agreement or the GMO or Aquila cases?

20 THE WITNESS: Well, I would say there is
21 a different because each merger or acquisition has
22 different characteristics and factors driving the
23 dynamics of the merger. In some of those cases the
24 sharing of costs was a -- cost savings was a big
25 issue. Some of them was transition cost recovery.

1 So, I would say that in almost every case there is a
2 difference that causes, causes you to have to adjust
3 to those conditions.

4 JUDGE BURTON: What do you see as the
5 major differences with this merger application and
6 those? And if you can cite to an example to give a
7 description.

8 THE WITNESS: Well, I would say one of
9 the difficulties in evaluating this transaction is
10 the lack of specificity as to what operational and
11 financial changes are really going to take place and
12 who's going to do them. If you go back to the KCP&L
13 and Aquila acquisition, the company had fairly
14 specific, detailed plans. In fact, they had plans
15 for day one, the day they took it over, of the
16 changes they were going to make. In this case, for
17 example, you don't have those. And the Empire
18 Algonquin you had more than you do here, but there
19 was still a lot of unexplained or lack of detail so
20 that you could make a -- you could make a conclusion
21 that, yeah, that's not detrimental or yeah, that is
22 detrimental.

23 JUDGE BURTON: In the Empire stip and
24 agreement, the stipulation and agreement, I know
25 that it's been referred to previously, was there any

1 condition set on rate cases and their request for
2 consolidated capital structures versus using
3 utility-specific capital structures?

4 THE WITNESS: There is some capital
5 structure conditions and as -- as I recall -- as it
6 gets to the -- it's the type where if you're going
7 to modify the capital structure, you have to -- I
8 say Algonquin, that won't be the company that the
9 name is under, but Algonquin will have to show that
10 the capital structure being proposed is justified
11 versus the other ones, more economic. We have that
12 in that case. In probably the cases prior to this,
13 the capital structure that would be used for rate
14 making wasn't that significant an issue.

15 JUDGE BURTON: Well, in the Empire stip
16 and agreement was there also the condition or the
17 option to consider acquisition premium in the future
18 if a party in a rate case were to challenge the use
19 of a utility-specific capital structure?

20 THE WITNESS: As I recall, I think
21 there's some language about that, but in practice,
22 you know, where you draw the line of when are you no
23 longer -- where you draw the line that the
24 acquisition adjustment's not being directly,
25 indirectly recovered, that issue is prevalent all

1 the time.

2 JUDGE BURTON: Okay. Do you know how
3 much the acquisition premium is for this case
4 roughly? Because I know it hasn't been finally
5 established yet.

6 THE WITNESS: I've seen numbers in the
7 acquisition premium would be what their purchase --
8 the value they're giving up against its book value.
9 I've seen numbers as high as 4.9 billion and I think
10 the lowest number I've seen is 4.2 and until the
11 transaction closes you won't know what the exact
12 number is.

13 JUDGE BURTON: To your knowledge and
14 your experience working here, has the Commission
15 dealt with a case where there's been a merger
16 application with an acquisition premium around that
17 scale?

18 THE WITNESS: I can't recall any. I
19 give the caveat that for -- there may have been some
20 Southwestern Bell transactions because that was a
21 huge enterprise when we did more regulation than we
22 do now and it would be possible that they would have
23 that, but the -- but even then I still can't
24 remember a 4 billion-dollar-plus acquisition
25 adjustment.

1 JUDGE BURTON: Do you think it would be
2 appropriate for the Commission to consider recovery
3 of acquisition premium in this case from the
4 ratepayers?

5 THE WITNESS: I assume you say proper.
6 I don't have a problem with the concept that
7 somebody can bring it up. I know that in some water
8 and small gas we've brought the issue up, the staff
9 has brought the issue up about the use of negative
10 acquisition adjustment and that it shouldn't be
11 used. So, under certain circumstances as such it
12 can be appropriate.

13 JUDGE BURTON: What about in this
14 situation?

15 THE WITNESS: I don't -- I know about
16 the part where you want to recover it. I just don't
17 know the justification for in this circumstance. I
18 haven't seen anybody put together a case saying that
19 it's justified to recover it in this case.

20 JUDGE BURTON: Have you reviewed
21 Mr. Gorman's rebuttal testimony that was submitted
22 in this case?

23 THE WITNESS: No.

24 JUDGE BURTON: Thank you. That's all I
25 have.

1 Any recross from GPE, KCPL, GMO?

2 MR. FISCHER: Yes, briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. FISCHER

5 Q. Mr. Schallenberg, as far as the
6 retention of records for five years, were you
7 suggesting that there is a rule that the Commission
8 has for general rule -- a general retention of
9 records for six years?

10 A. No, I didn't say that. There's no
11 general rule. If you look at --

12 Q. I'm sorry. I didn't understand where
13 that -- where that was coming from.

14 A. If you look at the Commission's
15 affiliate transaction rules, it has several sections
16 and I know it's near the end. It's called retention
17 or record retention. It has a provision in there
18 and that provision is, if I had the -- I have it in
19 my office, but it says that the records related to
20 compliance with this rule have to be maintained for
21 no less than six years. So, that's where. It's in
22 the affiliate transaction.

23 Q. Okay. That's helpful. Thank you.

24 So, if the company agreed to use the
25 six-year retention, would that take care of your

1 **concern on that?**

2 A. I would just say just strike the
3 sentence. I mean, the rule stands for itself.

4 **Q. Or we could just amend it to say we keep**
5 **them for at least six years?**

6 A. Okay. But, I mean -- because when you
7 start talking about a CAM and stuff, you're talking
8 about compliance with the affiliate transaction
9 rules and the rule says six. So, I don't know you
10 have to put it in agreements or anything else to
11 comply with the rule, and I think there's a lot of
12 conditions and stuff that we're discussing that
13 probably are going to cause just as much angst
14 regarding application as it is for protection.

15 **Q. As far as cost allocation manuals go, is**
16 **it correct that KCPL in its pending rate case has an**
17 **agreement with the staff that the cost allocation**
18 **manual that's been discussed for sometime should be**
19 **approved by the Commission for KCP&L?**

20 A. Yes. That's my understanding.

21 **Q. And is it true that -- do you have the**
22 **stipulation with the staff in front of you today?**

23 A. I have the OPC and agreement and it has
24 the staff's attached, if that's what you.

25 **Q. Okay. That's fine. Would you turn to**

1 page -- well, let's start with page 10 of the staff
2 agreement. In the last sentence of paragraph six,
3 do you see that where it says, No later than six
4 months after the closing of the transaction, but no
5 less than two months before the filing of the
6 general rate case for either KCPL or GMO, whichever
7 occurs first, KCPL and GMO agree to file updates to
8 their existing CAMs reflecting processes and
9 record-keeping changes necessitated by the
10 transaction. Do you see that?

11 A. Yes.

12 Q. Does that indicate to you that -- let's
13 assume that the Commission approves the stipulation
14 that's pending in the current rate case -- that KCPL
15 and GMO would file updates to that, that CAM which
16 would have been approved in the current rate case to
17 make changes necessitated by the merger transaction.
18 Is that how you would interpret that?

19 A. I would interpret that within these
20 fixed timeframes you will be providing or trying to
21 do CAM updates, but the only thing is these fixed
22 dates may not work against what actual affiliate
23 transactions you're conducting because, like, I
24 suspect that on day one the affiliate transaction
25 activity will be different than six, seven or eight

1 months and, so, I couldn't -- I mean, but this says
2 that in that fixed time period these are what you
3 have to do about giving or suggesting about CAM
4 modifications.

5 **Q. So, but that's what would happen is the**
6 **companies would be updating that approved CAM for**
7 **additional changes that might be necessitated by the**
8 **transaction, correct?**

9 A. That are known at that time. The
10 trouble is is the change in operations, well,
11 they're not all going to be done on day one. And
12 when you're looking at how you can bring the
13 different transaction in compliance with the rules
14 or whether you need to get a waiver or you can
15 declare a variance, I don't know that the six-month
16 period is the -- is going to capture all the
17 transactions that you're going to be getting into.
18 In fact, I think at UE, oh, Ameren that we have a
19 agreement similar to this, it's a modification of
20 this, but we have a meeting to discuss what's going
21 on and it's more driven by getting together and
22 figuring out what's going on and using the details
23 and then figure out how we get the related affiliate
24 transaction documentation completed.

25 **Q. So, if I understand what you're saying,**

1 **your concern is that on day one these transactions**
2 **will be occurring between Westar and KCPL and GMO or**
3 **vice versa?**

4 A. My concern is that on day one not all of
5 them will be in effect and that they will gradually
6 take place after the closing of the transaction and
7 six months may not be the proper time to look at the
8 mature level of affiliate transactions coming
9 between the affiliates.

10 Q. But, so, you prefer to have it -- in an
11 **ideal world you'd have all this done on day one; is**
12 **that what you're saying?**

13 A. Well, ideal world I'd like to know at
14 this time what all the transactions are going to be
15 so that you could address that level of detail and
16 say yes or no to that.

17 Q. I think you mentioned in answer to one
18 **of the Judge's questions you referenced the**
19 **Algonquin Empire transaction and I believe you**
20 **indicated one of the differences was that Algonquin**
21 **has a service company; is that right?**

22 A. Yes. That's, that's one. And when I
23 say that, it's going to -- it's converting Empire
24 into a different entity operationally than it was
25 prior to the transaction.

1 **Q. Is the service company model one that**
2 **you can be supportive of?**

3 A. Obviously, the answer is yes under
4 concern conditions. I personally usually have a
5 bias that the utility is the service company on the
6 basis that if the utility is ever going to be needed
7 to stand alone or wants to be sold, it doesn't need
8 to rely on additional services or something to
9 continue its operations, but a service company --
10 well, we're going to have a service company in
11 Algonquin.

12 **Q. In the past do you recall that KCP&L had**
13 **suggested at least in conversations with staff that**
14 **they would consider a service company, but that**
15 **wasn't something you endorsed at that time?**

16 A. Well, I wasn't in favor of the, but they
17 did have a service company. In fact, I think its
18 shell still exists today.

19 **Q. But it was reversed, is that right, at**
20 **the request of staff?**

21 A. It was reversed because the company
22 wanted to reverse it. They did -- they did not do
23 that because we asked them. They did it because
24 circumstances changed and it was better to have it
25 back in KCP&L's -- at the KCP&L entity for their

1 purposes.

2 Q. Do you recall if you were in favor of a
3 service company at that time?

4 A. I wasn't in favor of the service company
5 they were talking about.

6 Q. Okay. And I'd like to ask you to turn
7 to page 9 of the staff stipulation.

8 A. Yes, I'm there.

9 Q. Would you agree that in paragraph four
10 it states, By the Commission's approval of this
11 stipulation, the signatories intend that the
12 Commission shall grant KCPL and GMO a variance from
13 the provisions of 4 CSR 240-20.015 allowing all
14 transactions between KCPL, GMO and Westar to occur
15 at cost, except for wholesale power transactions
16 which will be based on rates approved by the FERC --
17 by the Federal Energy Regulatory Commission or the
18 FERC, period? Is that -- is that correct?

19 A. Oh, I wasn't on the sentence you were
20 at, but I'll accept. I'll accept -- the stip says
21 what it says.

22 Q. And so, is it correct that that should
23 be interpreted that the staff is recommending a
24 variance from the asymmetric pricing rules on day
25 one for the -- for KCPL and GMO?

1 A. That's what this says, but if you go
2 back to that other section, you're asking for
3 another variance for changing the retention rules.

4 **Q. Well, I'm just asking you right here.**
5 **This is related to the asymmetric pricing rule, that**
6 **would grant a variance for KCPL and GMO on day one,**
7 **correct?**

8 A. To do business with Westar.

9 **Q. Yes.**

10 A. Yes, regulated.

11 **Q. Yes. And that's the staff's agreement?**

12 A. Yes.

13 MR. FISCHER: That's all I have. Thank
14 you.

15 JUDGE BURTON: OPC?

16 MR. OPITZ: No, thank you, Judge.

17 JUDGE BURTON: MJMEUC?

18 MR. JARRETT: No, thank you, Judge.

19 MS. ROBY: Nothing further.

20 JUDGE BURTON: Redirect?

21 MR. THOMPSON: No, thank you, judge.

22 JUDGE BURTON: All right. Thank you,
23 Mr. Schallenberg. You're excused.

24 Staff may call its next witness.

25 MR. THOMPSON: Staff calls David Murray.

1 JUDGE BURTON: Your right hand is
2 raised. Would you, please, state -- swear or affirm
3 that the testimony you're about to give will be the
4 truth, the whole truth and nothing but the truth?

5 THE WITNESS: I do.

6 JUDGE BURTON: Okay. You may be seated.

7 DAVID MURRAY,
8 having been called as a witness herein, having been
9 first duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. THOMPSON

13 Q. State your name, please, and spell your
14 last name for the reporter.

15 A. Get comfortable.

16 It's David Murray, M-U-R-R-A-Y.

17 Q. How are you employed?

18 A. I'm employed by the Public Service
19 Commission as a utility regulatory manager in the
20 financial analysis unit.

21 Q. Are you the same David Murray that
22 contributed to the staff investigation report that
23 was filed in Case EM-2016-0324?

24 A. I am.

25 Q. And you prepared, did you not, section

1 **2-B-1, compliance with financial conditions,**
2 **referring to the stipulation and agreement from**
3 **Case EM-2001-464?**

4 A. I think that's part of it, yes.

5 Q. And you also prepared section 2-C-1,
6 **financial detriments?**

7 A. Yes.

8 Q. And do you have any corrections or
9 **changes to make to those sections?**

10 A. I do not.

11 Q. And if you were to redraft those today
12 **based on what you knew at the time, would you write**
13 **them the same way?**

14 A. I would.

15 Q. And is everything contained in there
16 **true and correct to the best of your knowledge and**
17 **belief?**

18 A. It is.

19 MR. THOMPSON: At this time, Your Honor,
20 since this is staff's final witness, I'll go ahead
21 and offer Exhibit 20-HC and NP.

22 (Staff's Exhibit 20-HC and Exhibit 20-NP
23 were offered into evidence.)

24 JUDGE BURTON: Exhibit 20, HC and NP
25 versions have been offered. Are there any

1 objections?

2 MR. FISCHER: No objection.

3 JUDGE BURTON: Exhibit 20 is admitted.

4 (Staff's Exhibit 20-HC and Exhibit 20-NP
5 were admitted into evidence.)

6 MR. THOMPSON: Thank you very much, and
7 I tender Mr. Murray for cross-examination.

8 JUDGE BURTON: GPE?

9 MR. ZOBRIST: No questions?

10 JUDGE BURTON: OPC?

11 MR. OPITZ: No, thank you, Judge.

12 JUDGE BURTON: MJMEUC?

13 MR. JARRETT: No questions.

14 MS. ROBY: No questions.

15 JUDGE BURTON: Any questions from the
16 bench?

17 CHAIRMAN HALL: Good afternoon,
18 Mr. Murray.

19 THE WITNESS: Good afternoon.

20 JUDGE BURTON: Let's start. I'm looking
21 at staff's investigative report, pages 30 through
22 35, but let me just first go back to page 25
23 concerning condition 6-G and that is -- and that
24 relates to a condition on the Aquila merger or
25 Aquila acquisition, correct?

1 THE WITNESS: No. I believe this was
2 actually due to the reorganization --

3 CHAIRMAN HALL: I'm sorry.

4 THE WITNESS: -- of the holding company.

5 CHAIRMAN HALL: I'm sorry. Thank you.

6 That, that condition requires KCP&L to
7 maintain its debt at investment grade; is that
8 correct?

9 THE WITNESS: Yes.

10 CHAIRMAN HALL: And are there not other
11 conditions that were designed -- well, let me phrase
12 it this way. What other -- that along with what
13 other conditions were designed to, to produce a
14 stand-alone S&P credit rating for KCP&L that was a
15 function of KCP&L business and financial risks?

16 THE WITNESS: I would say in summarily
17 all the financial conditions were intended to create
18 some -- you know, create separation and hopefully
19 achieve some recognition from at least specifically
20 Standard and Poor's rating separation.

21 CHAIRMAN HALL: Which was the most --
22 the most important in your view?

23 THE WITNESS: All right. Let me go
24 through here.

25 Okay. Do you mind if we just go one by

1 one?

2 CHAIRMAN HALL: Sure.

3 THE WITNESS: Okay. 6-A to the extent
4 that that restricts them from engaging in any
5 business activities materially outside of the
6 regulated electric and gas industry. You know, that
7 more or less is trying to ensure that the holding
8 company on a consolidated basis doesn't, you know,
9 doesn't deter too much from the overall financial
10 soundness of the consolidated company. So, that's
11 not necessarily going to cause any type of credit
12 rating concern with another regulated utility
13 unless, you know, there's a fairly tough regulatory
14 environment somewhere else.

15 Condition 6-B, do not policemen KCPL's
16 common stock as collateral or security for the debt
17 of the holding company or a subsidiary without
18 Commission approval. Trying to ensure that there is
19 not any debt that, you know, specifically expects
20 recovery through the utility and actually foreclose
21 on the utility's common stock. So, I mean, that,
22 you know, that was -- that is something that is
23 discussed in some insulating conditions as something
24 that should be put into place.

25 As far as KCPL will not guarantee the

1 notes, debentures, debt obligations or other
2 securities of the holding company or any of its
3 subsidiaries, or enter into any make-well agreements
4 without prior Commission approval. You know,
5 obviously, to the extent that, you know, there's
6 anything in another subsidiary, you want to make
7 sure that there's no, no financial assurances from
8 the regulated utility. I mean, I'll just speak from
9 memory. I think Great Plains Energy's biggest
10 nonregulated activity was strategic energy before
11 they acquired GMO. So, to the extent that there
12 would have been any notes at that level, that would
13 have been the concern there. So, but that, again,
14 is trying to ensure that the regulated utility cash
15 flows and what have you are not used to guarantee
16 other affiliate notes.

17 Condition 6-D as far as maintaining
18 30 percent total equity at the GPE level and 35
19 percent at the KCPL level, I'd say that was --
20 didn't matter. I mean, to the extent -- in today's
21 environment, I think if you saw a 30 percent equity
22 ratio, you would say they're probably below
23 investment grade anyway. Right? So, I don't -- at
24 that time, just to give you a little history,
25 Aquila --

1 CHAIRMAN HALL: Actually, I'm good on
2 that.

3 THE WITNESS: You're good?

4 CHAIRMAN HALL: Yeah.

5 THE WITNESS: Okay.

6 CHAIRMAN HALL: Yeah, we can keep going.

7 THE WITNESS: Okay. Condition 6-C is
8 just -- I'd say that's not a very big factor.
9 That's just an opportunity for staff to have
10 continuing monitoring of the financial health of the
11 utility, but without detailed audit of, you know,
12 financial transaction such as things that are going
13 on between companies. That's just going to give us
14 an idea of what the -- you know, what their current
15 financial situation is. So, I don't think that's
16 very material.

17 Condition 6-F I would -- KCPL's total
18 long-term borrowings including all instruments shall
19 not exceed KCPL's regulated rate base. I would not
20 consider that to be material condition to
21 potentially allow for any type of insulation.

22 Condition 6-G, KCPL shall maintain
23 separate debt, KCPL agrees to maintain its debt at
24 investment grade. This condition should not be --
25 excuse me. I don't think I need to read that part,

1 but, you know, it -- I mean, there's a lot of
2 utilities that maintain separate debt that don't
3 have separate credit ratings. When I say separate,
4 distinct and rated on a stand-alone basis. So,
5 while that may, you know, be something that's looked
6 at, you know, there's much more to ensuring that the
7 creditors are safeguarded than just issuing their
8 own debt.

9 CHAIRMAN HALL: Okay.

10 THE WITNESS: 6-H, GPE, KCPL and staff
11 agree that the allowed return on equity and other
12 cost of capital will not increase as a result of the
13 reorganization. Now, that's just a commitment.
14 That's not a really proactive type of situation
15 where -- I mean, that's for rate making purposes.
16 So, to the extent you're trying to achieve any
17 rating separation, that's not going to matter.

18 Condition 6-I, GPE, KCPL guarantee that
19 customers of KCPL shall be held harmless if
20 reorganization creating GPE, with KCPL as a
21 subsidiary, results in a higher revenue requirement.
22 Again, commitment. That's really not having to do
23 with anything with structural or legal separation
24 that's going to allow for any credit rating
25 differential. So, I don't consider that

1 significant.

2 6-J just providing information. Again,
3 I don't think that that's going to play a part in
4 what a rating agency might look at for looking at
5 rating separation.

6 I'd say -- I'd say that covers the ones
7 that I consider that might be looked at as that
8 would be desired in a, you know, in maybe looking at
9 some, you know, some rating separation.

10 CHAIRMAN HALL: Okay. So, those
11 proposed conditions were intended to produce a
12 stand-alone S&P credit rating for KCP&L that was a
13 function of KCP&L's business and financial risks; is
14 that correct?

15 THE WITNESS: Yes.

16 CHAIRMAN HALL: Okay. That did not
17 prove successful, correct?

18 THE WITNESS: Yes.

19 CHAIRMAN HALL: Explain.

20 THE WITNESS: Well, it's just a simple
21 matter of the consistent S&P feedback and the rating
22 agency reports that indicates that they don't
23 consider anything in Missouri to be -- to be
24 significant enough to restrict cash flows and
25 between the companies and that have any consequence

1 whether it's legal or monetary penalties or what
2 have you. Their bar is pretty high. I mean, I
3 think there's only a few states where S&P recognizes
4 a true -- there's a difference between ring-fencing
5 and insulation. Ring-fencing is the most strict
6 form of separation. Insulation may be just
7 regulatory types of conditions.

8 CHAIRMAN HALL: And so, now I'm looking
9 at page 34 of the report where you say experience --
10 that this experience has proven that proposing a
11 list of untested conditions did not accomplish
12 stand-alone ratings for KCPL.

13 THE WITNESS: Yes.

14 CHAIRMAN HALL: And in your -- in your
15 summary just above that you say, Staff does not know
16 how to provide the Commission assurance that KCP&L
17 and GMO ratepayers will not pay higher capital costs
18 as a result of the proposed transaction and possibly
19 suffer impaired ability to raise reasonably priced
20 capital due to unforeseen risks; is that correct?

21 THE WITNESS: Yes.

22 CHAIRMAN HALL: And that was your
23 opinion when you -- when you wrote this section of
24 the investigative report?

25 THE WITNESS: Yes.

1 CHAIRMAN HALL: Are there conditions
2 that are at issue in this case that mitigate those
3 concerns for you?

4 THE WITNESS: I think the best we can do
5 was just agree that we're going to have to argue it
6 out in a rate case. I mean, I've -- so, there's
7 no -- there's no upfront commitment from the company
8 as far as rate of return and capital costs and
9 potential adjustments to capital cost. There's no
10 upfront commitment from staff as to how that's going
11 to be handled because, obviously, the devil is in
12 the details and what happens down, you know, the
13 next couple years in evaluating how they financially
14 manage the companies and potential credit rating
15 impacts on the subsidiaries will have to be closely
16 evaluated and that's -- so, I just think we agree --
17 neither party really wanted to, you know, agree to
18 the other one's request for, you know, having an
19 upfront commitment on rate making for capital
20 structure and rate of return in general.

21 CHAIRMAN HALL: Well, I mean, there is a
22 commitment in the stipulation and agreement, No. 7.
23 Do you have staff's stipulation and agreement in
24 front of you?

25 THE WITNESS: I do.

1 CHAIRMAN HALL: And that commitment is
2 that neither KCP&L nor GMO shall seek an increase to
3 the cost of capital as a result of the transaction.
4 Does that mitigate the concern that you have that is
5 set forth in the investigative report?

6 THE WITNESS: I think these commitments
7 are made in many stipulation and agreements and we
8 still have differences in opinion as to what could
9 be filter-down effects on a credit rating of a
10 subsidiary due to whether it's holding company debt,
11 whether it's holding company other business
12 activities. Ameren is a great example. It's just
13 something that parties just tend to disagree whether
14 or not there is any impact. And, I mean, one of the
15 things I will say is that once the transaction is
16 approved, you know, the typical and usual outcome
17 for an allowed rate of return is to use the actual
18 embedded cost of debt from issuances done, whether
19 it's at the holding company, which we did with GPE
20 in the equity units when they acquired GMO and we
21 had the financial issues, or whether it's, you know,
22 the cost of debt, you know, with short-term tenor
23 debt applied to GMO or, you know, longer term to
24 KCPL. The default is to accept the actual cost of
25 debt. And, I mean, I think it's my duty to try to

1 review, and I'll never know for sure what the
2 company would have looked like if it stayed
3 stand-alone. It's impossible, can't unravel it.
4 So, what I can try to evaluate what I think KCPL's
5 cost would be if it were -- for instance, Standard &
6 Poor's assigns it a stand-alone credit profile A-,
7 but it gives it a BBB+ credit rating due to its
8 affiliation with GPE. So, if I look back and try to
9 look at what I think A- debt cost would have been, I
10 mean, of course, there's going to be some judgment
11 in that. So, what I'm pointing -- what I'm saying
12 is the counter to that will be, well, our credit
13 rating was never downgraded. Well, but your credit
14 rating was -- you know, you could argue that it was
15 suppressed. And so, we just argue it in rate cases
16 and that's the way it goes.

17 CHAIRMAN HALL: So, in essence, this is
18 what I'm hearing is yes, there is a risk that KCP&L
19 and GMO ratepayers may pay higher -- might pay
20 higher capital costs as a result of the proposed
21 transaction, but if staff and you do your job and
22 the Commission does its job, those increased costs
23 can be prevented?

24 THE WITNESS: Yes. And as has been
25 evident in the past, sometimes the Commission

1 disagrees with my opinion as to whether or not
2 those -- they incurred increased capital costs due
3 to financial activities, but that's -- my job is to
4 just provide you my opinion and you evaluate it.

5 CHAIRMAN HALL: How important from your
6 perspective would it be going forward for the
7 Commission to use a consolidated capital structure
8 as opposed to subsidiary-specific capital structure
9 to prevent some of the concerns that you raise in
10 your investigative report?

11 THE WITNESS: Well, I'd say -- and once
12 again, it's going to depend on, you know, what, you
13 know, what the evaluation of what the debt
14 investors, you know, are giving the most weight to.
15 If their debt investors are giving weight to Great
16 Plains Energy's capital structure when they invest
17 in the KCPL debt issuances, you know, that's going
18 to have some trickle-down cost effect. And then,
19 so, the 50 percent equity ratio that they typically
20 add is not necessarily providing the full credit of
21 an A- credit rating for debt investors to require a
22 lower debt coupon. And so, you know, to the extent
23 that, you know, I still have those concerns and
24 that, obviously, the execution of this is still
25 something that will be evolving and there will be

1 lots of things that, you know, that I think will
2 only be able to be controlled by the way the
3 company, you know, handles their financial
4 management.

5 But so, to the extent that the KCPL
6 ratepayers or GMO ratepayers are paying, you know,
7 higher cost of debt on the subsidiary-specific debt
8 issuances, I think then it very much needs to be
9 considered that the Great Plains Energy capital
10 structure is consistent with the costs that are
11 being incurred at the subsidiary level. So,
12 therefore, that equity-rich capital structure --
13 they're basically getting, you know, a double
14 whammy. Not only are they getting -- having to pay
15 for the higher equity-rich capital structure, but
16 they're having to pay higher debt cost for the
17 50 percent of debt that they have in their capital
18 structure. Well, as I said, this is something that
19 us rate of return witnesses and even internal
20 company witnesses, we argue about all the time.

21 CHAIRMAN HALL: So, at the bottom of
22 page 30 of the report you state that the issuance of
23 debt at GPE will have an indirect impact on KCP&L
24 and GMO and there are some conditions set forth in
25 the staff stip designed to address that, and you and

1 I have had an in-depth conversation about staff's
2 role in future rate cases and the Commission's
3 obligation to take that into account. Are there any
4 additional conditions that you could propose that
5 would provide any amount of further insulation for
6 Missouri ratepayers?

7 THE WITNESS: I mean, I'll stick to what
8 I indicated in the report that for me or staff we've
9 learned from our mistakes. We tried -- we tried to
10 provide you the 2001 Commission assurance that, you
11 know, when we did this -- when we approved --
12 recommended approval of the reorganization with the
13 holding company, creation of the holding company, we
14 thought those conditions, you know, may allow for
15 some rating separation. It didn't happen, and it
16 goes -- it's so much more involved than just
17 recommending a few conditions. I mean --

18 CHAIRMAN HALL: Let me ask this. My
19 understanding is that Moody's downgraded GPE as a
20 result of the transaction, but did not downgrade
21 KCP&L and GMO. So, isn't that an indication of some
22 separation?

23 THE WITNESS: That's correct, and that's
24 great point because even the rating agencies don't
25 necessarily agree. So, that's why there will always

1 be debate. Point being is yes, Great Plains Energy
2 will be -- actually, I think they're pretty well,
3 you know, providing assurance that they will
4 downgrade it to the Baa3, the last notch before
5 junk.

6 But yeah, my concern is just the
7 experience that we had after the acquisition of
8 Aquila that -- and the company's -- the company's
9 focus was on trying to mitigate or stop, you know,
10 the potential for Great Plains Energy's credit
11 rating to fall below junk, which came at a cost to
12 its subsidiaries and so, you know, everything --
13 every transaction that involves taking on quite a
14 bit of financial risk involves risk and reduces
15 flexibility and especially during periods of, you
16 know, recessions and what have you and financial
17 market issues.

18 CHAIRMAN HALL: Okay. I have no further
19 questions. Thank you.

20 THE WITNESS: Thank you.

21 COMMISSIONER STOLL: I have no
22 questions. Thank you.

23 COMMISSIONER KENNEY: No questions.
24 Thank you.

25 THE WITNESS: Thank you.

1 JUDGE BURTON: I have a few questions
2 for you. Do you know what KCPL and GMO's current
3 credit ratings are for Moody's, S&P, Fitch?

4 THE WITNESS: Fitch doesn't rate KCPL
5 and GMO, Great Plains Energy for that matter.
6 Moody's has a Baa1 on KCPL, Baa2 on GPE, I think a
7 Baa2 on GMO. S&P, like I said, they do a family
8 group of companies, consolidated methodology, and
9 they -- even though they have -- I don't want to
10 confuse anybody, but the company is probably going
11 to try to make sure they address this, so that's
12 fine. But they are all assigned a BBB+ credit
13 rating, Great Plains Energy, KCPL and GMO. That's
14 their issuer credit rating, and it's based on the
15 family group of companies financial and business
16 risk profile.

17 JUDGE BURTON: And that's, as far as you
18 know, the current rating?

19 THE WITNESS: Yes. I mean, they're on
20 negative outlook for -- S&P has all the companies on
21 negative outlook pending, you know, this
22 transaction. That doesn't mean that they are
23 necessarily going to downgrade the company if they
24 complete this acquisition. It just means that if
25 they do act, it's a better chance that they will --

1 you know, better than 50 percent chance it will be,
2 you know, a downgrade. Where the Great Plains
3 Energy it's pretty well assured it's going to be
4 downgraded to Baa3 for GPE, but not for -- they
5 affirm the credit ratings of KCPL and GMO.

6 JUDGE BURTON: Are there any advantages
7 for Missouri ratepayers for KCPL or for GMO being
8 rated, let's say, BBB+ versus BBB-?

9 THE WITNESS: If you match the capital
10 structures with the capital cost. I think it just
11 depends and that was kind of my point. You know,
12 the stand-alone, the hypothetical stand-alone credit
13 profile for KCPL from S&P is A-. So, if you put a
14 55 percent equity ratio on KCPL because their
15 stand-alone credit profile says A-, but they're
16 actually rated BBB+, then I think you're mismatching
17 capital cost with capital structure. So, no, I
18 don't -- it's beneficial to the extent that, you
19 know, that they are rated consistent with their
20 financial and business risk.

21 JUDGE BURTON: I think you're
22 misunderstanding my question.

23 THE WITNESS: Sorry.

24 JUDGE BURTON: Right now in the
25 stipulation and agreement it says that if KCPL and

1 GMO's respective S&P corporate credit rating
2 declines below BBB-. Currently their rating is
3 BBB+, is that what you stated?

4 THE WITNESS: S&P, that's correct.

5 JUDGE BURTON: Why is it in the stip and
6 agreement it doesn't try to match them with that
7 BBB+? Why is it that they have to fall below BBB-
8 in the stip and agreement with staff?

9 THE WITNESS: Well, this is what -- I
10 think it's a trigger for certain reporting
11 requirements and certain actions that would have to
12 be taken by the utility. Yes, any type of downgrade
13 would be a sign of problems. Whether or not the --
14 whether or not that would be defined as a detriment,
15 I guess it depends on what we allow in rates, but
16 the BBB-, yes, that's one notch below -- or from
17 junk status. And so, to the extent that you're
18 downgraded below BBB-, I'd say we're probably going
19 to have some -- I guess we're going to have a lot
20 more work to do around here, but --

21 JUDGE BURTON: So, the conditions in the
22 stipulation and agreement with staff only, the
23 reporting or whatever additional requirements,
24 because I think it's referred to throughout the stip
25 and agreement, only occur if KCPL and GMO fall three

1 steps below their current credit rating?

2 THE WITNESS: If they fall to junk, yes.

3 If they fall below BBB-, then that triggers all the
4 requirements within the stipulation and agreement.

5 Now, as far as in the rate case, if they are just
6 downgraded from BBB+ to BBB, you know, there are
7 certain conditions that go into effect that require
8 the company to -- they should have the burden of
9 proof anyway, but to provide more information to
10 justify the capital cost have an increase -- or will
11 not be passed on to ratepayers at the time of the
12 rate case.

13 JUDGE BURTON: Okay. Have you reviewed
14 Mr. Gorman's rebuttal testimony?

15 THE WITNESS: I did.

16 JUDGE BURTON: He made some
17 recommendations for ring-fencing measures and what
18 are your thoughts on those ring-fencing measures as
19 far as potential for S&P, let's say, to consider
20 those in separating GPE?

21 THE WITNESS: Again, we're technical
22 witnesses. I think this requires much more than
23 just a technical witness's recommendation. There's
24 legal structures that -- if you're doing a real
25 ring-fencing, you have to create a special purpose

1 entity, independent director. I mean, and I just --

2 JUDGE BURTON: So, for instance, his
3 recommendation for an independent board?

4 THE WITNESS: I don't know what, you
5 know, what his expertize is in legal structural
6 issues, but my understanding is this is very
7 involved. This is not something that just one
8 person -- a true ring-fence. I mean, you can
9 recommend insulating factors and we tried it. But,
10 you know, an independent board, I think, it's -- you
11 know, everybody has a different definition of what's
12 truly independent, but, you know, I think that
13 there's a lot more detail that would have to be
14 explored before you can say that, you know, this is
15 going to achieve ring-fencing. I believe Kansas,
16 when Westar had its financial troubles, they opened
17 up a -- I think they had probably a yearlong
18 investigation into what could be achieved as far as
19 ring-fencing. So, I mean, like I said, I think I'm
20 doing a disservice to say that I think this is going
21 to achieve a separation.

22 JUDGE BURTON: And are you aware of what
23 the estimate is currently for the acquisition
24 premium for this merger?

25 THE WITNESS: I think Mr. Schallenberg

1 was about where I -- is somewhere around 4 billion
2 or a little bit more.

3 JUDGE BURTON: Okay. And would you
4 think in any situation in the future it would be
5 reasonable for the Commission to consider recoupment
6 of acquisition premium costs in a rate case?

7 THE WITNESS: That's not my area of
8 expertize. I think auditing would handle that.

9 JUDGE BURTON: Okay. All right. That's
10 all I have.

11 Any recross from GPE, KCPL or GMO?

12 MR. ZOBRIST: Yes, Judge. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. ZOBRIST

15 Q. Mr. Murray, you referred to the
16 July 17th, 2016, S&P report. Do you recall that?

17 A. I referred to S&P reports in general,
18 but yes.

19 Q. Okay. I've got a copy of the one from
20 July 17, 2016, that you and I talked about in a rate
21 case. Do you want to see a copy of that?

22 A. Sure, sure.

23 MR. ZOBRIST: Judge, I'm not sure if I
24 need to put this into evidence. I can if I need to,
25 but I just want to clarify a couple of things with

1 the witness at this point.

2 Q. (By Mr. Zobrist) Mr. Murray, is that a
3 copy of the July 16, 2016, S&P report on Kansas City
4 Power & Light Company?

5 A. Just a correction. It's June 17, 2016.

6 Q. I'm sorry. Thank you. You're right.

7 And I just want you to refer to this
8 because I want to clarify and perhaps confirm a
9 couple of things I think you told either Chairman
10 Hall or the Judge. If you turn to page 5, when you
11 talked about the credit profile for GPE, KCPL and
12 GMO, you said they were all a BBB+ credit rating,
13 correct?

14 A. Yes.

15 Q. Then you referred to the stand-alone
16 credit profile as an A- for KCP&L, correct?

17 A. Yes.

18 Q. And that's discussed on page 5, correct?

19 A. Yes.

20 Q. Okay. And that is a higher credit
21 rating than BBB+, correct?

22 A. But that's not the assigned credit
23 rating.

24 Q. Understand. But S&P has taken the
25 information provided by these three companies, the

1 holding company and the two utilities, and assigned
2 this stand-alone credit profile to KCP&L based upon
3 its holdings, its financial holdings, correct?

4 A. That's not its credit rating. It's
5 information, but it's not its credit rating. So, I
6 disagree that that's what they assigned to KCPL.

7 Q. Well, they called it a stand-alone
8 credit profile. I may have mis --

9 A. It's a hypothetical profile, I agree.

10 Q. But it's based upon the finances of the
11 utility, correct?

12 A. Yes. With my caveat that they're rated
13 BBB+, I agree.

14 Q. And the significance of BBB- when you
15 say junk, am I correct that that means that the
16 quality of the securities, if they're below BBB+,
17 are non-investment grade?

18 A. Below BBB+ is still investment grade.
19 So, BBB and BBB- is still investment grade, but
20 below BBB- isn't --

21 Q. Right.

22 A. -- is junk. It is non-investment grade.

23 Q. Right. Let's get this correct on the
24 record because I misspoke again, too.

25 When it is BBB-, it is one level above

1 **non-investment grade, correct?**

2 A. That is correct.

3 Q. And if it's below BBB-, then it is junk
4 **or non-investment grade?**

5 A. Yes.

6 Q. Okay. And all things being equal, any
7 **business having an investment grade credit rating is**
8 **better than being non-investment grade, correct?**

9 A. From a financial stability standpoint
10 I'd agree, but maybe not necessarily from a cost of
11 capital standpoint. I mean, it depends on what
12 industry you're in.

13 Q. Well, let's electric public util --
14 **let's just deal with public utilities here. I mean,**
15 **it's better to be investment grade, right, than**
16 **non-investment grade?**

17 A. For your credit -- for your debt
18 investors, yes. Not necessarily for your equity
19 investors.

20 Q. Well, and the higher your credit rating,
21 **generally speaking, the better that is for the**
22 **company in terms of being a debt issuer, correct?**

23 A. For the debt investors, yes.

24 Q. Lower cost of capital if you -- lower
25 **interest rate that you pay when you issue debt if**

1 **your credit rating is higher, correct?**

2 A. Lower cost of debt. Not necessarily
3 lower overall cost of capital.

4 **Q. Lower cost of debt if your credit rating**
5 **is higher, correct?**

6 A. That is correct.

7 **Q. And that's a good thing for the**
8 **ratepayers?**

9 A. No. It depends.

10 **Q. Okay. Well, let's go on to something**
11 **maybe where we can agree in a few things.**

12 **Are you familiar with schedule DRI-4 to**
13 **Mr. Ives' surrebuttal?**

14 A. I am not.

15 MR. ZOBRIST: Judge, if you think it
16 would be helpful to admit the S&P report into
17 evidence, I would be glad to do so.

18 JUDGE BURTON: Why don't we go ahead and
19 do that. I know there was prior comments about the
20 stipulation and agreement for the Empire case, but
21 don't know if it was actually marked when you were
22 referring to it.

23 MR. FISCHER: It was not. We can do
24 that if you'd like. I only have one copy, but we
25 can get you copies later. It's also in the

1 Commission's records. I can ask that you take
2 administrative -- I can ask that you take
3 administrative notice of it if that would be
4 simpler.

5 JUDGE BURTON: Yeah, that would be fine.
6 Let's do that.

7 MR. FISCHER: Well, for the record,
8 then, I would ask that the Commission take
9 administrative notice of the stipulation and
10 agreement in the Empire case, whatever the case
11 number was that I reflected on the record earlier,
12 and I would also ask that --

13 JUDGE BURTON: EM-2016-0213.

14 MR. FISCHER: Yes. And while I'm at it,
15 I'd ask that you take official notice of the order
16 approving that stipulation and agreement.

17 JUDGE BURTON: The Commission will take
18 such notice.

19 MR. ZOBRIST: Judge, I've handed the
20 court reporter a copy of the S&P research report on
21 KCP&L dated June 17th, 2016. May I have an exhibit
22 number for that?

23 JUDGE BURTON: That will be
24 Exhibit No. 22.

25 MR. ZOBRIST: 22. I move its admission.

1 (KCP&L's Exhibit 22 was offered into
2 evidence.)

3 JUDGE BURTON: Exhibit 22 has been
4 offered. Are there any objections?

5 Seeing none. Exhibit 22 is received.

6 (KCP&L's Exhibit 22 was admitted into
7 evidence.)

8 Q. (By Mr. Zobrist) Mr. Murray, I've given
9 you a copy of schedule DRI-4 which consists of four
10 pages and is attached to the surrebuttal of
11 Mr. Ives, correct?

12 A. I have the exhibit, but I accept that.

13 Q. Okay. So, are you telling the
14 Commission you're not familiar with the supplemental
15 merger commitments and conditions that are contained
16 in schedule DRI-4?

17 A. I am aware of our stipulation and
18 agreement, but no, I did not -- I sponsored the
19 report.

20 Q. Okay. Well, let's go through, not all
21 of them, but let's start with the bottom part of
22 page 1, which is entitled financing and ring-fencing
23 conditions. Do you see that, sir?

24 A. I do.

25 Q. And the first category there is numbered

1 11 and it says separation of assets; is that
2 correct?

3 A. Yes.

4 Q. And in that first paragraph it states
5 GPE commits that KCP&L and GMO will not co-mingle
6 their assets with the assets of any other person or
7 entity except as allowed under the Commission's
8 affiliate transaction statutes or other Commission
9 order. Did I read that correctly?

10 A. Yes.

11 Q. And if that is included in the
12 Commission's report and order approving this
13 transaction and approving the staff stipulation and
14 agreement and the Public Counsel stipulation
15 agreement, that would provide some financing and
16 ring-fencing conditions, correct?

17 A. I just have a problem with using the
18 general term ring-fencing to refer to all these
19 situations.

20 Q. Do you want to say insulation? Are you
21 more comfortable with that?

22 A. Sure. Regulatory insulation condition.
23 Ring-fencing is much more complex and I think people
24 are using it too loosely.

25 Q. All right. But you would agree that

1 that first sentence would provide additional
2 insulation?

3 A. It's a commitment, yes.

4 Q. Okay. And in the second sentence it
5 says, GPE commits that KCP&L and GMO will conduct
6 business as separate legal entities and shall hold
7 all of their assets in their own legal entity name
8 unless otherwise authorized by Commission order.
9 Correct? That's what it says, right?

10 A. Yes. I assume that you would do that
11 anyway, but yes.

12 Q. All right. And the second one says,
13 GPE, KCPL and GMO affirm that the present legal
14 entity structure that separates their regulated
15 business operations from their unregulated business
16 operations shall be maintained unless express
17 Commission approval is sought to alter any such
18 structure, and then it goes on to say, GPE, KCPL and
19 GMO further commit that proper accounting procedures
20 will be employed to protect against
21 cross-subsidization of GPE's, KCPL's and GMO's
22 nonregulated businesses or other GPE's -- pardon me,
23 or GPE's other regulated businesses in Missouri,
24 correct?

25 A. That's what it says, correct.

1 Q. And those do provide for separation of
2 those three entities, correct?

3 A. I think they're already separate, but
4 sure.

5 Q. Okay. Now, if you turn to the second
6 page, it says other separation and it states that
7 neither KCPL nor GMO shall guarantee the debt of the
8 other or of GPE or of any of GPE's other affiliates
9 or otherwise enter into any make-well or similar
10 agreements unless otherwise authorized by the
11 Commission. And then it goes on to state, Neither
12 KCP&L nor GMO shall pledge their respective stock or
13 assets as collateral for obligations for any other
14 entity unless otherwise authorized by the
15 Commission. And then, finally, it says, Neither
16 KCP&L nor GMO will include in any debt or credit
17 instrument of GMO and KCP&L any financial covenants
18 or default triggers related to GPE or any of its
19 affiliates.

20 A. I think that's in the staff stip and
21 agreement it says that.

22 Q. And again, that provides for separation
23 that did not exist between these three companies --
24 I should say between GPE, KCP&L and GMO as a result
25 of the 2001 stipulation? This is more detailed,

1 correct?

2 A. I don't -- I don't know. I haven't done
3 an exhaustive research of what all these other
4 stipulation agreements had.

5 Q. Then if you would turn to the next page
6 and if you go to the box that says rate making,
7 accounting and related conditions and then there's a
8 box that says No. 18. Do you see that?

9 A. I do.

10 Q. And it states there, For rate making
11 purposes GMO and KCP&L agree to the use of an actual
12 utility-specific capital structure with an equity
13 share of no less than 45 percent and no more than
14 53 percent, provided, however, that GMO and KCP&L
15 may petition the Commission for relief from this
16 condition for reasons not related to the transaction
17 and the Commission may grant such relief to the
18 extent it chooses to do so based upon a finding of
19 good cause. Correct?

20 A. That's what it says, yes.

21 Q. And that was -- this is based on in part
22 the recommendation that Mr. Gorman made in
23 surrebuttal. Do you recall that?

24 A. Yes.

25 Q. And would you also agree that this is a

1 rate-making commitment that does not currently
2 exist?

3 A. It's a commitment that I prefer not to
4 make, I mean, but staff and the company agreed to
5 discuss this and debate this in a rate case. So, I
6 think that was staff and company's previous
7 agreement.

8 Q. And if you turn, finally, to paragraph
9 25 just farther down on that page, it states that
10 provided the actual utility-specific capital
11 structure is used to set rates for KCP&L and GMO,
12 GPE, KCP&L and GMO commit to uphold to principle
13 that their future costs of service and rates will be
14 set commensurate with the financial and business
15 risks attendant to each affiliate's regulated
16 utility operations and that they will not oppose
17 either in a regulatory proceeding or by judicial
18 appeal of a Commission decision the application of
19 this principle. Correct?

20 A. Yes.

21 Q. And that's in the stipulation and
22 agreement with staff as well, correct?

23 A. Yes.

24 Q. And so, even though we go to rate cases
25 and you and I fight a lot about cost of debt and

1 capital structure and occasionally return on equity,
2 what you are telling the Commission is when you have
3 a particular rate case, then you go in and explore
4 the details of the facts and then the Commission
5 calls balls and strikes as to whether the company's
6 position is correct or yours is or someone else's
7 based upon those particular financial transactions,
8 the state of the markets and things like that?

9 A. Yes.

10 Q. But this principle is now going to be
11 the backdrop to those future decisions in future
12 rate cases, correct, if approved by the Commission?

13 A. I mean, we'll debate them in future rate
14 cases. I said I think, you know, I think we agree
15 that we're not going to commit to anything with
16 capital structure, staff and the company, and I
17 think that that's the right way to move on this.

18 Q. And I think the Chairman spoke with you
19 briefly about this, but there's also a series of
20 financing conditions related to the potential of a
21 downgrade, what the company has agreed to do if its
22 credit rating is downgraded, not below investment
23 grade, but just if it's downgraded to any degree,
24 correct?

25 A. Yes.

1 Q. Okay. And those are found in the
2 stipulation agreement between the joint applicants
3 and staff, correct?

4 A. Yes.

5 Q. Now, let me ask you -- do you have the
6 S&P report in front of you?

7 A. You took it, I believe.

8 Q. I think I gave it to the court reporter.
9 If she could hand it, please, to the witness.

10 A. Thank you.

11 I have it now.

12 Q. Okay. Thank you.

13 On page 31 of your July 2016 staff
14 report, you talked about the designation of GPE from
15 stable to negative. Do you remember that?

16 A. I'm looking at the Moody's. On page 31?

17 Q. At the top there you said the type of --
18 you talked about the designation from negative to
19 stable in the second line.

20 A. I'm not --

21 Q. It's on the page 31 of the staff report.

22 A. Okay.

23 Q. At the top.

24 A. I have the first line. My -- I'm not
25 seeing what you're referring to on.

1 Q. Yeah. I'm on page 31.

2 A. I'm on page 31, too, so...

3 Q. The sentence starts at the bottom of
4 page 30. Maybe I confused it.

5 A. Okay.

6 Q. It says, Although S&P has affirmed, and
7 then it goes over to the top of 31 to GPE's credit
8 ratings.

9 A. Okay. I'm still -- my page 30, the last
10 paragraph says GPE provided staff with financial
11 information showing the pro forma impact. So, I --

12 Q. Okay. Well, let's -- yeah, it's the
13 paragraph right above that. You stated -- you see
14 the sentence that says, The type of designation is
15 often issued?

16 A. It would be nice to have line numbers,
17 wouldn't it?

18 Q. I'm just talking about just go to the --
19 the paragraph above that.

20 A. I have given the above issuance of debt
21 at GPE will have at least an indirect impact.

22 Q. Right, right.

23 A. Okay.

24 Q. And I'm just saying go to the next to
25 the last sentence of that paragraph.

1 A. Okay. I'm sorry. I'm here now.

2 Q. Okay. So, you said there this
3 designation is often issued, meaning going from
4 making the announcement of negative outlook. Do you
5 recall that?

6 A. Yes.

7 Q. Okay. And you say, This type of
8 designation is often issued when a merger or
9 acquisition is announced and the rating is under
10 active review, correct?

11 A. Yes.

12 Q. And then you said it is more likely than
13 not that at the conclusion of the review the rating
14 will be downgraded, true?

15 A. Yes. That's for a credit watch
16 negative. So, if I confused anybody with that,
17 that's not -- that's only if it's on a credit watch.

18 Q. Right. Well, if you turn to page 3 of
19 Exhibit 22, the S&P report, at the top of the page
20 when it's talking about the outlook negative, it
21 also gives an upside scenario, correct?

22 A. Yes.

23 Q. Okay. And S&P said, quote, We could
24 affirm the ratings on GPE after the merger closes if
25 the combined company demonstrates that it can

1 **achieve FFO to total debt of more than 13 percent**
2 **after 2018, correct?**

3 A. They're referring to GPE in the KCP&L
4 report, but yes, that does say that.

5 Q. **And FFO stands for funds from**
6 **operations?**

7 A. Yes.

8 Q. **Okay. And that's a standard metric that**
9 **S&P and Moody's use?**

10 A. FFO to debt is one of the primary
11 metrics used for ratings.

12 Q. **Well, my only point is that there's a**
13 **downside scenario, but there's also an upside**
14 **scenario? The rating agencies will consider both**
15 **depending upon what the financial metrics look like**
16 **at the time?**

17 A. Yes.

18 Q. **And then in that next paragraph that**
19 **says GPE provided. Do you see that?**

20 A. Back to the report, yes.

21 Q. **Right. And then at the end, if you**
22 **would just look at those last three sentences, You**
23 **state, however, S&P projects the FFO to debt ratio**
24 **to improve to above 14 percent after 2018. Did I**
25 **read that correctly?**

1 A. Yes.

2 Q. And then you went on to say, It appears
3 that S&P is giving significant weight to its
4 expectation that GPE will be able to improve its
5 FFO-to-debt ratio fairly quickly?

6 A. It is in its assessment, yes.

7 Q. Now, you have a little bit of discussion
8 later on in the report about the equity units. Do
9 you recall that?

10 A. I do recall the equity units, but I
11 don't remember where it's at in the report.

12 Q. I think it's in the next paragraph just
13 before the heading that's underscored that says
14 potential impact on rate making capital structures.
15 Do you see that, sir?

16 A. Yes. Yes, I do.

17 Q. Okay, okay. Well, without going into
18 all the detail about the equity units, the equity
19 units were a form of equity-linked convertible debt,
20 correct?

21 A. Yes.

22 Q. Okay. And GPE issued those back in, I
23 think it was 2009; is that correct?

24 A. Yes.

25 Q. And you and I had a debate a couple of

1 years ago in both the KCP&L and the GMO cases about
2 whether there should be an adjustment based upon the
3 cost of those equity units, correct?

4 A. Yes.

5 Q. And ultimately, the Commission disagreed
6 with staff's position and rejected your
7 recommendation of a 245 basis point adjustment in
8 the cost of equity units, correct?

9 A. That's correct.

10 Q. And, in fact, the Commission found that
11 their cost was reasonable and was incurred in the
12 best interests of the ratepayers, correct?

13 A. I can't remember what they said
14 specifically, but I know they confirmed it.

15 MR. ZOBRIST: Judge, I would -- I
16 request that the Commission take official notice of
17 the report and orders in those two cases. The first
18 is No. ER-2010-0355 in the matter of Kansas City
19 Power & Light issued April 12th, 2011. I also
20 request that the Commission take official notice of
21 the GMO rate case No. ER-2010-0356 issued May 4th,
22 2011.

23 JUDGE BURTON: Okay. Commission will
24 take such notice.

25 MR. ZOBRIST: Thank you.

1 Q. (By Mr. Zobrist) Now, Mr. Murray, let's
2 turn -- I think we've got different pages here, but
3 if we could go to the section that starts with
4 potential impact on rate making capital structures
5 right below where I was speaking with you about the
6 equity units.

7 A. Yes.

8 Q. Go to the second paragraph in that
9 section.

10 A. Yes.

11 Q. In the second sentence you state, Staff
12 will not debate. Do you see that sentence?

13 A. Yes.

14 Q. That's with regard to the specific
15 capital structure issue?

16 A. Yes.

17 Q. But you say, Staff will point out that
18 GPE's proposed acquisition of Westar may cause this
19 change to be even more costly to Missouri ratepayers
20 if debt investors do not recognize KCPL's and GMO's
21 lower risk capital structures when determining their
22 required return on debt, correct?

23 A. Yes.

24 Q. And that kind of goes back to the
25 discussion that you and I had or the extent time you

1 had with the Chairman that if this Commission
2 approves these stipulations and agreements between
3 Public Counsel and staff and incorporates the
4 additional commitments made in Mr. Ives schedule
5 DRI-4, it is certainly possible that debt investors
6 will recognize the lower risk capital structures of
7 the two utilities when determining return that those
8 investors would require, correct?

9 A. We'll definitely have to follow that.

10 Q. But that's certainly a possibility?

11 A. Just like it was a possibility in 2001
12 we thought we were going to get ring-fencing, but
13 yes, it is possible.

14 MR. ZOBRIST: Can I just have a moment,
15 Judge?

16 JUDGE BURTON: That's fine.

17 Q. (By Mr. Zobrist) Mr. Murray, finally,
18 would you agree that the commitments in the
19 protections set forth in these two stipulations with
20 staff and public counsel and what I've given you,
21 and I know you're not a student of it, but what you
22 see in the Ives surrebuttal schedule DRI-4, I mean,
23 those provide greater insulation than were presented
24 to the Commission in the Aquila acquisition; isn't
25 that correct?

1 A. We've striving, I mean, but I don't know
2 what's going to happen with the rating agencies and
3 their recognition. It's a very high hurdle. So, I
4 mean, it's additional conditions, but I think some
5 of those things as far as separate legal entities
6 and what have you, that was going to occur
7 regardless, but it's an attempt.

8 **Q. Okay. But my point is these are**
9 **additional commitments and protections in this case**
10 **that we didn't have in the Aquila acquisition case,**
11 **correct?**

12 A. Again, I think it was in the
13 reorganization of the -- for the holding company.

14 **Q. Well, in the 2001 GPE stipulation that's**
15 **true as well, correct?**

16 A. Yes.

17 MR. ZOBRIST: Okay. Thank you. Nothing
18 further, Judge.

19 JUDGE BURTON: OPC?

20 RE CROSS-EXAMINATION

21 BY MR. OPITZ

22 **Q. Mr. Murray, in response -- in response**
23 **to some questions from the Chairman about --**

24 JUDGE BURTON: Could you, please, turn
25 on your microphone, Mr. Opitz.

1 Q. (By Mr. Opitz) In response to some
2 questions from the Chairman about capital structure
3 and I believe he was talking about rate making
4 capital structure, you gave an answer about a double
5 whammy. Do you recall that?

6 A. I do.

7 Q. And can you help me parse out what you
8 meant by a double whammy? What is the first whammy?

9 A. Okay. I'll try to be a little more, I
10 guess, articulate and not using slang words, even
11 though it seems to be the thing nowadays, but
12 anyway. As far as the -- if you have an equity-rich
13 capital structure as a subsidiary of a consolidated
14 holding company that has a more leveraged capital
15 structure and, therefore, has a lower credit rating
16 to the extent and, like I said, this can be a matter
17 of debate, but to the extent that the debt investors
18 are requiring a higher return at the subsidiary
19 level and those debt costs are being included in the
20 capital structure and you're including. So, that's
21 the first whammy that you're having higher debt cost
22 at the subsidiary due to additional leverage at the
23 Great Plains Energy level, to the extent it's
24 40 percent equity, 60 percent debt and you have
25 50/50 at the subsidiary.

1 The second whammy is the fact that the
2 percentage of equity in the capital structure makes
3 a big difference in the revenue requirement because
4 that -- obviously, the cost of equity is higher than
5 the cost of debt, but, more importantly, or not
6 necessarily more importantly but, you know, and we
7 can do the math sometime, but is the tax multiplier
8 effect, because when you have more equity in the
9 capital structure and the debt investors aren't
10 necessarily even putting full weight on that equity
11 in the capital structure, they're paying for the
12 higher debt cost and then they're going to pay for
13 this more equity-rich capital structure that has a
14 higher cost of capital as compared to the debt
15 capital and also has a tax multiplier. I think
16 staff used a generic 1.62308 to allow for a revenue
17 requirement that allows for the payment of taxes
18 based on the rate making formula. It doesn't
19 necessarily mean they'll pay the taxes and I don't
20 think they're expected to pay taxes until 2001 I
21 believe, 2002.

22 **Q. And so, are those two I'll call them**
23 **considerations things that rating agencies are aware**
24 **of?**

25 A. Well, they don't go much into the tax

1 factors. Obviously, they're looking at what the --
2 what the potential outcome of a rate case is going
3 to be and to the extent that -- well, to the extent
4 that companies provide them financial projections
5 that assume capital structures of 50/50 in their
6 rate-making models, then they're going to be
7 expecting higher cash flows. I don't know that the
8 rating agencies modeled in a possibility that they
9 may not get that 50/50 capital structure. So, point
10 being is is that a lot of things we've read it's
11 quite possible that they didn't factor in that other
12 downside scenario. But as far as the rating itself,
13 Moody's and S&P, they don't approach it the same
14 way. S&P says yes, that consolidated financial risk
15 of Great Plains Energy which includes the
16 transaction debt affects the whole family of
17 companies, where Moody's is looking at Great Plains
18 Energy more in isolation than the subsidiaries.

19 **Q. The Chairman also -- I believe in your**
20 **discussion with him you walked through some of the**
21 **conditions from 2011 -- or 2001 agreement?**

22 **A. Yes.**

23 **Q. And one of the provisions in there was**
24 **6-G about debt issuance at the operating company**
25 **level?**

1 A. Yes.

2 Q. And that condition alone wouldn't be
3 enough for a rating agency to assign a credit rating
4 for that stand-alone company, would it?

5 A. No. We've proven that even with all
6 these other conditions it didn't happen. I mean, so
7 that condition was in the restructuring case and we
8 had these whole host of conditions and S&P did not
9 recognize it as being significant.

10 MR. OPITZ: That's all I have. Thank
11 you.

12 JUDGE BURTON: MJMEUC?

13 MR. JARRETT: No questions.

14 JUDGE BURTON: Independence?

15 MS. ROBY: Yes, just a few follow-up
16 questions.

17 RECROSS-EXAMINATION

18 BY MS. ROBY

19 Q. I believe I heard you say that -- and
20 I'm looking at schedule DRI No. 4. Do you have that
21 in front of you?

22 A. Yes.

23 Q. Okay. Condition No. 18, can you turn to
24 that?

25 A. Yes.

1 **Q. Did I hear correctly that you said you**
2 **wish this condition was not in there?**

3 A. It's because it ties our hands. I
4 don't -- I mean, I think we've agreed -- staff and
5 the company had already agreed that we're just going
6 to agree to disagree and approach it in the rate
7 case.

8 **Q. And there are two clauses in this**
9 **condition. Is your concern with both of those**
10 **clauses?**

11 A. Well, I think one's dependent on the
12 other, but -- so, yes, I'm concerned with both of
13 those.

14 MS. ROBY: Okay. Thank you.

15 THE WITNESS: Thank you.

16 JUDGE BURTON: Redirect?

17 MR. THOMPSON: No, thank you, Judge.

18 JUDGE BURTON: Mr. Murray, you're
19 excused.

20 THE WITNESS: Thank you.

21 JUDGE BURTON: Thank you very much.

22 Why don't we take a brief recess until
23 3:30.

24 (A short recess was taken.)

25 JUDGE BURTON: Let's go ahead and go

1 back on the record. I'm sorry.

2 MR. JARRETT: Yes, Judge. Now that
3 we're back on the record, when Mr. Murray was on the
4 stand I believe there was some discussion of the
5 Aquila merger case report and order and, so, at this
6 point I would ask that the Commission take official
7 notice of the report and order in Case
8 No. EM-2007-0374.

9 JUDGE BURTON: 0374. And that's the
10 Commission's final order?

11 MR. JARRETT: That's correct.

12 JUDGE BURTON: Okay. The Commission
13 will take notice.

14 At this time I believe we are ready for
15 OPC's witness.

16 MR. OPITZ: Public Counsel calls
17 Mr. Geoff Marke.

18 JUDGE BURTON: Dr. Marke, would you,
19 please, raise your right hand. Do you swear or
20 affirm that the statements you're about to give will
21 be the truth, the whole truth and nothing but the
22 truth?

23 THE WITNESS: I do.

24 JUDGE BURTON: You may be seated.

25

1 GEOFF MARKE,
2 having been called as a witness herein, having been
3 first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. OPITZ

7 **Q. Good afternoon, Dr. Marke. Would you**
8 **state and spell your name for the record, please.**

9 A. It's Geoff, G-E-O-F-F, Marke, M-A-R-K-E.

10 **Q. And where are you employed and in what**
11 **capacity?**

12 A. I'm an economist with the Missouri
13 Office of the Public Counsel.

14 **Q. Are you the same Geoff Marke who**
15 **prefiled direct testimony in Case No. EE-2017-0113?**

16 A. I am.

17 **Q. And you understand that docket has been**
18 **consolidated with the current case?**

19 A. I do.

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

22 A. I do not.

23 **Q. If I were to ask you the same questions**
24 **that are posed in that prefiled testimony, would**
25 **your answers be the same?**

1 A. They would.

2 **Q. And your answers are true and correct to**
3 **the best of your information and belief?**

4 A. They are.

5 MR. OPITZ: With that, Judge, Public
6 Counsel moves to enter into evidence Exhibit 23.

7 (OPC's Exhibit 23 was offered into
8 evidence.)

9 JUDGE BURTON: Exhibit 23 has been
10 offered. Are there any objections?

11 Seeing none. It is admitted.

12 (OPC's Exhibit 23 was admitted into
13 evidence.)

14 MR. OPITZ: Thank you. I'll tender the
15 witness for cross-examination.

16 JUDGE BURTON: GPE, KCPL, and GMO?

17 MR. STEINER: No questions, Judge.

18 JUDGE BURTON: Staff?

19 MR. THOMPSON: No questions, Judge.

20 JUDGE BURTON: MJMEUC?

21 MR. JARRETT: No questions, Judge.

22 JUDGE BURTON: City of Independence?

23 MS. ROBY: No questions.

24 JUDGE BURTON: Questions from the
25 Commission?

1 CHAIRMAN HALL: No questions. Thank
2 you.

3 COMMISSIONER STOLL: I hate to say it.
4 No questions.

5 JUDGE BURTON: All right. Well, thank
6 you very much.

7 THE WITNESS: Thank you.

8 MR. HACK: Well done.

9 JUDGE BURTON: And I believe that leaves
10 us with our final witness of the day, and that's
11 Mr. Herz for City of Independence.

12 Would you raise your right hand. Do you
13 swear or affirm that the statements you're about to
14 give will be the truth, the whole truth and nothing
15 but the truth?

16 THE WITNESS: I do.

17 JUDGE BURTON: Thank you.

18 JOSEPH HERZ,
19 having been called as a witness herein, having been
20 first duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. ROBY

24 Q. Would you, please, state and spell your
25 name.

1 A. Joseph Herz, H-E-R-Z.

2 Q. And where are you employed?

3 A. Sawvel, S-A-W-V-E-L, and Associates.

4 Q. Are you the same Joseph Herz that
5 submitted testimony in Docket No. EE-2017-113 on
6 February 14th, 2017?

7 A. Yes, I am.

8 Q. And are you aware that that proceeding
9 was consolidated with EE-2017-226?

10 A. Yes.

11 Q. Was that testimony prepared by you or
12 under your direct supervision?

13 A. Yes, it was.

14 Q. If I ask you the same questions today
15 that are in that testimony, would your answers be
16 substantially the same?

17 A. Yes, they would be.

18 Q. Do you have any corrections to your
19 testimony?

20 A. I have one correction. It's on page 16,
21 line three. Following the word "do" is the word
22 "could" that should be deleted. "Could" should be
23 deleted from line three.

24 MS. ROBY: Okay. I tender Mr. Herz.

25 I'd like to offer into evidence what has been marked

1 as Exhibit No. 24, I believe.

2 (Independence's Exhibit 24 was offered
3 into evidence.)

4 JUDGE BURTON: Exhibit 24, Mr. Herz
5 rebuttal testimony, has been offered. Are there any
6 objections?

7 Seeing none. It is received.

8 (Independence's Exhibit 24 was admitted
9 into evidence.)

10 MS. ROBY: And Mr. Herz is available for
11 cross.

12 JUDGE BURTON: GPE, KCPL, and GMO?
13 Actually, I believe we'll start with
14 MJMEUC.

15 MR. JARRETT: No questions, Judge.

16 JUDGE BURTON: OPC?

17 MR. OPITZ: No, thank you, Judge.

18 JUDGE BURTON: Staff?

19 MR. THOMPSON: No, thank, Judge.

20 JUDGE BURTON: GPE, KCPL and GMO?

21 MR. DORITY: No questions at this time,
22 Judge.

23 JUDGE BURTON: Are there any questions
24 from the Commission?

25 CHAIRMAN HALL: No questions. Thank

1 you.

2 COMMISSIONER STOLL: No questions.

3 JUDGE BURTON: You're excused.

4 THE WITNESS: Thank you.

5 JUDGE BURTON: Thank you very much.

6 I believe that will conclude the
7 evidentiary portion of this hearing for the taking
8 of testimony.

9 The procedural schedule has been set and
10 we have one round of briefs scheduled for
11 April 21st. And let me just confirm with Ms. Farrar
12 that we will be able to have a copy of the
13 transcripts available next Tuesday?

14 THE COURT REPORTER: The 11th, yes,
15 Tuesday.

16 JUDGE BURTON: Okay. So, it will be
17 available Tuesday, the 11th, and I believe that
18 should be sufficient time for the parties.

19 And just to confirm, Exhibits 1, 2, 3,
20 4, 5, 6 -- let's just say straight through to 24
21 were offered and admitted. I didn't see anything
22 else that was offered or marked that wasn't
23 included. And the Commission was requested to take
24 official notice of the Commission's decision in
25 EM-2007-0374, as well as the stip and agreement and

1 the Commission's order approving that agreement in
2 EM-2016-0213, the order issued on 9/7/16 which I
3 believe that the stipulation and agreement is part
4 of the Commission's order approving it as an
5 attachment, and as the Empire stipulation and
6 agreement. And also for the Commission to take
7 official notice of the orders in the KCPL rate case
8 ER-2010-0355 and that's the April 10th, 2011, order,
9 as well as the Commission's order of May 24th, 2011,
10 in ER-2010-0356.

11 Was there anything else that is missing
12 or anything else that the parties believe the
13 Commission should take official notice of?

14 All right.

15 CHAIRMAN HALL: Judge, I have one thing
16 when you're done.

17 JUDGE BURTON: Are there any other
18 issues that we need to address procedurally while
19 we're still on the record?

20 Okay. Chairman, it's yours.

21 CHAIRMAN HALL: Well, in the -- in the
22 briefing I would be interested in hearing --

23 JUDGE BURTON: I don't know if your
24 microphone's on.

25 CHAIRMAN HALL: In the post-hearing

1 briefs I would be interested in hearing the parties'
2 position, in particular I'd like to hear from GPE,
3 KCP&L and GMO on whether it would be appropriate as
4 a condition of approval that KCP&L and GMO maintain
5 the contact center in Raytown at current staffing
6 levels for some certain number of years. It's my
7 understanding that that's GPE's plan, but it's not
8 set forth in any of the stipulations, and there may
9 be good reasons and there may be bad reasons for
10 adding that as a condition, but I'll be interested
11 in the parties' views on that. Thank you.

12 JUDGE BURTON: With that being said, I
13 thank everyone for their participation and we are
14 officially adjourned.

15 (The hearing was adjourned at 3:39 p.m.)
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CERTIFICATE OF REPORTER

I, Amanda N. Farrar, a Certified Court Reporter for the State of Missouri, do hereby certify that the witnesses whose testimony appears in the foregoing transcript were duly sworn; the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting by me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Certified Court Reporter

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