BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of 4 CSR 240 – 20.015	)	
Proposed Rule – Electric Utilities	)	**Case No. EX-99-442**
Affiliate Transactions	)	

PREPARED STATEMENT OF
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September 14, 1999

Good Morning. My name is Steve Mahinka. I am a partner at the international law firm of Morgan, Lewis & Bockius LLP, resident in our Washington, D.C. office. I currently am manager of my Firm's antitrust, food and drug regulatory, international trade, and legislative practices. My Firm has approximately 50 lawyers in our Antitrust Practice Group. I have practiced in the antitrust area for 25 years. Attached to my prepared statement are copies of my brief and more detailed professional biographies.

My antitrust practice has concentrated in particular on energy matters. I have become familiar with the kinds of competition issues that come before state utility commissions. For example, I have represented clients involved in state commission proceedings concerning energy competition matters in Pennsylvania, Texas, West Virginia and Colorado. I have been closely involved with most industry deregulation efforts, including those for the natural gas, cable television, cellular telephone, airline and trucking industries, as well as currently for electric power.

Exhibit No. 2
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Reporter KRM

At the request of Kansas City Power and Light, I am here today to offer the Commission and your Staff some comments about the Staff's proposed affiliate transaction rules for electric utilities. I will focus on two chief areas. First, from the standpoint of an antitrust lawyer who has dealt extensively with competition policy issues, I want to discuss some basic principles that I believe properly should guide this Commission as it considers alternative proposals for affiliate transaction rules. Second, I would like to address some of the specific proposals that have been advanced to you by others.

As the Commission is aware, some of the recent restructuring efforts in the electric power, natural gas, and telecommunications industries has been at the federal level, but much has also taken place at the state level. In both cases, the end result has been a movement toward a mixed environment in which some portions of the formerly fully regulated businesses remain fully regulated and subject to cost-of-service pricing determined in ratemaking proceedings, but other portions are deregulated, permitting prices to be competitively determined in the marketplace.

Depending on the extent of deregulation in any given jurisdiction, this mixed regulatory environment presents two principal issues to regulatory commissions: (1) non-discriminatory open access to utility distribution services, and (2) the prevention of inappropriate cost shifting from unregulated affiliates (or unregulated parts of the utility's operations) to the regulated delivery service operations

As I understand it, Missouri has not, as some other states have done, deregulated (or unbundled) the production and sale of electric power. Rather, electric power continues to be supplied, along with delivery services, by Missouri utilities. This means that the issue of non-discriminatory open access is not before this Commission. By contrast, Missouri electric utilities are permitted to own and operate affiliates engaged in businesses other than the supply and delivery of electric power. This means that, so long as there remains a mixed regulatory environment, there is an opportunity for incumbent utilities inappropriately to load costs onto regulated operations, causing ratepayers to subsidize the unregulated businesses. Thus, the PSC has a legitimate duty to prevent this cross-subsidization from occurring.

The Commission properly should be concerned about regulated utilities subsidizing their unregulated affiliates.

As the statement of purpose to the proposed rules states, the affiliate transaction rules are intended "to prevent regulated utilities from subsidizing their nonregulated operations." I agree with this purpose -- inappropriate cost-shifting should be a principal concern in a mixed regulatory environment.

There are two inter-related reasons why the Commission should be concerned about regulated utilities subsidizing their unregulated affiliates. First, ratepayers should be protected from paying the costs of producing and selling goods and services that they are not buying. Second, as a general principle, firms should bear all of the costs associated with the production of goods and services that they sell. If firms are subsidized, they are encouraged to produce more goods and services than what covering true costs would otherwise direct. That is, firms will allocate too many resources to the production of the goods that they sell, resulting in an inefficient allocation of society's scarce resources.

The Commission should adopt affiliate transaction rules that maximize consumer welfare. In addition to protecting ratepayers, I believe that the affiliated transaction rules should focus on maximizing consumer welfare. The best means to do that in unregulated markets is to have "rules of the game" that promote competition, properly understood, and promote economic efficiency.

I do not stand alone in presenting this view to the Commission. As I read the comments to the PSC of the other parties, there appears to be general agreement that competition should be fostered.

Agreement breaks down, however, over what is meant by competition. Some of the commenters seem to view competition as an end in itself, rather than as a means to maximizing consumer welfare. In so doing, these commenters mistakenly define competition in terms numbers of competitors, and erroneously urge the Commission to adopt affiliate transaction rules that would, in their terms, "level the playing field." By "leveling the playing field," these commenters mean that the Commission should adopt rules that would prevent incumbents from taking advantage of any cost advantages that they might have by virtue of economies of scale and scope. In my view, such rules would only protect competitors, not competition. In the end, consumers would be harmed because assets could not be efficiently used, resulting in higher prices. As KCP&L pointed out in its comments, both the Federal Trade Commission and the Department of Justice Antitrust Division strongly concur with this approach in the context of electric power restructuring.

Competition is a dynamic process, not a result.

Competition, properly understood, is a process, not a result. In a market economy, consumers' needs and desires drive competition. Firms compete when they strive to satisfy consumers' needs and desires better than their competitors. This means offering lower prices, better quality, and continual improvement in the range and quality of product offerings. Thus, in a competitive environment, it is consumers who determine which firms are successful and make a profit, and which firms fail. The competitive process is a dynamic process.

Inherent in the competitive process is that different competitors will always have differing mixes of strengths and weaknesses in vying for consumers. This is a strength of the process, not a flaw, and benefits consumers. Market competition embodies incentives for each competitor to utilize its unique mix of attributes to the fullest to serve consumers well because, in a competitive market, serving consumers well is the only way a firm is rewarded.

Of course, the competitive process results in some competitors being injured insofar as they lose customers and suffer diminished profits when rivals serve consumers better. But such loss of customers is desirable and proper, and not anticompetitive or a defect in the competitive process.

Merely counting the number of firms competing in a market is not a proper basis for measuring how competitive a market is. In fact, it makes no economic sense at all. If a free market is large enough to support many efficiently sized firms, then that market is surely competitive. Competition, however, is not properly measured by the number of firms in the market, but by whether consumer welfare is being served. Economists believe that this can happen even in situations where there is but one seller, so long as the seller faces the threat of entry of new sellers if it fails to serve consumers well with low prices, high quality, and good service.

The Commission's rules should not hinder economic efficiency because efficiency promotes consumer welfare.

Efficiency measures how well the competitive process is working, and thus whether consumer welfare is being served. Economists use several concepts of efficiency. Economists that study markets and the competitive process usually focus on two concepts of efficiency that are particularly relevant to measuring how well markets are functioning -- productive efficiency and allocative efficiency.

Productive efficiency occurs when goods and services are produced at their lowest average cost. Vigorous competition ensures productive efficiency because, under competition, prices are driven down to costs. An important consequence of this is that firms always face strong incentives continually to lower costs even further, in order to obtain economic profits.

Allocative efficiency occurs when resources used in the production of goods and services are allocated to their highest valued use, as determined by consumer preferences in the marketplace. Under competition, firms have a strong incentive continually to allocate resources to the production of goods and services that best satisfy consumer preferences, because to do so maximizes profits.

Thus, the concepts of productive efficiency and allocative efficiency are directly connected to maximizing consumer welfare. Public policy therefore should not stand in the way of firms taking advantage of any efficiencies that they can, including economies of scale and scope.

In order to promote competition, enhance efficiency, and maximize consumer welfare, the Commission should formulate affiliate transaction rules that are narrowly targeted to the problem of cross-subsidization and do not overreach.

The Commission should keep in mind that so long as an affiliate bears the costs of producing the goods and services that it sells, the problem of cross-subsidies is resolved. The only rule needed to put this into practice is an appropriate pricing rule for affiliate transactions (and a mechanism for ensuring compliance with the pricing rule). Rules that go beyond this will impede the competitive process and harm, rather than help, consumers.

There are actually two prices that are important in the context of preventing cross-subsidization: (1) the price received by a regulated utility when it transfers assets or expertise to an affiliate, and (2) the price paid by a regulated utility when it purchases assets or expertise from an affiliate.

In the first instance, the price should be sufficient to compensate ratepayers for all costs, including opportunity costs, that the regulated utility incurs to provide the assets or expertise. This will occur when the price covers incremental costs. Indeed, incremental cost should be the standard that the Commission uses. In the second instance, the appropriate price is the market price.

Let me explain that I use the term "incremental costs" to mean what economists call long-run marginal costs. These are the costs of marshaling all of the resources needed to produce an additional unit of output. Incremental costs include implicit opportunity costs as well as actual cash outlays.

There are three inter-related reasons why incremental cost is the appropriate standard. First, so long as incremental costs are recovered by the regulated operations, ratepayers are fully protected. The regulated utility would have no legitimate cost basis to seek Commission approval for higher rates. Second, an incremental cost standard sets out the proper incentives for the company as a whole to transfer assets or expertise to its most productive use. For example, if a utility asset is worth more to an affiliate (because of its ability to generate a higher rate of return in the hands of the affiliate), efficiency and consumer welfare are enhanced if the asset is transferred to the affiliate. This kind of economy of scope should be encouraged by the Commission, not hindered. Third, long-run marginal cost is a forward-looking standard. It represents the true societal costs to produce the incremental output looking to the future. By contrast, use of embedded or historical costs would be backward-looking.

I recognize that, as a practical matter, incremental costs may be difficult to ascertain. Therefore, use of "fully distributed costs" ("FDC") as defined in the proposed rules is, in my view, a reasonable workable approximation of incremental costs. The main difference is that fully allocated costs may not always account for all implicit costs that should properly be included in incremental cost.

In regard to the second kind of affiliate transaction, transactions involving the transfer of assets from an affiliate to a utility, "market price" is the appropriate pricing rule. In this case, we are talking about goods and services that are being produced and sold in unregulated, competitive markets, and thus have an observable market price. When an affiliate is compensated at the market price, there is no cross-subsidy because that is the price the affiliate could have obtained from any other third-party customer.

Sections 2.A.2 and 2.A.1 of the proposed rules hinder efficiency.

Let me now comment on some of the specific sections of the Staff's proposed rules, beginning with Section 2.A.2. Section 2.A.2 requires that an affiliate compensate a utility for the transfer of an asset at the *greater* of FDC or market price. For the reasons that I mentioned previously, the standard should simply be FDC. In instances where the market price exceeds incremental costs, requiring that the utility charge a market price to its affiliates reduces efficiency, by distorting the incentive to transfer assets or expertise to affiliates or to make investments in the assets or expertise.

Section 2.A.1 of the proposed rules similarly creates inefficiency. Here, the pricing rule should simply be market price. There should not be the qualification that the price be the *lesser* of market price or the *utility's* FDC.[1] First, as I explained, market price ensures that no cross-subsidization takes place. That is the sole purpose of these rules. Second, for goods and services

1/ The rule might make sense if it referred to the *affiliate's* FDC for producing and supplying the good or service. But because that is not the case, market price should be the standard.

produced and sold in competitive markets, the market price and true incremental cost will be the same. If, because of calculation methodology, FDC is calculated to be something different than market price, that is a flaw in the methodology, most likely because implicit opportunity costs are not properly accounted for. The possibility of that flaw should not be embodied into the Commission's pricing rule. Indeed, if FDC is calculated to be below market price, and that is the price paid by the utility to the affiliate, there would be reverse cross-subsidization. That is, customers of the affiliate would be subsidizing ratepayers. Such a result produces allocative inefficiency just as much as when ratepayers subsidize competitive affiliates.

Section 2.B of the proposed rules is overly broad and would prohibit an incumbent's use of legitimate efficiencies.

Proposed rule 2.B is the most troubling of the proposed rules to me. This section would prohibit *any* preferential treatment by a utility toward an affiliate. The rule is overly broad and would prohibit the efficient use of assets and expertise to detriment of consumer welfare. Indeed, the rule is completely backward. So long as there is no cross-subsidization, utilities not only should be permitted to give preferences to their affiliates, they should be encouraged to do so if preferential treatment increases internal efficiency and lowers costs.

The proposed rule erroneously considers a preference by a utility to its affiliate, in the form of sharing assets or information, as a subsidy. As I have explained, cross-subsidization occurs when the affiliate does not bear the costs of producing the goods or services that it sells but, rather, ratepayers share some of those costs. This situation, however, does not occur so long as the affiliate compensates the utility for asset and information transfers at a price at least equal to incremental costs. As long as that standard is satisfied, the utility as a whole (regulated and unregulated operations combined) should be allowed to use all of its resources as efficiently as possible. To deny the ability of the utility to utilize its resources efficiently simply *subsidizes* less efficient rivals, creates economic waste, and raises prices to consumers who have to pay for the waste. Although the market may *appear* more competitive as measured by the number of subsidized rivals, as I have explained, this is an improper understanding of competition. In fact, the competitive process is impeded, and the market is less competitive.

The Commission should reject proposals to handicap incumbents.

Let me turn now to some of the comments submitted by other parties. I particularly want to present some thoughts on the proposals advanced by the Office of Public Counsel ("OPC").

The OPC has proposed that this Commission adopt a set of rules that are far more detailed, complex, and regulatory than the Staff's proposed rules. The OPC, for example, would have the Commission regulate, among other things, an affiliate's ability to use its parent utility's name and logo, the ability of a utility and an affiliate to engage in joint marketing, and the ability of company employees to transfer among different units of the company. As the Commission is aware, the more detailed and complex the affiliate transaction rules are, the greater the cost of compliance and oversight. The rules should not impose unnecessary compliance and oversight costs.

Simply put, the proposals advanced by the OPC are not grounded in a proper understanding of competition and the competitive process, and, if adopted, would reduce efficiency and consumer welfare. The Commission should therefore reject such proposals.

Although the OPC has cloaked its proposals in language that suggests that they are designed to prevent cross-subsidization, the proposals do not actually deal with cross-subsidization at all. Rather, the proposals are better characterized as forms of competitive handicapping, based on the mistaken belief that any competitive advantage that an incumbent has is unfair and detrimental to competition. The OPC would have the Commission "level the playing field" by prohibiting affiliates from using genuine cost or productivity advantages arising out of affiliation with the utility. In effect, the OPC would "tax" internal efficiencies that the incumbent might have, so that everyone is equally inefficient. Under such a regulatory approach, the incumbent would be faced with the choice of either sharing its assets and information with everyone else, or not sharing them at all, including with its own affiliate. In the short run, if the incumbent chooses not to share, the economic value of the assets or information simply goes to waste. In the long run, the incentives to invest in the creation of valuable assets and information would be severely diminished because the expected benefits of doing so are destroyed.

Let me reiterate that preventing cross-subsidization does not mean prohibiting the transfer of any benefit to the affiliate; rather, it means prohibiting the transfer of any costs to ratepayers. Lowering one firm's costs (so long as it is not the result of cross-subsidization) is procompetitive and should be encouraged. Artificially raising the cost of an incumbent through competitive handicapping should not be required by the Commission. Certainly, if an incumbent's affiliate has cost advantages, it will be more difficult for competitors to compete because these advantages will allow the affiliate to offer lower prices and/or provide better products to consumers. This result, however, is precisely the desired outcome from a consumer-welfare standpoint, and is not cross-subsidization.

Although competitive handicapping may superficially result in more competitors in the market, by subsidizing high-cost, less-efficient suppliers, consumers would be worse off. Competition is fostered by leaving all firms unencumbered to use all of their strengths to compete to the best of their abilities, even if doing so will allow some firms to realize cost savings or have access to unique resources that others do not. If an affiliate has access to expertise or other economic assets that allows it to price below potential entrants, and thereby capture a large share of the market, consumers are benefitted, not harmed. Unless cost reductions that underlie lower prices are the result of cross-subsidization, they cannot properly be viewed as anticompetitive.

Adoption of the specific proposals advanced by the OPC would be detrimental to consumer welfare.

(1) The OPC's exception for corporate support functions does not go far enough.

The OPC has modified its original position to some degree by proposing that there be an exception to Section 2.B of the proposed rules for "corporate support" functions. Included under the OPC's definition of corporate support are such functions as payroll, taxes, shareholder services, insurance, financial reporting, financial planning, corporate accounting, corporate security, human resources, employee records, legal, and pension management. Specifically excluded are such functions as employee recruiting, engineering, hedging and financial derivatives, arbitrage services, electricity purchasing for resale, purchasing of electricity transportation and storage capacity, system operations, regulatory affairs, lobbying, and marketing.

Although the OPC's exception for corporate support services significantly improves upon the proposed Section 2.B by permitting incumbents to use some economies of scale and scope, it does not, in my view, go far enough. Indeed, as I have expressed previously, there should be no restrictions that have the effect of disallowing legitimate cost-lowering efficiencies, regardless of the source of those efficiencies or the functional areas in which the efficiencies occur. As long as proper cost allocations are made between the regulated and unregulated operations, illegitimate cross-subsidization will not occur.

(2) The OPC's specific handicapping proposals should be rejected.

Among the specific handicapping proposals that the OPC has advanced in this proceeding are that the Commission prevent a competitive affiliate of an incumbent utility from (1) using its parent utility's brand name and mark, (2) engaging in joint marketing with the utility, and (3) hiring a utility employee except under severe time limitations and with compensation. The OPC's arguments for such restrictive rules rest on assertions that these practices would erect barriers to entry in retail markets. Furthermore, the OPC asserts that incumbent utilities will possess market power because of their name recognition and reputation with consumers, as well as because of the historic role of the incumbent as the sole provider of electricity in its region.

The OPC's argument is that regulatory handicapping of the incumbent is necessary in order to facilitate and ensure the successful entry of new providers into the market.

The OPC's argument rests on a flawed understanding of barriers to entry. Not all factors that make entry difficult can properly be labeled *anticompetitive* barriers to entry. Certainly, it is more difficult for a potential entrant to compete with a more efficient incumbent that charges low prices and provides good service. Although low prices and good service discourage entry, such market behavior is procompetitive. These are not barriers to entry in an anticompetitive sense. Conduct that erects *anticompetitive* barriers to entry occurs not by lowering one's own costs, but by artificially raising the costs of rivals. The former leads to lower prices for consumers, while the latter inhibits competition and leads to higher prices.

(a) There should be no restrictions on an affiliate's ability to use its parent utility's name and logo.

Reputation, goodwill, and brand loyalty add net value to a product or service. For example, a reputation for reliability and good service in one market provides valuable information to consumers about a firm that is expanding its products and services to new markets. To limit an affiliate's ability to compete using the utility's established reputation and goodwill in new markets harms consumers by removing valuable information from the marketplace.

Proponents of handicapping such as the OPC say, however, that a utility acquired its brand name recognition and goodwill during a time when it was the only legal provider of electricity. If a particular utility has a positive brand name recognition and goodwill, the time when it acquired those attributes is irrelevant to forward-looking affiliate transaction rules. Any positive reputation, goodwill, and brand loyalty that a utility might possess would only be sustainable if these factors continue to produce net positive value for consumers in the marketplace. If they do so, they must be viewed as procompetitive and consumer-welfare enhancing, and not as improper abuses of market power. If, in contrast, a utility's initial attributes derive only from the fact that the utility has been the historical incumbent and the attributes otherwise have no real sustaining value to consumers, or if consumers perceive them negatively, the utility's historical position will quickly dissipate in the face of new competition.

Furthermore, restrictions that discriminatorily foreclose a competitive affiliate from using its parent utility's name and mark would be the functional equivalent of an economic subsidy to new entrants, many of whom will have substantial brand name recognition and goodwill of their own. In effect, such restrictions would simply raise the utility's affiliate's costs of establishing itself in the marketplace. The Commission should reject such efforts to use the regulatory process to impose costs on rivals.

In addition to the absence of any economic basis to impose name and mark restrictions, there is no legal basis to do so. A utility's investment in goodwill and reputation and other intangible assets is not generally considered a cost of providing utility services, and thus is not borne by ratepayers or subject to state rate making proceedings. Therefore, there is no justification for assigning to ratepayers or anyone else other than shareholders any property rights in a utility's intangible assets.

(b) Requiring affiliates to provide disclaimers and pay royalty fees to use a parent's name would reduce incentives to invest in goodwill and distort resource allocation.

The OPC urges that if the Commission does not ban an affiliate's use of its parent's name and logo altogether then, as an alternative, the Commission should mandate that affiliates use disclaimers and pay royalty fees. There is no sound economic or legal basis, however, for either of these measures.

Under the OPC's proposal, the disclaimer must state that the utility and the affiliate are not the same company, the affiliate is not regulated, and the affiliate's products need not be purchased in order to receive quality regulated services from the utility. The practical effect of these requirements is that the affiliates will forego using the mark because it is simply too cumbersome to comply with the mandates. This will, as I discussed previously, deny important information to consumers. Even if the mark is used with this disclaimer, the disclaimer, rather than informing and assisting consumers, is more likely to hinder consumers in making informed choices. It does so by confusing and obscuring the relationship between the utility and the affiliate that is relevant information to consumers. Because the disclaimer largely erodes the ability of an incumbent utility to identify its goodwill and reputation with its new marketing affiliate, valuable information to consumers is lost and incentives to invest in goodwill are reduced.

The proposed royalty requirement is similarly without merit. Because ratepayers never assumed risk associated with a utility's reputation and goodwill, there is no basis in economic analysis to require that affiliates pay a royalty for use of their parent's logo. Indeed, to do so would be welfare-reducing because it would be a subsidy to ratepayers. Such a transfer would distort optimal -- from a consumer welfare standpoint -- use of the logo by affiliates. Furthermore, as a practical matter, there would be no objective way to determine a "market" value of goodwill. Therefore, any required royalty payments from an affiliate to a utility would necessarily be arbitrary.

(c) Restrictions on billing inserts and other joint advertising are not justified.

The OPC also argues that the Commission should restrict joint marketing between a utility and its competitive affiliate. For example, the OPC believes that the competitive affiliate should not be able to include promotional inserts with the utility's monthly billing statement. The OPC contends that including such inserts would provide an unfair advantage to vertically integrated utilities, and therefore argues that either (1) competitors should also be allowed to include their marketing materials in the utility's billing statement, or (2) there should be no inserts by anyone.

As long as costs are properly allocated, joint advertising and marketing do not raise cross-subsidy concerns. Rather, consumers will benefit from the economies of scope inherent in joint advertising and marketing between a utility and an affiliate. To prohibit such joint activity simply causes economic waste of valuable assets, and distorts incentives to invest in their creation. As I said previously, the cross-subsidization issue is not about what is provided to an affiliate or what is not provided to others, it is about proper cost allocation to protect ratepayers.

(d) The sharing of customer information, plant and equipment, and employees between a utility and an affiliate is procompetitive.

The OPC has urged the Commission to restrict the sharing of several other assets between a utility and an affiliate, including customer information, plant and equipment, and employees. In considering such proposals, it is important to keep in mind that Missouri has not deregulated or unbundled the retail sale of electric power and power delivery. Therefore, as I explained earlier, the issue of *access* to essential delivery services is not presented at this time. The only concern now before the Commission is the issue of *cross-subsidization*. Questions that relate to cross-subsidization should focus on making sure that anything that is provided to or shared with an affiliate is provided at an appropriate price, *i.e.*, incremental costs, completely apart from what is being provided to others.

Although some tailored restrictions on the exchange of certain types of customer information and the sharing of certain employees (because of they have knowledge of sensitive customer information) may be appropriately considered if Missouri implements competition in electric power marketing, such restrictions are not relevant to utility participation in competitive non-power markets. Quite to the contrary, such information exchange and sharing, if it lowers the costs of affiliates, is procompetitive so long as proper cost allocations are made.

(e) A rule against tying arrangements is unnecessary.

Some parties, including the OPC, have urged the Commission to include a rule that prohibits a utility from conditioning the sale of utility services on the purchase of goods or services from its affiliate. Such a rule is unnecessary, however. Anticompetitive tying arrangements are already prohibited by the antitrust laws, and those laws provide plaintiffs, including the Missouri Attorney General, with a sufficient means to remedy harm. An additional "tying" rule here would simply create another level of costly oversight and compliance activity, and creates the potential for inconsistent rules, as has occurred, for example, between the antitrust laws and the tying provisions of the Bank Holding Company Act.

Conclusion.

The need for regulation of affiliate transactions arises from the mixed regulatory environment in which some utility services will continue to be subject to cost-of-service ratemaking. In this environment, the issue of cross-subsidization is a legitimate concern for the Commission. In addressing this concern, however, the Commission should adopt affiliate transaction rules that are narrowly tailored to address only the specific issue of cross subsidization, and are aimed at maximizing consumer welfare. The goal should be to avoid handicapping any firm, including the incumbent utility, and not to prohibit use of legitimate cost advantages, namely those due to efficiencies and not due to inappropriate cost shifting. Artificially raising the costs of one firm in order to create a cost umbrella under which more firms can "compete" will diminish, not promote competition. Removing an incumbent's cost advantages will help competitors, but hurt consumers, precisely contrary to the Commission's purpose in this proceeding.

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He graduated from The Johns Hopkins University in 1971, Phi Beta Kappa, and received his law degree in 1974 from the Harvard Law School, where he was executive editor of the *Harvard International Law Journal*. Following law school, Mr. Mahinka served as law clerk to the Chief Justice of the Massachusetts Appeals Court. He is a former trustee of The Johns Hopkins University. He is Section Manager for the Firm's Antitrust, FDA, and International Trade Practice Groups.

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Lectures/Addresses (Selected):

"Legal and Regulatory Barriers to Transfers of Nuclear Assets: Antitrust Considerations," at Infocast Conference on Restructuring Nuclear Assets, Washington, D.C. (January 1999).

"Rules for the Competitive Retail Electric Power Market: Handicapping and Branding," at Public Utilities Reports 2d Annual Conference, Arlington, Virginia (June 1998).

"Antitrust for a Disaggregated Electric Industry," at Energy Utility Consultants, Inc./ML&B Workshop on How to Disaggregate: Legal Issues in Electric Utility Restructuring (Sept. 1996) (with P. Zane).

"Antitrust Analysis of Mergers, Acquisitions and Joint Ventures in Electric Industry Restructuring," at Energy Business, Inc. Conference on New Legal Arrangements for the Electric Industry (July 18, 1996).

"Antitrust Analysis of Mergers, Acquisitions, and Joint Ventures in the Deregulating Electric Industry," at Energy Business, Inc. Conference on Antitrust Law and Economics for the Electric Industry (Feb. 23, 1996) (with J. Kattan).

"Antitrust Issues in Electronic Banking," at Glasser LegalWorks Conference on the Emerging Law of Cyberbanking (Feb. 9, 1996)

"Antitrust Enforcement in Network Industries: Application to Electronic Funds Transfer Networks," at District of Columbia Bar Association Seminar (Jan. 1995).

"Practical Concerns in Responding to Multistate Antitrust and Consumer Protection Investigations," at ABA Antitrust Section Annual Spring Meeting (April 1994).

"Strategic Responses by Drug Companies to the Changing U.S. Health Care System," at Pharmaceutical Update '93 of the Food and Drug Law Institute (May 1993)

"Mergers, Acquisitions, and Joint Ventures in the Energy Industries," at Energy Decisions, Inc. conferences on Antitrust in Natural Gas and Electricity in the 1990's (March 1991 and October 1990)

"Vertical Restraints as Exclusionary Practices: Current Issues in Regulated and Deregulated Industries," at ABA National Institute on The Cutting Edge of Antitrust: Exclusionary Practices (October 1989)

"Network Industries and the Antitrust Laws: Applying Antitrust to Interdependent Markets," at ABA Antitrust Section Annual Spring Meeting (April 1989).

"Antitrust Considerations Affecting Contracting Practices in the Gas Industry," at Federal Energy Bar Association conference on Joint Action -- Antitrust Risks in Increasingly Competitive Gas and Electric Industries (January 1989).

"Antitrust Analysis of Exclusionary Conduct: Lessons from Deregulation," at ABA Antitrust Section Conference on The Cutting Edge of Antitrust: Lessons from Deregulation (June 1988)

"Antitrust Aspects of Access to and Utilization of Gas Transmission and Distribution Facilities Post-Order 436," at Gas Daily Conference on Antitrust Action in Natural Gas (October 1986).

"Pricing Constraints and Opportunities Under Airline Deregulation," at the Transportation Industry After Deregulation Conference (Feb. 1984).

"New Antitrust Issues Facing Gas Companies in a Deregulated Environment," at the American Gas Association Annual Legal Forum (July 1983).

"Antitrust Aspects of Intercarrier Agreements," at the Federal Bar Association Program on Air Transportation and Antitrust (May 1983).

"Comments on Bottleneck Monopoly Issues," at the American Gas Association Advanced Antitrust Seminar (March 1983).

"Antitrust Law - Historical Development and Current Application," at the American Gas Association Seminar on Deregulation: Antitrust Issues Facing Pipelines and Distributors (March 1982).

"Antitrust Implications of the Motor Carrier Act of 1980," at the winter meeting of the Industrial Relations Committee, American Trucking Associations (March 1981).

"Antitrust Aspects of Pricing and Pricing Practices Under Airline Deregulation," at the ABA Sections of Antitrust Law and Public Utility Law Seminar on Deregulation and Antitrust: The Airline Experiment (October 1980).

"The Scope and Application of the Antitrust Laws to the Transportation Industry: Present and Future," at the 9th Annual Eastern Transportation Law Seminar of the Association of Interstate Commerce Commission Practitioners (October 1979).

"Antitrust and Its Application to the Regulated Industries," at the Antitrust Law Seminar of the Office of Proceedings, Interstate Commerce Commission (April 1979).

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