

1 work with us because they knew that was a weak link in the
2 system and were very interested in getting that line
3 upgraded.

4 So we discussed the option of them actually
5 upgrading the line to fit our needs and then turn around
6 and leasing a line back to us for our use as if it were
7 our own line for a period of time.

8 Q. Earlier there was a lot of reference to
9 Exhibit 304, and particularly the last page of that
10 document where the number 102 has a square drawn around
11 it.

12 Do you remember that discussion?

13 A. Yes.

14 Q. And that refers, I think, to a Sibley to Duncan
15 transmission line. Is that correct?

16 A. That's what this document indicates, yes.

17 Q. All right. Please look at your surrebuttal
18 testimony on page 3 at lines 14 through 17.

19 A. Yeah, I can see that.

20 Q. Is the Sibley to Duncan line that you're
21 talking about there the same as the Sibley to Duncan line
22 that shows up on Exhibit 304?

23 A. Yes, it is.

24 Q. And you talk about -- on lines 15, 16 and 17,
25 that UtiliCorp currently has an operating procedure in

1 place to reduce the loading on these lines should these
2 contingencies occur.

3 Does that operating procedure have any bearing
4 or any relevance to this 102 number that has got a square
5 around it on Exhibit 304?

6 A. Yeah. I think it -- it's in this case where we
7 actually see the rating of that line that we would
8 redispatch the generations to not exceed that -- that
9 line's loading.

10 Q. And you say on line 17, the operating procedure
11 calls for reduced generation at Sibley or increased
12 generation at Greenwood or both. Do I understand
13 correctly that changing the generation then removes the
14 problem represented by this 102 number?

15 A. Yes, it does.

16 Q. And if that -- and that is in a -- well, strike
17 that.

18 Is that what would happen in the real world if
19 the Sibley to Duncan line were overloaded?

20 A. Yes.

21 Q. And this 102 is just a computer simulation, is
22 it not?

23 A. That's correct.

24 Q. You were asked early on in cross-examination
25 about the fact that the Southwest Power Pool does a

1 regional analysis.

2 Did UtiliCorp do any type of regional analyses
3 for purposes of this case?

4 A. Yes, we did. We -- in the interconnect study
5 from St. Joe to UtiliCorp's Nashua substation, we did do a
6 loadflow study and included not only SPP utilities and
7 facilities but extended out into MAIN and MAPS facilities.
8 So it truly is regional.

9 Q. You were also asked some questions, and I think
10 the answers contained a phrase worst-case dispatch, and I
11 think -- correct me if I'm wrong -- does Exhibit 303
12 represent something called a worst-case dispatch?

13 A. Well, that's -- in -- Exhibit 303, again, is
14 the study impact -- is a system impact study for our
15 application for network service. And in this study they
16 did a worst-case dispatch.

17 Q. Give me a layman's explanation of what a
18 worst-case dispatch is, please.

19 A. Well, like I said earlier, that's where they
20 make the assumption to run these computer models where
21 they crank up generation on one end as high as it can go
22 and crank it down on the other end of the system and then
23 analyze the model -- or model the loadflow across the
24 system.

25 Q. Would -- as a layman, if I hear the term

1 worst-case scenario," that says to me that everything that
2 can possibly go wrong goes wrong. Is that the same thing
3 that you're talking about in a worst-case dispatch or is
4 that something different?

5 A. I think that would be a good description of
6 what I understand the worst-case scenario to be.

7 Q. Well, then, if Exhibit 303 is a worst-case
8 scenario or worst-case dispatch, how do you -- how do you
9 relate that to what you expect to be normal operations?

10 A. Well, I don't think there is a relationship.
11 Worst-case is worst-case, normal is normal. I don't
12 think --

13 Q. Well, has there ever been anything like a
14 worst-case scenario in actuality?

15 A. Not that I'm aware of, no.

16 Q. You indicated in your testimony that several
17 engineers work for you. How many engineers work for you?

18 A. I would think, gosh, maybe a hundred in my
19 group.

20 Q. Do you personally check the calculations and
21 work output of all of the engineers that work for you?

22 A. I do not.

23 Q. Do you have procedures in place to give you
24 some assurance that their work is accurately performed and
25 that there are checks on that work?

1 A. Yes, I do.

2 Q. Can you briefly describe what that is?

3 A. Well, generally, which I don't think would be
4 unusual, is that engineers doing the work have supervisors
5 who are ultimately or intimately familiar with the subject
6 matter and surely capable of checking the work. And
7 that's -- and that's what's happened in this case.

8 Q. Do you have any doubt or any reason to doubt
9 the accuracy of any of the information that was supplied
10 to you and that you relied upon in your direct or
11 surrebuttal testimony in this case?

12 A. No, I do not.

13 Q. Has anything come to light in the testimony
14 you've heard in this case to give you any indication that
15 there are any errors?

16 A. No.

17 MR. DUFFY: That's all of the questions I have
18 on redirect, Your Honor.

19 JUDGE WOODRUFF: All right. Thank you. You
20 may step down.

21 (Witness excused.)

22 JUDGE WOODRUFF: The next witness is Michael
23 Proctor, please.

24 MR. DUFFY: Would it be possible to take a
25 five-minute break?

1 JUDGE WOODRUFF: All right. Let's take a five-
2 minute break and come back at -- oh, let's go ahead and
3 say 11:40.

4 (A recess was taken.)

5 JUDGE WOODRUFF: I see that Dr. Proctor has
6 taken the stand. You are still under oath, sir.

7 THE WITNESS: Yes.

8 JUDGE WOODRUFF: Proceed.

9 MR. DOTTHEIM: Yes. Staff would like to call
10 Dr. Michael S. Proctor as its witness on transmission
11 access and liability issue.

12 At this time I have for the court reporter
13 three copies of Dr. Proctor's premarked cross-surrebuttal
14 testimony on transmission access and reliabilities. It's
15 been marked as Exhibit No. 715.

16 (EXHIBIT NO. 715 WAS MARKED FOR
17 IDENTIFICATION.)

18 MICHAEL S. PROCTOR testified as follows:

19 DIRECT EXAMINATION BY MR. DOTTHEIM:

20 Q. Dr. Proctor, you have a copy with you of your
21 cross-surrebuttal testimony which has been marked as
22 Exhibit 715?

23 A. Yes, I do.

24 Q. Do you have any corrections to that cross-
25 surrebuttal testimony?

1 A. No, I do not.

2 MR. DOTTHEIM: I tender Dr. Proctor for
3 cross-examination.

4 JUDGE WOODRUFF: Okay. Do you want to offer
5 the exhibit at this time also?

6 MR. DOTTHEIM: Yes. I would offer Exhibit 715.

7 JUDGE WOODRUFF: And 714 as well, his rebuttal?

8 MR. DOTTHEIM: Dr. Proctor is going to be
9 taking the stand again on market power, so I will offer
10 that into evidence at that time.

11 JUDGE WOODRUFF: All right. Thank you.

12 715 has been offered into evidence. Are there
13 any objections to its receipt?

14 Hearing none, it will be received into
15 evidence.

16 (EXHIBIT NO. 715 WAS RECEIVED INTO EVIDENCE.)

17 JUDGE WOODRUFF: He's been tendered for
18 cross-examination.

19 Does anyone have questions on cross-examination
20 for Dr. Proctor?

21 Hearing none, there are no questions from the
22 bench, so no recross and no redirect.

23 You may step down.

24 (Witness excused.)

25 JUDGE WOODRUFF: I believe Mr. Russell is the

1 next witness then.

2 (Witness sworn/affirmed.)

3 JUDGE WOODRUFF: You may be seated.

4 THE WITNESS: Thanks.

5 JUDGE WOODRUFF: You may inquire.

6 WHITFIELD A. RUSSELL testified as follows:

7 DIRECT EXAMINATION BY MR. KEEVIL:

8 Q. Sir, would you please state your name?

9 A. Whitfield A. Russell.

10 Q. And what is your professional position, sir?

11 A. I am a public utility consultant.

12 Q. And have you been retained by Springfield to
13 provide testimony in this case?

14 A. That's correct.

15 Q. And have you caused to be prepared what has
16 been labeled and premarked as the rebuttal testimony of
17 Whitfield A. Russell, Exhibit No. 300?

18 A. Yes.

19 MR. KEEVIL: Judge, at this time I'll hand the
20 copies to the court reporter.

21 (EXHIBIT NO. 300 WAS MARKED FOR
22 IDENTIFICATION.)

23 BY MR. KEEVIL:

24 Q. Mr. Russell, do you have any changes or
25 corrections that you wish to make to your rebuttal

1 testimony?

2 A. At page 9, lines 20 through 23, this was
3 clarified by Mr. Kreul on his surrebuttal. So I want to
4 change that statement to say, yet applicant studies
5 demonstrate that whether it is purchased from KCP&L and
6 upgraded or replaced by applicant's own 161kV line, delete
7 that and insert the St. Joe Hawthorn line, and then return
8 to text, remains overloaded under contingency conditions
9 with heavy transfers, and delete the rest of the page.

10 MR. DUFFY: Can we do that a little slower?
11 Because I can't write as fast as he can talk.

12 JUDGE WOODRUFF: Yes. If you would go through
13 that again, please.

14 THE WITNESS: Yes. On line 20 there, right at
15 161kV line, delete that, and insert the St. Joe Hawthorn
16 340kV. And then return to the text, line remains
17 overloaded, and insert under contingency conditions with
18 heavy transfers, period. And then delete the rest of the
19 sentence.

20 Now, the other corrections are not so much
21 corrections as a reflection of the fact that we've had
22 kind of a moving target here as the case has proceeded.

23 At the time the testimony was filed by the
24 Company and by me, there was a network request pending
25 before SPP, and the Company had developed these two

1 alternatives, the Nevada-Asbury and the Lake Road to
2 Nashua lines, for purposes of calculating savings but not
3 necessarily for purposes of preferred course of action.
4 Since that time the SPP study has been completed.

5 So that accounts for some of the things
6 discussed at pages 38 to 42 with respect to the SPP study,
7 which are no longer up to date but were correct at the
8 time they were stated.

9 And there is one other clarification on
10 page 10. Mr. Kreul's surrebuttal discusses a so-called
11 three-terminal line, and I suggested that one alternative
12 to that would be a total parallel line. And he contended
13 that the parallel line -- excuse me -- that his three-
14 terminal line involving the two Nashua 161kV buses and the
15 Lake Road bus was somehow parallel.

16 So that's just a disagreement on the use of the
17 term "parallel" --

18 MR. DUFFY: Your Honor, this witness is
19 apparently supplementing his testimony at this point
20 instead of making corrections to the document.

21 So I move to strike everything after we -- what
22 he talked to us about on page 9.

23 JUDGE WOODRUFF: This does appear to be
24 supplemental which should be coming in through questions.
25 I'm going to go ahead and grant the motion to strike. If

1 your attorney has questions for you, Mr. Keevil, you may
2 ask them.

3 THE WITNESS: Okay. That is all of my changes.

4 BY MR. KEEVIL:

5 Q. Mr. Russell, back on the bottom of page 9, I
6 think one time you said strike to the end of the page and
7 you said strike to the end of the sentence.

8 A. I'm sorry. I meant to the end of the page.

9 Q. Okay. After --

10 A. After my second insert, yes.

11 Q. Correct. Okay.

12 A. Yep.

13 Q. Okay.

14 MR. KEEVIL: Now, Judge, what question -- what
15 do you want me to ask him? I'll be glad to ask him.

16 MR. DUFFY: Well, I don't think he ought to be
17 asking him any more questions at this point, obviously.

18 MR. KEEVIL: Mr. Duffy, the judge wanted me to
19 ask more questions.

20 Are you sure -- Mr. Duffy, are you sure you
21 don't want some more questions here?

22 MR. DUFFY: I'm sure.

23 MR. KEEVIL: Okay.

24 BY MR. KEEVIL:

25 Q. Well, Mr. Russell, with the testimony as you've

1 corrected it there at the bottom of page 9, if I ask you
2 the questions in there -- contained therein, would your
3 answers be the same today as they are in Exhibit 300?

4 A. Yes, indeed.

5 MR. KEEVIL: Okay. With that, Judge, I would
6 offer Exhibit No. 300 into the record and tender the
7 witness for cross on the transmission access for liability
8 issue.

9 JUDGE WOODRUFF: Okay. Exhibit 300 has been
10 offered into evidence. Are there any objections?

11 Hearing none, it will be received.

12 (EXHIBIT NO. 300 WAS RECEIVED INTO EVIDENCE.)

13 JUDGE WOODRUFF: All right. For
14 cross-examination?

15 AGP?

16 CROSS-EXAMINATION BY MR. CONRAD:

17 Q. Mr. Russell, I'm Stu Conrad representing Ag
18 Processing in this proceeding, and my client is an
19 industrial customer up in St. Joseph. I want you to
20 understand the limited questions that I have. I'm not
21 going to get into this controversy with -- between you
22 guys and Springfield and so on.

23 I just -- I just kind of wanted to understand,
24 if you could tell me very briefly, how something like this
25 might affect my client.

1 Let me first ask you if you would look on
2 page 4 of your Exhibit 300, line 15, talking about
3 UtiliCorp ratepayers will bear the cost associated with
4 the constructing of a line if it's built.

5 Just so I understand it, are you talking about
6 existing UtiliCorp ratepayers or are you talking about
7 retailing UtiliCorp ratepayers, wholesale UtiliCorp
8 ratepayers, what?

9 A. All -- all retail and wholesale that make use
10 of transmission. And so I guess there is one refinement
11 here.

12 I guess if there is some sort of rate freeze,
13 I'm not sure what the status of this proposal is. But if
14 a bundle customer has some sort of a rate freeze, he
15 wouldn't see this new cost until the rates were adjusted.

16 But for anyone taking unbundled retail service
17 or wholesale transmission service, they would see these
18 additional costs in due course under a FERC tariff.

19 Q. Correct my understanding, at least the direct
20 cost would go into the wholesale FERC transmission rate.
21 Am I correct?

22 A. Yes, the capital costs. So hence is the
23 distinction I'm taking.

24 If you take unbundled retail service or
25 wholesale service, it's a FERC transmission rate. If

1 you're taking bundled transmission service that is bundled
2 as a part of a retail rate, it's subject to the State
3 jurisdiction and gets a little different treatment.

4 Q. Now, moving to page 6, line 16 and the balance
5 of that paragraph, I noted in your qualifications that you
6 had a JD from Georgetown in addition to the engineering
7 work. And I also notice that -- and I can't put my finger
8 on it right now -- oh, yes, I have found it.

9 It's on page 16 toward the top. You made a
10 citation to the NSP case, the Northern States Power case,
11 the Eighth Circuit?

12 A. Yes.

13 Q. I just wonder, you did not mention it at
14 page 6, and I guess it seemed to me as I read that, I was
15 kind of curious as to why you hadn't mentioned it there in
16 connection with access to transmission being vital to the
17 states. Because -- well, tell me why you didn't make a
18 reference to Northern States Power there.

19 A. Well, here I'm talking about why the state --
20 here at page 6 that is. I'm talking about why the State
21 has a vital interest in the adequacy and reliability of
22 transmission. And we tend to compartmentalize this
23 analysis.

24 But really what happens is this: Anyone who
25 owns a transmission system and operates a control area and

1 also is a vertically integrated utility has the ability to
2 permit or constrain or curtail or deny access to its
3 transmission system.

4 And often that is done to favor the sale or use
5 of its own generation. And all -- for the most part this
6 is regarded as a FERC jurisdictional issue, but the states
7 have a vital interest in this as well, and this is
8 reflected in this state's commission and participation in
9 FERC proceedings.

10 It's also reflected in a number of states like
11 Wisconsin and others which take an active role in
12 promoting the development of regional transmission
13 organizations and offering incentives and requirements for
14 utilities to participate in those.

15 Now, your second part of your question was
16 about this Eighth Circuit case. The Eighth Circuit case
17 is -- to me, speaking as an engineer. I'm not testifying
18 as to what the law is. I'm testifying what an engineer
19 understands that case to stand for.

20 That stands for the point that in rendering
21 bundled retail service, the State can grant the bundled
22 retail customer a priority.

23 What FERC was contending in that case is that
24 the bundled retail customer should be given the same
25 curtailment priority as all other firm customers. And

1 that's where the Eighth Circuit disagreed.

2 But FERC on revisiting the issue didn't appeal
3 that or seek cert to the Supreme Court. What they did is,
4 they came back and they told Northern States Power, the
5 utility who had challenged the so-called comparability
6 rule, they told Northern States is you can have this
7 higher priority to your native load bundled retail
8 customer, but if you do so, you're rendering an inferior
9 service to all other firm customers. You've got to lower
10 their rates to reflect that inferior service.

11 So when confronted with that choice, Northern
12 States just sort of dropped the issue.

13 Now, I just didn't see that Eighth Circuit case
14 as playing in what I was trying to say here on page 6.

15 Q. All right. I'm sorry if I misread.

16 Now, I did have, I guess, two more -- hopefully
17 two more questions and then I'm done. If you would look
18 at 14, page 14.

19 A. Yes, sir.

20 Q. And I'm kind of looking at line 6, and I take
21 it from -- and I don't -- I don't want you to get into
22 expanding on your testimony so we get into that realm.

23 But I take it that at least a major concern for
24 Springfield is -- what you're referring to there is the
25 potential curtailment of firm purchases. Right?

1 A. Firm transmission services.

2 Q. Firm transmission services. Well, you used the
3 term firm purchases of unit power, actually, for Montrose
4 generating resources, which is KCP&L?

5 A. Yes, yes.

6 Q. But really what you're concerned about is
7 getting the power to Springfield. Am I correct?

8 A. Correct.

9 Q. And that's on a firm commitment with UCU?

10 A. Yes. Yes. But don't -- don't misread my
11 testimony. I'm also concerned of Springfield and other
12 buyers having access to a nonfirm market.

13 Q. Okay. Stay with me here because my question
14 pertains to the firm nature of it.

15 A. Okay.

16 Q. As I understand most of these contracts, they
17 may be stated -- of course, you know, in an engineering
18 sense we can chuckle. All service is firm, all service is
19 interruptible. It's just a question of, you know, what
20 circumstances.

21 But as I understand the sense of firm as I use
22 it, it's a commitment that if it's not met, there is
23 some -- either a breaking or a breach of that contract or
24 there is some mechanism in the contract to do something
25 like a back credit if the commitment is not met.

1 Is that the type of arrangement that you're
2 talking about here?

3 A. No. I would phrase it slightly different. I
4 agree with your first part, that all service is
5 interruptible in the ultimate sense, both transmission and
6 bulk power.

7 The distinction between firm and nonfirm is
8 that who gets knocked off first and also who gets access
9 first.

10 If you are a referring customer, you are
11 entitled under FERC's rules at least to comparable
12 treatment irrespective of whether you're taking firm
13 point-to-point service or network service. And you are
14 the last to be cut. And if you are cut, you are to be cut
15 proportionally with all other entities receiving firm
16 transmission service, including the utility itself in
17 serving its own load.

18 So that's the general rule of thumb which
19 distinguishes firm transmission from interruptible.

20 In interruptible, as you know, from
21 representing industrials can have many meanings too. Some
22 are interruptible only for reliability purposes and some
23 are interruptible at the will or whim at the entity
24 rendering the service.

25 Q. Okay. Now, the bulk of your testimony, and I

1 sense the thrust of it, is obviously with respect to the
2 concerns of the client who is paying your bill here, which
3 is Springfield.

4 My client is up in St. Joseph. There is, as I
5 mentioned to you, an industrial customer there. They are
6 not on interruptible rate insofar as electricity is
7 concerned.

8 Indeed the contrary is true. I'll represent to
9 you that the continuance of the power up there is very
10 important to them.

11 And they have a tendency to be sensitive
12 because of the nature of their equipment to variations in
13 voltage, variations we talked yesterday -- you weren't
14 here -- with another witness, about phase, dropping phases
15 or something.

16 I just want to ask you: In what you've been
17 through on behalf of Springfield, did you see anything in
18 that that I should alert my client to with respect to the
19 implications of this transaction for the reliability, the
20 voltage levels and so on of their service up in St. Joe?

21 A. Well, yes, there -- there are several levels on
22 that which concern would arise, and let me just tell you
23 that I work for a number of PURPA cogenerators,
24 independent power producers and large industrial users of
25 electricity.

1 And so let me just tell you what some of the
2 attributes of this transaction which are -- would be of
3 concern to me as a consultant to an industrial.

4 First, there has been a reduction in the -- in
5 the required percentage of voltage that must be maintained
6 in SPP.

7 As I understand it, the band width used to be
8 plus or minus 5 percent of nominal, and now it's being
9 relaxed to plus or minus 10 percent.

10 And for anyone who is voltage sensitive, that
11 change in the prevailing voltage at the bulk level has
12 significance, because once the voltage gets transformed
13 and goes to a lower voltage, particularly if the customer
14 is on the end of a long feeder, he may see even a greater
15 decline in voltage as a result of this.

16 The other side is this: You have a utility
17 that you're paying for firm service at a given set of
18 voltage and reliability levels. And this lowering of the
19 standard to which the utility must conform is kind of a
20 windfall to the merging companies.

21 Here they were rendering service, setting rates
22 based upon one set of presumptions and then you merge the
23 two companies, and now many of the timing of upgrades and
24 fixes over time will be stretched out, and the net present
25 value of the future expansion of the system will be lower

1 simply because we've lowered the standard to which we're
2 going to adhere.

3 From the customers' point of view, low voltages
4 are not always a drastic thing but it can result in subtle
5 things. It can result in burned-up motors. It can result
6 in a smaller television tube. It can lead to nuisance
7 trips of equipment that is voltage sensitive.

8 And there is a growing recognition in the
9 industry and there have been a number of instances of
10 voltage collapse brought on by the fact of these
11 fractional horsepower air conditioning motors.

12 Once the voltage gets below about 85 percent,
13 they lose their torque. When they don't -- but they hang
14 on the line for seconds or minutes at a time until the
15 overtemperature takes them up.

16 And in some cases this has led to a collapse in
17 voltage and widespread blackouts. This was an attribute
18 of some midwestern utility blackouts and also very much a
19 factor in some recent cascading failures of the Pacific
20 Northeast and WCC.

21 So those are the kinds of things which
22 concerned me as I examine the evolution of events in this
23 proceeding.

24 MR. CONRAD: Thank you, Your Honor. That's
25 all.

1 JUDGE WOODRUFF: Any other cross-examination
2 questions?

3 MR. DUFFY: Do I get to ask anything about what
4 he just talked about? Yes, I do, since I haven't asked
5 any.

6 JUDGE WOODRUFF: You haven't asked anything
7 else.

8 MR. DUFFY: I beg your pardon?
9 I can go ahead?

10 JUDGE WOODRUFF: You can go ahead, yes.

11 MR. DUFFY: Am I the last one? Does anyone
12 else --

13 CROSS-EXAMINATION BY MR. DUFFY:

14 Q. I just want to ask a couple questions about
15 what you just testified about.

16 Are you aware whether this Commission has
17 administrative rules that specify the minimum amount of
18 voltage that is to be satisfactory service to a customer?

19 A. I haven't found those, no. I don't.

20 Q. Would you expect that if they exist they would
21 be changed simply because of a merger? In other words, a
22 merger wouldn't change an administrative rule of the
23 Public Service Commission, would it?

24 A. No. But it -- a lowering of the bulk power
25 standard could increase the chances of a violation of

1 those rules.

2 Q. When you talked about going -- SPP going from
3 plus or minus 5 percent to plus or minus 10 percent, is
4 that the way it's going to be all of the time or is that
5 just under contingency situations?

6 A. Well, that is a contingency situation as I
7 understand it, yes, plus or minus five under normal.

8 Now, I got a -- I got --

9 Q. That's --

10 A. No. I wasn't going to --

11 JUDGE WOODRUFF: He's not asked you a question,
12 so you can't respond to anything at this point.

13 THE WITNESS: I want to clarify --

14 JUDGE WOODRUFF: Unless he asks you another
15 question.

16 THE WITNESS: It's a completion of the prior
17 answer. I'm sorry.

18 JUDGE WOODRUFF: Do you want to allow it,
19 Mr. Duffy?

20 MR. DUFFY: Not particularly, no.

21 JUDGE WOODRUFF: Okay. Then it's too late to
22 clarify at this point.

23 BY MR. DUFFY:

24 Q. Do you know what county the Montrose generating
25 plant is located in?

1 A. No, sir.

2 Q. Do you know whether the Montrose generating
3 plant is located in the St. Joseph Light & Power
4 certificated area?

5 A. I do not.

6 MR. DUFFY: That's all of the questions I have.

7 JUDGE WOODRUFF: Thank you. Then we'll come up
8 to the bench.

9 Commissioner Murray, do you have any questions?

10 COMMISSIONER MURRAY: A few.

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. Good afternoon.

13 A. How are you?

14 Q. Just fine. Thank you.

15 You list several things in your testimony that
16 you think that UtiliCorp should be required to do if this
17 merger goes through, and one of the things that you ask us
18 to order is for them to conduct a study.

19 And I'd like to know, how does that relate to
20 the study that you mentioned when you were speaking about
21 changes in your testimony and you said an SPP study has
22 been completed?

23 A. Okay. Okay. There are -- there are two or
24 three kinds of studies at issue here, Your Honor.

25 First, the Company witness Mr. Kreul has filed

1 an analysis evaluating five or six alternatives for
2 interconnecting St. Joe with UtiliCorp. Okay? And I'll
3 put aside all of my quarrels with that and its validity.

4 Second, the Company in its initial testimony
5 indicated that it was going to seek a network service
6 arrangement from the SPP transmission body. And the study
7 related to that was pending at the time we filed the
8 testimony.

9 And so all of these upgrades and refinements
10 that were investigated in Mr. Kreul's testimony were
11 represented to us as being merely a benchmark from which
12 savings on the merger were to be calculated. And there
13 was no commitment to build these facilities.

14 And indeed, a data response indicated that
15 whatever SPP came back and told the Company they would
16 have to build, they would build.

17 The study came back; they changed their mind,
18 and now they're going to do the refinements in Mr. Kreul's
19 testimony.

20 Now, there is another set of studies. Now,
21 this SPP analysis used a set of loadflow data. Okay?
22 That was separate and apart from what Mr. Kreul's loadflow
23 studies did.

24 So the study that I'm contending should be done
25 is over and above what SPP did and over and above what the

1 Company has done.

2 What I'm concerned about, one of the major
3 concerns that I have, is that once the companies are
4 merged and they turn over the control of the dispatch of
5 their generators to the central dispatch system computer,
6 then they -- the economics will drive how much flow is
7 between the three operating companies, and even four
8 operating companies if you pick up the Kansas West Plains.

9 Q. Excuse me a moment.

10 Are you saying the economics will drive the
11 flow versus the reliability issue?

12 A. No. I'm saying -- I'm saying that the amount
13 of power transmitted between the three, there are
14 reliability restraints in the computer control, but
15 wherever -- whenever you move power, say, from St. Joe
16 down to Empire, not only does the power flow on the direct
17 lines, the power flows over all of the parallel lines.

18 And we may get -- simply because these
19 companies who are now operating independently and meeting
20 their own load locally, simply because they combine their
21 dispatch and they be moving some power from MAPP to
22 St. Joe down to Empire, they're going to change the base
23 case from which everybody's analyzing reliability.

24 And not only will they change the base case,
25 the rules under FERC give those kinds of internal dispatch

1 transactions a priority.

2 Internal dispatch is not even posted on the
3 OASIS bulletin board. So if I'm out there looking for
4 transition service, I'd like to know how much capacity is
5 available, how much I can buy. I really won't be able to
6 tell any more after this new dispatch system is put in
7 place.

8 So what I'm asking the Company to do is
9 simulate that dispatch, tell us what the range of
10 transmission transfer will be that you are going to carry
11 out as a part of your new merged system and then reserve
12 it and pay for it, you see.

13 Something that -- now, and the reason that I
14 would do this is that this additional transfer and the
15 common gearing of the region's transmission capability
16 results solely from the merger, you see? And they have a
17 right to it under the rules -- literally under the rules.

18 So I'm asking that this is an anticompetitive
19 result of the merger. They'll be able to favor their own
20 dispatch over the dispatch and the transmission use all of
21 their competitors that might want to make use of that same
22 transmission capacity.

23 So those are the three kinds of studies that
24 are being discussed here, and it's this third one that
25 I'm -- I'm asking be done.

1 Q. And do you have any estimate of the length of
2 time or the amount of money that it would take to complete
3 such a study?

4 A. Well, yes. And the same thing happened when
5 Alliant was formed. Now, Alliant was a merger of
6 Wisconsin Power & Light and it was electronically isolated
7 from -- I think it was Northwestern Public Service and
8 another Iowa company, IEC.

9 So when that merger came through, the same sort
10 of objections arose. All of the people who lay between
11 the -- the three merging companies were concerned about
12 consolidating their dispatch and getting overloaded some
13 very, very strategic and oversubscribed bottlenecks.

14 So the way this worked out as part of a
15 settlement, the Company ran a study in the course of a
16 hearing. It took a matter of two to four weeks. They got
17 a range of transfers that they expected to occur, a
18 minimum, an average and a maximum, and the parties
19 negotiated an amount.

20 And they also got a commitment from the merging
21 companies to measure the amount being transferred between
22 the companies and to put everybody on alert of how much
23 capacity was no longer available for use by the market.

24 Q. So that is what you would assume would come out
25 of such a study would be further negotiations and

1 agreements that any problems that were detected would be
2 provided for and that there would be a commitment to
3 measure and to show or post somehow the internal dispatch
4 so that others would be aware of it?

5 A. Yes, ma'am. And also that they'd reserve it,
6 so we'd have public notice of how much that we're using.

7 Q. And you mentioned that you would order
8 construction of Nevada-Asbury line?

9 A. Yes. Yes.

10 Q. Did you want to say something about that?

11 A. Well, I -- just that that line when we analyzed
12 the loadflow seemed to help the Montrose transfer to
13 Springfield and had a salutary effect. But I think it
14 should be part of this more comprehensive review of
15 transmission that I'm asking for.

16 Q. So if that review showed that that particular
17 line were not necessary, you would not insist upon that
18 being a condition, would you?

19 A. Well, I think that's fair. And more
20 importantly, if a better more comprehensive solution to
21 the overloads were identified in the studies, I would
22 endorse -- endorse this -- this better alternative.

23 Q. And you asked for a commitment to establish and
24 implement a single standard for the merged company in
25 compliance with SPP criteria?

1 A. Yes. That is kind of a slippery slope, because
2 the criteria changed from -- between the time that I filed
3 my testimony and today. In fact, in late May the criteria
4 were relaxed.

5 Q. Are you still asking that they be compliant
6 with that criteria?

7 A. I'm -- I'm having misgivings, to tell you the
8 truth. And -- and for the reasons that I went through
9 with Mr. Conrad's questions.

10 Voltage -- a decline in voltage standards is
11 not a trivial thing and is adversely affecting the
12 ratepayers and tends to be a windfall to the merging
13 companies in their ability to defer transmission upgrades.

14 So I would ask that the Commission give its
15 attention to -- to that in reviewing the merger.

16 Q. Now, is the Company opposed to committing to
17 establish and implement a single standard for the merged
18 company?

19 A. Well --

20 Q. Has that been the position?

21 A. I think they would frame it that they will
22 subscribe -- they will adhere to any standard of any RTO
23 to which they become a member.

24 Now, the point is that St. Joe now adheres to a
25 higher standard. If you look through that SPP study,

1 there were no voltage violations and no overload
2 violations found on the St. Joe system at all. They were
3 all in the UtiliCorp and Empire.

4 So of necessity, if the three companies come in
5 and join an RTO with a 10 percent standard, the current
6 5 percent standard to which St. Joe adheres will, you
7 know, just be deteriorating over time.

8 Q. So are you asking that they adhere to the
9 St. Joe standard?

10 A. That would be advisable, yes. They seem to run
11 a fine system, and again, as SPP turned up no violations.

12 Q. And are you saying that the St. Joe has higher
13 standards than would be the criteria required by the SPP?

14 A. St. Joe adheres to the standard that wasn't
15 used by the SPP until May, as I understand it. And -- but
16 as things now stand this instant, St. Joe adheres to a
17 higher standard than the SPP.

18 Q. On page 46 of your testimony you recommend that
19 UtiliCorp be required as a condition, A, not to set aside
20 transmission capacity for CBM and TRM, and then to waive
21 any future claims for CBM and TRM. I don't believe I
22 understand those conditions.

23 A. These are pretty exotic concepts, Your Honor.
24 And it's really a vestige of the old vertically integrated
25 power pool paradigm that we had.

1 And in simple lay terms it's this: Capacity
2 benefit margin means that utilities in setting their
3 installed reserve criteria rely upon the fact that they
4 can borrow power from others when their own generators are
5 out of service.

6 Now, to get that stuff delivered through your
7 interconnections, you need to have some sort of either
8 statistically or firm commitment to transmission.

9 Now, in the course of the restructuring debate,
10 NERC changed these standards and this concept of a
11 capacity benefit margin, and a transmission reserve margin
12 appeared in the new NERC rules.

13 Now, what it does in effect is, it adds to the
14 company's network or the company's reservation of
15 transmission capability, an additional increment for this
16 old capacity benefit notion, and it's been -- it's been
17 used by some companies abusively.

18 In fact, there are some companies that have
19 absolutely no available transmission capacity even though
20 there's -- a total transfer capability would be
21 4,000 megawatts, simply because they've reserved it all
22 for capacity benefit margin. The discretion is left to
23 the Company in designating the amount.

24 And the other -- the other unfairness of this
25 is that the capacity is reserved for the owner's use but

1 doesn't have to pay for it, doesn't have to pay extra.

2 So FERC's nibbled away at this a little bit,
3 and they're starting to make them pay for it. But the
4 issue is still alive and well.

5 And what I was just trying to do here is fly
6 the issue for the Commission, and it seemed like this
7 would be a good time with the companies merging. They
8 aren't relying upon these kind of reservations and might
9 be a good time to ask them to waive these reservations,
10 but if they need capacity benefit margin or transmission
11 reserve margin, that they reserve and pay for it under
12 their own tariffs.

13 Q. So you would hold them to a higher standard
14 than the NERC rules. Is that what you're saying?

15 A. No. I'm saying that I would ask them to -- ask
16 them to either waive the claim to it or if they -- if they
17 reserve CBM and TRM, that they reserve it and pay for it
18 under their tariffs.

19 So it will be not free capacity. It will be
20 capacity that the Company is bearing the costs for in
21 setting transmission rates.

22 Q. And that is to prevent any anticompetitive?

23 A. Yes, ma'am. As I say, some companies have
24 designated the entirety of their interchange and key
25 strategic interfaces as dedicated to capacity benefit

1 margin and taken that off of market.

2 And the effect of it is a very valuable
3 interface is transferred for the transmission owner alone
4 and the competitors can't get any access to it.

5 Q. On page 47 of your testimony you speak about
6 refunctionalization of any currently categorized
7 transmission lines that operate at or above 69kV.

8 Can you -- and you may have already covered
9 this, but how is refunctionalization detrimental?

10 A. Okay. Refunctionalization really arose from
11 the FERC Order 888. FERC saw a need to distinguish
12 distribution from transmission for purposes of saying who
13 has the jurisdiction over the delivery.

14 So when it comes to -- and also it was -- it
15 had a salutary purpose in that many companies with
16 voltages of 500 and 765 and others, really high voltage
17 systems, nonetheless in setting a transmission rate, they
18 pick up all of the 34kV and 69kV and they average in all
19 of the high-cost facilities, and that would drive the
20 transmission rate up.

21 And so FERC was really addressing themselves to
22 that issue. And they set out these seven factors by which
23 the state commissions were delegated the job of
24 distinguishing distribution for -- from transmission.

25 And in some states, like, Illinois, it has been

1 developed and applied in quite an anticompetitive manner.

2 The major targets of this seem to be large
3 industrials who might want to generate. And if you take,
4 for example, someone who is paying at 69kV today who is
5 connected to the utilities who is paying a transmission
6 rate and only for 69kV and above.

7 Then if you take and declare that 69kV facility
8 to be distribution, then he's lumped in with a 34 and a 13
9 and he loses all of his rights under the FERC open-access
10 tariff. You see? There is some danger of that.

11 So all I'm saying here is that when we seek
12 refunctionalization if a company comes in for it, that we
13 get a commitment from them that they'll leave the 69kV and
14 above in the transmission function, and hopefully that
15 will prevent the possibility of some of these
16 anticompetitive conduct.

17 Q. All right. Let's see if I have any more
18 questions here.

19 COMMISSIONER MURRAY: I believe that's all.
20 Thank you.

21 JUDGE WOODRUFF: Recross based on questions
22 from the bench?

23 Mr. Conrad.

24 RECROSS-EXAMINATION BY MR. CONRAD:

25 Q. Mr. Russell, I'm going to very quickly display

1 to you my lack of understanding of some of these physical
2 principles. But Commissioner Murray's question --
3 actually a couple of hers, I guess, triggered something up
4 here.

5 You use the term -- in responding to her
6 question, I think was one of the very first ones that she
7 asked, you talked about the path the power might take, and
8 the companies might move power.

9 Am I correct, am I understanding, that really
10 how that is done is that one company -- term seems to be
11 cranks up its generation and the other company cranks it
12 down, so that there is, in effect, a voltage differential
13 between the two, and then voltage differential is what
14 causes the power to move?

15 A. Well, I agree with everything you said, but
16 it's an angular difference which makes the power flow and
17 is a voltage difference which makes the VARS flow. But
18 otherwise, everything you say I agree with.

19 Q. And you mentioned that it would also flow
20 through parallel lines?

21 A. Correct.

22 Q. That's what -- I mean, we hypothesize when we
23 do one of these transactions. We hypothesize a path of
24 the power, like we're able to say, okay, now, you
25 electron, you know, you go over here and go down here.

1 And, in fact, the electrons go where they want
2 to go, and that may not even be close to -- to the path
3 that we're contracting on. And that's what we talked
4 about when we use the term "loop flows."

5 A. Yes. It's the distinction between what we
6 assume is flowing on a contract path, which is the
7 designated path, and the loop flow is the part of that
8 contractual amount which is moving over the noncontractual
9 path.

10 Q. And another way that that is done -- well, let
11 me -- let me back up.

12 And really what we're talking about is a
13 function that is called the impedance of the transmission
14 line, and the higher the impedance of that transmission
15 line, the more, shall we say, resistance to use the DC
16 concept, that it offers to the flow of power over that
17 line.

18 So that the power is going to take the path of
19 least resistance or most impedance wherever that may be.
20 Am I essentially correct?

21 A. Yes, yes. This is one of the main things that
22 is going to be accomplished with these direct
23 interconnections.

24 When you connect St. Joe to UtiliCorp to Empire
25 by direct paths, they can designate that contract path for

1 all of their internal deliveries even though everyone
2 knows much of it will be flowing through parallel paths.

3 Absent these direct interconnections they'd
4 have to buy transmission service and pay someone for the
5 burden they're putting on the transmission path.

6 So you really hit on one of -- one of the key
7 things that is going on here, is that these direct
8 interconnections confer on the companies a lot of
9 favorable treatment and a lot of priorities which hurt
10 other companies that own parallel paths.

11 They're denied revenue and they're also having
12 to bear the flows and the losses associated with those
13 flows.

14 Q. Okay. Now, another question that the
15 commissioner asked that led me to, I guess, question why
16 you were answering.

17 We talked earlier when I had a couple of
18 questions about the construction of the transmission
19 lines, and that UtiliCorp's ratepayers, both transmission
20 bundled or even if they were unbundled, they would see it,
21 but the UtiliCorp ratepayers at both levels would pay. Do
22 you remember that?

23 A. Correct.

24 Q. And the commissioner asked you why the
25 companies might oppose that.

1 If the companies were able to recover, as
2 you've testified, the cost of the transmission lines
3 through their rates, why would they -- I mean, they would
4 say, sure, we'll build it wherever you want to build it.
5 Why would they oppose building a transmission line?

6 A. Well, because there are so many advantages that
7 come to the generation sector of the company as a result
8 of transmissioning being insufficient.

9 That's one of the things that goes on here and
10 has been a trend across the country.

11 Many people have failed to reinforce and
12 upgrade their transmission. Because within the load
13 pocket or the constrained load pocket served by
14 insufficient transition, this gives them a favorable
15 position in marketing their generation.

16 So there -- there is an interplay between the
17 two. And the one way we get around that is to separate or
18 divest the generation, but we don't have that kind of
19 thing going on here.

20 Indeed, I understand the company's affiliate is
21 building new generation within the area of the three
22 merging companies that will be unregulated.

23 Q. Now, lastly, the commissioner asked you about
24 CBM, capacity benefit margin, TRM, and let me first ask,
25 you're basically familiar with contours of -- I think it's

1 FERC Order 889?

2 A. Yes.

3 Q. And that's the one that set up the real-time
4 OASIS systems?

5 A. Correct.

6 Q. When a company reserves CBM or TRM, in theory,
7 for its native load. Correct?

8 A. Correct.

9 Q. Does that show up on the OASIS?

10 A. Not necessarily. In fact, it does implicitly.
11 In other words, if the total transfer capability across an
12 interface is a thousand and the Company reserves CBM, what
13 they'll post is -- a thousand versus the 300, they'll post
14 an available transmission capacity of 700. So it shows up
15 by subtraction.

16 Q. And similarly, the reservations that they --
17 that they would make -- and I think you referenced this in
18 her question -- to deal with that native load situation,
19 does that show up on the oasis system at all either?

20 A. Well, the internal dispatch to serve native
21 load does not, that's correct, and you don't know in
22 advance how much they'll be and you don't get any full
23 knowledge of it and you don't know in real time how much
24 of it is going on. So that's the kind of thing I'm asking
25 be remedied here.

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

2 JUDGE WOODRUFF: Any further recross?

3 MR. COFFMAN: Yes.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. COFFMAN: Yes, just one.

6 RECROSS-EXAMINATION BY MR. COFFMAN:

7 Q. Mr. Russell, you were asked about various
8 remedies for anticompetitive impacts that you anticipate
9 in this merger, and one of those involves a condition that
10 would require the merging companies to waive native load
11 priority. Is that correct?

12 A. Only as to the increased amount of transfers.
13 In other words, I would -- I would leave the status quo in
14 place. But as to an assertion of native load priority for
15 new and additional transfers between the companies, yes.

16 Q. Well, with any waiving of native load, isn't
17 there both a potential positive result on the competitive
18 wholesale market but a corresponding negative impact on
19 bundled service customers?

20 A. I don't see the -- I'm going to leave the
21 existing customers alone. They're going to get the same
22 priority they now have.

23 As to, say, St. Joe serving Empire, I wouldn't
24 give that a native load priority. That -- that's
25 something which -- that's an unfair favoritism in priority

1 which came about solely as a result of merging. And
2 that's -- that's the thing I'm targeting here.

3 And don't forget, any gain -- any gain by the
4 merging companies is a result of this incremental
5 assertion of native load priority will come at the expense
6 of company -- the native load customers of the parallel
7 utilities. So it's -- it's a zero sum gain here.

8 Q. Okay. But the waiving of native load priority
9 would prevent bundled service customers from benefiting
10 from certain synergies, wouldn't it? Wouldn't it?

11 A. Only the amount that results from the merger,
12 the incremental amount. They're going to -- they're going
13 to be entitled to the native load priority they now enjoy,
14 Empire receiving services from Empire resources.

15 Q. So are you saying that due to this parallel
16 flow situation, that all Missouri customers would be held
17 harmless from your recommendation?

18 A. Yes. We maintain the status quo. In other
19 words, what I'm trying to prevent is something -- the
20 Company -- the merging companies' gain at the expense of
21 other ratepayers.

22 MR. COFFMAN: Okay. Thank you. That's all.

23 JUDGE WOODRUFF: Any other recross?

24 Hearing none, then redirect?

25 MR. KEEVIL: Just very briefly, Judge.

1 REDIRECT EXAMINATION BY MR. KEEVIL:

2 Q. Mr. Russell, in response to a question from
3 Commissioner Murray, you stated that St. Joseph Light &
4 Power has higher voltage standards than the new SPP
5 standards. Is that correct?

6 A. Correct.

7 Q. Is it your understanding that St. Joseph
8 Light & Power's voltage standard is higher or lower or the
9 same as UtiliCorp's current voltage standards or voltage
10 criteria?

11 A. I had understood that the UtiliCorp standard
12 was more permissive or laxer.

13 Q. Now, at the very beginning of your testimony
14 when Mr. Duffy was asking you just a couple of questions,
15 he asked you something about the SPP criteria going from
16 where it used to be to where it is now and whether that
17 applies to the normal situations or contingency situations
18 or something, and you attempted to clarify your answer --
19 or your response to your understanding of what the SPP
20 criteria change does, and Mr. Duffy, I believe, objected
21 to such clarification.

22 I was wondering if you would like to at this
23 time clarify that response, if you remember what it was.

24 A. Well, the standard allowed a plus or minus
25 5 percent departure from the nominal voltage until it was

1 changed under contingency conditions, and now it permits a
2 plus or minus 10 percent departure from the normal, from
3 the nominal voltage.

4 MR. KEEVIL: Judge, that's all I have.

5 JUDGE WOODRUFF: All right. You may step down.

6 (Witness excused.)

7 JUDGE WOODRUFF: The next item on the list is
8 market power and market power conditions. It's also
9 getting about lunch time. Let's go off the record for a
10 moment.

11 (OFF THE RECORD.)

12 JUDGE WOODRUFF: Let's go back on the record.
13 We'll go ahead and proceed with market power and market
14 power.

15 Mr. McKinney I believe is the first witness.

16 MR. DUFFY: I'm going to have to go find him,
17 Your Honor.

18 Here he is.

19 JUDGE WOODRUFF: All right. I see Mr. McKinney
20 has taken the stand. You are still under oath.

21 THE WITNESS: Thank you.

22 JOHN MCKINNEY testified as follows:

23 DIRECT EXAMINATION BY MR. DUFFY:

24 Q. Mr. McKinney, do you have any changes to what I
25 believe have been marked as Exhibits 4, 5 or 20 -- and 27,

1 which would be your direct, supplemental -- surrebuttal
2 and supplemental direct testimony?

3 A. Yes. I would like to make one small correction
4 in my surrebuttal testimony. On page 8, line 6, the line
5 now reads, yes, witnesses from the Staff, Public Counsel
6 and AGP have all filed rebuttal testimony.

7 I would like to change that by striking the
8 words "the Staff" and the word "all." The corrected line
9 would then read, yes, witness from Public Counsel and AGP
10 have filed rebuttal testimony.

11 And that's all I have.

12 MR. DUFFY: Okay. With that I would offer into
13 evidence Exhibits 4, 5 and 27 and tender the witness for
14 cross.

15 JUDGE WOODRUFF: All right. Exhibits 4, 5 and
16 27 have been offered into evidence. Are there any
17 objections to their receipt?

18 Hearing none they will be received into
19 evidence.

20 (EXHIBIT NOS. 4, 5 AND 27 WERE RECEIVED INTO
21 EVIDENCE.)

22 JUDGE WOODRUFF: Okay. Mr. McKinney has been
23 tendered for cross-examination. Are there any
24 cross-examination questions?

25 Mr. Keevil.

1 MR. KEEVIL: Very, very few, Judge.

2 CROSS-EXAMINATION BY MR. KEEVIL:

3 Q. Mr. McKinney, am I correct that in your direct
4 testimony the issue of market power, which I believe is
5 the issue that you're testifying on now, you only address
6 the market power issue in your direct testimony beginning
7 on page 29, lines 16 and continuing over to page 31,
8 line 19. Is that correct, sir?

9 A. That's correct.

10 Q. Okay. A similar question in your surrebuttal
11 testimony: The only place you address the issue of market
12 power is on page 8, lines 3 through line 19. Correct?

13 A. That's correct.

14 Q. Okay.

15 MR. KEEVIL: That's all I have, Your Honor.

16 JUDGE WOODRUFF: Okay. Public Counsel, I
17 believe you had cross.

18 MR. COFFMAN: Yes, just one, I believe.

19 CROSS-EXAMINATION BY MR. COFFMAN:

20 Q. I'm again having some trouble understanding
21 exactly your company's position on Public Counsel's
22 condition.

23 Do you have a copy of your statement of
24 position on the issues in this case?

25 A. I don't have a copy of ours. I have a copy of

1 a summary that I put together myself, and I'm looking for
2 it.

3 Q. All right. Well, maybe I can read to you the
4 question and answer that is concerning me and you can
5 recall what that --

6 A. I have it now. Thank you.

7 Q. I'd be referring to No. 3 in market power
8 conditions. In the list of issues, the issue is
9 respecting horizontal market powers should OPC's condition
10 that the companies be required to agree that they will be
11 subject to the same horizontal market power provisions
12 that were approved by the Commission in Case No. EM-97-515
13 be adopted.

14 And I believe that UtiliCorp's answer is, no,
15 the Commission has determined this case is not the time
16 for this study, and UCU stated it will comply with the
17 requirements at time of study. Is that correct?

18 A. That's what it reads, yes.

19 Q. Are you under the impression that the Office of
20 Public Counsel is requesting that a study be conducted in
21 the course of this case?

22 A. No.

23 Q. Okay. Do you understand that Public Counsel's
24 request for a horizontal market power study would occur at
25 the time of restructuring or at the time the decision was

1 made regarding restructuring?

2 A. Under certain guidelines, that's correct.

3 Q. Okay. And you don't -- and you do not agree
4 that that would be a condition that UtiliCorp would be
5 willing to agree to?

6 A. Not the conditions of the Public Counsel's
7 study, unless those conditions are the ones so ordered by
8 the Commission at that point in time. If they are, we
9 will be happy to comply. If not, the Public Counsel is
10 free to submit whatever study they choose to submit.

11 MR. COFFMAN: That's all I have.

12 JUDGE WOODRUFF: Okay.

13 Any other cross?

14 Thank you very much.

15 Bench?

16 Vice-Chair Drainer?

17 COMMISSIONER DRAINER: I just have one
18 question.

19 QUESTIONS BY COMMISSIONER DRAINER:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. When you apply for this merger with the FERC,
23 do you have to submit to them information on market power
24 or market study?

25 A. Yes. I'm not an expert in that field, but I am

1 knowledgeable that the FERC does require an Appendix A
2 study to be completed and filed with any merger
3 applications. That has been completed. It's been updated
4 and it's now pending before the FERC.

5 COMMISSIONER DRAINER: Okay. Thank you. I
6 have no other questions.

7 JUDGE WOODRUFF: Commissioner Murray?

8 COMMISSIONER MURRAY: Just one myself.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. It's my understanding that Office of Public
13 Counsel would like us to order you to conduct retail
14 market power study at the time that retail competition
15 were legislated in Missouri. Is that your understanding?

16 A. I believe they would like to see studies done
17 at that time.

18 Q. And is it your position that even if
19 legislation were passed, that it would take some time in
20 order to have a meaningful study as to any impact of
21 retail competition?

22 A. No. Once the market is defined, we understand
23 the parameters that we're supposed to study. I believe --
24 with most studies that I'm familiar with, one could be
25 performed fairly timely.

1 Q. But it is not the Company's desire to be asked
2 to do that at this time?

3 A. No. I don't know what the market would look
4 like, and it's very possible that it could change between
5 now and such time as the Legislature does define the
6 market.

7 Q. Let me correct --

8 A. I'm sorry.

9 Q. -- my question. What I meant to ask, is it the
10 Company's position that you would not like to be ordered
11 in conjunction with approval of the merger to do a retail
12 market power study at the time that retail competition
13 comes to Missouri?

14 A. If the Commission knows what type of study it
15 wants us to do at that point in time, the Commission can
16 order us to do one now and that's fine and we will be
17 happy to do it at that point in time whenever that may
18 occur.

19 The Commission -- my recommendation to the
20 Commission is we probably need to wait and see what the
21 Legislature says on how they're going to structure this
22 retail market so we know what to study at that point in
23 time.

24 Q. Okay. So your position is that it would be
25 difficult to devise a meaningful study or to set the

1 parameters for a meaningful study until we know what the
2 legislation would be?

3 A. Yes. I wouldn't want to get in front of the
4 Legislature on that point.

5 COMMISSIONER MURRAY: Thank you.

6 THE WITNESS: Thank you.

7 JUDGE WOODRUFF: All right. Recross based on
8 questions from the bench?

9 MR. KEEVIL: Yeah, I have one real quick one.

10 JUDGE WOODRUFF: I'm sorry, Mr. Keevil. I
11 believe AGP goes first.

12 MR. CONRAD: I don't feel bad.

13 JUDGE WOODRUFF: Okay.

14 RECROSS-EXAMINATION BY MR. CONRAD:

15 Q. Mr. McKinney, Vice-Chair Drainer asked you
16 about the market power study that you were asked to do or
17 required to do at FERC.

18 A. That's correct.

19 Q. And it is a requirement there, isn't it?

20 A. That's correct.

21 Q. And that is a wholesale market power study;
22 isn't that correct?

23 A. That's correct.

24 Q. There is not -- FERC didn't order you to do a
25 retail power study?

1 A. No, they do not.

2 Q. You've not done a retail power study?

3 A. No, we have not.

4 Q. And at least based on the pleadings and the
5 orders issued so far in this case, the Commission has not
6 ordered you to do one. Right?

7 A. That's correct.

8 Q. So there is no retail market power study in
9 this record?

10 A. That's correct.

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

12 THE WITNESS: Thank you.

13 JUDGE WOODRUFF: Now Springfield.

14 RECROSS-EXAMINATION BY MR. KEEVIL:

15 Q. Related to it, Mr. Conrad was asking about what
16 Commissioner Drainer had asked you.

17 I believe you mentioned in response to
18 Commissioner Drainer that this order was pending
19 currently. Monday when I was here there was testimony
20 about the fact that you were on a consent agenda -- FERC
21 consent agenda for Wednesday, and I was wondering if you
22 knew what had happened there.

23 A. Yes, I'm aware of the developments. The FERC
24 did not rule on our merger this Wednesday. There was
25 five -- I believe around five cases that were, what is

1 called, cut from the agenda. But we have received
2 assurance that the FERC will be issuing an order before
3 the end of this month.

4 Q. Before the end of July?

5 A. That's correct.

6 MR. KEEVIL: Thank you. That's all.

7 JUDGE WOODRUFF: Any other recross?

8 Any redirect?

9 MR. DUFFY: No, Your Honor.

10 JUDGE WOODRUFF: Okay. Then you may step down.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 JUDGE WOODRUFF: And Mr. Proctor has taken the
14 stand and you are still under oath.

15 THE WITNESS: Yes.

16 JUDGE WOODRUFF: And this will be his last
17 appearance as well, I believe.

18 MR. DOTTHEIM: Yes, that's correct.

19 JUDGE WOODRUFF: It looks like all of his is in
20 also.

21 MR. DOTTHEIM: Yes. The Staff would like to
22 request that Dr. Proctor's testimony that is contained in
23 Exhibit No. 714 be moved into evidence, and the Staff
24 tenders Dr. Proctor for cross-examination on market power
25 and market power conditions.

1 JUDGE WOODRUFF: 714 has been offered into
2 evidence. Are there any objections?
3 MR. CONRAD: I have no objection, Your Honor.
4 I just wanted to be clear that the witness also
5 had another piece of testimony. Was that 715 or --
6 JUDGE WOODRUFF: He had 715 which was admitted.
7 MR. CONRAD: We already dealt with that.
8 Thank you. I'm sorry. I have no objection.
9 JUDGE WOODRUFF: All right. Hearing no
10 objections, then Exhibit 714 will be received into
11 evidence.
12 (EXHIBIT NO. 714 WAS RECEIVED INTO EVIDENCE.)
13 JUDGE WOODRUFF: And he's been tendered for
14 cross-examination.
15 Are there any cross-examination?
16 Hearing none, we'll come up to the bench.
17 Vice-Chair Drainer?
18 COMMISSIONER DRAINER: No. I have no
19 questions. Thank you very much.
20 JUDGE WOODRUFF: Commissioner Murray?
21 COMMISSIONER MURRAY: Just one moment, please.
22 I have no questions either. Thank you.
23 JUDGE WOODRUFF: So there will be no recross
24 and no redirect and you may step down.
25 THE WITNESS: Thank you.

1 (Witness excused.)

2 JUDGE WOODRUFF: Ryan Kind I believe will be
3 next.

4 You may proceed.

5 MR. COFFMAN: Thank you.

6 RYAN KIND testified as follows:

7 DIRECT EXAMINATION MR. COFFMAN:

8 Q. Mr. Kind, you have previously testified, but
9 are there any corrections that need to be made to the
10 market power portion of your rebuttal testimony?

11 A. Yes, there are. I noticed just a couple of
12 typographical errors that I wasn't aware of when I
13 initially testified earlier this week.

14 Those errors are in the Attachment 1 to my
15 testimony, which are the OPC's proposed market power
16 conditions.

17 And the first one that I wanted to bring to the
18 Commission's attention is on page 3, the --

19 Q. Page 3 of Attachment 1?

20 A. Page 3 of Attachment 1.

21 The second full paragraph on that page, which
22 is the paragraph following the paragraph that's numbered
23 paragraph 4, paragraph iv. That second full paragraph has
24 no number to it attached that designates it as
25 paragraph v, which is what it should be designated as.

1 So as my -- as those conditions appear now,
2 there is a paragraph iv on page 3, followed by
3 paragraph vi on page 4, which is obviously missing the
4 numbering for v.

5 Q. Okay. Okay. And that would be a lower case
6 Roman Numeral v?

7 A. Right.

8 Q. Do you have any other corrections?

9 A. Just the one other correction is on page 8,
10 under Section C for retail market power provisions. There
11 is -- the first paragraph under section C is numbered
12 paragraph I, and it really should be roman numeral i
13 instead of I, followed by paragraph Roman Numeral ii.

14 Q. Does that cover all of the corrections that are
15 needed to your rebuttal testimony?

16 A. Yes, it does.

17 MR. COFFMAN: All right. I would then offer
18 into the record Exhibits 201 -- I'm not sure I have the
19 right numbers here.

20 JUDGE COFFMAN: I have 201NP and 201HC.

21 MR. COFFMAN: 201NP and 201HC and tender
22 Mr. Kind for cross-examination.

23 JUDGE WOODRUFF: 201HC and 201NP are offered
24 into evidence. Are there any objections?

25 Hearing none, they will be received into

1 evidence.

2 (EXHIBIT NOS. 201HC AND 201NP WERE RECEIVED
3 INTO EVIDENCE.)

4 JUDGE WOODRUFF: Mr. Kind has been tendered for
5 cross-examination. Are there any cross-examination
6 questions?

7 Hearing none we'll come up to the bench.

8 Vice-Chair Drainer?

9 COMMISSIONER DRAINER: I have no questions.
10 Thank you.

11 JUDGE WOODRUFF: Commissioner Murray?

12 COMMISSIONER MURRAY: I have no questions.
13 Thank you.

14 JUDGE WOODRUFF: No recross and no redirect.
15 You may step down.

16 (Witness excused.)

17 JUDGE WOODRUFF: And Mr. Russell has the honor
18 of being the last witness.

19 MR. DUFFY: Do we need to put him up there or
20 can we just ask if anybody has any questions?

21 JUDGE WOODRUFF: I'll ask that.

22 Does anybody have any questions for him?

23 MR. CONRAD: I do not on this issue.

24 JUDGE WOODRUFF: Would there be any questions
25 from the bench on this issue?

1 Was his testimony offered previously?

2 MR. KEEVIL: It was, Judge, but I do not
3 remember if it was received.

4 MR. CONRAD: I think it was held pending.

5 JUDGE WOODRUFF: That would be No. 300, right.

6 MR. KEEVIL: 300.

7 JUDGE WOODRUFF: I actually show it as having
8 been received.

9 MR. DUFFY: So do I.

10 JUDGE WOODRUFF: Although we'll go through it
11 again if you don't show it the same way.

12 MR. CONRAD: I show it received.

13 MR. DUFFY: I show it received.

14 JUDGE WOODRUFF: If it's not received before,
15 it's received now.

16 Okay. The only other items I have are the
17 Staff accounting schedules.

18 MR. DOTTHEIM: Yes. I don't even know if the
19 original accounting schedules have. I don't think they
20 have been offered and received.

21 JUDGE WOODRUFF: Neither of them have come in
22 yet.

23 MR. DOTTHEIM: So at this point I'd like to
24 offer Exhibit 720 which is the Staff's accounting
25 schedules filed in May, on May 2. I'd like to ask that

1 they be received into evidence. And I also would like to
2 ask that Exhibit 730, which are the updated accounting
3 schedules which were distributed yesterday, that they be
4 received in evidence.

5 JUDGE WOODRUFF: Okay. 720 and 730 have been
6 offered into evidence. Are there any objections?

7 Hearing none, they will be received.

8 (EXHIBIT NOS. 720 AND 730 WERE RECEIVED INTO
9 EVIDENCE.)

10 JUDGE WOODRUFF: On my chart, 721, which was
11 Mr. Traxler's replacement pages, also have not been ruled
12 upon.

13 MR. DOTTHEIM: At this time I'd like to request
14 that Exhibit 721, Mr. Traxler's replacement pages, be
15 received in evidence.

16 JUDGE WOODRUFF: Is there any objection?

17 Hearing none, it will be received.

18 (EXHIBIT NO. 721 WAS RECEIVED INTO EVIDENCE.)

19 MR. DOTTHEIM: I'm showing every other Staff
20 exhibit has having been received.

21 JUDGE WOODRUFF: I'm showing every other Staff
22 exhibit as being entered.

23 MR. DOTTHEIM: Thank you.

24 MR. KEEVIL: You're showing 300 through 304.
25 Right?

1 JUDGE WOODRUFF: I'm showing them all as having
2 been received.

3 And if you'll give me a moment. Let's go off
4 the record.

5 (OFF THE RECORD.)

6 JUDGE WOODRUFF: Okay. During the -- while we
7 were off the record we had a discussion about the
8 admission of briefs.

9 The initial briefs will be due on August 28th
10 and reply briefs will be due on September 22nd.

11 Anything else that needs to be taken up while
12 we are on the record?

13 All right. Thank you very much. This hearing
14 is adjourned.

15 WHEREUPON, hearing was concluded.
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