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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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On-the-Record Presentation

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February 27, 2006  
Jefferson City, Missouri  
Volume 7

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In the Matter of the Tariff )  
Filing of Aquila, Inc. to )  
Implement a General Increase )  
For Retail Steam Heat Service ) Case No. HR-2005-450  
Provided to Customers in its )  
L&P Missouri Service Area )

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MORRIS L. WOODRUFF, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE  
JEFF DAVIS, Chairman,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

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REPORTED BY:

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PAMELA FICK, RMR, RPR, CCR #447, CSR  
MIDWEST LITIGATION SERVICES

25

Exhibit No. 108  
Date 11-18-10 Reporter TU  
File No. ~~HC~~ HC-2010-0235

0031

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20 the public

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23 FOR: Staff of the Public Service  
24 Commission.  
25

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

2 JUDGE WOODRUFF: Good afternoon,  
3 everyone. We're here for the stipulation of the  
4 hearing to consider the stipulation agreement that's  
5 been filed in Case No. HR-2005-0450. We're going to  
6 begin today by taking entries of appearance, and then  
7 when the Commissioners get down here, we'll give them  
8 a chance to ask questions about the stipulation.

9 So we'll begin with entries of  
10 appearance for Aquila.

11 MR. COOPER: Yes, your Honor. Dean L.  
12 Cooper with the law firm of Brydon, Swearengen,  
13 England, PC, P.O. Box 456, Jefferson City, Missouri  
14 65102, appearing on behalf of Aquila, Inc., doing  
15 business as Aquila Networks - L&P.

16 JUDGE WOODRUFF: Staff?

17 MR. WILLIAMS: Nathan Williams and  
18 Steven Dottheim, P.O. Box 360, Jefferson City,  
19 Missouri, 65102.

20 JUDGE WOODRUFF: Public Counsel.

21 MR. MILLS: My name is Lewis Mills. I'm  
22 appearing on behalf of the Public Counsel and the  
23 public. My address is Post Office Box 2230,  
24 Jefferson City, Missouri 65102.

25 JUDGE WOODRUFF: For AG Processing.

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1                   MR. CONRAD: Your Honor, Stuart W.  
2 Conrad, with the law firm of Finnegan, Conrad and  
3 Peterson, 3100 Broadway, Suite 1209. I have provided  
4 the reporter with a sheet with the details on that.  
5 Thank you.

6                   JUDGE WOODRUFF: Thank you. For City of  
7 St. Joseph.

8                   MR. STEINMEIER: Thank you, your Honor.  
9 Let the record reflect the appearance of William D.  
10 Steinmeier and Mary Ann Garr Young of William D.  
11 Steinmeier, P.C., in Jefferson City, Missouri on  
12 behalf of the City of St. Joseph.

13                  JUDGE WOODRUFF: The only other party, I  
14 believe, was The Empire District, and I don't see  
15 anyone here from The Empire District so I assume they  
16 won't be participating today. Were there any other  
17 parties that I missed?

18                  (NO RESPONSE.)

19                  JUDGE WOODRUFF: All right. Well, as I  
20 indicated, today we're here to discuss the  
21 stipulation agreement that has been filed in this  
22 case, and for questions -- for questions we'll go  
23 over to Commissioner Appling.

24                  COMMISSIONER APPLING: Well, I just  
25 walked in, so I'm gonna -- I can say is not a

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1 question. It's good to see all you-all chairmen  
2 faces. But anyway, I'll pass right now, Judge, okay?

3 JUDGE WOODRUFF: Okay. Well, I do have  
4 one question. And if need be, we'll take a short  
5 break before the other Commissioners get down here.  
6 And that concerns the timing of all this, the  
7 approval of this.

8 The parties had indicated in the  
9 stipulation agreement that they, at least as a goal,  
10 wanted the department -- the Commission to approve  
11 this to be effective March 1st. Of course, that's  
12 just two days away.

13 I will tell you that I have placed an  
14 order regarding the stipulation agreement on  
15 tomorrow's agenda. Whether or not the Commission  
16 will take that -- will actually take that up or will  
17 approve it tomorrow, I don't know.

18 But I want to ask the parties, assuming  
19 that the Commission were to approve that order  
20 tomorrow, then we would have to be -- next-day  
21 effective date. And does that create any problems  
22 for anyone? Mr. Cooper?

23 MR. COOPER: Just one moment, your  
24 Honor.

25 JUDGE WOODRUFF: Sure.

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1                   MR. COOPER: Your Honor, I think that we  
2 would probably be more comfortable with perhaps a  
3 seven-day effective date as opposed to trying to do  
4 it the -- the next day.

5                   JUDGE WOODRUFF: Okay. Well, thank you  
6 very much for that information then. Well, then,  
7 we'll look over to Commissioner Clayton who just  
8 walked in the room. Do you have any questions? Or  
9 would you like a few minutes?

10                  COMMISSIONER CLAYTON: Did I miss  
11 opening statement?

12                  JUDGE WOODRUFF: We've not done opening  
13 statements. We've just done entries of appearance.

14                  COMMISSIONER CLAYTON: Are we gonna have  
15 opening statements? What's the procedure here? I  
16 don't know what --

17                  JUDGE WOODRUFF: Does anyone wish to  
18 make an opening statement?

19                  MR. COOPER: We have no desire to do so  
20 unless the Commission wants us to. I guess I had  
21 reviewed the transcript from the -- from the electric  
22 stipulation presentation, the recent electric  
23 presentation, and noted that the Commission had  
24 essentially begun with their questions and had kind  
25 of anticipated that process, if that will be

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1 acceptable.

2 COMMISSIONER CLAYTON: Well, if -- do  
3 you have questions?

4 COMMISSIONER APPLING: I want to make  
5 sure that we stay in order of rank around this place.  
6 Since I'm the junior guy, I will listen. Thank you.

7 JUDGE WOODRUFF: I did get a message  
8 from the Chairman and he indicated he'd be down in  
9 about five minutes from now. So if we want to take a  
10 short break, we can do that.

11 COMMISSIONER CLAYTON: I'll go ahead and  
12 get started.

13 JUDGE WOODRUFF: All right.

14 MR. CONRAD: Well, I was -- I was just  
15 going to just, you know, follow up on Mr. Cooper's  
16 comments. We had -- had planned to simply lift up to  
17 the bench that Mr. Johnstone is here if there are  
18 technical questions about it from our perspective  
19 that he can answer.

20 Also, Mr. Brubaker is here, and his area  
21 was in a few aspects of fuel pricing and to the costing,  
22 which as this developed, it took a different  
23 direction. So there may not be questions for him,  
24 but he is here.

25 To Mr. Cooper's comment, I think the

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1 Commission should appreciate that when we started the  
2 process on actually putting this stipulation  
3 together, the stipulation draft on the electric side  
4 was before us and that had that provision, Judge,  
5 about March 1.

6 And I think as -- as the process took  
7 longer, like the old adage, everything takes longer  
8 than you think it will, that kind of crept up on us  
9 and we just didn't really address that.

10 But we obviously don't have any desire to  
11 put pressure on the Commission to accomplish that. It  
12 was a goal and as that, we built into it that if it's  
13 not a practical date, you know, don't worry about it.

14 MR. COOPER: And, your Honor, I might  
15 just -- I'm sorry, Commissioner. I was just gonna add  
16 one thing to my prior comment about an effective date.

17 Similar to what, I guess, we would have  
18 initially intended with the March 1st date, it would  
19 be the company's intention that if there were a  
20 seven-day effective date of an approval order during  
21 that seven-day period, we would work towards filing  
22 the tariffs such that it would at least be possible  
23 for the Commission to then approve tariffs effective  
24 the same day that an order might be effective. So  
25 just as a matter of further explanation.



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1 JUDGE WOODRUFF: Certainly. All right.

2 COMMISSIONER CLAYTON: You're going back  
3 on the deal then?

4 COMMISSIONER APPLING: I think this  
5 might be a question for you, Stu, since it says that  
6 the AG process and the steam customer designed by an  
7 AG customer. Can you talk to me a little bit about  
8 the reliability and system resources study that  
9 you're asking to be done? What is -- what is that  
10 about? Is it -- can you explain that, or do I need  
11 to ask somebody else to do it?

12 MR. CONRAD: I can -- I can take probably a  
13 high-level view and if your Honor wanted more detail,  
14 then you might want to turn to one of the technical  
15 witnesses.

16 But at a high level, the nature of AGP's  
17 processes there in St. Joe, they refine soybeans. They  
18 take in raw soybeans as an input and they go through a  
19 fairly intensive process to flake those and to extract  
20 the oil and the other products that are from that.

21 Some of that goes into pet food, but other  
22 parts of it go into human consumable products. So  
23 there are FDA requirements with respect to the plant.

24 I'm not a chemist. I gave that -- I  
25 gave that up some time ago, but my understanding is

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1   that some parts of that process involve a gas called  
2   hexane, which is itself flammable. It's h-e-x-a-n-e.  
3   And that is flammable to the point that inappropriate  
4   concentrations can even be explosive.

5                   And when you shut down a line  
6   unpredictably, it creates problems for them that are  
7   safety-related, setting aside the issue of lost  
8   production and lost product that's in the line that has  
9   to be cleared out before the line can be restarted.

10                   But it creates for them safety issues  
11   for their employees in some instances, that if it's  
12   not shut down in the right sequence, that you can  
13   actually have a hazardous situation arise.

14                   For that reason, reliability of the  
15   steam supply, since it is a critical input to  
16   their -- to their production process, they do not  
17   have a steam-generating facility on-site. This is --  
18   this is what they rely on for that product. That is  
19   very important to them.

20                   And in the past, that has been an  
21   occasional issue. The parties, in the sense of  
22   Aquila and AGP, have -- have each taken steps to try to  
23   identify what causes drops in pressure. And drops in  
24   the steam pressure can be as disruptive as a complete  
25   interruption to them. If it drops below a certain

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1 level, things trip out and processes start to shut down.

2 I think the provision of the settlement

3 agreement that you were looking at with that

4 background is intended to draw attention, if you

5 will, and to -- and to ask that attention be given to

6 enhancements to the steam delivery system that will

7 help to ensure its reliability as pressure on that --

8 and I mean -- in this -- I shouldn't use that term

9 because it's a different kind of pressure.

10 As demand for steam increases, there is

11 a new, fairly substantial size customer that is

12 attaching and has attached to the standpoint up

13 there.

14 The Lake Road plant is an older

15 generation plant and goes back in some instances

16 perhaps older than I am, which is getting to be up

17 there.

18 And as changes are made, we just simply

19 want to be -- try to be sure that Aquila and my

20 client are on the same page with respect to those

21 enhancements, those changes, to try to be sure that

22 something doesn't occur that impacts the reliability

23 of the system. Is that helpful?

24 COMMISSIONER APPLING: That's helpful.

25 My second question, do you concur with this

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1 stipulation?

2 MR. CONRAD: Yes, sir, I do. We -- we  
3 believe this is -- this is a fair and reasonable  
4 approach. It obviously, as we've talked before, no  
5 stipulation, no settlement is perfect and there are  
6 aspects that, you know, if we were just -- if we were  
7 king for a day that you might change, but we're not.  
8 And this is a cooperative venture. The plant is not  
9 built on railroad cars nor is my client's facility.

10 COMMISSIONER APPLING: OPC, what you  
11 think?

12 MR. MILLS: Commissioner, we -- we  
13 didn't participate actively in this case. We have no  
14 objection to the stipulation agreement, but there are  
15 no residential or small steam customers. These are  
16 all large industrial customers ably represented by  
17 Mr. Conrad, and we were not a participant in the  
18 settlement negotiations to any great extent.

19 COMMISSIONER APPLING: Thank you, sir.  
20 Staff?

21 MR. WILLIAMS: As the suggestions of  
22 staff files indicates, the staff supports the  
23 agreement.

24 COMMISSIONER APPLING: Okay. Anyone  
25 else care to comment on this stipulation and

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1 agreement at this point?

2 (NO RESPONSE.)

3 COMMISSIONER APPLING: Don't all of  
4 you-all speak up at the same time now. Go ahead.

5 MR. STEINMEIER: Well, there aren't many  
6 of us left, your Honor, so I assume you're calling on  
7 me. And the City of St. Joseph did not have  
8 witnesses in the case. We did not have -- bring to  
9 bear the kind of technical resources that the staff  
10 and that Ag Processing and the industrial customers  
11 did.

12 We've participated in the process and  
13 carefully observed it and feel confident that once a  
14 stipulation and agreement has been entered into with  
15 which staff is comfortable and with which the  
16 industrial customers are comfortable, the City of  
17 St. Joseph is likewise comfortable that that  
18 stipulation produces a just and reasonable result.

19 COMMISSIONER APPLING: Okay. Thank you,  
20 sir. That's all the questions I have.

21 JUDGE WOODRUFF: Thank you,  
22 Commissioner. Mr. Clayton?

23 MR. CLAYTON: Thank you, Judge. I  
24 wanted to ask some questions just starting off on the  
25 general nature of the steam operation because we

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1     don't deal with it that often. So I guess I'll  
2     direct those questions to Mr. Cooper, and if you  
3     don't -- I'm sure you'll have a general idea of the  
4     answer. If you don't, we'll see if we can find it  
5     out. First of all, how many customers does Aquila  
6     have?

7                     MR. COOPER: There are seven steam  
8     customers.

9                     MR. CLAYTON: Okay. And has that number  
10    of customers varied over the past, if we say five,  
11    ten, 25 years? Or basically the seven customers have  
12    been there for a long time. Have you lost any  
13    customers, gained any? That's what I'm asking.

14                    MR. COOPER: It's our understanding that  
15    it has been fairly consistent. I mean, within one  
16    customer here or one customer there.

17                    COMMISSIONER CLAYTON: And how -- is --  
18    I guess you can't really go back or you may not have  
19    the information to go back 25 years. I mean, you've  
20    only had the company, what, five now, less than five.  
21    Did you know that answer or...

22                    MR. COOPER: Certainly we could do some  
23    checking and we would be more certain, Commissioner.

24                    COMMISSIONER CLAYTON: That's quite all  
25    right. How big is the footprint that's served by

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1     Aquila's steam operation, geographically?

2                     MR. COOPER:  Yeah, Commissioner, with me  
3     is Mr. Gary Clemmons from -- from Aquila, and if it  
4     would be all right, I would like to, I guess, share  
5     the microphone with Mr. Clemmons on some of the  
6     questions.

7                     JUDGE WOODRUFF:  And I'll go ahead and  
8     swear you in as a witness then.

9     GARY CLEMMONS was sworn and testified as follows:

10                    COMMISSIONER CLAYTON:  Now,  
11     Mr. Clemmons, how -- how big is the service area of  
12     Aquila steam operation?

13                    MR. CLEMMONS:  It's relatively small.  
14     Just a few -- a few square miles around the Lake Road  
15     power plant because the steam is fed off that plant.  
16     So it's all in the river bottom along the power  
17     plant.

18                    COMMISSIONER CLAYTON:  Okay.  Is -- is  
19     it a loop system, or is it -- or is it just lines  
20     that go out and are capped at the end?

21                    MR. CLEMMONS:  Just lines that go -- my  
22     understanding is the lines just -- just go out.

23                    COMMISSIONER CLAYTON:  So it's not a --  
24     it doesn't connect.  It doesn't go in a circle and  
25     connect at the end for redundancy?

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1                   MR. CLEMMONS: I -- I can't answer that  
2 for sure, but...

3                   MR. CONRAD: I --

4                   COMMISSIONER CLAYTON: If anyone knows.  
5 I don't want to swear in another witness. I'm --

6                   MR. CONRAD: I think it's just  
7 end-capped, Judge.

8                   COMMISSIONER CLAYTON: Okay. Okay.  
9 Okay.

10                  MR. CLEMMONS: I think it's just  
11 end-capped.

12                  COMMISSIONER CLAYTON: Do you know,  
13 Mr. Clemmons, how many other industrial customers  
14 would be along the route that are not served by  
15 Aquila steam?

16                  MR. CLEMMONS: No, I wouldn't know how  
17 many industrial customers that we have in that area,  
18 but it's not a whole lot additional.

19                  COMMISSIONER CLAYTON: Not a whole lot.  
20 Let's go back to Mr. Cooper. I was doing fine with  
21 him. Let's just -- okay. The agreement is entitled  
22 nonunanimous. Is that because OPC didn't sign on; is  
23 that correct?

24                  MR. MILLS: I believe The Empire  
25 District Electric Company is also a party to the case



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1 and they didn't sign on.

2 COMMISSIONER CLAYTON: Okay. Okay. But  
3 they didn't file any objection; is that correct?

4 MR. MILLS: That's correct.

5 COMMISSIONER CLAYTON: Okay. Would it  
6 be -- if Empire didn't sign on and OPC did not in  
7 this instance, would it be nonunanimous?

8 MR. COOPER: I think we would still  
9 initially file it as a nonunanimous stipulation.

10 COMMISSIONER CLAYTON: Out of an  
11 abundance of caution.

12 MR. COOPER: Always.

13 COMMISSIONER CLAYTON: Mr. Mills?

14 MR. MILLS: Yeah.

15 COMMISSIONER CLAYTON: The moratorium  
16 date is out to January 7, 2007. What's not to love?

17 MR. MILLS: I wish I could transpose  
18 that into another document.

19 COMMISSIONER CLAYTON: I thought that  
20 would get you in on this one. And you don't  
21 represent any of the seven customers; is that  
22 correct?

23 MR. MILLS: That's correct.

24 COMMISSIONER CLAYTON: Mr. Dottheim?

25 MR. DOTTHEIM: At my peril, your

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1 question regarding historically the number of steam  
2 customers, I think maybe -- and maybe Mr. Conrad can  
3 confirm this, who even predates me.

4 MR. CONRAD: Easy, now.

5 MR. DOTTHEIM: But in the late '70s I  
6 think St. Joseph Light and Power applied to the  
7 Commission to abandon part of the steam system which  
8 was in downtown St. Joseph -- St. Joseph.

9 And I believe the Commission authorized  
10 St. Joseph Light and Power to abandon that part of  
11 the -- of the steam system.

12 Not at the moment, but I can verify  
13 that, and if that's something -- additional  
14 information that the Commissioners would like, we  
15 can -- we can provide, we can make a filing with the  
16 Commission and provide that additional background.

17 COMMISSIONER CLAYTON: Mr. Dottheim, are  
18 you aware of how close the downtown area is in  
19 compared to the Lake -- is it Lakewood Generation  
20 System?

21 MR. DOTTHEIM: I, myself, no. There may  
22 be others in the hearing room who might.

23 COMMISSIONER CLAYTON: Has anyone ever  
24 seen this system in the room? Everybody's not really  
25 for sure, you know. Mr. Conrad, is downtown close to

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1 the Lake Road?

2 MR. CONRAD: Well, when you say close...

3 COMMISSIONER CLAYTON: Couple of miles?

4 MR. CONRAD: It probably is more than  
5 that. I hesitate to give it in blocks, but it is --  
6 if you're familiar with St. Joe, there's the area  
7 where the downtown is, and then the river kind of  
8 swings around.

9 And the Lake Road plant -- and it is  
10 Lake Road, so I don't know if they named the road  
11 after the plant or the plant after the road. It is  
12 well south of the down -- what would be the downtown  
13 area of St. Joe.

14 And this is more proximate to an area  
15 that I think people would historically associate with  
16 being the stockyards, and the old St. Joe stockyards  
17 are adjacent to the industrial area.

18 And if I might, Judge, speak very  
19 quickly to the question of the number of customers.  
20 I would agree with Mr. Cooper insofar as recent  
21 history.

22 I believe in probably 2002, 2003 time  
23 frame, maybe 2004, Friskies Pet Care had two separate  
24 facilities, and -- both of which were steam  
25 customers. Not the size of H&P, but both were steam

0049

1 customers. They -- they closed one of those. That's  
2 on the negative side.

3 On the plus side here, I believe in the  
4 last eight or ten months, a pork processing plant has  
5 been constructed that has unfortunately hit the news  
6 here in the last couple of months with the gas  
7 explosion.

8 But they will be -- will be or are a  
9 steam customer on this, and they will be  
10 approximately, give or take, about a third the size  
11 of AGP's load. AGP has -- and I don't know how you  
12 count customers on this, whether you count customers  
13 and say meter, meter, meter is three customers, even  
14 though they're on the same premises.

15 AGP has -- takes two different pressure  
16 levels, and that may be included in the count.

17 COMMISSIONER CLAYTON: So the pork  
18 processing plant wouldn't be included in the seven  
19 customers referenced, correct?

20 MR. CONRAD: Well, I don't know. It  
21 depends on what the count is. Maybe Mr. Cooper, now  
22 that I have prompted his memory, maybe he can speak  
23 to that.

24 MR. COOPER: Yeah. Our -- the seven  
25 customers I referred to are referred to by entity as

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1   opposed to meters. We do count the new pork  
2   producing plant because they were a customer for a  
3   very small time period in 2005. But they are  
4   included in the -- in the number of seven.

5               COMMISSIONER CLAYTON: Okay. Well, I  
6   would assume one customer would make a tremendous  
7   difference on usage and revenues and -- the reason I  
8   was asking is I don't know if the system is -- is it  
9   in a position for any growth at all? I mean, one  
10  customer would change a lot of these numbers, would  
11  it not?

12              MR. COOPER: It would, although -- and  
13  Mr. Clemmons could speak in more detail than I can,  
14  but it's my understanding that -- that the rates we  
15  have come up with for purposes of this settlement  
16  include some estimates associated with that one  
17  additional customer.

18              COMMISSIONER CLAYTON: Okay. So a  
19  customer -- the tariff rate would -- would make  
20  allowances for the incremental costs, however that  
21  would be done. Okay.

22              On paragraph eight under fuel costs,  
23  there is an actual fuel cost rider as it's referred  
24  to. And first of all, I wanted to ask, I don't -- is  
25  steam authorized to have a fuel adjustment clause

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1 under Senate Bill 179? Or was steam omitted?

2 MR. COOPER: I think it -- go ahead.

3 MR. DOTTHEIM: There is no direct  
4 reference to steam in Senate Bill 179. There is, of  
5 course, Section 393.290 and in the staff's  
6 suggestions and support, that statutory section is  
7 noted, which arguably would bring steam under SB 179.  
8 There are -- there's nothing definitive.

9 That issue has been raised on occasion.  
10 St. Joseph Light and Power, the steam case which it  
11 filed, was not under SB 179. In the future there may  
12 be a company that may file with the Commission under  
13 SB 179, for amongst other reasons, to get a  
14 definitive determination as to whether steam is  
15 covered by -- by SB 179.

16 COMMISSIONER CLAYTON: 393.290, what is  
17 Chapter --

18 MR. DOTTHEIM: I'm sorry. 393? The --

19 COMMISSIONER CLAYTON: Does it relate to  
20 all utilities or just to --

21 MR. DOTTHEIM: Well, it relates to  
22 electric, gas, water and sewer as opposed to Chapter  
23 392, which is only telecommunications. But the  
24 statutory section makes direct reference to what  
25 sections in Chapter 386 and 393 are applicable to --

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1 to heating companies, steam companies.

2 In fact, this is a copy of the staff's  
3 suggestions in support and it's cited in a pertinent  
4 part in that -- in the staff's suggestions in  
5 support.

6 So Commissioner, I can hand a copy of  
7 that to you if you'd like to, in particular, to see  
8 393.290.

9 COMMISSIONER CLAYTON: That's all right.  
10 Just the fact that it's in dispute really kind of  
11 answered the question. So -- so it would be in  
12 dispute -- for a rider such as this, you'd have to  
13 have a stipulation and agreement?

14 MR. DOTTHEIM: Well, I don't know -- to  
15 say that --

16 COMMISSIONER CLAYTON: Let me ask what's  
17 the staff's position? What is staff's position?  
18 Is -- would you have to have an agreement for this  
19 type of rider?

20 MR. DOTTHEIM: No.

21 COMMISSIONER CLAYTON: Is this like an  
22 IEC and electric case?

23 MR. DOTTHEIM: No, on the basis this was  
24 also addressed in the staff's suggestions.

25 COMMISSIONER CLAYTON: Well, if you'd

0053

1 like me to read it.

2 MR. DOTTHEIM: No.

3 COMMISSIONER CLAYTON: I'm just asking  
4 briefly if you could just tell me --

5 MR. DOTTHEIM: Okay. Yes. The UCCM  
6 case in 1979 which -- Missouri Supreme Court case  
7 that held fuel adjustment clause -- causes are  
8 unlawful. They're specific -- first of all, it was  
9 an electric case; and two, there's specific language  
10 at least in two places in the court's decision that  
11 the court, the case before the Commission that was  
12 before this Missouri Supreme Court involved  
13 residential customers and not industrial and large  
14 commercial customers.

15 And the court specifically said that it  
16 wasn't addressing those customers. There -- there  
17 was at the time a fuel adjustment clause applicable  
18 to steam customers of St. Joseph Light and Power, and  
19 a fuel adjustment clause after the UCCM decision  
20 remained in effect until it was withdrawn in 1988.  
21 So --

22 COMMISSIONER CLAYTON: Mr. Dottheim, I  
23 forgot my question.

24 MR. DOTTHEIM: Okay. I'm sorry. Yes.

25 COMMISSIONER CLAYTON: Did I ask -- I



0054

1 think I asked, is a fuel cost rider such as this, in  
2 staff's position, authorized even if there's no  
3 stipulation and agreement, yes or no?

4 MR. DOTTHEIM: Yes.

5 COMMISSIONER CLAYTON: It is authorized?

6 MR. DOTTHEIM: Yes.

7 COMMISSIONER CLAYTON: Okay. So because  
8 of that case that you referenced earlier in not  
9 involving residential customers, we could have  
10 positions such as this brought up on different caps  
11 and ceilings and everything else. Okay.

12 COMMISSIONER GAW: And of course, in  
13 this case no one is objecting.

14 COMMISSIONER CLAYTON: Yes. Yes, I  
15 understand. I understand. Is -- what is the -- is  
16 there a fuel mix, is it entirely coal? Is there any  
17 gas? Is it...

18 MR. COOPER: Coal and natural gas.

19 COMMISSIONER CLAYTON: Okay.

20 MR. COOPER: And Commissioner, also some  
21 possibility of some oil as well, I think.

22 COMMISSIONER CLAYTON: There is some  
23 oil. Okay. I did not see this in the stipulation.  
24 What is the -- how is the rate changed, by percentage  
25 increase or decrease? What is the across-the-board

0055

1     increase?

2                   MR. CLEMMONS:  The across-the-board  
3     increase for the four and a half million is 37 and a  
4     half percent across the board.

5                   COMMISSIONER CLAYTON:  In addition to  
6     the fuel -- fuel cost rider or does the 37 and a half  
7     percent include fluctuations in fuel costs?

8                   MR. CLEMMONS:  That's the base.  That's  
9     the base increase, and then fuel rider would be on  
10    top of that.

11                  COMMISSIONER CLAYTON:  The previous  
12    tariff, did it involve a fuel cost rider?

13                  MR. CLEMMONS:  No.

14                  COMMISSIONER CLAYTON:  So it was just a  
15    base rate amount?

16                  MR. CLEMMONS:  That's correct.

17                  COMMISSIONER CLAYTON:  Okay.  So this is  
18    a 37 and a half percent increase just for the base  
19    rate, plus there will be a rider for fuel costs over  
20    and above that?

21                  MR. CLEMMONS:  Right, up or down.

22                  COMMISSIONER CLAYTON:  Up or down.  So  
23    you could have a negative rider?

24                  MR. CLEMMONS:  Yes.  As the fuel costs  
25    drop, then it would reduce, the rider would be a

0056

1 negative.

2 COMMISSIONER CLAYTON: It would be a

3 negative, credit or --

4 MR. CLEMMONS: Credit.

5 COMMISSIONER CLAYTON: I'm not sure what

6 you call that. What -- is there a way to identify

7 the fuel cost at which this rider is set at zero?

8 It's very complicated.

9 You go in and you read the stipulation

10 that you've got. A number of paragraphs that go

11 into, you know, designing of the -- of the fuel

12 adjustment rider. But is it set at a certain fuel

13 mix and a certain cost for that fuel mix?

14 MR. CLEMMONS: Yes, it is. It has a

15 base coal in it, basically staff's run that they had

16 provided that had a 2.1 million MM Btu's of coal, and

17 that's gonna be the minimum amount of coal that we

18 can use in this rider. And that had a gas price of,

19 I think, \$6.70 which, again, I think a staff -- we

20 use that as a base that computes to a three-dollar

21 and .005 per MM Btu. That's the fuel cost that's

22 built into the rate.

23 And anything above -- above that rate --

24 basically works 80 percent of anything above that, we

25 will pass on to the customer. And anything that goes

0057

1 80 percent below the three dollars and five cents,  
2 the customer would get -- we'd get to retain 20  
3 percent. We can have a savings. Above that, again,  
4 \$3.005 per MM Btu.

5 COMMISSIONER CLAYTON: Does Aquila have  
6 a hedging program or a gas purchasing program in the  
7 steam operation which would be similar to its gas  
8 operations?

9 MR. CLEMMONS: Yes.

10 COMMISSIONER CLAYTON: And the \$6.70,  
11 how far out does that go where you can identify 6.70  
12 as the price? When I say "how far out," is -- how  
13 far out in the future is Aquila hedged at that price?

14 MR. CLEMMONS: We're not hedged at that  
15 price.

16 COMMISSIONER CLAYTON: You're not?

17 MR. CLEMMONS: No. No.

18 COMMISSIONER CLAYTON: What price are  
19 you hedged at? Is that public?

20 MR. CLEMMONS: It's \$8.42 is what we're  
21 hedged in for 2006. That's only for two-thirds of  
22 our gas. We still have another third that we aren't  
23 hedged.

24 COMMISSIONER CLAYTON: So it was almost  
25 under \$7 for a March or April contract. Okay. Was

0058

1 AARP in this case?

2 MR. CLEMMONS: No.

3 COMMISSIONER CLAYTON: Okay. Then I  
4 don't have any other questions. Thanks.

5 JUDGE WOODRUFF: Mr. Conrad?

6 MR. CONRAD: Judge, I might clarify one  
7 thing on Judge Clayton's comment and perhaps counsel  
8 for Aquila can then correct me if I've misstated it.

9 The four and a half million which is a  
10 base, and that was the 37 and a half percent  
11 increase, that includes, Judge, a level of fuel,  
12 coal, gas, what little oil there is, but primarily  
13 coal and gas, at that \$3.005 level.

14 So it's variations above or below that  
15 that would be captured in there. And you've used, I  
16 think, the terminology that staff used which is a  
17 fuel rider. And I'm not gonna quarrel about that,  
18 although we've preferred to call it a utility  
19 customer interest alignment mechanism.

20 COMMISSIONER CLAYTON: Did you pay a  
21 public relations firm for that -- that term? Well,  
22 that -- that is a good point because I was assuming  
23 that fuel costs were completely outside of base rate.

24 So you have -- you've got the \$3 --  
25 3.005 per MM Btu is included within the base rate,

0059

1 and then the rider are the variations, the customer  
2 alignment correction fixer-upper, whatever you call  
3 it, it's -- fluctuations from that will --

4 MR. CONRAD: Yes, sir.

5 COMMISSIONER CLAYTON: Okay. Okay. So  
6 there is a base rate. Okay. Staff, can you-all tell  
7 me what, under current tariffs, what the price for  
8 fuel was or is there an identifiable price compared  
9 to the 3.005 MM Btu at which rates are set in the  
10 current tariffs?

11 MR. WILLIAMS: I know I can't. I'm not  
12 sure if any technical staff can or not. If you give  
13 me a minute.

14 COMMISSIONER CLAYTON: Or if Aquila  
15 knows or does anyone know? Well, if someone could --  
16 if someone could just look at that, I'd be interested  
17 to know the -- a comparable price.

18 MR. CONRAD: While he's checking, I'm  
19 reminded that the last case was settled and so there  
20 may not -- there may not be --

21 COMMISSIONER CLAYTON: And it just had a  
22 base rate amount with no alignment charge?

23 MR. CONRAD: I believe that's correct.  
24 And there would not be a discrete number.

25 MR. COOPER: I would agree with

0060

1 Mr. Conrad that while you may come up with a number,  
2 you're not going to come up with a number --

3 COMMISSIONER CLAYTON: It would be an  
4 apple and an orange comparison.

5 MR. COOPER: Yeah.

6 COMMISSIONER CLAYTON: What was the  
7 date, the effective date of the prior order approving  
8 tariffs? How long ago? Was it two years?

9 MR. CONRAD: I'm told roughly two years  
10 that HR -- or was it 2003 or two thousand --

11 COMMISSIONER CLAYTON: Well, if you-all  
12 are guessing, I can guess too, and that will get me  
13 close enough. Thank you.

14 JUDGE WOODRUFF: Commissioner Gaw, do  
15 you have any questions? Chairman Davis?

16 COMMISSIONER APPLING: I have one I can  
17 fill in for you.

18 JUDGE WOODRUFF: Go right ahead.

19 COMMISSIONER APPLING: I don't want to  
20 get before the Chairman. I want to make sure I stay  
21 in the right pecking order around this place. This  
22 question is for Mr. Clemmons. How you doing?

23 MR. CLEMMONS: Great, thanks.

24 COMMISSIONER APPLING: Good. And I  
25 would be interested in what Stu's comment and also

0061

1 St. Joe. In my previous job I was the manager of the  
2 KC Fletcher Dallenhill's (phonetic spelling) office  
3 building in downtown in Kansas City.

4 Would you address for me, the seven  
5 clients that you have, what it is your percentage of  
6 reliability? You're asking for a 37.5 percent  
7 increase in this year, so would you address your  
8 reliability, if you have some knowledge around that?

9 MR. CLEMMONS: I wouldn't know the  
10 reliability percentage. I know if we have some  
11 fluctuations -- kind of from the last case, we had an  
12 agreement that we would meet with the AG Processing  
13 if we had some reliability problems that fell below a  
14 certain percent reliability, but as far as number of  
15 occurrences that have happened or what that ratio is,  
16 I wouldn't know.

17 COMMISSIONER APPLING: Okay.  
18 Mr. Conrad, did you have anything to add to that?

19 MR. CONRAD: I don't have anything  
20 specific, Judge. Our consultant, Mr. Johnstone, had  
21 done some studies on that, and I believe his file  
22 testimony indicated something on that. He's  
23 available if you wanted to ask him a few questions.

24 COMMISSIONER APPLING: Well, you can see  
25 why I'm concerned about it. The reliability is a



0062

1 concern if you're gonna go up 37.5 percent. St. Joe,  
2 comment? City of Saint.

3 MR. STEINMEIER: None, your Honor.

4 COMMISSIONER APPLING: We're not getting  
5 too far here today on questions, are we? Maybe we  
6 ought to bring in this second group and maybe we can  
7 get better -- but I'll wait. That's good. Thank you  
8 very much.

9 MR. CONRAD: Well, Judge, I've just been  
10 handed something by Mr. Johnstone that does have  
11 numbers and hours of partial and full outages on it,  
12 but he also advises me that it is a highly  
13 confidential document, so --

14 CHAIRMAN DAVIS: Is or isn't?

15 MR. CONRAD: Is. So if you wanted to go  
16 into that, we're prepared to do that, but we would  
17 need to deal with -- with the presiding judge on  
18 that.

19 COMMISSIONER APPLING: Mr. Conrad, for a  
20 matter of time, unless one of my colleagues want to  
21 go into that, then we'll -- I will talk later about  
22 it, but I'm just concerned about the reliability if  
23 you're gonna be taking these people to a different  
24 level, as far as the pay is concerned, I want to make  
25 sure that the reliability of this steam of Aquila's

0063

1 is adequate. That's just my concerns. Okay. Thank  
2 you.

3 JUDGE WOODRUFF: Mr. Conrad, if I can  
4 ask, was the testimony from Mr. Johnstone, or that  
5 document from Mr. Johnstone, was that in his  
6 testimony?

7 MR. JOHNSTONE: Yes, it is. In schedule  
8 I. Six pages in the schedule.

9 MR. CONRAD: I don't know if you heard  
10 that. It's schedule I of your prefiled -- prefiled  
11 direct, I believe.

12 JUDGE WOODRUFF: Would you repeat that,  
13 Mr. Conrad?

14 MR. CONRAD: He indicates that it's the  
15 second direct filing. It was the one that dealt with  
16 the class cost of service as opposed to the revenue.  
17 That's the schedule there, but it is an HC schedule.

18 JUDGE WOODRUFF: Thank you.  
19 Mr. Appling, do you have anything else?

20 COMMISSIONER APPLING: I'm done.

21 JUDGE WOODRUFF: Chairman Davis?

22 MR. STEINMEIER: Your Honor, before you  
23 move to the Chairman, and with apologies to the  
24 Chairman, let me give Commissioner Appling a slightly  
25 better answer or an answer at all.

0064

1           The City of St. Joseph certainly shares  
2 your concern about the reliability of the system at  
3 current rates or at new rates, and it's a very  
4 legitimate concern. And that's why we think that the  
5 reliability study that is provided for as part of the  
6 stipulation and agreement is a very important element  
7 of the settlement of this particular case.

8           We look forward to the -- to the results  
9 of that study and to any improvements that may derive  
10 from it. I mean, the City of St. Joseph in this case  
11 has a -- has an interest in the case -- has a  
12 perspective on the case that frankly is very similar  
13 to that of the Commission. It's a balancing act.  
14 The city is concerned that -- that its citizens don't  
15 have to pay more in utility rates than are necessary  
16 to be paid.

17           The city doesn't want electric customers  
18 of Aquila to be subsidizing steam operations. But  
19 the steam customers of Aquila and St. Joseph are also  
20 a very important part of the economic engine of the  
21 St. Joseph community.

22           And so the city is likewise deeply  
23 concerned both about reliability and rates for those  
24 steam customers who employ a lot of the taxpaying  
25 citizens of the city. So I would focus on the

0065

1 importance of the reliability study as an element in  
2 this stipulation.

3 JUDGE WOODRUFF: Thank you, sir.

4 COMMISSIONER APPLING: Thank you very  
5 much for those comments. Thank you. Appreciate it.

6 JUDGE WOODRUFF: Chairman Davis?

7 CHAIRMAN DAVIS: Okay. Mr. Dottheim,  
8 I've read staff's suggestions in support of the  
9 nonunanimous stipulation and agreement.

10 If I understand staff's position  
11 correctly, it's that in State ex rel Utility  
12 Consumers, Council of Missouri, Incorporated versus  
13 Public Service Commission, Supreme Court Case 1979,  
14 the -- it's your position that the Supreme Court  
15 passed on the issue of a fuel adjustment clause for  
16 industrial and large commercial consumers; is that a  
17 fair statement?

18 MR. DOTTHEIM: Yes, Chairman, and also  
19 the case was an electric case. It wasn't directly a  
20 steam case. But, yes, the court specifically stated  
21 that it was addressing the fuel adjustment clause  
22 applying to residential customers.

23 CHAIRMAN DAVIS: Okay.

24 MR. DOTTHEIM: And again, I'm sorry to  
25 repeat myself, but St. Joseph Light and Power Steam

0066

1 did have a fuel adjustment clause in effect at the  
2 time, and a fuel adjustment clause continued to  
3 remain in effect --

4 CHAIRMAN DAVIS: Through 1988?

5 MR. DOTTHEIM: Yes.

6 CHAIRMAN DAVIS: Do you concur with that  
7 analysis, Mr. Conrad?

8 MR. CONRAD: I do. The -- actually  
9 there had been an industrial and commercial fuel  
10 adjustment clause, I believe, in place certainly for  
11 Kansas City Power & Light that I was familiar with,  
12 and perhaps for the other electric utilities before  
13 the case that Mr. Dottheim's memo cited which was, I  
14 want to say, 17730, the old numbering scheme.

15 And it was that case which added the  
16 residential customers to the fuel adjustment equation  
17 that Public Counsel Barvick and the group from  
18 St. Louis, United Consumers Council of Missouri,  
19 UCCM, decided to challenge it to take up.

20 CHAIRMAN DAVIS: Okay. And you were --  
21 you were in that case, weren't you?

22 MR. CONRAD: I plead guilty.

23 CHAIRMAN DAVIS: Who were you  
24 representing back then?

25 MR. CONRAD: Armco Steel.

0067

1                   CHAIRMAN DAVIS: And what position were  
2 you representing?

3                   MR. CONRAD: Well, I'll tell you what  
4 would be of public record, but --

5                   CHAIRMAN DAVIS: Tell us what's on the  
6 public record.

7                   MR. CONRAD: We filed a brief,  
8 Mr. Bates, my then senior partner, and I filed a  
9 brief in that case supporting the fuel adjustment  
10 clause.

11                  CHAIRMAN DAVIS: Okay. Thank you,  
12 Mr. Conrad. Mr. Dottheim, were you here then too?

13                  MR. DOTTHEIM: I started at the  
14 Commission just a short time, several weeks after the  
15 Missouri Supreme Court handed down the UCCM decision.

16                  CHAIRMAN DAVIS: So the rumors that you  
17 and Mr. Conrad were here to greet Lewis and Clark  
18 when they were traveling across the Missouri River  
19 are somewhat exaggerated?

20                  MR. DOTTHEIM: At times it seems that  
21 must be true, but, no. Yes, that seems to be a  
22 slight exaggeration.

23                  CHAIRMAN DAVIS: Okay.

24                  MR. CONRAD: But only slight.

25                  CHAIRMAN DAVIS: And so, Mr. Dottheim,

0068

1 it's your position that the authority to enter  
2 into -- and to enter into this agreement exists  
3 independently of Senate Bill 179, correct?

4 MR. DOTTHEIM: Yes, Chairman.

5 CHAIRMAN DAVIS: All right. Anything  
6 else you wish to add for the record? I know you only  
7 had 13 pages for your memorandum in support of the  
8 agreement. Anything else, Mr. Dottheim?

9 MR. DOTTHEIM: Not unless the  
10 Commissioners would like any responses or additional  
11 information.

12 CHAIRMAN DAVIS: Well, I think I want to  
13 turn my attention to someone who probably was here  
14 when Lewis and Clark came. Mr. Conrad?

15 MR. CONRAD: Yes, sir.

16 CHAIRMAN DAVIS: Okay. In laymen's  
17 terms, can you just explain to me this fuel  
18 adjustment rider one more time, how that works again?

19 MR. CONRAD: As I had said before, I'll  
20 be happy to try to give you, you know, a 15 or  
21 20,000-foot view, and if you want more detail, either  
22 Mr. Clemmons or Mr. Johnstone for the company and for  
23 us, respectively, would be happy to do that.

24 CHAIRMAN DAVIS: Okay.

25 MR. CONRAD: As I mentioned to Judge

0069

1 Clayton, a level was \$3 and I believe half a cent.

2 CHAIRMAN DAVIS: Uh-huh. \$3 and half a  
3 cent. How did you derive that number?

4 MR. CONRAD: Well, actually --

5 CHAIRMAN DAVIS: Complicated actuarial  
6 analysis?

7 MR. CONRAD: Complicated actuarial  
8 analysis I think basically involved adding numbers  
9 together and dividing by the number of numbers that  
10 you added together. That's an average. We took --

11 CHAIRMAN DAVIS: At \$3 per million Btu,  
12 does that take into account coal, natural gas,  
13 purchase power, does that take into account  
14 everything?

15 MR. CONRAD: That takes into account --  
16 I believe the basis of that is explained -- and  
17 perhaps Mr. Clemmons can respond to that, but I  
18 believe that is based on the fuel models that -- I  
19 think that staff had run and that there was  
20 essentially an agreement when we went into the  
21 negotiations that that was where that should be.

22 MR. CLEMMONS: It does not include  
23 purchase power. Purchase power isn't used for the  
24 steam. It's just Lake Road, the fuel that's used at  
25 Lake Road, which would be natural gas.



0070

1                   CHAIRMAN DAVIS: Okay.

2                   MR. CONRAD: If you said purchase power,

3 I'm sorry. I should have picked up on that.

4                   CHAIRMAN DAVIS: So is it just natural

5 gas, Mr. --

6                   MR. CLEMMONS: Natural gas, coal and

7 oil.

8                   CHAIRMAN DAVIS: Natural gas, coal and

9 oil.

10                  MR. CLEMMONS: The majority of it being

11 coal.

12                  CHAIRMAN DAVIS: Okay. All right. So

13 I'm probably gonna have to ask some more questions

14 about how the \$3 was derived. But, Mr. Conrad, go

15 ahead with your 15 to 20,000-foot overview, sir.

16                  MR. CONRAD: Assuming that that level

17 then is built into what's been characterized as the

18 base rate.

19                  CHAIRMAN DAVIS: Uh-huh.

20                  MR. CONRAD: If in a given quarter the

21 fuel costs were higher --

22                  CHAIRMAN DAVIS: Uh-huh.

23                  MR. CONRAD: -- then an adjustment would

24 be developed, and the company, Aquila, would be

25 allowed to recover 80 percent of that, of that

0071

1 incremental increase. And that increment would then  
2 be recovered over the next 12 months, if you will,  
3 four slices.

4 CHAIRMAN DAVIS: Okay.

5 MR. CONRAD: If the cost were less --

6 CHAIRMAN DAVIS: Uh-huh.

7 MR. CONRAD: -- than that \$3 level, then  
8 an adjustment -- a negative adjustment --

9 CHAIRMAN DAVIS: Uh-huh.

10 MR. CONRAD: -- would be developed and  
11 Aquila would be entitled to retain 20 percent of  
12 that, and the remaining 80 percent would be passed as  
13 a reduction to the customers per MM Btu. And that,  
14 again, would -- would either potentially, as an  
15 offset, but as a negative adjustment, would then work  
16 its way through the next 12 months in four  
17 different -- four different slices.

18 At the end of that, for each of the --  
19 each of those quarters that began, there would be a  
20 reconciliation of that particular quarter's cost as  
21 against what the actual was.

22 And if there was a difference, then  
23 that, too, would be captured and passed through in a  
24 period of time, I think not less than 12 nor more  
25 than 24 months to do the true-up on that. In other

0072

1 words, to -- coming to actual as against the initial  
2 prospect.

3                   And I think what -- it's simple if you  
4 just have one time slice. What makes it complicated  
5 is you may, at a given point of time, have four or  
6 five different time slices going on because we  
7 elected to try to do this on a quarterly basis and  
8 track it through on a 12-month basis from and after  
9 that quarter. So it becomes a rolling type of  
10 adjustment. I don't know if that -- if that helps.  
11 Looks like it didn't.

12                   CHAIRMAN DAVIS: No, I'm just thinking,  
13 Mr. Conrad. Do you think such a mechanism would  
14 be -- oh, I know you can't comment on this probably  
15 because there's something in the stipulation that I  
16 read, but could such a -- could such a mechanism be  
17 applicable to gas LDCs as well?

18                   MR. CONRAD: Well, let me answer it this  
19 way: A long time ago in a galaxy far, far away, Paul  
20 Phillips, who you have met some weeks ago --

21                   CHAIRMAN DAVIS: Uh-huh.

22                   MR. CONRAD: -- and I -- and I believe  
23 this was after FRC Order 636 came down and took the  
24 pipelines out of the merchant business as such and

25 thrust --

0073

1                   CHAIRMAN DAVIS: Uh-huh.

2                   MR. CONRAD: -- thrust the LDCs into  
3 the -- into the gas market for real. We did some  
4 drafts, actually, of a proposed rule that we had  
5 thought that DOE and Midwest Gas Users would submit  
6 to the Commission which built around some -- an idea  
7 very similar to this --

8                   CHAIRMAN DAVIS: Uh-huh.

9                   MR. CONRAD: -- that it was a -- it was  
10 a shared -- shared risk type of thing --

11                  CHAIRMAN DAVIS: Uh-huh.

12                  MR. CONRAD: -- that we would set the  
13 Commission under that proposal or at least what we  
14 had doodled around with, was the Commission would set  
15 a base price.

16                  CHAIRMAN DAVIS: Uh-huh.

17                  MR. CONRAD: And then it would adjust  
18 through an annual process that price for each LDC as  
19 a target, recognizing what each LDC had as a mix of  
20 suppliers and pipelines to which it was connected.  
21 And then that base price would be set, and if the LDC  
22 did better than that, they would -- they would have  
23 some gain from it.

24                  CHAIRMAN DAVIS: Uh-huh.

25                  MR. CONRAD: And if it did worse than

0074

1     that, they would have some punitive aspects of it.  
2     Not that I want to characterize it as punitive, but  
3     essentially as a counterincentive, if you will --

4                 CHAIRMAN DAVIS:  An incentive to be  
5     prudent.

6                 MR. CONRAD:  To be aggressive, yes, in  
7     purchasing practices.

8                 CHAIRMAN DAVIS:  Right.

9                 MR. CONRAD:  And I think what we had  
10    designed was not a flat number, Commissioner.  It was  
11    not in this case like just an 80 or 20.

12                CHAIRMAN DAVIS:  Right.  Right.

13                MR. CONRAD:  It had something of a  
14    sliding scale component to it, recognizing that the  
15    first dollars that you might save would be what you  
16    might have called low-hanging fruit and would be  
17    comparatively easy, but as you save more and more, it  
18    would require more and more aggressiveness to squeeze  
19    those -- those dollars out of the process.

20                CHAIRMAN DAVIS:  So they'd get a --  
21    they'd get a larger share then?

22                MR. CONRAD:  Yes, as -- under our -- the  
23    thing that we had toyed with.  As it turned out, both  
24    our respective clients decided to go other directions  
25    and that never got -- that never got filed.

0075

1                   But in the sense of answering your  
2 question, I think I can respond that way rather than  
3 the context of the specifics element.

4                   CHAIRMAN DAVIS: Okay. Now, can you go  
5 back and give me a little more detail about how you  
6 set that \$3 and one half cent per MM Btu amount?  
7 Mr. Clemmons?

8                   MR. CLEMMONS: I'll give it a shot for  
9 you. The total load for the steam business up there  
10 is around 2.7 MM Btu, 2.7 million annually.

11                  CHAIRMAN DAVIS: Uh-huh.

12                  MR. CLEMMONS: And in the staff run,  
13 they had about 2.1 million MM Btu was coal --

14                  CHAIRMAN DAVIS: Uh-huh.

15                  MR. CLEMMONS: -- and that's priced out  
16 at about a -- around \$1.30 per MM Btu approximately,  
17 \$1.35. And I'm doing these numbers from memory, but  
18 they should be pretty close.

19                  Then the other 600,000 MM Btu would be  
20 from gas at about \$6.70, coming up with a total of  
21 just a little over eight million dollars worth of  
22 fuel costs, divided by the 2.6 million MM Btu creates  
23 the \$3. So that's basically how it was -- how it was  
24 done.

25                  And those numbers came out of the staff

0076

1 fuel run. And the 2.6 million MM Btu takes into  
2 account Triumph that was coming in and the Albaugh  
3 (phonetic spelling) Chemical who was adding a second  
4 shift.

5 So we took into account the low growth.  
6 But that's -- that's basically how we came up with  
7 the \$3 price per MM Btu.

8 MR. CONRAD: I should caution we're not  
9 HC here so...

10 CHAIRMAN DAVIS: Okay. All right.  
11 Well, I'll try not to tax Mr. Clemmons with anything  
12 that's HC. And I'm not asking for any specific  
13 number, Mr. Clemmons, but how far are you hedged out  
14 on your coal contracts?

15 MR. CLEMMONS: We don't hedge our coal  
16 contracts.

17 CHAIRMAN DAVIS: You don't hedge your  
18 coal contracts?

19 MR. CLEMMONS: Coal, no. That -- those  
20 are contracts. I mean, those are just --

21 CHAIRMAN DAVIS: Well --

22 MR. CLEMMONS: We don't -- there's no  
23 hedging.

24 CHAIRMAN DAVIS: Okay. So you've got a  
25 contract to purchase coal, right? And when did -- so

0077

1 without asking you what those numbers are, how long  
2 are your coal -- how long are your coal costs known  
3 and measurable within a reasonable degree of  
4 certainty?

5 MR. CLEMMONS: About five years on the  
6 coal contract. I'd say around five years.

7 CHAIRMAN DAVIS: About five years. And  
8 we've already heard some testimony from you that  
9 you're about, was it two-thirds hedged for natural  
10 gas for '06; is that correct?

11 MR. CLEMMONS: That's correct. That's  
12 the current plan.

13 CHAIRMAN DAVIS: Okay. So is there any  
14 way -- way feasible that you can beat this \$3 per  
15 million Btu amount?

16 MR. CLEMMONS: Well, the other third gas  
17 that we have not hedged, we are in the process of  
18 buying that at a lower rate just through  
19 efficiencies. And if we can burn more coal at the  
20 plant, that would lower the ratio. If we can burn  
21 higher than the 2.1 that's built into the rate, that  
22 would give an opportunity for us. It gives us  
23 incentive to try to be efficient on the --

24 CHAIRMAN DAVIS: On the coal side.

25 MR. CLEMMONS: -- on the coal side,



0078

1    yeah.

2                   CHAIRMAN DAVIS:  Okay.  So you're  
3   telling me that -- that it is feasible then, that you  
4   could potentially beat this number and Aquila could  
5   actually make some money on this?

6                   MR. CLEMMONS:  It's feasible.

7                   CHAIRMAN DAVIS:  But not likely?

8                   MR. CLEMMONS:  With current prices,  
9   possibly not, but I don't know.  See how the market  
10  goes in the future.

11                  MR. CONRAD:  Judge, one way to look at  
12  this is, springing from what Mr. Clemmons has said,  
13  the predominant quantity of the MM Btu's are raised  
14  from coal.  The predominant dollars come from the gas  
15  cost.  So if -- if in that scenario, if the gas costs  
16  were to drop, and praise the Lord if they would do  
17  that --

18                  COMMISSIONER CLAYTON:  They've dropped  
19  significantly today, Mr. Conrad.  I don't know how  
20  much further they'll drop, but they've dropped  
21  significantly today.

22                  MR. CONRAD:  -- then there would be some  
23  potential for both of the utility and for the  
24  customer to have some benefit from that.  Certainly  
25  as compared with locking in a hard number.

0079

1                   MR. CLEMMONS: I might add on our  
2 two-thirds hedge, half of that are call options which  
3 we would just pay the premium, so I mean, we would  
4 have an advantage to buy the cheaper gas.

5                   If they weren't -- weren't in the money,  
6 we would just pay the costs of that premium and then  
7 buy gas at the market rate. So we'd still have some  
8 opportunities to lower that gas price.

9                   CHAIRMAN DAVIS: And then you feel like  
10 this arrangement sufficiently protects you in the  
11 event that, you know, coal can't be delivered from  
12 the Powder River basin and the price of natural gas  
13 shoots up to \$10 or more again, that 80 percent of  
14 that is sufficient to help you get through until you  
15 can file a rate case and adjudicate it in the  
16 11-month process after that.

17                  MR. CLEMMONS: Yes, sir.

18                  CHAIRMAN DAVIS: Mr. Mills, you're awful  
19 silent there.

20                  MR. MILLS: Yes, sir.

21                  CHAIRMAN DAVIS: You've not -- you've  
22 not signed on to this stip and agreement, correct?

23                  MR. MILLS: That's correct. And, in  
24 fact, we did not really participate very actively in  
25 this case. The steam customers are not people that

0080

1 we generally treat as our constituents.

2 CHAIRMAN DAVIS: Okay. And your  
3 concern -- I mean, do you have any concerns that --  
4 with this -- with this arrangement that Aquila would  
5 prefer delivery of its cheaper coal-fired electricity  
6 to the St. Joe industrial consumers or to your -- or  
7 as to your -- as to the consumers that you're  
8 representing, or do you have any concern there, or  
9 because you've got rate stability for the next 15  
10 months, you're satisfied?

11 MR. MILLS: No. I think, you know, to  
12 the extent that they operate the plant more  
13 efficiently in terms of their fuel purchasing  
14 practices to the benefit of the steam customers, that  
15 benefit will also accrue to the benefit of the  
16 electric customers from the same plant. I don't  
17 think there's a way to favor industrial electric  
18 customers because of this agreement.

19 CHAIRMAN DAVIS: So your official  
20 position is that you don't have an official position;  
21 is that correct?

22 MR. MILLS: That's correct.

23 CHAIRMAN DAVIS: Okay. Mr. Clemmons,  
24 what is the capacity of that Lake Road plant?

25 MR. CLEMMONS: There is -- the Lake Road

0081

1     itself is 100 -- around 150-megawatt capacity. The  
2     steam operation comes out of basically one boiler out  
3     of the coal which is about 25 megawatts. There's  
4     several boilers at Lake Road.

5             CHAIRMAN DAVIS: Right.

6             MR. CLEMMONS: But that --

7             CHAIRMAN DAVIS: And how many -- how  
8     many million Btu does that equal just so I can gauge  
9     how efficient you have to get that Lake Road plant  
10    operating?

11            MR. CLEMMONS: The 25 megawatts on  
12    boiler 5 is about 2.4, 2.5 million MM Btu's, to my  
13    understanding.

14            CHAIRMAN DAVIS: Okay. So --

15            MR. CLEMMONS: We're maxed out on the  
16    steam capacity, the coal capacity at boiler 5 for the  
17    current customers. Any additional customer coming  
18    on --

19            CHAIRMAN DAVIS: Will be taking  
20    something else besides steam?

21            MR. CLEMMONS: Than coal steam. They'll  
22    be using gas to produce the steam, correct.

23            CHAIRMAN DAVIS: Okay. So if you  
24    figure -- so you're roughly, I'm just gonna say  
25    roughly running at about 87, 88 percent capacity

0082

1 right now; is that correct?

2 MR. CLEMMONS: Correct.

3 CHAIRMAN DAVIS: And so your goal is to  
4 get up into the 90s, 95, 98, however efficient you  
5 can make it; is that a fair statement?

6 MR. CLEMMONS: That would be a fair  
7 statement.

8 CHAIRMAN DAVIS: Okay. Mr. Coffman's  
9 not here. Anybody here on behalf of DNR?

10 JUDGE WOODRUFF: DNR's not a party.

11 CHAIRMAN DAVIS: Oh, they're not a  
12 party. I don't think I have any further questions,  
13 gentlemen. Thank you.

14 JUDGE WOODRUFF: Commissioner Gaw, you  
15 don't have anything?

16 COMMISSIONER GAW: I have a few and I  
17 apologize if any of these are redundant. Just  
18 generally, can somebody educate me, are all of the  
19 steam generation units cogeneration units?

20 MR. CLEMMONS: We use coal and gas.

21 COMMISSIONER GAW: Not coal,  
22 cogeneration units. Are they units that are used  
23 primarily to generate electricity or -- and then  
24 consequently you get heat to use the steam or vice  
25 versa?

0083

1 MR. CLEMMONS: They're called co-units.

2 COMMISSIONER GAW: Okay. And their  
3 location is where again?

4 MR. CLEMMONS: In St. Joe in the river  
5 bottom in St. Joe territory near the City of St. Joe.

6 COMMISSIONER GAW: And how many units  
7 are there?

8 MR. CLEMMONS: I think there's six units  
9 total there.

10 COMMISSIONER GAW: And are they all at  
11 the same facility?

12 MR. CLEMMONS: Yes.

13 COMMISSIONER GAW: Okay. And how many  
14 of those units are coal, c-o-a-l units?

15 MR. CLEMMONS: Two.

16 COMMISSIONER GAW: Okay. And what's the  
17 megawatt capacity?

18 MR. CLEMMONS: About 100 megawatts for  
19 the coal that's basically used for electricity, and  
20 the other 25 megawatts is basically used for,  
21 majority for the steam customers.

22 COMMISSIONER GAW: Okay. And the age of  
23 those two units?

24 MR. CLEMMONS: Those were built in, I  
25 think, 1950.

0084

1 COMMISSIONER GAW: Both of them?

2 MR. CLEMMONS: Well, the initial build  
3 was 1950. I don't know when the last one was. I  
4 just looked in our Form 1. We've just owned them for  
5 five years. I just did a little research, but I know  
6 they started construction in 1950, and when they  
7 ended --

8 COMMISSIONER GAW: All right. And the  
9 other four units are gas or gas/oil units?

10 MR. CLEMMONS: Right.

11 COMMISSIONER GAW: Are they all  
12 combination gas/oil?

13 MR. CLEMMONS: Right.

14 COMMISSIONER GAW: All right. And the  
15 age of those units?

16 MR. CLEMMONS: Again, I'm not sure of  
17 that. I just know the original construction started  
18 in 1950.

19 COMMISSIONER GAW: Do you know the size  
20 of those units?

21 MR. CLEMMONS: The total capacity at  
22 St. Joe is like 137. The other units are really  
23 small, so the total capacity is like 130 megawatts.  
24 So I don't know by unit.

25 COMMISSIONER GAW: Okay. The total

0085

1 capacity is 137 including coal units?

2 MR. CLEMMONS: Yes.

3 COMMISSIONER GAW: Okay. And do the --  
4 do the natural gas/oil units dispatch electricity for  
5 purposes of primarily producing electricity, or are  
6 they primarily for steam production and then just  
7 happen to have electricity generated as well?

8 MR. CLEMMONS: Primarily electricity.  
9 Not -- they're not used very often.

10 COMMISSIONER GAW: They are not?

11 MR. CLEMMONS: Huh-uh.

12 COMMISSIONER GAW: But they are  
13 dispatched primarily for purposes of electric  
14 generation --

15 MR. CLEMMONS: Correct.

16 COMMISSIONER GAW: -- correct? And how  
17 are the costs allocated in running these units when  
18 you're doing -- when you're generating electricity  
19 and you're producing steam? How is that allocated  
20 according to the way the stipulation works?

21 MR. CLEMMONS: That was covered in a  
22 prior case. I think that goes back to -- maybe  
23 Mr. Conrad can answer that.

24 COMMISSIONER GAW: Whoever knows.

25 MR. CLEMMONS: That goes back to a 1992



0086

1 case. I think that allocation is still being used  
2 today.

3 COMMISSIONER GAW: Okay.

4 MR. CONRAD: Judge, I think it's  
5 paragraph 9.

6 COMMISSIONER GAW: Paragraph 9 of the  
7 stip?

8 MR. CONRAD: And the quick answer is the  
9 stipulation does not disturb.

10 COMMISSIONER GAW: So when fuel is  
11 utilized in these units, then the cost of that fuel  
12 is split, a portion of it attributed to electricity  
13 and a portion of it split and attributed to steam  
14 according to that previous agreement or order,  
15 correct?

16 MR. CONRAD: Yes, I believe that's  
17 correct. Please don't ask me details about that,  
18 because I don't know them.

19 COMMISSIONER GAW: That's okay. I'm  
20 just looking at the picture conceptually so I can  
21 understand it a little better. And --

22 MR. CONRAD: Judge, if I could break in?

23 COMMISSIONER GAW: Yes.

24 MR. CONRAD: Page -- my consultant  
25 refers me to page 6 of appendix C which you will find

0087

1 is a reproduction of direct testimony of Tim Nelson.

2 COMMISSIONER GAW: Okay.

3 MR. CONRAD: The formula for that -- for  
4 what you're asking for is given there starting at  
5 lines 15 and down.

6 COMMISSIONER GAW: All right. Are these  
7 units ever used to -- as a first purpose to generate  
8 steam as opposed to electricity, or is the steam just  
9 always a by-product of the dispatch of the units for  
10 electric purposes?

11 MR. CLEMMONS: The unit has several  
12 boilers that are attached to the unit and --

13 COMMISSIONER GAW: Yes.

14 MR. CLEMMONS: -- and boiler 5, what we  
15 call boiler 5, that's dedicated primarily to the  
16 steam operation and that's basically where that 25  
17 megawatts that I was talking about, feeds that boiler  
18 and that's the primary use for the steam operation.

19 So as far as your question or  
20 specifically, steam is pretty much a full 24/7  
21 operation, so it's always producing that steam for  
22 the steam customers, yeah.

23 COMMISSIONER GAW: And I guess what I'm  
24 trying to just get answered is are these units ever  
25 dispatched because of the need for steam as opposed

0088

1 to the steam just being a by-product of the units  
2 being dispatched for purposes of filling electric  
3 needs?

4 MR. CLEMMONS: Yes. Yes, they would be  
5 specifically for the steam operations. In certain  
6 instances, yeah, we would turn one on just for steam.

7 COMMISSIONER GAW: Okay. So even though  
8 those -- and then the electricity that's generated is  
9 put on the grid?

10 MR. CLEMMONS: It would be, yes.

11 COMMISSIONER GAW: So there might be  
12 occasion when there might be a unit dispatched where  
13 electricity is being put on the grid where if it  
14 weren't for the need for the steam, another  
15 generating unit might be more efficient to be  
16 dispatched?

17 MR. CLEMMONS: It could be. I'm -- I  
18 wouldn't know for sure.

19 COMMISSIONER GAW: I've got different  
20 people shaking heads different directions on that.

21 MR. CLEMMONS: Maybe Mr. Johnstone can --

22 JUDGE WOODRUFF: Mr. Johnstone, if you  
23 want to come closer to a microphone to get sworn in.

24 COMMISSIONER GAW: I don't want to spend  
25 a whole lot of time on this.

0089

1 DONALD JOHNSTONE, having first been duly sworn,  
2 testified as follows:

3 MR. JOHNSTONE: Okay. My name is Donald  
4 Johnstone. Commissioner, I think perhaps some of the  
5 confusion is arising from the configuration of the  
6 plant. There are a number of boilers on a common  
7 header which can be used to provide steam for the  
8 steam customers, or it can be used to make  
9 electricity.

10 COMMISSIONER GAW: All right.

11 MR. JOHNSTONE: This boiler 5 can be  
12 operated and it will produce steam which can go any  
13 direction, and it's my understanding that on any  
14 particular day they might well use all of the output  
15 for steam and it would not be necessary to make  
16 electricity at all.

17 COMMISSIONER GAW: Okay. That's making  
18 more sense to me then. So in essence then, the steam  
19 that would -- could be used to turn a turbine would  
20 be redirected into another unit that would just  
21 dispatch the steam through the steam system?

22 MR. JOHNSTONE: That's correct.

23 COMMISSIONER GAW: That makes more sense  
24 to me. I'm sorry. Now, is that true of all of the  
25 generating units that are there, that they can be so

0090

1 directed with their steam output?

2 MR. JOHNSTONE: No.

3 COMMISSIONER GAW: Okay. Tell me --

4 tell me how that works with the other unit.

5 MR. JOHNSTONE: I don't have the picture

6 with me, but there are a number of boilers that are

7 connected to the common header system --

8 COMMISSIONER GAW: Yes.

9 MR. JOHNSTONE: -- and then there's one

10 that is a stand-alone system and I think it's No. 6;

11 is that correct? If Mr. Clemmons confirms that.

12 COMMISSIONER GAW: Okay. So No. 6 is

13 what kind of a unit?

14 MR. JOHNSTONE: That is, it's my

15 understanding, is a coal-fired unit also.

16 COMMISSIONER GAW: All right. Is that

17 the small unit?

18 MR. JOHNSTONE: That's the large one.

19 COMMISSIONER GAW: That's the large one,

20 okay. And that particular unit, as a large unit, how

21 does it dispatch? Is it dispatched for electricity

22 only, but sometimes the excess steam is used for some

23 other purpose or what?

24 MR. JOHNSTONE: I'm gonna turn this back

25 to Mr. Clemmons because I think at this point he's

0091

1 more --

2 MR. CLEMMONS: That's just purely  
3 electricity.

4 COMMISSIONER GAW: Purely electricity?

5 MR. CLEMMONS: Yes.

6 MR. JOHNSTONE: That's consistent with  
7 my understanding.

8 COMMISSIONER GAW: But it is included in  
9 regard to rates on the steam case or not?

10 MR. JOHNSTONE: No.

11 MR. CLEMMONS: No, it's not.

12 MR. JOHNSTONE: It's at the same  
13 plant --

14 COMMISSIONER GAW: Oh, okay.

15 MR. JOHNSTONE: -- but it's at a  
16 separate facility.

17 COMMISSIONER GAW: Okay. So is that or  
18 is that not that 100-megawatt unit that you referred  
19 to earlier?

20 MR. CLEMMONS: That's the 100 megawatts  
21 that I said that -- you said the total capacity for  
22 St. Joe. I mean ---

23 COMMISSIONER GAW: So in regard to  
24 steam, do I just have the 25-megawatt coal plant plus  
25 the gas/oil units?

0092

1 MR. CLEMMONS: Right.

2 COMMISSIONER GAW: All right. That  
3 makes more sense to me then. So it's that  
4 25-megawatt plant that -- coal plant that's used to  
5 manufacture the steam, correct?

6 MR. CLEMMONS: That's correct.

7 COMMISSIONER GAW: Okay. Thank you for  
8 that clarification. I apologize if I caused that  
9 confusion myself. This -- okay. You probably have  
10 already explained this, but if you would just briefly  
11 tell me, the purpose of the steam, the use of the  
12 steam by the customers is what? Is it heat and other  
13 things or what?

14 MR. CONRAD: Judge, our case, which is  
15 the one I could probably speak to most  
16 authoritatively, it is what I would call a production  
17 process.

18 COMMISSIONER GAW: Okay.

19 MR. CONRAD: It's not used except  
20 insofar as having steam go through a process. There  
21 is some obvious exchange of heat with air. It is  
22 primarily used in production. I cannot speak for how  
23 each of the other steam customers makes use.

24 I do believe, and this goes back a ways,  
25 that Friskies primarily used steam in the, I believe

0093

1    their Packer's location, which refers to an avenue,  
2    and that was, I believe, the component of their  
3    operation that was closed.

4                    They used -- they used steam to clean  
5    their equipment at the end of a run, perhaps during a  
6    run, also in some instances the cans that pet food is  
7    put into.

8                    COMMISSIONER GAW:   Okay.

9                    MR. CONRAD:   I believe there's one other  
10   customer that I do not know the name of  
11   authoritatively, and I think they use -- they use the  
12   steam -- actually, it's kind of an odd situation, but  
13   they use it to boil water.

14                   COMMISSIONER GAW:   Okay.

15                   MR. CONRAD:   So they go back, do their  
16   own, or heat water and then they use the heated water  
17   in their process.  But I think probably on balance,  
18   most of them use it, if not all of them, Judge, use  
19   it for a process or a production within their  
20   facility rather than heat.

21                   COMMISSIONER GAW:   Okay.  That's what I  
22   wanted to know.  And part of the reason I was wanting  
23   to ask this question is whether or not the customers  
24   have other choices to accomplish the same thing if  
25   other kinds of mechanical choices or other kinds of



0094

1 choices in the facility, whether that might include  
2 manufacturing their own steam, or coming up with some  
3 other different kind of process that would accomplish  
4 a similar end.

5 MR. CONRAD: Again, Judge, I can't speak  
6 authoritatively to all of them. I suspect at the  
7 margin there might be one or two that could have  
8 substitution of processes. For us, for Ag  
9 Processing, there is no -- no substitute.

10 COMMISSIONER GAW: So your client is  
11 locked in on this?

12 MR. CONRAD: We are locked into the  
13 steam so much so that, you know, we have -- we have  
14 expressed concern in the past. Your Honor may recall  
15 when the merger case was before the Commission, we  
16 were concerned that some of the exhibits that had  
17 been put together by St. Joe Light and Power in the  
18 context of that merger case, suggested an abandonment  
19 in the future --

20 COMMISSIONER GAW: Uh-huh. Yes.

21 MR. CONRAD: -- of the steam system, and  
22 we were quite concerned about that for --

23 COMMISSIONER GAW: I'm not saying yes  
24 because I recall necessarily, because I wasn't here  
25 for the initial case on that one, but I understand



0096

1 was a fairly -- fairly large element or not.

2 MR. CONRAD: It's not very significant  
3 because we do make a large use of the steam. In  
4 fact, I believe, subject to check, the payment to  
5 Aquila for steam is larger than the payment to Aquila  
6 for electric.

7 COMMISSIONER GAW: Interesting. Okay.  
8 Any other customers that are represented that have --  
9 that could give me any similar information? Are  
10 there any of these consumers that are impacted here  
11 that are not represented in this case?

12 MR. CONRAD: Well, I thank you for  
13 asking that. Earlier reference was made. I think  
14 maybe that was left an incorrect assumption. I am  
15 here representing Ag Processing alone.

16 COMMISSIONER GAW: Yes. Yes.

17 MR. CONRAD: The others have had -- have  
18 had the same notice that AGP has had, and for various  
19 and sundry reasons which I can't address, Judge, I  
20 mean, I just am not in a position to, have chosen not  
21 to become involved.

22 COMMISSIONER GAW: So they are not  
23 official parties?

24 MR. CONRAD: They are not official  
25 parties, no, sir.

0097

1 COMMISSIONER GAW: Okay.

2 MR. CONRAD: Not to the steam case. I  
3 should clarify that. One or two may be parties in  
4 the -- as a -- to the St. Joe industrial intervenor  
5 group on the electric.

6 COMMISSIONER GAW: That's -- I'm only  
7 asking about the steam case.

8 MR. COOPER: Commissioner, just to  
9 provide a little bit of context for that question.  
10 And I hesitate to put the actual numbers on it, but  
11 Ag Processing, Mr. Conrad's client, in the year 2005,  
12 utilized a great, great majority of the volume of  
13 steam produced by this system.

14 Looking forward, with estimated usage of  
15 the new customer that -- that we've referred to  
16 earlier, Mr. Conrad's client will still utilize a  
17 majority of the volumes that will be produced by this  
18 system.

19 COMMISSIONER GAW: Okay. And the new  
20 customer, again, that would not be somebody that was  
21 using this steam for heat primarily; they would be  
22 using it for process, correct?

23 MR. COOPER: Correct.

24 MR. WILLIAMS: Commissioner Gaw?

25 COMMISSIONER GAW: Yes.

0098

1                   MR. WILLIAMS: With respect to Ag  
2 Processing and pricing, I suggest you look at  
3 paragraph 12 of the stipulation that appears on  
4 page 9 to 10 which references the continuation of an  
5 existing contract. And specifically it indicates  
6 that the term of the contract, including pricing  
7 provisions, will be extended April 21 of 2010.

8                   COMMISSIONER GAW: Does that mean that  
9 Ag Processing is not impacted by this stip, or is  
10 impacted differently?

11                  MR. WILLIAMS: I think that would be a  
12 question to direct to Ag Processing.

13                  MR. CONRAD: I think the latter  
14 statement that you made is correct, that that  
15 contract deals -- and again, I think you may or may  
16 not have been on the bench, Judge, when this was  
17 originally done, but there was a package done when we  
18 did the merger.

19                  COMMISSIONER GAW: Yes.

20                  MR. CONRAD: And there was a concession  
21 made by Aquila that the term of the concession was  
22 that it would have no impact on any other customer,  
23 steam or electric, that it was entirely out of their  
24 pocket, and that's what's being extended one  
25 additional year in this arena.

0099

1 COMMISSIONER GAW: I don't understand.

2 What is -- that agreement that it wouldn't have any  
3 impact, how does that interrelate for one additional  
4 year? How does that interrelate to the results of  
5 the stipulation?

6 MR. CONRAD: I'm trying to remember if  
7 that is HC. I don't believe that part is. So we  
8 could talk to him about that. If you have a copy of  
9 that here, I'll try.

10 The customer would receive, Judge, a  
11 \$35,000 monthly credit not to exceed the total amount  
12 available that month on a steam service bill, so long  
13 as customer maintains for such month, a monthly load  
14 factor at or above 70 percent.

15 And then there's a proviso that drops  
16 below that because of company's -- Aquila's inability  
17 to supply and then there's an adjustment. That is  
18 appendix C to the settlement stipulation in ER --

19 COMMISSIONER GAW: 2004.

20 MR. CONRAD: -- 2004-0034, which was the  
21 next proceeding electric case, Judge, if that helps  
22 you cite to --

23 COMMISSIONER GAW: So there was a  
24 monthly credit --

25 MR. CONRAD: Credit.

0100

1                   COMMISSIONER GAW:  -- if you use so much  
2   steam on a monthly basis?

3                   MR. CONRAD:  Yes.  Yes.  In other words,  
4   if you maintain -- if they maintain 70 percent load  
5   factors, which historically they have -- they have  
6   done.

7                   COMMISSIONER GAW:  And that's going  
8   to --

9                   MR. CONRAD:  In fact, well in excess of  
10  that.

11                  COMMISSIONER GAW:  -- that's going to  
12  continue for an additional year?

13                  MR. CONRAD:  That would just continue  
14  for an additional year.  It was originally -- correct  
15  me, Mr. Cooper, if I'm wrong, but I believe it was  
16  originally extended to 2009, some date in 2009 this  
17  would kick to 2010.

18                  MR. COOPER:  We would agree with that.

19                  COMMISSIONER GAW:  Okay.  Interesting.  
20  Okay.  So that that -- if there's any -- do any of  
21  the other customers involved in this case, or that  
22  are impacted by this case, have any kind of a  
23  discount of similar nature?

24                  MR. CLEMMONS:  No.

25                  COMMISSIONER GAW:  Okay.  Did you tell

0101

1 me what your -- I don't know if you can do this very  
2 well in open session. But did you say or did you say  
3 there was some information giving me an idea about  
4 what your monthly expenditures are as Ag Processing  
5 is concerned on steam?

6 MR. CONRAD: Judge, there may be in the  
7 case. I don't have a finger on it right now. I'm  
8 pretty sure if you looked at -- and perhaps  
9 Mr. Williams would correct me if I'm wrong on this,  
10 but I believe it is Pyatte's testimony, gave a fairly  
11 detailed analysis of what revenues were from steam  
12 for the system and for AGP.

13 COMMISSIONER GAW: Okay.

14 MR. CONRAD: Maybe Mr. Watkins is here  
15 and can speak to that.

16 MR. WILLIAMS: Not having reviewed her  
17 testimony for some time, I don't recall what  
18 precisely is in it, but I'm sure that if there's  
19 anything that was customer-specific, it would have  
20 been designated as HC.

21 COMMISSIONER GAW: I'm sure it would be  
22 too, yeah. But -- and who was it again, whose  
23 testimony, I'm sorry?

24 MR. WILLIAMS: He's referring to Janice  
25 Pyatte.



0102

1 COMMISSIONER GAW: Okay.

2 MR. WILLIAMS: And I think probably  
3 would have been the initial filing.

4 COMMISSIONER GAW: All right.

5 MR. CONRAD: The answer to your question  
6 may be there.

7 COMMISSIONER GAW: All right. I just --  
8 that would help me understand how much that 35,000 --  
9 how much of that significance I should give that in  
10 relation to what the monthly expenditure is, I should  
11 say. Okay.

12 MR. CLEMMONS: Commissioner Gaw?

13 COMMISSIONER GAW: Yes.

14 MR. CLEMMONS: The total revenues in  
15 this steam business, it was around seven million  
16 dollars.

17 COMMISSIONER GAW: Okay. A year or a  
18 month?

19 MR. CLEMMONS: A year.

20 COMMISSIONER GAW: Okay.

21 MR. CLEMMONS: And the Ag Processing was  
22 the majority of that.

23 COMMISSIONER GAW: Okay. All right.

24 Thank you. And the drivers, the primary drivers for  
25 the increase in this case, somebody -- I'm assuming

0103

1 part of it is fuel. Is that nearly all of it, or are  
2 there other drivers?

3 MR. CLEMMONS: Fuel.

4 COMMISSIONER GAW: Nothing else  
5 basically has changed in regard to construction or  
6 plant or anything like that that caused there to be  
7 an agreement as to this increase?

8 MR. CLEMMONS: No.

9 COMMISSIONER GAW: Okay. Do you know  
10 what the fuel -- I think somebody already asked this.  
11 There was no -- there is no place where we can go  
12 back and see what the fuel costs are set up in the  
13 last case, correct? I think someone said that  
14 already.

15 MR. CONRAD: Judge, it was a settled  
16 case --

17 COMMISSIONER GAW: Yeah.

18 MR. CONRAD: -- so you could -- you  
19 could, of course, go back and the number on that old  
20 case was HR 2004-0024, and you could, of course, go  
21 back to the respective filings that were made there  
22 and see what those said, but that wouldn't give you  
23 any real insight as to what the final number was.

24 COMMISSIONER GAW: And the case prior to  
25 that, was it a settled case also?

0104

1                   MR. CONRAD: Might have been. I'm  
2   forgetting.

3                   COMMISSIONER GAW: That's all right.

4                   JUDGE WOODRUFF: Would that have been a  
5   St. Joseph Light and Power case?

6                   MR. CONRAD: That would have been an  
7   SJLP case, yes sir.

8                   COMMISSIONER GAW: I'm a little  
9   unsure -- this is a sort of minutia, but you said --  
10   I thought you said at one point it was 2.7 MM Btu  
11   figured in on the -- on the fuel costs or normal  
12   capacity. What was it?

13                  MR. CLEMMONS: Around -- around 2.7  
14   million MM Btu's was used to -- used in the revenue  
15   requirement, approximately 2.7, and that would --  
16   that includes some projected customers of the two  
17   customers that were coming on.

18                  COMMISSIONER GAW: Okay. And then I  
19   thought you said at one point also 2.6 MM Btu. Did I  
20   misunderstand you? Or was that some reference to  
21   something different?

22                  MR. CLEMMONS: No, I said 2.1 million  
23   was coal and .6 was --

24                  COMMISSIONER GAW: Yes. And then after  
25   that, I thought I heard you say 2.6, and I was just

0105

1     trying to make sure.

2                   MR. CLEMMONS:  It rounds to two-seven.

3                   COMMISSIONER GAW:  Okay.  That's -- so  
4     it is two-seven and it's a round up to that.

5                   MR. CLEMMONS:  Yeah.

6                   COMMISSIONER GAW:  Okay.  That helps me.

7                   MR. CONRAD:  Judge Gaw, for your notes  
8     there, you might also refer -- in recalling your  
9     earlier question about the revenues and mix and so  
10    on --

11                  COMMISSIONER GAW:  Yes.

12                  MR. CONRAD:  -- you might also refer to  
13    what is denominated as appendix B to this particular  
14    stipulation, which I believe is further marked as  
15    schedule 2 from Ms. Pyatte's direct testimony.

16                  COMMISSIONER GAW:  Okay.

17                  MR. CONRAD:  Now, that -- that -- and  
18    I'll hold it up so that you see what it looks like.

19                  COMMISSIONER GAW:  Okay.

20                  MR. CONRAD:  It's a landscape-formatted  
21    spreadsheet and that indicates, without identifying a  
22    particular customer, it indicates, I think, the  
23    information that you were looking at --

24                  COMMISSIONER GAW:  Thank you.

25                  MR. CONRAD:  -- that you were looking

0106

1 for. And that does, I think, include on one line, if  
2 you look carefully, you'll see the calculation of  
3 that special contract.

4 COMMISSIONER GAW: Yeah, unfortunately I  
5 think I have the public version here.

6 MR. CONRAD: Now, that is -- that part,  
7 since it does not identify specific customer, that  
8 part is not HC and it should be before you.

9 COMMISSIONER GAW: I'll look for it,  
10 I'll look for it.

11 MR. WILLIAMS: Commissioner, I think the  
12 appendices were filed as separate documents.

13 COMMISSIONER GAW: Okay. That would  
14 account for it. Thank you. All right. And then --

15 MR. CONRAD: We can get you a copy of  
16 it, if you want, in two or three minutes.

17 COMMISSIONER GAW: That's okay. I'll  
18 look for it. I'm sure it's in the office.

19 And then the other -- let me go back to  
20 Mr. Dottheim on the fuel adjustment question. Just  
21 to be clear here, does staff believe that it is  
22 significant in regard to the Commission's legal  
23 authority to approve a fuel adjustment clause outside  
24 of Senate Bill 179 that this is a stipulation as  
25 opposed to --

0107

1 MR. DOTTHEIM: Yes, in part.

2 COMMISSIONER GAW: Well, I just want to  
3 stick to, at this point, that particular question. I  
4 want to know, if you would, please, the authority  
5 that you cite, or just point it out to me, that  
6 suggests that this Commission can -- let me make this  
7 assumption for you, first of all.

8 MR. DOTTHEIM: Okay.

9 COMMISSIONER GAW: Make the assumption  
10 that this Commission legally does not have the  
11 authority to do a fuel adjustment clause. Whether  
12 you agree or disagree with that statement, make the  
13 assumption that it legally cannot do that. Cite me  
14 authority that suggests that in a stip you are able  
15 to do that even -- even though you otherwise would  
16 not be able to.

17 MR. DOTTHEIM: I don't know that I can  
18 cite you any specific authority other than I believe  
19 the staff's suggestions in support cites the 536.060  
20 respecting stipulations, but --

21 COMMISSIONER GAW: I'm looking for case  
22 law, is what I'm looking for.

23 MR. DOTTHEIM: Well, and the other thing  
24 I would offer is that the courts in Missouri, or the  
25 court in the State ex rel Jackson County case in the

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1 1970s held that, in essence, a moratorium in rate  
2 increases sought to be imposed at one time by the  
3 Commission itself was not lawful.

4               It involved Missouri Public Service  
5 Company. The Commission, in granting a rate increase  
6 case, announced that it was imposing a two-year  
7 moratorium. Missouri Public Service came back in  
8 within that moratorium period and filed for a rate  
9 increase case.

10              The City of Kansas City and one other  
11 party -- I don't know. It may -- I can't recall  
12 correctly. It may have been the Office of Public  
13 Counsel -- opposed the increase which the Commission  
14 granted on the basis that the Commission had imposed  
15 a moratorium and the courts -- I can't recall if it  
16 was the Missouri Supreme Court or Western District  
17 Court of Appeals -- ruled that the Commission could  
18 not, in that instance, impose a moratorium, and  
19 authorized or held lawful the other rate increase  
20 case.

21              And where I'm going with that is, it is  
22 not unusual for parties to reach stipulation and  
23 agreements in rate increase cases pending before the  
24 Commission, and part of the stipulation and agreement  
25 being a moratorium period.

0109

1                   And the Commission has, I believe in all  
2 instances I can remember, has approved the  
3 stipulation agreement with the moratorium involved.

4                   COMMISSIONER GAW: So are you telling  
5 me, Mr. Dottheim, that all of those moratoriums that  
6 we seem to have in these stipulations, that the  
7 Commission approves and sometimes puts in its press  
8 releases that those -- that those moratoriums are  
9 totally unenforceable under that case?

10                  MR. DOTTHEIM: Under that case.

11                  COMMISSIONER GAW: Is there another case  
12 to the contrary?

13                  MR. DOTTHEIM: At the moment I can't  
14 think of one. And I think --

15                  COMMISSIONER GAW: I'm not exactly sure  
16 how that applies to this particular argument, but it  
17 is -- it is an interesting thought that you've just  
18 planted in my head.

19                  MR. DOTTHEIM: Well, and frankly,  
20 Commissioner, it's not unusual, depending upon the  
21 case, for the staff to make note of that. I don't  
22 believe there's been any effort on the part of the  
23 staff through the years to not raise that matter with  
24 the Commissioners in on-the-record presentations or  
25 matters where the Commission is including the



0110

1 stipulation and agreement with the moratorium.

2 COMMISSIONER GAW: Well, I don't want to  
3 go too far down the road with that particular case,  
4 but you might answer me this: Was that -- who and  
5 when in the case was that provision challenged?

6 MR. DOTTHEIM: The moratorium provision?

7 COMMISSIONER GAW: Yes, who challenged  
8 it?

9 MR. DOTTHEIM: I believe it was the City  
10 of Kansas City.

11 COMMISSIONER GAW: And did they  
12 challenge it after the increase was granted, or prior  
13 to the case going to hearing?

14 MR. DOTTHEIM: I believe it was in the  
15 context of the case, the rate increase case, and I  
16 believe the Commission authorized an increase and the  
17 City of Kansas City, may have been the Office of  
18 Public Counsel, challenged the Commission's order  
19 increasing rates on the basis that the Commission had  
20 previously --

21 COMMISSIONER GAW: Okay. So --

22 MR. DOTTHEIM: -- imposed a two-year  
23 moratorium.

24 COMMISSIONER GAW: If I can step in here  
25 and try to clarify something, the earlier case you're

0111

1 talking about, they were challenging it where the  
2 Commission had imposed the moratorium on its own  
3 rather than through a stipulation agreement; is that  
4 correct?

5 MR. DOTTHEIM: That is correct.

6 COMMISSIONER GAW: Okay.

7 MR. DOTTHEIM: The Commission itself  
8 had -- had imposed the moratorium.

9 COMMISSIONER GAW: So the issue in that  
10 case was not one where there was a stipulation where  
11 the parties might have been able to go in and tried  
12 to estop another party from making a filing  
13 contravention of the stip; the question was whether  
14 or not the Commission is -- can bind a future  
15 Commission on a -- by a decision that it makes.

16 MR. DOTTHEIM: And I think the language  
17 may --

18 COMMISSIONER GAW: Would that be correct  
19 basically?

20 MR. DOTTHEIM: Yes. But -- and I think  
21 the language may be broader than that on the basis  
22 that the court cited it didn't -- well, it cited on  
23 the basis that the Commission's jurisdiction is of a  
24 continuing nature.

25 COMMISSIONER GAW: Yes, sure.

0112

1                   MR. DOTTHEIM: And it may address  
2 changed circumstances.

3                   COMMISSIONER GAW: Sure. That's -- to  
4 me that's a different question than what I'm asking.  
5 I'm looking for -- and it is a different question  
6 that I presupposed in my comment earlier in regard to  
7 whether or not those -- those stipulations that have  
8 moratoriums might be enforceable on parties.

9                   I've always understood the Commission is  
10 not a party to a contract or a stipulation and that  
11 future commissions are not bound by those provisions.

12                  Anyway, that comment aside, the question  
13 that I have is whether or not there's a -- there is  
14 some authority, some case law out there that would  
15 suggest to me that we can't approve in a stip  
16 something that may not be necessarily authorized by  
17 the statute if it were -- if it were proposed in a  
18 case by a party or if the Commission wished to do it  
19 on its own.

20                  MR. DOTTHEIM: And you're not referring  
21 to any particular statute?

22                  COMMISSIONER GAW: I'm looking for -- I'm  
23 looking for -- well, it would be helpful if it had to  
24 do with the fuel adjustment mechanism, but I'm not  
25 expecting there to be any cases out there on that.

0113

1                   MR. DOTTHEIM: And in part, I would cite  
2   you to SB 179 itself, which 36.266.10, "Nothing  
3   contained in this section shall be construed as  
4   affecting any -- any existing adjustment mechanism,  
5   rate schedule, tariff, incentive plan or other rate-  
6   making mechanism currently approved and in effect."

7                   COMMISSIONER GAW: Sure, because at the  
8   time there was an interim energy charge, or a couple  
9   of them, that were floating around out there that  
10  staff always believed to be appropriate even after  
11  that UCCM case, correct?

12                  MR. DOTTHEIM: Correct. Which is --

13                  COMMISSIONER GAW: Which staff has also  
14  drawn a distinction between an interim energy charge  
15  mechanism and a fuel adjustment clause, correct?

16                  MR. DOTTHEIM: Yes. And of course, the  
17  interim energy charge has never been challenged itself.

18                  COMMISSIONER GAW: Yes, because it does  
19  set a particular -- a particular range or a price  
20  that is later trued up, but there is a particular  
21  understanding of what that price is after that is  
22  entered -- after that energy charge is ordered --

23                  MR. DOTTHEIM: Yes.

24                  COMMISSIONER GAW: -- correct? So with  
25  a fuel adjustment clause there is -- it just rides up

0114

1 and down with whatever the price is, and then there's  
2 an analysis on prudence and checking whether or not  
3 the price that was actually charged was accurate, I  
4 think; is that correct?

5 MR. DOTTHEIM: Yes.

6 COMMISSIONER GAW: Okay. Well, if  
7 anyone else has anything for me on that, that would  
8 be helpful if you have any authority.

9 (NO RESPONSE.)

10 COMMISSIONER GAW: Okay. I don't see  
11 anybody offering anything. Well, that's all I had,  
12 Judge. Thank you very much.

13 JUDGE WOODRUFF: Chairman Davis,  
14 anything else you wanted to ask or had?

15 CHAIRMAN DAVIS: No further questions,  
16 Judge.

17 JUDGE WOODRUFF: All right. Thank you.  
18 Anything else anyone wants to bring up while we're  
19 still on the record? With that, then, this  
20 on-the-record presentation is adjourned. Thank you.

21 (WHEREUPON, the on-the-record presentation  
22 was concluded.)

23

24

25