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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

HEARING

April 15, 2003

Jefferson City, Missouri

Volume 2

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In the Matter of the Tariff Filing )  
of Laclede Gas Company ) Case No. GT-2003-0032

BEFORE:

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LEWIS MILLS, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE.  
KELVIN SIMMONS, Chair  
CONNIE MURRAY,  
STEVE GAW,  
BRYAN FORBIS,  
COMMISSIONERS.

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REPORTED BY:  
TRACY L. CAVE, CSR, CCR  
ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

MICHAEL C. PENDERGAST, Attorney at Law  
RICK ZUCKER, Attorney at Law  
720 Olive, Suite 1520  
St. Louis, Missouri 63101  
314-342-0532  
FOR: Laclede Gas Company

RICHARD S. BROWNLEE, III, Attorney at Law  
HENDREN AND ANDRAE  
221 Bolivar Street  
Jefferson City, Missouri 65101  
573-636-8135  
FOR: Missouri School Boards Association

DOUGLAS E. MICHEEL, Senior Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102  
573-751-5559  
FOR: Office of Public Counsel and the Public

ROBERT FRANSON, Associate General Counsel  
P.O. Box 360  
Jefferson City, Missouri 65102  
573-751-8701  
FOR: Staff of the Missouri Public Service Commission

1 (EXHIBIT NOS. 1 THROUGH 6 WERE MARKED FOR  
2 IDENTIFICATION.)  
3 JUDGE MILLS: Let's go on the record, please.  
4 We're on the record this morning for a hearing in Case  
5 No. GT-2003-0032. We will begin with entries of appearance  
6 starting with Laclede.

7 MR. ZUCKER: Rick Zucker and Mike Pendergast  
8 here for Laclede Gas Company, 720 Olive, Suite 1524,  
9 St. Louis, Missouri 63101.

10 JUDGE MILLS: Thank you. And for the School  
11 Board?

12 MR. BROWNLEE: Richard Brownlee, law firm of  
13 Hendren and Andrae, 23-- or 221 Bolivar Street, Jefferson  
14 City, Missouri appearing on behalf of Missouri School Boards  
15 Association and representing the Cooperative School  
16 Districts of St. Louis.

17 Mr. McWilliams, who is I think their counsel  
18 of record, is not going to make an appearance, but at least  
19 he's adopted our testimony, so indirectly I'm representing  
20 him also. Thank you.

21 JUDGE MILLS: Thank you.  
22 And for Public Counsel?

23 MR. MICHEEL: Douglas E. Micheel appearing on  
24 behalf of the Office of the Public Counsel and the public.

25 JUDGE MILLS: And for the Staff?

1 MR. FRANSON: Robert Franson appearing on  
2 behalf of the Staff of the Public Service Commission, P.O.  
3 Box 360, Jefferson City, Missouri 65102.

4 JUDGE MILLS: Thank you. We'll do opening  
5 statements in that same order beginning with Laclede.

6 MR. ZUCKER: If it pleases the Commission. My  
7 name is Rick Zucker and along with Michael C. Pendergast, we  
8 represent the Laclede Gas Company in this case.

9 Last summer the State of Missouri enacted  
10 House Bill 1402 which provides for an experimental program  
11 to see whether schools can benefit by aggregating gas  
12 purchases on their own through an association. I have  
13 copies of House Bill 1402 for your convenience to look at.

14 I handed you the House Bill open to a page 9  
15 so you could refer to Section 5 of the statute, because the  
16 statute is very clear that the aggregation program for the  
17 schools must achieve success on its own merits and not at  
18 the expense of another group.

19 Specifically, Section 5 of the statute  
20 requires that the Commission approve a gas corporation  
21 school aggregation tariffs upon finding that, quote,  
22 implementation of the aggregation program set forth in such  
23 tariffs will not have any negative financial impact on the  
24 gas corporation, its other customers or local taxing  
25 authorities.

1                   In October 2002, the parties who are before  
2 you today reached an agreement on tariffs that established  
3 an experimental school aggregation program in Laclede's  
4 territory. Schools that participate in the aggregation  
5 program are referred to as Eligible School Entities or ESEs.

6                   However, the agreement only fully covered the  
7 first winter of the aggregation program, the winter of  
8 2002/2003. This is because one issue in the settlement  
9 agreement was only temporarily settled through May 31st of  
10 this year. The parties have been unable to resettle the  
11 issue and so we are here today asking that you resolve it.

12                   The issue at hand is the terms upon which the  
13 ESE pay for the pipeline capacity previously acquired by  
14 Laclede to serve them. Laclede believes that the ESEs must  
15 pay for the capacity Laclede has arranged for them.

16                   Staff and Public Counsel agree with this  
17 position because they know that to the extent the ESEs do  
18 not pay for such capacity, the cost of it will be borne by  
19 Laclede's other customers through the PGA. This is  
20 precisely the type of negative financial impact that the  
21 statute prohibits.

22                   The Schools Association, on the other hand,  
23 through the testimony of its outside consultant, Mr. Louie  
24 Ervin, stands alone in its belief that it is not required to  
25 assume any responsibility for this pipeline capacity.

1                   Let me give you some background.  
2           Historically, the schools have been Laclede's sales  
3           customers similar to other small- or medium-sized  
4           businesses. As sales customers, they buy their gas from  
5           Laclede. The price they pay for the gas covers, among other  
6           things, the cost of the pipeline capacity Laclede arranges  
7           to carry the gas to Laclede's city gate.

8                   Under the aggregation program, the schools,  
9           through their association, will arrange their own gas  
10          purchasing. However, as schools leave Laclede's sale  
11          service, Laclede does not have the flexibility to simply  
12          reduce the amount of pipeline capacity it bought to serve  
13          the schools.

14                  For example, a company called MRT operates a  
15          pipeline that covers about 85 percent of Laclede's pipeline  
16          needs. The company has a contract with MRT that requires it  
17          to pay for a set level of pipeline capacity through the  
18          winter of 2006/2007.

19                  As with other pipeline capacity contracts,  
20          Laclede has no contractual right to reduce the amount of  
21          pipeline capacity it takes from MRT during the period that  
22          the experimental aggregation program is in effect.  
23          Laclede's other pipeline contracts are similar to this.  
24          Thus, Laclede has no ability to adjust the amount of  
25          pipeline capacity it purchases to allow for ESEs that depart

1 from Laclede's sales service to join the aggregation  
2 program.

3           Based on these circumstances, the schools must  
4 maintain responsibility for the pipeline capacity Laclede  
5 has reserved for them. MRT and other pipeline operators  
6 will continue to demand payment from Laclede for that  
7 capacity and other customers will have to pay for it if the  
8 schools don't. Under such circumstances, the effect will be  
9 a negative financial impact in violation of Section 5 of the  
10 statute.

11           How much pipeline capacity should a school  
12 take? Other LDCs basically agreed to accept for the first  
13 year of the nearly three-year program an amount equal to  
14 150 percent of a benchmark. And that benchmark can roughly  
15 be described as the average day in a peak cold month. We've  
16 nicknamed this benchmark the average peak month usage or  
17 APMU.

18           Now, why choose the APMU as the benchmark?  
19 Well, in order to provide reliable gas service, LDC capacity  
20 planners generally arrange for pipeline capacity, in  
21 combination with other resources, sufficient to meet the  
22 peak needs of their customers. Laclede, like other LDCs, is  
23 obliged to purchase this peak capacity all year round and  
24 not just when we need it.

25           With respect to the ESE's responsibility for

1 capacity, Laclede generally followed suit with some of these  
2 other LDCs and used 150 percent of the APMU at the beginning  
3 of the program.

4                   However, consistent with our obligation under  
5 the Stipulation and Agreement reached last October, we took  
6 another look at this matter and determined that if we  
7 factored in our storage and peak shaving capabilities, we  
8 could reduce the school's capacity requirement for the  
9 remainder of the experimental program from 150 percent of  
10 APMU down to 114 percent.

11                   114 percent of the APMU, therefore, represents  
12 the relationship between the year round pipeline capacity we  
13 have reserved as a percentage of the usage by our firm  
14 customers on the average day of the peak winter month.

15                   We also found that these same considerations  
16 allowed us to structure the school's capacity purchases in a  
17 way that better matches their usage characteristics without  
18 creating a negative financial impact for our other  
19 customers.

20                   Specifically, Laclede has proposed in its  
21 tariff filing in this case to provide for the ESE to take  
22 pipeline capacity in the amount of 150 percent of the APMU  
23 in the winter months of November to March, but only  
24 88 percent of the APMU in the summer months of April through  
25 October.

1                   Winter capacity at 150 percent allows the  
2                   Schools Association to minimize the chance that it will  
3                   actually need to buy supplemental pipeline capacity when the  
4                   weather is coldest and such capacity is likely to be most  
5                   expensive. Summer capacity at 88 percent lowers the amount  
6                   of capacity the Schools Association must pay for at a time  
7                   when its needs are small.

8                   I understand that Staff and Public Counsel  
9                   both support this proposal and believe that it complies with  
10                  the statute, but the schools -- the School Association's  
11                  witness is not satisfied. According to his testimony, the  
12                  Association wants nothing short of avoiding responsibility  
13                  for any pipeline capacity.

14                  As I've stated, since Laclede cannot shed this  
15                  capacity, the effect of such a provision would be to simply  
16                  shift the burden of paying for that capacity from the  
17                  schools onto someone else and this violates the statute.

18                  Incidentally, not one school signed up for  
19                  Laclede's aggregation program this past winter. Why? The  
20                  schools -- the School Association's representative,  
21                  Mr. Ervin, will try to tell you it's because of the high  
22                  pipeline capacity cost or because of the uncertainty of what  
23                  pipeline costs his clients would be responsible for after  
24                  May 31st. Neither excuse is accurate.

25                  First, other LDCs required roughly 150 percent

1 of the APMU for the entire first year of the program, the  
2 same as Laclede. Laclede's tariff at 150 percent of APMU  
3 for only the first seven months, therefore, was certainly no  
4 worse because it is not realistic that this figure could go  
5 higher than 150 percent for the remaining five months of the  
6 program's first year.

7           Second, the fact that the schools have a fresh  
8 option each year to enroll in the program meant that they  
9 had little exposure to any decision by the Commission that  
10 actually increased capacity above the 150 percent. In such  
11 events, the schools could, if they wished, simply decline to  
12 renew their participation in the second year of the program.

13           As it turned out, Laclede's proposal of  
14 88 percent of APMU for the remaining months of the first  
15 program year makes Laclede's pipeline capacity costs  
16 significantly cheaper than other LDCs in the first year.

17           So why zero enrollment for school aggregation  
18 in Laclede territory? We believe the most likely  
19 explanation is that as gas prices rose last fall, Laclede's  
20 PGA rates, which were substantially hedged, looked better  
21 and better and the schools may have done themselves a great  
22 favor by sitting out the first program year and instead  
23 choosing Laclede's sales service -- choosing to stay on  
24 Laclede's sale service.

25           This is a great advantage for the schools, an

1 advantage our other sales customers don't have to be able  
2 each fall to choose between their aggregation service and  
3 Laclede's service based on the price of gas.

4 Finally, in his supplemental testimony filed  
5 this past month, Mr. Ervin has sought to re-open some  
6 arguments that were settled in last October's Stipulation  
7 and Agreement. One of these arguments involves whether the  
8 statute provides for a transportation only service. Another  
9 one involves whether the negative financial impact clause of  
10 Section 5 even applies to the capacity issue we've been  
11 discussing.

12 Resurrecting these issues is a violation of  
13 the Stipulation and Agreement that we entered into on  
14 October 11th and that you, the Commission, approved on  
15 October 17th. Let's focus on the issue we haven't settled  
16 and not re-litigate the issues we have settled.

17 In summary, Laclede's proposed solution to the  
18 capacity issue is to require the schools -- the  
19 participating schools to be responsible for 150 percent of  
20 the APMU in the winter, 88 percent of the APMU in the  
21 summer. We believe this solution is beneficial to the  
22 schools without causing a negative financial impact on our  
23 other customers or us in violation of paragraph 5 of the  
24 statute. Staff and Public Counsel both support this  
25 solution. We believe you should too. Thank you.

1 JUDGE MILLS: Thank you.

2 Mr. Brownlee?

3 MR. BROWNLEE: Thank you. May it please the  
4 Commission. My name is Richard Brownlee. I'm representing  
5 the Missouri School Boards Association.

6 There's a little bit of background that was  
7 included in the original testimony. The Missouri School  
8 Boards Association consists of 400 public school districts  
9 representing approximately 2,000 schools in the state of  
10 Missouri. The Cooperating School Districts of St. Louis,  
11 which I am indirectly representing, has 51 public school  
12 districts in the St. Louis area, representing approximately  
13 900 schools.

14 The way the program is set up from a practical  
15 standpoint is that the Missouri School Boards Association  
16 serves as a not-for-profit corporation as an aggregate  
17 purchasing agent for the natural gas. The schools and the  
18 school districts sign a membership and participation  
19 agreement with the School Board Association where the School  
20 Board Association is the contracting agent to purchase the  
21 gas and arrange for the transportation.

22 Latham and Associates, which is Mr. Ervin's  
23 company, bids the actual gas supply, that is the physical  
24 portion of handling that, and the daily operations with the  
25 interaction between Laclede and the other local distribution

1 companies are handled by a third-party administrator, TPA.

2 As Rick pointed out, the 91st General  
3 Assembly, second session, passed House Bill 1402 which  
4 basically -- and I think I would accept what Rick said --  
5 required gas corporations to file experimental tariffs.  
6 That went into effect November 1, 2002.

7 School districts in the state of Missouri and  
8 the schools are participating with schools under the MGE  
9 service area, under AmerenUE, under Aquila and under Atmos.  
10 The only schools and the only students in the state that are  
11 not able to participate in this program are the schools  
12 within the Laclede service area. That is because of the  
13 tariff that Laclede has filed.

14 The Commission has accepted tariffs in all of  
15 the other cases that essentially allows the service as  
16 Mr. Ervin and as the school district outlines in this case;  
17 that is, the Laclede tariff is, in fact, in opposition to  
18 what the Commission has accepted in the other cases.

19 There was a stipulation with Laclede entered  
20 into effective October 17, 2002 as a method of trying to at  
21 least settle that. We did reserve the issue on capacity  
22 release, which is the single issue that is before the  
23 Commission today.

24 The statute does not require the eligible  
25 school entities to take or pay for interstate pipeline

1 capacity acquired by Laclede to serve the eligible school  
2 entities. I will tell you the statute is unclear in certain  
3 areas. There is some dispute as to whether it creates  
4 different types of tariffs.

5 That is, on one hand when the schools can  
6 purchase their own gas, handle the transportation, that's  
7 under one section of the tariff. There's an argument to be  
8 made that under the second section, the actual local  
9 distribution company, Laclede, handles the purchasing of the  
10 gas, handles the transportation, resells the gas, gets an  
11 aggregation fee for the administration costs.

12 The statute reasonably can be read that way.  
13 And that has been one of the problems and I will be the  
14 first to concur it is not clear. So much of what is  
15 involved in front of the Commission today I feel is a legal  
16 issue, interpretation of that statute as applied.

17 Unfortunately, it's not just a pure legal  
18 issue because it involves a tremendous amount of needy  
19 children and needy school districts in the state that we all  
20 recognize today are going to have serious financial problems  
21 into the future. So this is a very, very important issue.  
22 It's not just a suspended legal issue that's before this  
23 Commission.

24 The remaining issue I think, as Rick pointed  
25 out, does the statute, does the Stipulation and Agreement

1 and does the tariff require the eligible school entities to  
2 take or pay for interstate pipeline capacity acquired by  
3 Laclede to serve the eligible school entities.

4 The Laclede position -- while Rick stated it,  
5 we take some differences. And I think the essence of what  
6 we will point out is that there are differences in the  
7 Laclede tariff than what the other companies signed up for  
8 and what the Commission has approved.

9 Laclede has stated that the -- they must  
10 release contracted pipeline capacity to the eligible school  
11 entities on a take or pay basis at prices exceeding what  
12 large commercial and industrial transportation pay.

13 That is, we believe that this tariff should be  
14 treated just as if we were a large industrial commercial.  
15 That is, we can switch from firm sale to transportation.  
16 And that rate is 150 percent of the average daily  
17 consumption and peak usage month during the 24 months ending  
18 September 30th, 2002 for the entire three-year program.

19 It's important to realize, for the Commission  
20 to understand that the Laclede tariff they've proposed is  
21 very different from what the other companies have proposed.  
22 They go back 24 months to establish the 150 percent. That  
23 includes the second and first coldest periods in the last --  
24 since 1941.

25 So Laclede has gone back a full year to where

1 they establish their 150 percent figure, it goes back and  
2 collects the two coldest months, the two coldest periods  
3 since 1941. The other companies did not do that.

4 Secondly, they require that the tariff that's  
5 established goes for the full three years of the program.  
6 None of the other schools -- none of the other utilities  
7 have required that. They've only required one year at a  
8 time. That is critical.

9 The Missouri School Boards Association's  
10 position is that we should be treated like other large  
11 industrial -- or large commercial industrial customers.  
12 They're not required to take or pay for any released  
13 pipeline capacity for any values at any price for any  
14 specific time.

15 The normal pipeline capacity practice that  
16 other utilities go through that this Commission apparently  
17 approved in these other cases is that the utilities can post  
18 release capacity to the market, that's one way to do it.  
19 That is, they sell the -- if there's any excess capacity,  
20 they sell it to the market. There are FERC tariffs that  
21 allow them to post that, to sell it to other entities. And  
22 we believe that that methodology could be used here.

23 There is no evidence that Laclede has been  
24 able to show that I could find in the testimony that they  
25 could not do that. In fact, those issues that Mr. Ervin

1 raises are not even mentioned in their testimony.

2 Having said that, I'm not going to belabor the  
3 point. This is a difficult -- it's a difficult issue. This  
4 is a testy case and it's very, very important and I  
5 appreciate your attendance this morning. Thank you very  
6 much.

7 JUDGE MILLS: Thank you.

8 Mr. Micheel?

9 MR. MICHEEL: May it please the Commission.

10 The Office of the Public Counsel believes that  
11 Laclede Gas Company's tariffs are the only tariffs that  
12 comply appropriately with 393.310 and, therefore, we would  
13 urge the Commission to adopt those tariffs.

14 I agree with Mr. Brownlee to the extent that  
15 it is important that schools and children and schools get  
16 reasonable natural gas prices, but I also think that it is  
17 important that in implementing this experiment that we don't  
18 provide cross-subsidies, because in the end it's going to be  
19 the students' parents who pay. It's just a question of who  
20 pays.

21 And I think the statute is very clear in  
22 subsection 5 when it says, and I quote, Will not have any  
23 negative financial impact. And any means just what it says.  
24 I think that part of the statute is clear. And there is  
25 nothing in my reading of this statute that -- that

1 disaggregates capacity from the financial. It says when you  
2 look at this package, it cannot have any adverse financial  
3 impact on other customers.

4                   And indeed that makes sense with the whole  
5 idea of an experiment. And I think what we're doing when we  
6 have an experiment is you're testing a hypothesis. And the  
7 hypothesis to be tested in this case with this statute is  
8 that if the schools are allowed to become transportation  
9 customers and aggregate a load, they can get a lower cost of  
10 gas.

11                   But that has to be tested against the backdrop  
12 of what if they were just large volume customers like they  
13 were in the past. And you need to test that hypothesis on  
14 an equal playing ground. And if the field -- the playing  
15 field is not level, obviously you've predetermined your  
16 result.

17                   If they're not required to make it have no  
18 financial impact on any other customers, by definition it's  
19 going to be beneficial to them, but it is not going to be  
20 beneficial to the customers as a whole. And I think in this  
21 case, based on the evidence, that Laclede's proposal is the  
22 only one that tests this hypothesis. And so the Office of  
23 Public Counsel supports Laclede in this matter.

24                   JUDGE MILLS: Thank you.

25                   Mr. Franson?

1                   MR. FRANSON: Thank you, Judge. May it please  
2 the Commission.

3                   Most of what has been said by the other  
4 parties Staff does not agree with -- or does not disagree  
5 with; however, the main question is -- it's been covered why  
6 we're here, because there is a Stipulation and Agreement,  
7 parties had their conference call, we haven't settled it.

8                   The two issues that are before this Commission  
9 are set out in the list of issues. That, A, is does the  
10 statute, Stipulation and Agreement or the tariff require  
11 eligible school entities to take or pay for interstate  
12 pipeline capacity acquired by Laclede to serve the  
13 requirements of the eligible school entities.

14                   The answer is yes, it does. And that is  
15 simply based on the paragraph 5 of the statute which sets  
16 out that there will be no negative impact upon Laclede or  
17 its other customers.

18                   There is a separate paragraph that talks about  
19 the aggregation charge and what it's designed to do about  
20 incremental cost. Totally separate. So that aggregation  
21 charge is not designed to cover this situation.

22                   So the first question is, are there costs  
23 being incurred by Laclede to provide interstate pipeline  
24 capacity. The answer is yes. And Mr. Cline's testimony  
25 covers that. And so with that answer being yes, the answer

1 to A is yes. And then what do we have about tariffs? Well,  
2 Laclede's is the only one that fits within the statute.

3 Now, if there are costs, Mr. Brownlee says  
4 that he wants the schools to be treated like transportation  
5 customers. He also said in his opening that there's some  
6 room for question about how this statute should be  
7 interpreted.

8 Well, it's already been determined by the  
9 Commission when the Stipulation and Agreement was settled in  
10 this case what applies to this case. The tariff that's in  
11 place answers that question.

12 And there's a fundamental difference between  
13 transportation customers in the schools and this situation.  
14 Transportation customers, large customers of Laclede who  
15 want to opt to become transportation customers that --  
16 switching from large volume sales, they're not covered by a  
17 statute that says there shall be no negative financial  
18 impact on Laclede or its other customers. If there are  
19 costs, somebody's got to pay them.

20 And as Mr. Micheel pointed out, if this  
21 experimental program is going to work and we're going to  
22 find out whether it works, which is the purpose of an  
23 experimental program, it has to be a level playing field and  
24 the schools that are causing the cost have to be the ones  
25 that pay the cost.

1                   Accordingly, Staff would ask the Commission to  
2 approve the tariffs filed by Laclede in this case. Thank  
3 you.

4                   JUDGE MILLS: Thank you. We're going to move  
5 onto our first witness. While we have Mr. Cline come  
6 forward, I will see if I can switch the camera view until we  
7 get a picture of him or video feed. Bear with me just a  
8 minute here.

9                   Okay. Please go ahead. Let me swear him in  
10 first.

11                   (Witness sworn.)

12                   JUDGE MILLS: Thank you. You may be seated.

13 MICHAEL T. CLINE testified as follows:

14 DIRECT EXAMINATION BY MR. ZUCKER:

15                   Q.       Good morning, Mr. Cline.

16                   A.       Good morning.

17                   Q.       Can you please state your full name for the  
18 record?

19                   A.       Michael T. Cline.

20                   Q.       And who are you employed by?

21                   A.       Laclede Gas Company.

22                   Q.       And are you the same Michael T. Cline who  
23 filed supplemental Direct Testimony in this case on  
24 March 17th, 2003?

25                   A.       Yes, I am.

1 Q. And did you also file supplemental Rebuttal  
2 Testimony in this case on April 1st, 2003?  
3 A. Yes, I did.  
4 Q. And do you have any changes to that testimony?  
5 A. No, I do not.  
6 Q. If I asked you the same questions contained in  
7 that testimony, would you give me the same answers today?  
8 A. Yes, I would.  
9 MR. ZUCKER: I move for admission of Exhibits  
10 1 and 2 into evidence.  
11 JUDGE MILLS: Are there any objections to the  
12 admission of Exhibit 1?  
13 Hearing none, it will be admitted.  
14 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)  
15 JUDGE MILLS: Any objections to the admission  
16 of Exhibit 2?  
17 Hearing none, it will be admitted.  
18 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)  
19 MR. ZUCKER: Tender the witness.  
20 JUDGE MILLS: Thank you. Cross-examination  
21 first from Public Counsel?  
22 MR. MICHEEL: I have no questions for  
23 Mr. Cline today.  
24 JUDGE MILLS: Staff?  
25 MR. FRANSON: Thank you, Judge.

1 JUDGE MILLS: And, Mr. Franson, before you  
2 begin, I'm going to ask you to move the podium a little bit.  
3 MR. FRANSON: Which way, Judge?  
4 JUDGE MILLS: Your right. I'm sorry. My  
5 right.  
6 MR. MICHEEL: We're not supposed to take it  
7 out of the tape spots, your Honor.  
8 MR. FRANSON: Am I situated okay?  
9 JUDGE MILLS: Slide it this way several feet.  
10 MR. FRANSON: This way?  
11 JUDGE MILLS: That way, toward the witness  
12 stand. A little bit more.  
13 MR. FRANSON: It's not me. It's the cord, the  
14 duct tape. I'm about to pull the cord off.  
15 JUDGE MILLS: I guess that's good.  
16 MR. FRANSON: May I proceed?  
17 JUDGE MILLS: Please go ahead.  
18 CROSS-EXAMINATION BY MR. FRANSON:  
19 Q. Mr. Cline, if you would turn to page 6 of your  
20 Supplemental Direct Testimony, which I believe is Exhibit 1,  
21 specifically page 6, lines 1 through 8.  
22 A. Okay.  
23 Q. Okay. Just so I understand, is it the  
24 intention under this program that the schools will only take  
25 capacity of the Mississippi River Transmission Corporation,

1 MRT, pipeline?

2 A. According to the tariff we put in place  
3 effective November 1st, 2002, that is the capacity that we  
4 agreed that we would release to the schools, and we would  
5 expect them to -- for which we expect them to cover the  
6 cost.

7 Q. Okay. So my question is, the only capacity  
8 that they are receiving from any pipelines that serve  
9 Laclede is off of MRT; is that correct?

10 A. That's the only capacity that Laclede would be  
11 releasing to them. I assume they'd be in a position to go  
12 out and get capacity from other pipelines if they wished.

13 Q. Okay. If you could look on Exhibit 1, the  
14 attached two tariff pages, could you turn to those, please?

15 A. Okay.

16 Q. Okay. Do you recall that tariffs are  
17 currently in place for this program and have been approved  
18 by the Commission?

19 A. Yes, sir.

20 Q. Okay. Is it fair to say that the only changes  
21 that you're recommending are found in paragraph E under  
22 transportation capacity? All the other parts of the tariffs  
23 would remain the same?

24 A. That is correct.

25 Q. Okay. Also, if you could turn to page 4 of

1 your Supplemental Direct, which is Exhibit 1, starting at  
2 line 14 and review, please, through page 5, line 21. And  
3 please tell me when you've had the opportunity to review  
4 that.

5 A. Okay. I've reviewed that.

6 Q. Could you clarify that by explaining it in  
7 non-mathematical terms?

8 A. Yes. Essentially this is just a mathematical  
9 derivation of the principle that we believe should be  
10 adhered to in order to ensure that, according to the  
11 statute, that there are no incremental costs or no costs  
12 additional costs borne by Laclede or by its other customers  
13 in order to provide service under this program.

14 And this whole -- this whole issue gets to the  
15 point of -- of Laclede's historical practice obviously of  
16 lining up pipeline capacity -- firm pipeline capacity to  
17 meet its firm sales obligations to all of its customers, all  
18 of its firm sales customers.

19 And Laclede must make sure that it negotiates  
20 secure pipeline capacity that will ensure that we are in a  
21 position to meet our firm sales customers' requirements on  
22 those most severe weather days.

23 And our point here is and the principle we're  
24 trying to uphold is that we have lined up implicitly -- we  
25 have lined up pipeline capacity to meet those requirements

1 of all our sales customers of which the schools are a part.  
2 And they have -- obviously they have a desire to have their  
3 buildings heated on the coldest days, and we have lined up  
4 capacity to make sure that that has happened.

5 We've entered into contracts prior to the  
6 effectiveness of the program that -- that enabled us to --  
7 to line up that capacity to make sure that capacity's in  
8 place to meet the schools' requirements as well as our other  
9 firm sales customer requirements.

10 And our own only point is that the schools  
11 should not be entitled to escape that obligation of paying  
12 for the costs of that capacity, the costs that -- the  
13 capacity which we -- capacity requirements which we --  
14 capacity which we lined up to meet their needs.

15 And this was -- the numbers on these pages was  
16 just a way of quantifying what that -- how we can arrive at  
17 what portion of our total pipeline capacity requirements we  
18 consider to be attributable to the schools to meeting the  
19 schools peak day needs.

20 MR. FRANSON: No further questions, Judge.

21 JUDGE MILLS: Thank you.

22 Mr. Brownlee?

23 MR. BROWNLEE: Thank you.

24 CROSS-EXAMINATION BY MR. BROWNLEE:

25 Q. Morning, Mr. Cline.

1 A. Good morning.

2 Q. You and I met. I'm Richard Brownlee,  
3 representing the School Board Association.

4 Turn if you would, sir, to page 3, line 16 of  
5 your direct.

6 A. Okay.

7 Q. Do you have that?

8 A. Yes, sir.

9 Q. You make reference there to long-term  
10 contracts for pipeline capacity. Are any of those contracts  
11 entered into exhibits in this proceeding?

12 A. I don't believe they are. I -- I don't  
13 believe they are.

14 Q. Without getting into any confidential or  
15 proprietary measures, could you outline from memory the best  
16 you can what companies those contracts are and when they  
17 were entered into and the term of those contracts?

18 I mean, you've testified that there's MRT,  
19 which is Mississippi River Transmission, Williams, and I  
20 believe Missouri Pipeline. The names are in the record, but  
21 I don't think you've given us any detail regarding the other  
22 questions that I just propounded to you.

23 A. Yes. What I was referring to here were  
24 basically the three -- contracts with the three pipelines  
25 that you mentioned are interconnected directly to our

1 distribution facilities in the St. Louis area, that being  
2 Mississippi River Transmission Corporation, Missouri  
3 Pipeline Company and Williams Natural Gas or Southern Star  
4 Central, whatever their name is today.

5 Q. It's Southern Star now.

6 A. Okay. The Mississippi River Transmission  
7 contract was, I believe, a five-year contract, became  
8 effective in May of 2002 and extends into 2007.

9 The Williams contract, Southern Star, was  
10 entered into or became effective at some point in 1998 and I  
11 believe it's like a 13-year contract initial term or primary  
12 term.

13 And the Missouri Pipeline Company -- the most  
14 current Missouri Pipeline Company agreement we are working  
15 under right now I believe extends through October of 2004, I  
16 believe. If you want to verify that, you could refer to  
17 a -- I actually specifically gave details on that contract  
18 in response to one of the MSBA's data requests.

19 Q. Do you know when the Missouri Pipeline  
20 contract was entered into, Mr. Cline, or the best you could  
21 do? I recognize you don't have it in front of you.

22 A. I don't know those exact dates. I know that  
23 we've -- that negotiations probably went on over a period of  
24 months, I know that it probably -- the actual pricing of  
25 that agreement probably wasn't ultimately settled until

1       shortly -- near the end of the last calendar year.  And I  
2       just don't recall exactly the -- the timing of those  
3       negotiations and when it was really entered into.  I'm the  
4       pretty sure on the termination date.

5                       And that's a contract that has been around for  
6       some time and has been re-negotiated maybe several  
7       occasions, but for the most part we began receiving capacity  
8       from Missouri Pipeline back in 1990 and that's obviously an  
9       important part of our capacity requirements into St. Louis.

10              Q.       Okay.  Well, let's focus back on the  
11       Mississippi River Transmission or MRT.  If that was executed  
12       in May of 2002, that was executed at a time when you were  
13       aware of the provisions of House Bill 1402, were you not?

14              A.       I can't recall exactly when I became aware of  
15       the -- of the House Bill you're referring to, the statute  
16       we're operating under.  I'd say this.  I know that that was  
17       a process that, in my mind, came upon me pretty quickly.  
18       And I knew it was something that whether we liked it or not  
19       was something we had to put in place in a relatively short  
20       period of time.  And basically didn't give us a whole lot of  
21       time to prepare for that.

22                       I mean, you know, we had to begin lining up  
23       supplies and capacity well in advance of the winter season,  
24       and I'm not so sure that with really adequate time to -- to  
25       take -- consider -- to take into consideration of that.

1                   And also you should understand too the MRT --  
2                   the MRT -- our agreement, our negotiations with MRT were  
3                   probably, I would say, difficult ones, as you would expect  
4                   they would be with the largest and most critical pipeline  
5                   supplier in our system.

6                   And they'd been going on for some time and I  
7                   don't know how -- how easy it would have been should -- had  
8                   that information been available at all to people negotiating  
9                   the agreement, to have somehow incorporated or accommodated  
10                  this program into those -- into those discussions. And  
11                  obviously as you -- as we discussed already, that contract  
12                  became effective May 2002. I don't believe the -- I'm not  
13                  so sure the statute was approved or effective then.

14                 Q.       Okay. Well, thanks for that narrative. But  
15                  the point being, assuming you were aware of at least House  
16                  Bill 1402, you could have made arrangements with your  
17                  negotiations as to where you didn't have to require the  
18                  school districts to take capacity release with MRT. That's  
19                  the only company that you're requiring it. Is that not  
20                  correct, is MRT?

21                 A.       That's the only company that we're requiring  
22                  it.

23                 Q.       Right.

24                 A.       And I guess I'd say, you know, once again, I  
25                  would have to emphasize that I don't -- the -- the school

1 program, the legislation was something that, like I said,  
2 came upon me pretty quick. I'm not so sure how -- how aware  
3 our gas supply people were who were dealing with MRT at the  
4 time knew about how possible that was -- that was even going  
5 to happen.

6 So it's not as if that -- we knew that was for  
7 certain. At least I can say from my standpoint it's not as  
8 if I knew for certain that was something that was right  
9 around the corner. So I would say it came upon us in a  
10 relatively quick fashion.

11 Q. So to summarize, you're saying that when you  
12 negotiated the contract in May of 2002 with MRT, you really  
13 weren't aware of the provisions of House Bill 1402 and how  
14 it might affect -- how that important contract with MRT  
15 might affect the schools and their availability to  
16 participate in the program?

17 A. I can only talk about what my familiarity was  
18 with the House Bill. I was the one negotiating with MRT. I  
19 don't know what our gas supply knew at that time or did not  
20 know at that time. But -- but most importantly another  
21 critical factor there is that --

22 Q. Mr. Cline, I didn't ask you really about other  
23 critical factors.

24 A. Those are the follow-up to earlier questions.  
25 I didn't get a chance to finish an earlier response.

1 Q. Well, thank you.

2 A. And the point was that --

3 Q. Turn to --

4 MR. ZUCKER: Your Honor, could he finish his  
5 answer, please?

6 JUDGE MILLS: Yes.

7 MR. BROWNLEE: If he can.

8 JUDGE MILLS: If there's an objection, you can  
9 raise an objection. Let's not have each other talking over  
10 each other. It's very hard for the court reporter to pick  
11 it up.

12 THE WITNESS: Mr. Brownlee, I think you had  
13 posited that probably -- it would have been possible that we  
14 could have been in a position to -- had we had full  
15 knowledge of the program at the time we were -- we were  
16 structuring our deal with MRT, couldn't we have made some  
17 arrangements to -- to accommodate that program somehow in  
18 our contractual relationship.

19 And -- and all I can say is that -- and I  
20 think this is confirmed by my testimony is -- is reiterating  
21 what I said in my testimony, but I'm not so sure that that  
22 would -- we could have certainly have put in place some  
23 provisions to enable the release of that capacity to -- to  
24 the schools, but certainly I don't think there would have  
25 been any -- any -- any ability on our part to ensure

1 ourselves that somehow we were going to escape some costs or  
2 that the schools will be able to escape the cost  
3 responsibility of the contract we were entering into with  
4 MRT.

5 Q. Okay. Thank you. Turn to page 4 of your  
6 direct, please. You have line 8 where there's a question  
7 regarding 150 percent of the daily consumption. Do you see  
8 that?

9 A. Yes, sir.

10 Q. And then in the following answer you said that  
11 this was -- this 150 figure was proposed by representatives  
12 of the schools in settlement discussions and was apparently  
13 a factor used by other school aggregation programs. Do you  
14 see that?

15 A. Yes, I do.

16 Q. Now, were you involved in any of the  
17 discussions with the other schools that the Commission has  
18 already approved those tariffs? Were you involved in those  
19 discussions?

20 A. I was not involved in those discussions, but I  
21 was involved in the discussions that we obviously had with  
22 the school representative for our area and pertaining to our  
23 area. And it was my understanding that this was -- the  
24 150 percent factor was something that worked in not only  
25 other jurisdictions in Missouri, but other states.

1 Q. Okay. So in the other cases on tariffs  
2 approved by the Commission, did the schools agree to take  
3 150 percent of the average daily consumption for years two  
4 and three of the program or just for the first year?

5 A. I haven't examined the school aggregation  
6 tariffs of the other LDCs in the state. It's my  
7 understanding from what I think your -- your -- your own  
8 witness has told us, that those -- those other LDCs have not  
9 imposed that requirement beyond the first year.

10 And I don't know if that's due to their -- a  
11 greater flexibility they have in their pipeline contracts or  
12 whether those cost consequences aren't as important to them  
13 or whether they're just not complying with the statute as  
14 closely as we believe we need to comply with the statute in  
15 this case.

16 And we want to do that to make sure that  
17 there's no capacity costs shoved off on Laclede or its other  
18 customers. And the best way we can do that is by matching  
19 that cost responsibility up with -- with something that  
20 reflects the kind of commitments we made with our pipeline  
21 suppliers.

22 JUDGE MILLS: Just for the record, let me note  
23 that the Commissioners had to leave for a 9:30 meeting. It  
24 wasn't anything you said.

25 BY MR. BROWNLEE:

1 Q. So the Laclede program requires participation  
2 for years one, two and three; is that correct?

3 A. The Laclede program requires that the schools  
4 are responsible for the costs throughout the duration of the  
5 program and it's not -- but you should understand it's --  
6 was 150 percent up through May of 2000 and -- 2003.

7 Q. Okay. Now, in the other cases and tariffs  
8 approved by the Commission, did the schools agree to accept  
9 the 24-month period in computing the 150 percent prior to  
10 September 2, 2000 or did they just use -- go back one year,  
11 whereas, Laclede has gone back two years?

12 A. I don't know that, Mr. Brownlee.

13 Q. Thank you.

14 A. I do know that -- I do know this was  
15 something -- this was a methodology that was agreed upon  
16 between the -- the schools and Laclede at that time. It  
17 wasn't as if I thought there was any serious disagreement  
18 over what would be a -- a legitimate way of expressing a  
19 relationship between --

20 Q. Okay.

21 A. -- the schools -- the schools' historical  
22 usage and what their capacity requirements may be.

23 Q. The answer is you don't know then, do you,  
24 about the other ones?

25 A. I do not know whether they used 24 months --

1 Q. Okay. Thank you.

2 A. -- in September 2002.

3 Q. And Laclede did go back 24 months prior to  
4 September 2, did they not, in computing their 150 percent  
5 figure?

6 A. We did once again because I think that was --  
7 that was -- that was agreed upon --

8 Q. Okay.

9 A. -- in our discussions. And also I would --  
10 I'm not so sure that that even really is necessarily a  
11 critical -- a critical matter here. All we're trying to do  
12 is establish some relationship between a school's historical  
13 usage at a point in time and what -- and what their -- and  
14 what their share of capacity is that Laclede's lined up to  
15 serve all its firm sales customers.

16 We could use a different month and we could  
17 have a different factor to apply and -- come up with a  
18 different factor and get very close to the same result.

19 MR. BROWNLEE: Your Honor, he's narrated -- I  
20 mean, these are kind of yes or no answers that I'm  
21 eliciting. He's narrated about 90 percent of what's going  
22 on and I'd ask the Bench to instruct him if he can answer  
23 yes or no -- he's got a lawyer that on recross can elicit an  
24 instruction if he wants to. But, I mean, we're going to be  
25 here all day if we can't get some yes or no answers.

1                   JUDGE MILLS: Let me say this. The most  
2 recent question was, But you did use 24 months. Right? And  
3 your answer was yes and here's why. And if you can make the  
4 here's why part relatively brief, I think that's okay. You  
5 don't have to confine yourself to simple monosyllabic  
6 answers, you don't have to say just yes, just no, but we  
7 don't need a great deal of narrative to a yes or no answer.

8 BY MR. BROWNLEE:

9                   Q.       And, Mr. Cline, you said by using that  
10 24-month period, you didn't think that was critical in terms  
11 of the 150 percent, but by going back 24 months instead of  
12 12, you were able to incorporate in those computations the  
13 coldest periods in the St. Louis history of weather in the  
14 last 60 years. Is that not correct? I mean --

15                  A.       Last 60 years? I'm not -- I'm not sure of  
16 that. I also -- but I also know that there were -- there  
17 were -- we had -- we had a historical peak day of -- that  
18 came to minus 8 degree temperature back in 1982. And I  
19 don't think we necessarily have -- I'm not sure whether the  
20 schools have considered what it might take to meet that kind  
21 of -- that kind of load.

22                  Q.       Okay. Well, didn't your people send a data  
23 request requesting information on the coldest 60 period, and  
24 did we not supply that in the -- showing that the November  
25 through December temperatures was the coldest period since

1 1941 and that the November/January period, which would  
2 include the first year of 2001 was the second coldest period  
3 since 1941 from the NOAA weather reports for St. Louis? You  
4 haven't reviewed those data requests that your company  
5 received?

6 A. Oh, I read those data requests, but I did not  
7 bother to go back and confirm whether that is accurate  
8 information. I have no reason to believe otherwise, but my  
9 point is you're talking about November through December  
10 monthly degree days, monthly temperatures. And I'm saying  
11 there's also -- that's one way of viewing a very cold  
12 period, but you can also look at the coldest single day and  
13 that -- you know, we had that back in 1982.

14 Q. Okay. Thank you. On page 6 of your  
15 testimony, of the direct again, if you'd turn there, please,  
16 would it be fair to say, Mr. Cline, that Laclede -- and I'm  
17 going to try to be very fair -- you could not adjust your  
18 pipeline contracts? That's sort of the essence of what you  
19 say between lines 1 through 8, that is, the pipeline  
20 contracts with MRT?

21 A. The essence of what I was saying there is  
22 we're not in a position to adjust our contract demands in  
23 such a way that we could reduce our cost responsibility to  
24 the pipelines.

25 Q. All right. That's what I asked you.

1                   And, further, you stated that the company,  
2                   that is Laclede, does not require other firm sales customers  
3                   who switched to transportation to take assignment of  
4                   pipeline capacity. You make that statement; is that not  
5                   correct?

6                   A.           I did make that statement.

7                   Q.           Okay. And you said when the customers, on  
8                   line 15, convert to transportation, did the company require  
9                   them to take assignment of capacity, which you stated  
10                  implicitly is lined up to serve their requirements. You  
11                  said, no, the company didn't require them to take that; is  
12                  that correct?

13                  A.           I did, and I explained why and that's because  
14                  most of those conversions or the bulk of those  
15                  conversions -- or the bulk of our transportation load, vast  
16                  majority of our transportation load occurred back at a time  
17                  when we had -- we had a contractual arrangement with MRT  
18                  that permitted us to reduce our contract demands. And  
19                  that's a critical distinction between what we have today and  
20                  what we had back then.

21                  Q.           So going back -- and I think on line 19,  
22                  Mr. Cline, you mentioned there were measures. Is that what  
23                  those measures are, that back in the earlier period you had  
24                  the flexibility in the MRT contract, whereas, under the new  
25                  contract negotiated in May of 2002, you don't have that

1 flexibility. Is that a fair statement?

2 A. We do not have a similar arrangement with MRT  
3 whereby our contract -- our demand costs or reservation cost  
4 responsibility would be relieved by virtue of a customer  
5 switching from firm sales service to transportation service.

6 Q. Okay. Thanks.

7 On page 7 you are discussing the subject about  
8 whether there was growth within the Laclede program in terms  
9 of added load and shifted load. And you say that there is  
10 negligible overall growth load. How do you quantify that,  
11 or is there a quantification factor that you could explain  
12 to me this morning?

13 A. Sure. There were several things I looked at  
14 when I made that statement. I think most importantly,  
15 especially when it comes to the issue of pipeline capacity,  
16 what's critical is the total throughput that the company has  
17 on a peak day or what we refer to as a zero degree day. And  
18 by that meaning when the average temperature is zero degrees  
19 Fahrenheit, what is the company's throughput.

20 And that number has been declining for the  
21 last five, six, seven, eight years. And as confirmation of  
22 that, I would refer you to the company's annual report.  
23 That statistic has been in our -- in our statistics page for  
24 years.

25 And you can see there that that -- that there

1 is really no growth in terms of -- of peak day -- or zero  
2 degree throughput. And I think that's probably most  
3 relevant to pipeline capacity.

4 Furthermore, in terms of growth, if you look  
5 at overall annual growth or throughput, I can just refer you  
6 to the determinants that have been used to establish rates  
7 in our most recent rate cases going back to like 1996.

8 And overall throughput in those cases has --  
9 has declined from what it was back in 1996 to the case we  
10 just came out of. There -- in my view, there's -- it's very  
11 difficult to -- to, you know, look at their -- look at  
12 some -- there being some overall tremendous growth on the  
13 St. Louis area. There may be new construction projects, but  
14 some of that is being offset by presumably more efficient  
15 usage of gas and those kind of things.

16 Q. So negligible overall load growth, did you  
17 mean negative or negligible?

18 A. At that -- when I wrote that, I was -- I was  
19 being conservative and mainly wanting to dispel any notion  
20 at all that there's any -- that there's any growth out  
21 there, that, in fact, we're seeing just the opposite when it  
22 comes to peak -- to zero degree day throughput.

23 Q. On terms that I might understand, did you  
24 have -- can you tell me or quantify within a reasonable  
25 number the terms of growth that Laclede may have

1 experienced in the year 2000 as opposed to the year 1999?

2 Would you have access just --

3 A. Therm -- annual therms of growth --

4 Q. Yeah.

5 A. -- in 1999 over 1998?

6 Q. No. 2000 over '99.

7 A. On a weather normalized basis?

8 Q. Right.

9 A. I don't have -- I would -- I don't have that  
10 information available, but I think the closest I could come  
11 to being -- to responding to that question and confirming  
12 it, there's probably been actually zero, if not negative,  
13 annual growth is -- you know, you go back and look at  
14 determinants on rate cases, which you are probably aware  
15 those -- those are normalized determinants adjusted for  
16 normal weather.

17 And presumably if you compare those year after  
18 year, you get things on a comparable weather basis. And --  
19 and if the throughput is falling, I'd say there's negative  
20 growth or there's customers leaving the system or --

21 Q. Right. Right. And your answer, I assume, is  
22 the same -- would it be any different for the year between  
23 2000 and 2001 or 2001 and 2002?

24 A. Once again, the only information -- the best  
25 information I would have to -- to rely on my memory is what

1 happened in rate cases. I'm sure though there are other  
2 ways of getting at the numbers you're talking about. I just  
3 don't have the -- if I had annual throughput in front of me  
4 and if I did some rough calculations of -- of what degree  
5 days are worth, you know, I can get everything on a  
6 comparable weather basis, I probably could confirm what our  
7 rate case results have been confirming.

8 Q. Okay. You have a weather algorithm contained  
9 in your tariff; is that correct?

10 A. Yes, we do.

11 Q. And is that in your general tariff as opposed  
12 to the tariff specific to this proceeding, if you know? I  
13 mean --

14 A. Well, the term, you know -- the weather  
15 algorithm was something that was -- a term that was brought  
16 up in the context of providing this aggregation service.

17 And we described that -- we described that  
18 weather algorithm by making reference to an already well  
19 established part of our tariff that we use for estimating  
20 customers' loads when we're unable to obtain meter readings.  
21 And it's a pretty well established, long-standing practice  
22 that is in the general terms and conditions of our tariff.

23 Q. Okay. Do you consider it to be a valid  
24 predictor of peak day volumes, for example, for deliveries  
25 to a specific school?

1           A.       I would consider it to be the best predictor  
2 we have.  If we have accurate information for -- if we have  
3 accurate information where we think that peak day  
4 temperature is going to be, I don't know of anything that's  
5 any better than that.

6           Q.       Okay.

7                   MR. BROWNLEE:  If I can approach the witness.

8 BY MR. BROWNLEE:

9           Q.       Do you recall -- let me set this up.  Do you  
10 recall that the School Board sent the company Data Request  
11 No. 36 and your response to No. 37?

12                   MR. BROWNLEE:  If I can approach the witness.

13                   JUDGE MILLS:  Yes, you may.

14                   MR. BROWNLEE:  Excuse me a minute.  I lost  
15 track.  Judge Mills, these are highly confidential figures  
16 dealing with Parkway West High School.

17                   JUDGE MILLS:  Okay.

18                   MR. BROWNLEE:  Figures based on the weather  
19 algorithm and then a figure based on the 150 percent of the  
20 Laclede tariff.  It's a comparison.  They're marked highly  
21 confidential, but they're my client's figures, so we're  
22 going to waive those in order to make sure this gets into  
23 the record.  You straight on that?

24                   JUDGE MILLS:  I'm straight on that.  And I  
25 have no problem with that.  Do all the parties agree that

1 there's no other party's confidential information contained  
2 in this?

3 MR. FRANSON: Your Honor, it would only be,  
4 from Staff's standpoint, the School Board Association and  
5 Laclede. And if they're both waiving that, we have no  
6 objection.

7 JUDGE MILLS: Laclede?

8 MR. ZUCKER: No objection, your Honor.

9 BY MR. BROWNLEE:

10 Q. Thanks. I don't mean to sit over your  
11 shoulder, but under Data Request 36 we ask, Using the  
12 Laclede weather algorithm for the years, what would be the  
13 peak day volume would Laclede have prepared using that  
14 weather algorithm for that particular school? And you've  
15 got the three years 2000, 2001, 2002 and you've got the  
16 therms using your weather algorithm; is that correct?

17 A. Yes, it is.

18 Q. And, for example, let's just use -- let's just  
19 use 2001. Data response No. 37 we asked, Using Laclede's  
20 tariff requirement for the 150 percent average peak monthly  
21 volumes, which capacity assignment would be attributed to  
22 Parkway Schools?

23 And for that figure, where the therms under  
24 using the weather algorithm are around 1,550 down to 1,400,  
25 using your 150 under your tariff, you have 2,000 therms; is

1 that correct?

2 A. That's correct.

3 Q. Okay. So apparently the weather algorithm  
4 contained in your tariff is substantially different than  
5 what the usage of the 150 percent proposed in this tariff.  
6 Is that not correct?

7 A. I'm not surprised by that result because --  
8 because their -- the 2000 and --

9 Q. 7.

10 A. -- 2007 was supposed to be what we deemed to  
11 be the -- something associated with the capacity connected  
12 with the -- what it would take to serve the school -- the  
13 Parkway West High School on a peak day. And it may have  
14 been that those particular years that you talked about here,  
15 calendar year 2000, 2001, 2002, that temperatures never got  
16 to the point where that kind of capacity was needed or those  
17 kind of requirements were met or required.

18 Q. Okay.

19 MR. FRANSON: Your Honor, if I may, I was  
20 going to ask Mr. Brownlee if he was going to offer DRs 36  
21 and 37 into evidence?

22 MR. BROWNLEE: Yeah. I will in a minute.

23 MR. FRANSON: Okay.

24 MR. BROWNLEE: If that's okay.

25 BY MR. BROWNLEE:

1 Q. Finally, under -- and this is just a general  
2 question, Mr. Cline, not directed to any particular section  
3 of your testimony, that is, no line or page.

4 Under the experimental program, isn't it true  
5 that the gas from the supplier to Laclede's city gate is  
6 transported in an interstate pipeline arranged by the  
7 association? I mean, under the experimental program, let's  
8 say, used by other companies.

9 A. Could you repeat the question, please?

10 Q. Yeah. Under the experimental program let's  
11 say that we have with Atmos or another company, isn't it  
12 true that the gas from the supplier to the city gate of that  
13 utility is transported in an interstate pipeline?

14 A. Just as it would be under our program.

15 Q. Right. And that in this case is arranged by  
16 the association under the statute which is, of course, the  
17 School Board Association. Correct?

18 A. That's my understanding of what the statute --  
19 the statute provide for aggregation of those gas supply  
20 needs as well as the pipeline transportation services needed  
21 to get that gas supply from the producer through the  
22 interstate pipeline system to the distribution system, yes.

23 Q. And in those cases that transportation service  
24 is no different than any other large commercial or  
25 industrial or other transportation customer, is it? The

1 transportation portion?

2 A. All -- all of our -- all of our  
3 transportation -- all of our transportation customers --  
4 non-school transportation customers have to -- have to  
5 secure through a marketer on their own not only gas  
6 supplies, but the interstate -- our interstate pipeline  
7 transportation necessary to get that gas to St. Louis.

8 At the same time, you know, they -- as  
9 transportation customers on our system, they can be either  
10 what we call firm or basic transportation customers. If  
11 they're a firm transportation customer, they get back-up  
12 sales service and pay -- pay a capacity reservation charges.

13 Or if they're what we call a basic  
14 transportation or not guaranteed back-up sales service, if  
15 they should ever come back to -- to firm sales service, they  
16 would owe Laclede a year's worth of capacity reservation  
17 charges. So that's how it works for our other customers on  
18 our system.

19 MR. BROWNLEE: Okay. Let me just have a brief  
20 moment with my witness, Lou, if I could have just a second.

21 JUDGE MILLS: Actually, we've been on the  
22 record for almost an hour and a half. We'll take a  
23 10-minute recess. We're off the record.

24 (A RECESS WAS TAKEN.)

25 JUDGE MILLS: Okay. We're back on the record.

1 Mr. Brownlee, did you have any additional questions?

2 MR. BROWNLEE: No, your Honor.

3 JUDGE MILLS: Okay. That means we're up to --  
4 actually, we're going to do questions from the Bench. I'm  
5 sorry if I got your hopes up for redirect, but we're going  
6 to do questions from the Bench first, then we'll do, if  
7 necessary, a round of further cross-examination based on  
8 questions from the Bench and then we'll catch up and do  
9 redirect on all of it.

10 My question --

11 MR. BROWNLEE: Wait. I'm sorry, excuse me.  
12 Well, I did want to introduce Data Request 36 and 37. I'm  
13 sorry. I forgot.

14 JUDGE MILLS: Okay. We'll go ahead and do  
15 that now if you have a copy.

16 MR. BROWNLEE: I do. And I apologize, Robert.  
17 Thanks. And I only have one copy and let's just do that as  
18 a single exhibit if you could rather than two.

19 JUDGE MILLS: Well, I haven't seen them, so I  
20 don't have an opinion on whether it should be one or two  
21 exhibits, but -- actually, I do have an opinion. If they're  
22 two different data requests, let's mark them as two  
23 different exhibits just for purposes of clarity.

24 MR. BROWNLEE: Data request 36 would be 7.

25 (EXHIBIT NOS. 7 AND 8 WERE MARKED FOR

1 IDENTIFICATION.)

2 MR. BROWNLEE: To clarify, your Honor, at this  
3 point I'm going to introduce Data Request 7, which is -- I  
4 mean, Data Request 36, which is Missouri School Board  
5 Association Data Request 36 to Laclede would be Exhibit 7;  
6 Exhibit 8 would be Data Request No. 37, Missouri School  
7 Boards Association to Laclede.

8 JUDGE MILLS: And I assume that these each  
9 have Laclede's response with them?

10 MR. BROWNLEE: Well, 36 is the -- yes, they  
11 do.

12 JUDGE MILLS: Okay. Thank you. Are there any  
13 objections to the admissions of either Exhibit 7 or 8 which  
14 are the School Board Association's Data Request 36 and 37  
15 and the responses?

16 MR. ZUCKER: No objection, your Honor.

17 MR. FRANSON: No objection, your Honor.

18 JUDGE MILLS: Hearing none, they will be  
19 received.

20 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO  
21 EVIDENCE.)

22 JUDGE MILLS: And I'll note for the record  
23 that although I assume on their face they're marked highly  
24 confidential, that the confidentiality has been waived on  
25 them so they will be public exhibits.

1                   And while we're marking exhibits, I'd like to  
2                   have the court reporter mark what's going to be Exhibit 9.  
3                   There's no good way for me to get down and hand these out to  
4                   you.

5                   (EXHIBIT NO. 9 WAS MARKED FOR IDENTIFICATION.)

6                   JUDGE MILLS: And for purposes of  
7                   identification, I'll note that this is Senate Amendment  
8                   No. 4 offered by Senator Goode to Senate Bill -- combined  
9                   Bills 125 and 290, which was adopted I believe on April 7th  
10                  and that will be Exhibit 9.

11                  QUESTIONS BY JUDGE MILLS:

12                  Q.        And, Mr. Cline, let me ask you this. Are you  
13                  familiar with this amendment?

14                  A.        Yes, I am. I have not examined it thoroughly,  
15                  but I am generally familiar with it.

16                  Q.        Okay. Well, let me direct you, in particular,  
17                  to page 2, line 28 through page 3 up to about line 11. And  
18                  then my question to you once you've had a chance to review  
19                  that, if this amendment were to be in effect at this moment,  
20                  what effect would it have on the issues in this proceeding?

21                  A.        Let me take a moment to read through this.

22                  Q.        Yeah. Take all your time -- take all the time  
23                  you need.

24                  A.        Okay. First of all, I guess it's -- to me  
25                  it's a little unclear as to what is really intended by this.

1 And -- and I'll just say this, that on page 3 that you  
2 handed me, lines 3 through 5 where there's a reference to  
3 corporations, tariff or large industrial commercial  
4 customers, assuming by that the statute is referring to --  
5 the proposed statute is referring to large industrial  
6 commercial transportation customers, I have an answer for  
7 that.

8 Obviously our large industrial -- we do have  
9 large industrial customer sales customers and they are, in  
10 fact -- you know, they do, in fact, pay capacity reservation  
11 costs. They're responsible for those and pay those through  
12 their rates.

13 But if -- if there's then -- if you assume  
14 that reference here is to the large industrial commercial  
15 transportation customers, it kind of gets back to the point  
16 I was making just before we took a break.

17 And that is that Laclede Gas Company has two  
18 types of large industrial or commercial transportation  
19 customers. One group is called firm transportation and they  
20 are guaranteed firm back-up sales service and they pay a --  
21 they pay our capacity reservation costs. They do pay --  
22 continue to pay pipeline reservation costs even though they  
23 are also out there buying their own gas supplies and paying  
24 to transport that gas to St. Louis.

25 We also have customers -- large industrial or

1 commercial transportation customers who are what we call  
2 basic transportation customers. Those customers are not  
3 required to -- they're not guaranteed back-up sales service.  
4 And as a result, since they're not guaranteed back-up sales  
5 service, they do not pay any of our -- do not pay for any of  
6 our pipeline capacity -- capacity charges anymore. All they  
7 do is pay for what they -- the pipeline capacity charge they  
8 pay to get their gas in St. Louis and that's the end of it.

9           However, with those groups -- with that last  
10 group, the base -- what's called basic transportation  
11 customers, if we're truly trying to compare -- you know, fit  
12 this into the mold of Laclede Gas transportation program and  
13 if -- and assuming the schools are not wanting to be firm  
14 transportation customers, if you're then considering them to  
15 be -- to be receiving basic transportation service, the key  
16 provision with basic transportation service is that if those  
17 customers ever come back to -- if those customers ever  
18 desire to come back to firm sales service and the schools  
19 may -- schools certainly could when this experiment expires --  
20 we have a provision in this tariff and we have a provision  
21 in our existing transportation tariff that as those basic  
22 transportation customers go back to sale service -- firm  
23 sales service, they have to pay a year's worth of basically  
24 pipeline capacity charges.

25           In other words -- the point is, under our

1 tariff they -- a transportation customer is either going to  
2 continue to pay some form of our pipeline capacity cost or  
3 if they ever desire to get firm sales service again, we  
4 expect them to reimburse us for the cost of then having to  
5 go out and -- and take them on again as -- as firm sales  
6 service customers.

7 The point being, you know, there really is  
8 no -- those would be the -- there would be some cost  
9 consequences, I believe, here even with a statute. And --  
10 and so it's not as if this I believe would necessarily take  
11 care of the school's problem if this -- if this -- if this  
12 proposed statute was in effect today.

13 I think there's some -- I think there has to  
14 be some understanding that the schools are not just going to  
15 be -- to be -- to be truly comparable how transportation  
16 customers are treated -- other transportation customers are  
17 treated on our system, there are still some residual  
18 pipeline capacity cost consequences of transportation  
19 service.

20 Q. Okay. Well, let me ask this a different way.  
21 If this amendment had been part of the statute at the time  
22 you were drafting your testimony, would the tariff that  
23 you've attached to your testimony look the way it does  
24 today? Or phrased another way, if this had been the law,  
25 would your tariff look different than it does attached to

1 your testimony?

2 A. There would be -- I believe it would. There  
3 would be no 150 percent requirement -- requirement either  
4 annually or for a winter period or summer period. But there  
5 would also be the -- there would also have to be some way of  
6 dealing with which one of these categories these schools fit  
7 into, whether they be considered firm transportation with  
8 back-up sale service and everybody still paying some  
9 pipeline capacity cost or would it be understood that --  
10 that when they elected basic transportation service, if  
11 that's what they want, if they ever come back to sales  
12 service, they'd have to know up front they're going to be  
13 responsible for the back payment of pipeline capacity  
14 charges.

15 In addition to that, I guess I'd have to say  
16 that I'd be concerned -- the LDC would be concerned -- there  
17 would have to be some understanding that if these  
18 customers -- if these schools would not -- somehow would --  
19 would not -- would be able to escape any pipeline capacity  
20 cost obligation whatsoever -- whatsoever either through firm  
21 sales service or basic sales service, I think it would have  
22 to be understood that, you know, that's -- there's going to  
23 be a cost that's going to be borne by somebody as a result  
24 of them doing that. And it would either be Laclede or its  
25 other customers if we'd flow this up through a PGA clause.

1 JUDGE MILLS: Thank you. That's really the  
2 only questions I have. Is there any additional  
3 cross-examination based on those questions starting with  
4 Public Counsel?

5 MR. MICHEEL: None, your Honor.

6 JUDGE MILLS: Staff?

7 MR. FRANSON: Yes. Very briefly, your Honor.  
8 However, is Exhibit 9 into evidence at this point?

9 JUDGE MILLS: It is not. I was going to wait  
10 until cross-examination, but we'll give you an opportunity  
11 to object to it if you'd like to.

12 MR. FRANSON: I have no objection to it. I  
13 just wondered if it was in.

14 JUDGE MILLS: It's not yet.

15 MR. FRANSON: Thank you, your Honor.

16 FURTHER CROSS-EXAMINATION BY MR. FRANSON:

17 Q. Mr. Cline, if you could look at Exhibit 9,  
18 page 2, starting at lines 28 through page 3, line 5.  
19 Mr. Cline, I'm looking for a short answer to this question.  
20 If this statute was in effect, would your answers about any  
21 of the pipeline capacity charges -- the fact that there's  
22 costs involved, would any of those be different with this  
23 statute in effect?

24 A. Would any -- would any what be different?

25 Q. Okay. Would the schools participating in the

1 school gas aggregation program, would they still incur  
2 pipeline capacity charges?

3 A. They would still incur pipeline capacity  
4 charges to the extent they were a Laclede -- considered a  
5 Laclede firm transportation customer. They would continue  
6 to pay back-up -- they would continue to pay for pipeline  
7 costs on every -- on every therm of throughput, every therm  
8 transport they would pay pipeline cost like for any other  
9 firm transportation cost on -- that Laclede does today.

10 If they would be considered basic  
11 transportation customers, they would not pay for any  
12 pipeline -- they would not pay for any other pipeline cost.

13 Q. Let's stick with firm transportation  
14 customers.

15 A. Okay.

16 Q. If there were costs that were incurred by the  
17 schools as firm transportation customers and there were  
18 still -- and the schools didn't pay for them, what other  
19 options are there for people -- who would pay for that?

20 A. It would be the other customers and -- you  
21 know, if somehow those costs would be disallowed and somehow  
22 the Staff of the Public Service Commission would disallow  
23 those costs, it would ultimately be borne by Laclede. But  
24 most likely the other customers who are -- would be left to  
25 pick up the -- the costs that these schools are escaping.

1 MR. FRANSON: No further questions.

2 JUDGE MILLS: Mr. Brownlee, cross-examination  
3 based on the questions from the Bench?

4 FURTHER CROSS-EXAMINATION BY MR. BROWNLEE:

5 Q. Mr. Cline, if this were adopted in the law  
6 today, an eligible school entity would have a choice under  
7 the tariff whether they chose to be a firm transportation  
8 customer or a basic transportation customer. Is that not  
9 correct?

10 A. Any transportation customer -- any customer  
11 that desires to be a transportation approved -- any customer  
12 today who desires to be a transportation customer and is  
13 eligible to be one can choose either firm service or basic  
14 service and pay -- and presumably pay the kind of tariffs,  
15 the rates we have in effect today for those -- for those  
16 transportation customers which are far different than the  
17 underlying rates these schools are paying today if there  
18 were demand charges, large customer charges, etc.

19 Q. So the answer is yes, they have a choice. Is  
20 that not correct?

21 A. Yes, it is.

22 MR. BROWNLEE: Thank you.

23 JUDGE MILLS: Mr. Brownlee, are you finished?

24 MR. BROWNLEE: Yes. Excuse me.

25 JUDGE MILLS: Redirect?

1 MR. ZUCKER: Thank you, your Honor.

2 REDIRECT EXAMINATION BY MR. ZUCKER:

3 Q. Good morning again, Mr. Cline,

4 A. Good morning.

5 Q. You just testi-- you just testified regarding  
6 Exhibit 9, the Senate Amendment No. 4, that to answer the  
7 questions regarding -- on page 3, lines 3 to 5 regarding  
8 Laclede's large industrial or commercial customers you would  
9 want to know whether they would be either sales customers,  
10 firm transportation or basic transportation before you could  
11 answer what the effect was; is that correct?

12 A. I think there has to be some clarification  
13 certainly.

14 Q. Does the same -- is the same clarification  
15 needed for paragraph 6 on page 3, lines 6 to 11?

16 A. Yes, it is.

17 Q. Let me go back to a question asked you by  
18 Mr. Brownlee regarding Laclede's pipeline transportation  
19 contract with MRT. Do you recall those questions?

20 A. Yes, I do.

21 Q. And what was the effective date of Laclede's  
22 agreement with MRT? Do you recall that?

23 A. I believe it was May 1st of 2002.

24 Q. Okay. And do you know what day the contract  
25 was actually entered into? Not the effective date, but the

1 date the contract was signed?

2 A. I believe it was sometime February of 2002.

3 Q. So it was signed in February, but effective  
4 May 1st. Is that what you're saying?

5 A. That's my understanding.

6 Q. Okay. Do you know whether or not in  
7 February 2002 House Bill 1402 had been passed?

8 A. I'm -- I'm fairly certain it was not passed at  
9 that point in time. I think that with it being February  
10 2002, I think it's even a more likely possibility that --  
11 possibility that there was -- it was -- would have been very  
12 difficult to have anticipated, you know, what was right  
13 around the corner with respect to school aggregation given  
14 the timing of negotiations of that contract.

15 Q. So the fact that the contract was signed in  
16 February meant it was probably negotiated before February?

17 A. As I mentioned earlier, I think that -- those  
18 discussions were -- were started long ago. They were  
19 difficult negotiations and with many, many issues. And so,  
20 you know, this would have been something would have come up  
21 at the last minute. I don't know that there would have been  
22 any way to really factor those into discussions at that  
23 time. I don't know that anybody had that knowledge at that  
24 point.

25 Q. Mr. Brownlee asked you some questions about

1 Laclede's tariff in which for purposes of determining the  
2 capacity proportion Laclede -- or the parties looked back  
3 24 months. Do you recall that?

4 A. Yes, I do.

5 MR. ZUCKER: Permission to approach the  
6 witness.

7 JUDGE MILLS: Please go ahead.

8 MR. ZUCKER: I only have one copy of this, so  
9 if I could stand back here.

10 JUDGE MILLS: Okay.

11 BY MR. ZUCKER:

12 Q. Can you tell me what document I've showed you  
13 there is?

14 A. This appears to be a gas transportation  
15 service tariff for Aquila.

16 Q. And what is the sheet number?

17 A. Sheet No. 32.7.

18 Q. And what is the heading on the section of the  
19 tariff there?

20 A. This particular section refers to pipeline  
21 capacity release.

22 Q. Okay. And can you read me the sentence in the  
23 second paragraph, the last sentence of the second paragraph  
24 starting with the words, The amount of pipeline capacity?

25 A. The amount of pipeline capacity the end-user

1 will be released will be calculated by determining the peak  
2 gas usage month that occurred within the past three years  
3 for each of aggregator's end-users, then adding the quantity  
4 of gas consumed by each of aggregator's end-users in such  
5 peak month and dividing that sum by 20.

6 Q. Thank you. So how far back does the Aquila  
7 contract look for its capacity factor?

8 A. It appears that it goes back three years.

9 Q. Okay. And looking at that sentence, what  
10 would you say the percentage proportion is given that it's  
11 a -- the quantity of gas for a month divided by 20?

12 A. I'm not sure I understand the question.

13 MR. FRANSON: Your Honor, at this point it's  
14 not so much an objection as a clarification. What are they  
15 reading from? I don't think that's ever been clearly  
16 established.

17 JUDGE MILLS: I thought it was fairly clear it  
18 was the Aquila aggregation tariff.

19 MR. FRANSON: I apologize, your Honor.

20 BY MR. ZUCKER:

21 Q. Laclede's capacity percentage is 150 percent  
22 of what we call the APMU?

23 A. Correct.

24 Q. What would you -- given that sentence you just  
25 read, what percentage would you apply to Aquila? What would

1 you say Aquila is trying to -- what percentage are they  
2 getting at there based on that sentence?

3 A. 100 percent.

4 Q. So if you take the amount of gas consumed in  
5 the peak month and divide that sum by 20, what percentage of  
6 the average peak day do you get?

7 A. Well, are you talking about 5 percent of the  
8 month?

9 Q. Well, let me ask it in a different way. How  
10 many days are there in a month, in general?

11 A. Well, in general there's 30 days, but many  
12 times the -- the 20 refers, like I say, the number of -- of  
13 business days in a month where a plant might be up and  
14 running, consuming gas, transportation customer.

15 Q. Okay. But for a normal month would you say  
16 30 days?

17 A. Right. 30.4.

18 Q. And if you divide 30 over 20, what proportion  
19 do you get?

20 A. That's 1.5.

21 Q. Would that be the equivalent of 150 percent?

22 A. Correct.

23 Q. So would you say the Aquila tariff is similar  
24 to the Laclede tariff in that it's 150 percent of an average  
25 day in a peak month?

1           A.       It looks like that would come to be a  
2 comparable percentage, correct.

3           Q.       And that's going back three years?

4           A.       That's correct.

5           Q.       Thank you. Take that back now.

6                    Mr. Cline, do you recall some questions by  
7 Mr. Brownlee on the fact that when Laclede went back  
8 24 months in their tariff, that included a very cold winter?

9           A.       Yes, I do.

10          Q.       For purposes of capacity planning, do capacity  
11 planner try and take into account cold winters, medium  
12 winters or warm winters?

13          A.       Certainly capacity planners have to be  
14 concerned with cold winters, severe winters, design winters.

15          Q.       And what do you mean by that?

16          A.       Well, they have to make sure that there's  
17 capacity available to serve customers on the coldest of  
18 days. On an average day -- an average day in a peak month  
19 is not really a very relevant number. They're looking at  
20 what is needed on a peak day and many times a peak hour.

21                    So there's -- there's different -- actually  
22 different ways to look at capacity planning or peak planning  
23 for utilities, but that's -- that's generally there's  
24 reference to some sort of severe test or design test to  
25 determine how much capacity the company may need to make it

1 through -- to make it through -- meet a peak day as well as  
2 make it through a entire winter to serve its customers,  
3 maybe to even provide for a late -- a late winter cold  
4 weather.

5 Q. So you're saying that there's nothing wrong  
6 with picking a cold winter for purposes of a capacity  
7 planning?

8 A. Certainly not.

9 Q. And, in fact, you're saying that you would  
10 want to do that?

11 A. Assuming the schools want to, you know, hold  
12 schools -- hold school on those days and -- or any customer  
13 wants to do business on those days, you would expect that  
14 that would be the -- that would be what the utility should  
15 be doing.

16 Q. Now, let me ask you a different question. If  
17 you recall, the winter of 2001/2002 was a particularly warm  
18 winter. Does that sound right to you?

19 A. That's correct.

20 Q. Let's say we would have used a month during  
21 that winter in which usage would have been much lower.  
22 Well, let me ask you this. Would usage have been lower in a  
23 month during that warm winter than in the cold winter the  
24 year before?

25 A. Most likely it would have. I mean, it could

1 be -- there could be months in warm winters or cold winters  
2 that may be different than the trend for the whole winter,  
3 but that's probably generally correct.

4 Q. And how would that have affected the  
5 114 percent of APMU capacity that Laclede has proposed in  
6 this case?

7 A. It would -- the factor would have been -- the  
8 114 percent would have been greater.

9 Q. Okay. And so could you have used a warmer  
10 winter for purposes of assigning capacity to the schools in  
11 the aggregation tariff?

12 A. I believe we could have. I think the whole  
13 point is to try to arrive at that portion of the utility's  
14 pipeline capacity commitments that is pre-- implicitly  
15 needed to serve that particular customer's requirements.

16 And all we were trying to do is establish a  
17 relationship whether it's a relationship between a peak  
18 month in 24 months ending September 2002 or whatever.  
19 There -- the 114 percent or 150 percent was just a way of  
20 expressing the implicit capacity requirements needed to  
21 serve those schools as a percentage of some base. And if  
22 the base changes, you get a different factor.

23 Q. Okay. So if I look at page 5 of your  
24 Supplemental Direct Testimony, what you said was that the  
25 pipeline -- at lines 16 to 18 you say that the pipeline

1 capacity under contract by the company is 726,000 MMBtus; is  
2 that correct?

3 A. That's correct.

4 Q. And you divided that number by the 636,000  
5 MMBtus which were used in a cold winter month to get the  
6 114 percent; is that correct?

7 A. That's correct.

8 Q. So if we would use a warm winter month and  
9 let's say you were to get a number instead of 636,000,  
10 363,000, which would be half of the pipeline capacity under  
11 contract, what would be the -- then the percentage be?

12 A. Approximately 228.

13 Q. But you would simply divide the 726 -- you  
14 would simply divide 726 over 363 --

15 A. Right.

16 Q. -- is that correct?

17 A. Right.

18 Q. We're giving you some hard math questions here  
19 today, aren't we, Mr. Cline?

20 A. That's correct.

21 Q. You were asked some questions by Mr. Brownlee  
22 about what is now Exhibit 7 and 8, two of the data requests.  
23 Do you have those in front of you?

24 A. Which ones are those?

25 Q. These are MSBA Data Requests No. 36 and 37.

1           A.       I do have those.

2           Q.       Mr. Brownlee pointed out in Data Request  
3 No. 37, 150 percent of the average peak monthly volume came  
4 out to 2,007 therms while actual usage was in the 1,500  
5 therm range. Does that sound right to you? Actual usage  
6 for a couple of the years shown on Data Request 36.

7           A.       That's correct.

8           Q.       Okay. And you said that that didn't bother  
9 you. Is that because you would want your planning capacity  
10 to be higher than your actual?

11          A.       That's right. I -- getting back to the point  
12 we discussed earlier, I would assume that the schools would  
13 want to have capacity lined up for them to serve their needs  
14 on those coldest of days. And -- and presumably we did not  
15 get to that point in any of these years, 2000, 2002 to a  
16 point where we're at what was maybe the underlying amount  
17 or -- or data or assumptions used to establish what would be  
18 something closer to the 2,007.

19                   MR. ZUCKER: I believe that's all I have, your  
20 Honor.

21                   JUDGE MILLS: Okay. Thank you.

22                   MR. ZUCKER: Thank you, Mr. Cline.

23                   JUDGE MILLS: Before Mr. Cline steps down, are  
24 there any objections to the admission of Exhibit 9, the  
25 Senate Amendment No. 4 to Senate Bill 125 and 290?

1                   Hearing none, it will be admitted.

2                   (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

3                   JUDGE MILLS: Mr. Cline, you may step down.

4                   Let's move onto Mr. Ervin.

5                   (Witness sworn.)

6                   JUDGE MILLS: Thank you. You may be seated.

7                   Go ahead, Mr. Brownlee.

8                   LOUIE R. ERVIN testified as follows:

9                   DIRECT EXAMINATION BY MR. BROWNLEE:

10                  Q.       Please state your name for the record.

11                  A.       My name is Louie R. Ervin, E-r-v-i-n.

12                  Q.       By whom are you employed?

13                  A.       I'm employed as a partner in Latham and

14                  Associates.

15                  Q.       And have you caused to be prepared Exhibits

16                  No. 3 and No. 4, which No. 3 is your Supplemental Direct

17                  Testimony and No. 4 is your Supplemental Rebuttal Testimony

18                  in this proceeding?

19                  A.       Yes.

20                  Q.       And if I asked you the same questions, would

21                  your answers be the same in those matters?

22                  A.       Yes.

23                  Q.       Are there any corrections or additions you

24                  would like to make to Exhibit No. 3?

25                  A.       Yes. I have --

1 Q. And are they in the nature of typographical  
2 errors? There's no substantive charges, are there, sir?

3 A. That's correct.

4 Q. If we can go through these very briefly.

5 A. Okay. In the Supplemental Direct, page 3,  
6 line 10, change "sets" to "set" just eliminate the plural.

7 Page 8, line 10, "recognize" change to -- or  
8 excuse me. Change "recognizes" to "recognize."

9 Page 9, line 12, after the word "corporation"  
10 insert a closed quotation.

11 Q. Wait a minute. Let them catch up.

12 A. Okay. I'm sorry. Page 10, line 16, right in  
13 the middle of that line between the word "and" and "have"  
14 insert the preposition "which."

15 MR. FRANSON: Richard, what was that one?

16 BY MR. BROWNLEE:

17 Q. Would you repeat that, please?

18 A. Yes. Page 10, line 16 between the word "and"  
19 and "have", insert the preposition "which."

20 On page 11, line 10, the reference to Revised  
21 Statute in Missouri 393 should be .310.

22 On that same page, line 23 there should be a  
23 comma after "monthly" and no comma after "meters." So it  
24 would be, Meters, without a comma, are read monthly, comma.

25 The last one is on page 15, line 22, after

1 Laclede, insert a comma.

2 Q. I think that's it, isn't it?

3 A. I think so.

4 MR. BROWNLEE: At this time, your Honor, I'm  
5 going to go ahead and offer Exhibits 3 and 4 and tender  
6 Mr. Ervin for cross-examination.

7 JUDGE MILLS: Are there any objection to the  
8 admission of Exhibits 3 or 4?

9 MR. ZUCKER: Your Honor, I would like to note  
10 an objection. And we've been pretty clear on the record on  
11 this. Some of the arguments that Mr. Ervin has made in this  
12 testimony including the argument that the aggregation  
13 program allows for a transportation only service and that  
14 the negative financial impact does not apply to capacity  
15 were issues that were resolved last fall and have not been  
16 re-raised again. And so we feel that they're not properly  
17 before the Commission.

18 JUDGE MILLS: Can you point me to specific  
19 instances?

20 MR. ZUCKER: Yes, your Honor. For example, on  
21 page 4 of the --

22 JUDGE MILLS: And I don't mean just examples.  
23 I mean every instance that you have an objection. Page  
24 numbers and lines, please.

25 MR. ZUCKER: Okay. Page 4, lines 11 to 22,

1 the question is, Can you describe the legislative history  
2 behind the experimental school natural gas aggregation  
3 purchasing program? And it goes into discuss how it's a  
4 small volume natural gas transportation tariff.

5 Page 6, lines 15 to 17, there's the question  
6 there where he's asked about experimental school  
7 transportation program.

8 Page 7, lines 19 --

9 JUDGE MILLS: Give me some more detail on  
10 that. Why is the question about -- are the gas corporations  
11 objectionable? Page 6, the question beginning on line 15?

12 MR. ZUCKER: Right. The point is that he's  
13 assuming that it's a transportation program. Our point is  
14 that it's an aggregation program. It's not a transportation  
15 program and, in fact, our tariff is clear that in compliance  
16 with the statute, that gas is sold to the gas corporation  
17 who then resells it to the schools. And so we've agreed to  
18 that in the tariff last October and that issue is not up for  
19 decision or for re-litigation here.

20 JUDGE MILLS: So you're objecting to the  
21 characterization of it as a transportation program --

22 MR. ZUCKER: Right.

23 JUDGE MILLS: -- in this question?

24 MR. ZUCKER: Characterization in that case,  
25 yes.

1 JUDGE MILLS: Okay.

2 MR. ZUCKER: Page 7, lines 19 to 21 states  
3 that the section intended the pipeline capacity under small  
4 school volume transportation tariffs. And, again, same  
5 objection.

6 Page 8, lines 3 to 13, there Mr. Ervin  
7 discusses Section 4 and, again, gives a different  
8 interpretation of the statute then we have already agreed to  
9 in the tariff. That is, that this is a sale and resale  
10 tariff, not transportation.

11 Page 10, line 14, again he refers to it as  
12 small volume transportation, that the legislative intended  
13 experimenting the small volume transportation.

14 Page 14, lines 3 to 4 again is a question --

15 JUDGE MILLS: I'm sorry. What was the last  
16 reference?

17 MR. ZUCKER: Page 14, lines 3 to 4 is a  
18 question that, again, assumes transportation service.

19 Page 15, lines 14 to 15 states the school  
20 experimental program is intended to be a small scale test of  
21 transportation service for small users.

22 I'm getting near the end, your Honor.

23 JUDGE MILLS: Okay.

24 MR. ZUCKER: Page 20, lines 4 to 7 is a  
25 sentence that ends again -- talks about the legislatively

1 mandated experimental school transportation program.

2 And also farther down page 20, lines 13 to 16  
3 refers to the statute interpreted to provide schools with  
4 transportation service.

5 Page 21, lines 2 to 3, same thing. Again, he  
6 refers to the tariff as an experimental school  
7 transportation tariff, same in lines 6 to 7 on that page and  
8 lines 15 to 16.

9 And, finally, starting in his summary at the  
10 bottom of page 21 -- page 21, line 22 to page 22, line 2 is  
11 where he discusses his proposed change to that tariff,  
12 Section A. And then that section is in Exhibit C where in  
13 Exhibit C on tariff Section A there he's actually proposed a  
14 change to that tariff section, none of which should be at  
15 issue.

16 JUDGE MILLS: Okay. Where in Exhibit C?

17 MR. ZUCKER: Exhibit C, Section A. He has  
18 about on the fourth line down there -- well, he has on the  
19 second line a 1 inserted there and then the fourth line down  
20 it says or 2.

21 And there's only one reference to this issue  
22 in Mr. Ervin's Supplemental Rebuttal Testimony if you're  
23 ready to go there.

24 JUDGE MILLS: Yes, I am.

25 MR. ZUCKER: That's page 4, lines 14 to 18

1 where he talks about the legislative intent of experimenting  
2 with small volume transportation.

3 JUDGE MILLS: Okay. Thank you.

4 Mr. Brownlee, your response?

5 MR. BROWNLEE: Yes, your Honor. First of all,  
6 I think they're legal arguments that are being made that  
7 could be addressed in a brief.

8 Secondly, Mr. Cline has spent about 80 percent  
9 of his Rebuttal Testimony addressing exactly the same  
10 subject so anybody reading it, the Commission would be  
11 clear.

12 Further, to do what they want to do, you'd  
13 have to rewrite Mr. Ervin's testimony. They quibble with  
14 the fact that instead of using the word "aggregation tariff"  
15 that they want to use, we used the word "transportation."  
16 Transportation is clearly mentioned numerous times in  
17 section 393.310 along with aggregation, along with  
18 transportation, along other phrases that have been used  
19 intermittently and interchangeably through all of this  
20 testimony.

21 Further, the issue itself, your Honor, that  
22 the parties agreed to does the statute, Stipulation and  
23 Agreement or tariff require. So they really object to us  
24 discussing what we think the tariff requires when, in fact,  
25 that's one of the issues they agreed to in the first place,

1 that the tariff, the statute could be discussed. And in  
2 fact, that's what we've done.

3 Obviously they just disagree with our  
4 conclusions, but that's not any reason to strike the  
5 testimony that I've ever seen in my 30 years practicing.  
6 Beyond that, I don't -- I don't think they're valid  
7 objections.

8 JUDGE MILLS: Okay. Staff, Public Counsel,  
9 any opinion on this issue?

10 MR. MICHEEL: I'll stay out of it, your Honor.

11 JUDGE MILLS: Okay. Mr. Franson?

12 MR. FRANSON: Staff has nothing really to add,  
13 Judge. I think each side set out their arguments.

14 JUDGE MILLS: Okay. I don't think resolution  
15 of this issue is going to significantly change the way the  
16 hearing proceeds. I'm going to reserve ruling on it and  
17 take it with the case. As a general rule, I don't like to  
18 do that, but I think in this case it's not going to hurt  
19 anything and I'll deal with it when I issue a Report and  
20 Order in this case.

21 Okay. Having sidestepped that question for  
22 the moment, let's proceed with cross-examination beginning  
23 with Staff.

24 CROSS-EXAMINATION BY MR. FRANSON:

25 Q. Morning, Mr. Ervin.

1           A.     Good morning.

2           Q.     Okay.  Let's turn to page 7 of your  
3 Supplemental Direct, which I believe is Exhibit 3.  Could  
4 you go there, please?

5           A.     Yes, sir.

6           Q.     And are you there?

7           A.     Yes, sir.

8           Q.     Could you look at line 11?

9           A.     Yes, sir.

10          Q.     Okay.  Well, actually rephrase that, lines 11  
11 through -- page 7, lines 7 through 14.  Would you agree that  
12 no schools signed up for the Laclede program as it's  
13 currently offered?

14          A.     No schools signed up with Laclede.  Several  
15 schools did sign participation agreements with the MSBA.

16          Q.     Okay.  But none actually participated; is that  
17 correct?

18          A.     That is correct.

19          Q.     Okay.  Let me direct your attention to what's  
20 been referred to as House Bill No. 1402.  Would you have  
21 that in front of you?  It's actually --

22          A.     I don't.

23          Q.     -- the quantification of the -- I think  
24 Mr. Brownlee has it for you.

25                 MR. BROWNLEE:  I've got it.  Here's an extra

1 one.

2 BY MR. FRANSON:

3 Q. It's actually 393.310 is what I'm referring  
4 to.

5 A. Yes, sir. I have it.

6 Q. If you could look at paragraph 5?

7 A. Yes, sir.

8 Q. Okay. Mr. Ervin, I believe in your testimony  
9 you gave your opinion of paragraph 5; is that correct?

10 A. I think I did.

11 Q. Okay. And as I recall that opinion, you feel  
12 that schools should not pay capacity costs; is that correct?

13 A. My opinion was that they should be treated the  
14 same way as large commercial and industrial transportation  
15 customers.

16 Q. Okay. Would you agree with me that large  
17 industrial and commercial customers are not addressed in  
18 section 393.310 in any way, shape or form?

19 A. I agree.

20 Q. Okay. And in Section 5, in fact, there is --  
21 I'm going to call it a hold harmless clause. And what I'm  
22 referring to is that there's not supposed to be any negative  
23 financial impact on the gas corporation, its other customers  
24 or local taxing authorities. Do you see that, Mr. Ervin?

25 A. I see that.

1 Q. Do you understand what I mean by hold harmless  
2 clause? They're not supposed to bear any of the cost. Is  
3 that your understanding of the statute?

4 A. With regard to the rest of the sentence,  
5 they're not to bear any of the aggregation costs and any  
6 incremental costs caused by the experimental aggregation  
7 program. I think you have to take the sentence in its  
8 entirety.

9 Q. Okay. Let's look at the sentence, Mr. Ervin.  
10 Isn't it true that it reads that it will not -- will not  
11 have any negative financial impact on the gas corporation,  
12 its other customers or local taxing authorities, and then  
13 there is a comma at that point. Do you see where I'm  
14 talking about?

15 A. Yes, sir.

16 Q. And then there is a word, And that the  
17 aggregation charge and -- is sufficient to generate revenue  
18 or at least equal to all incremental costs caused by the  
19 experimental aggregation program. So your idea is those  
20 cannot be separated?

21 A. My -- my reading of that is that that's one  
22 sentence.

23 Q. So they cannot be separated? You can't look  
24 at the hold harmless provision that I've referred to over  
25 here and then the aggregation charge over here (indicating)?

1           A.       I think you have to look at the statute in its  
2           entirety. And I think you have to look at that sentence in  
3           its entirety. So I think you can look at it in segments,  
4           but to get the whole picture you have to look at it all.

5           Q.       So it is possible to look at it in segments.  
6           Let's look at it in segments. Isn't it true that there is a  
7           specific provision that says there won't be any negative  
8           financial impact on the gas corporation, other customers or  
9           local taxing authorities? That's one segment of it.  
10          Correct?

11          A.       That is one segment, yes.

12          Q.       Okay. Schools not having any negative  
13          financial impact are not mentioned there; is that correct?

14          A.       That is correct.

15          Q.       Now, the second segment is about the  
16          aggregation charge and it is to be sufficient to generate  
17          revenue at least equal to all incremental costs caused by  
18          the experimental aggregation program; is that correct?

19          A.       You've got -- I agree that that's what the two  
20          segments say. I don't conclude anything from the two  
21          segments.

22          Q.       Okay. Now, let's put them together. Putting  
23          them together, would you agree that there's not supposed to  
24          be a negative financial impact on the gas corporation; is  
25          that true?

1           A.       With regard to incremental cost caused by the  
2 experimental aggregation program.

3           Q.       Okay.  Also, other customers or local taxing  
4 authorities are not supposed to bear any of the incremental  
5 cost caused by the experimental aggregation program.  Is  
6 that how you interpret it?

7           A.       Yes.

8           Q.       Okay.  Let's step back.  Let's assume that the  
9 program is in effect right now.  Let's also assume that  
10 every single school in the Laclede service territory had  
11 signed up.  Let's assume that they have \$1 in capacity  
12 costs -- pipeline capacity costs and these are specifically  
13 caused by the school.  And let's also assume further that  
14 the aggregation charge is not sufficient to cover that.  Are  
15 you with me so far?

16          A.       I believe I am.

17          Q.       Okay.  That \$1 in costs attributable to the  
18 school, under your interpretation of this statute schools  
19 would not pay that; is that correct?

20          A.       In -- in my interpretation of the statute is  
21 that the schools would be treated in the same manner that  
22 the Commission has already approved tariffs for large  
23 industrial commercial.

24          Q.       Okay.  That was not my question, Mr. Ervin.  
25 My question is -- let's go back.  Let's assume that the

1 current version of Section 393.310 is in effect. You with  
2 me so far?

3 A. I'm sorry. Repeat that one more time.

4 Q. Let's assume that the current version of  
5 Section 393.310 is in effect, which it, in fact, is. Okay.  
6 With me so far?

7 A. Yes, sir.

8 Q. Next step, let's assume that the tariffs that  
9 were agreed to are also in effect. With me so far there?

10 A. Yes, sir.

11 Q. Okay. Let's assume though that different from  
12 what we actually have, the next step is every single school  
13 in the Laclede school -- in the Laclede service territory is  
14 participating using MSBA as their agg-- for aggregation  
15 purposes. With me so far?

16 A. Yes. I think so.

17 Q. Let's also assume that there are, in fact,  
18 pipeline capacity costs attributable strictly to schools  
19 that are not covered by the aggregation charge. And let's  
20 assume it's all of that revenue from the aggregation charge  
21 and it's \$1 above that. Under your interpretation of this,  
22 who would pay that \$1?

23 A. Who would pay that is addressed in the  
24 statute.

25 Q. Where?

1           A.       Under 6, The Commission may adopt by order  
2 such other procedures not inconsistent with the section  
3 which the Commission determines are reasonable or necessary  
4 to administer the experimental program. And in -- my  
5 testimony is that the Commission has already addressed that  
6 through other orders approving Laclede's tariffs.

7           Q.       How? Where?

8           A.       In their large volume transportation tariffs.

9           Q.       Okay. Let's go back again. This statute does  
10 not address large volume transportation; is that correct?  
11 It addresses schools strictly with a specific program that  
12 applies only to schools; is that correct?

13          A.       It -- it addresses school -- schools only, I  
14 agree with that part of it. But it also says under 4.2 --  
15 excuse me -- 4.1 to provide for the aggregate purchasing of  
16 natural gas supplies and pipeline transportation services.  
17 And -- and I think it's pretty well understood what pipeline  
18 transportation services involves. It's the same type of  
19 transportation services that Laclede has offered to other --  
20 to other type customers.

21          Q.       Let's try it this way. Under the current  
22 tariff in effect, now the schools buy as sales customers; is  
23 that correct? Under the current Stipulation and Agreement  
24 and tariffs that are in effect, the schools under the  
25 Laclede tariffs buy as sales customers; is that correct?

1           A.       I don't -- if I understand your question, the  
2 answer is no.

3           Q.       Okay.

4           A.       And maybe I can expound on that just a little  
5 bit.

6           Q.       Please do.

7           A.       Today the schools buy sales service, but not  
8 under this tariff. It's under a previously approved  
9 Commission tariff. Did that answer your question?

10          Q.       No. Actually, it didn't. Let's try it this  
11 way. Let's assume that however it's structured, that  
12 schools cause \$1 above and beyond all fees in capacity --  
13 pipeline capacity costs attributable strictly to schools.  
14 Who pays that?

15          A.       That is a matter that the Commission is to  
16 decide, and I believe they've already decided that in other  
17 cases.

18          Q.       Well, let's not worry about other cases, let's  
19 worry about this case. You're now the advisor saying to the  
20 Commission there is \$1 in costs. Let's use the same  
21 scenario except let's make it \$10, let's make it \$1 million.  
22 You're advising the Commission. Who should pay those costs?  
23 I'll give you choices: One, schools; two, Laclede; three,  
24 other customers. What's your answer to that?

25          A.       My answer is that the Commission should decide

1 how those costs are to be paid and by whom.

2 Q. Okay. As a matter of policy in this scenario,  
3 what is -- who are you going to have pay those costs? That  
4 is the question. You're now the one that the Commission is  
5 looking to right now to advise them on who should pay them  
6 and why and in what mechanism. What is your answer to that?

7 A. My answer is that the Commission should have  
8 the -- have this tariff consistent with and non-disc--  
9 non-discriminating with other tariffs. So my answer is,  
10 whoever pays under other tariffs should be consistent under  
11 this tariff, whoever that is.

12 Q. So you're not willing to step up and say the  
13 school causes cost, then schools should pay them? That's  
14 not your answer?

15 A. No. I think that rate-making is not an exact  
16 science and that I don't use exactly the same amount of gas  
17 as my next door neighbor, but I pay the same rates. So it  
18 becomes a question of what becomes undue discrimination,  
19 what becomes subsidies, what becomes cross-subsidies.

20 And that is a matter that the Commission takes  
21 under consideration. And I think as a general  
22 recommendation I would have for the Commission, that they  
23 should be consistent from customer class to customer class.

24 Q. Okay. Mr. Ervin, let's go back to a provision  
25 in Section 393.310.1 where it says, This section shall apply

1       only -- shall only apply to gas corporations as defined in  
2       Section 386.020 RSMo. This section shall not effect any  
3       existing laws and shall only apply to the program  
4       established pursuant to the section. Do you see that?

5             A.       Yes.

6             Q.       Okay. Would you agree that under current law,  
7       schools -- if this Section 393.310 -- let's go back prior to  
8       this bill -- schools unless they came to some kind of  
9       agreement with the gas corporation, were pretty hard pressed  
10       to have an aggregation program. Is that a fair statement?

11            A.       Correct. Aggre--

12            Q.       So this bill was enacted to allow for that  
13       process; is that correct?

14            A.       Yes. And I think the way that I would  
15       characterize that is that there were transportation services  
16       existing for large commercial industrial type customers.  
17       And those tariffs required some changes in order to make it  
18       potentially possible for schools to aggregate. And this  
19       Section 393.10 specified what some of those changes would  
20       be.

21            Q.       Okay. Mr. Ervin, let's step back from this  
22       for a moment. You are now an advisor to the Public Service  
23       Commission and a Commissioner has asked you this question.  
24       Mr. Ervin, as a matter of policy, without regard to how any  
25       other customers are treated, large volume transportation,

1 residential, firm sales or anybody else, would you agree  
2 that as a matter of policy, that if schools incur any costs,  
3 those costs should be attributed to schools?

4 A. No. I don't think that we would single out  
5 schools. Schools are part of a broader class and rates  
6 apply to customer classes. I would say that residential  
7 schools are not, but schools certainly fall into the  
8 character or class of service as industrial and commercial  
9 type customers.

10 Q. Okay. Mr. Ervin, let's go down the road you  
11 don't want to. Let's do single out schools. Doesn't this  
12 statute, Section 393.310 that's currently in effect, in  
13 fact, single out schools and set special provisions for  
14 schools?

15 A. It uses schools as the participants in an  
16 experimental program to see how small volume transportation  
17 tariffs can work, but that's part of the experiment is to  
18 see how it would work for broader customer groups than just  
19 schools.

20 Q. Okay. Someone looking at this is going to see  
21 a program designed for schools; is that correct?

22 A. No. They're going to see a program that's  
23 experimental in nature that is very similar to what Georgia  
24 has, Kansas has, Iowa has, Illinois has that applies to  
25 barber shops, applies to Wal-Mart's, applies to all -- a

1 broad group.

2                   And what this does -- this statute, it forms  
3 an experiment for utilities, Commission, marketers,  
4 consumers to experiment with that type of small volume  
5 transportation and it uses schools as the initial party to  
6 participate.

7                   Q.     Okay. Let's go back. Right now you're  
8 appearing on behalf of the Missouri School Boards  
9 Association. Correct?

10                  A.     Yes, sir.

11                  Q.     Okay. Now, that is strictly schools.  
12 Correct?

13                  A.     Yes, it is.

14                  Q.     Okay. Now, let's forget all the other  
15 customers. Let's talk about strictly schools and schools  
16 only. Question, if schools incur a cost -- and this is a  
17 policy question. If schools incur a cost, would you or  
18 would you not agree that schools should pay all of those  
19 costs?

20                  A.     I think I've answered that at least a couple  
21 of times.

22                  Q.     No. I disagree. You have not answered that.  
23 You've sidestepped it multiple times.

24                  A.     As a policy -- as a policy matter, schools  
25 would or would not pay those costs consistent with the

1 Commission's treatment of similar costs for other customers.

2 Q. Okay. Let's go back a step further. Would  
3 you agree, as a matter of general policy, that if a class of  
4 customers -- and we'll use schools -- incur a cost, that  
5 schools should pay those costs?

6 A. I agree that class of customers should pay  
7 those costs, but schools are not a class of customers.  
8 Commercial and industrial type customers is the class of  
9 customer to which schools belong. There are no --

10 Q. Okay.

11 A. -- tariffs for schools.

12 Q. Let's go with commercial customers, small  
13 general service. Is that what you've been referring to?

14 A. Generally, yes. Some of the larger high  
15 schools may fall into a larger classification depending upon  
16 which utility you're dealing with. Laclede's tariff, for  
17 example, even the very largest of schools would not fall  
18 under the large classification, but that same school under  
19 Missouri Gas Energy would fall under that.

20 Q. Okay. Small general service customers are a  
21 class, they incur costs directly attributable to them.  
22 Should they or should they not pay all of those costs?

23 A. If those costs -- under that assumption, if  
24 those costs are specifically for that class of customer,  
25 then that class of customer should pay.

1           Q.       Okay.  Let's go to the next step.  If schools  
2           are considered to be a separate class -- for the purposes of  
3           my question, they are -- if they incur costs, should  
4           schools, as a matter of policy, pay those costs if those  
5           costs are directly attributable to schools?

6           A.       If a new class were created just for schools,  
7           then all costs -- not just pipeline capacity costs, all  
8           costs of service would have to be done through a fully  
9           allocated cost of service analysis presented to the  
10          Commission, be challenged by the parties and then under that  
11          circumstance whatever the Commission deems to be  
12          attributable to that class of customer -- that new class of  
13          customer, then that class should pay.

14          Q.       Okay.  And if schools were a new class of  
15          customers and schools were the -- whatever the size, were  
16          the only ones that could belong to that and someone came  
17          into a rate case -- in a future Laclede rate case and said,  
18          We have this new class of customers, schools.  They have  
19          incurred these costs and we want all of those costs  
20          attributed strictly to schools.  Would you believe that's a  
21          reasonable position for someone to take?

22          A.       First of all, I don't believe that schools  
23          should be a single class of customer.

24          Q.       But let's assume they are.

25          A.       Under the assumption -- under the

1 assumption -- if all costs, not just pipeline capacity costs  
2 are all looked at and allocated to that class, then, yes.

3 Q. And isn't it, in fact, true that what we have  
4 here is a legislatively set up program that in the first  
5 instance applies only to schools? Regardless of what its  
6 overall intent in the future may be, so far it's only to  
7 schools; is that correct?

8 A. The experimental program is for schools, I  
9 agree with that. The part I don't agree with is that it did  
10 not specify that -- that these tariffs -- class cost of  
11 service tariffs be totally redesigned just for schools.

12 Q. But the only ones that are eligible for this  
13 specific statutory provision Section 393.310 is eligible  
14 school entities. Correct?

15 A. Yes, sir.

16 Q. Okay. Let's go to Exhibit No. 9, Mr. Ervin.  
17 Do you have that in front of you?

18 A. What is it?

19 Q. Exhibit No. 9 is Senate Amendment No. 4. Do  
20 you have that in front of you?

21 A. No, I don't.

22 MR. FRANSON: May I approach the witness, your  
23 Honor?

24 JUDGE MILLS: Yes, you may.

25 (Off the record.)

1 MR. FRANSON: May I proceed your Honor?

2 JUDGE MILLS: Please do.

3 BY MR. FRANSON:

4 Q. Mr. Ervin, if you could look at Senate  
5 Amendment No. 4. And I'm directing your attention  
6 specifically to page 2, lines 28 through page 3, lines 5, if  
7 you could look at those, please.

8 A. Yes, sir.

9 Q. Okay. Based on your earlier testimony, is it  
10 a fair statement that you don't believe that any class of  
11 customers, whether it's small general service which includes  
12 schools, large general service, residential, transportation  
13 firm interruptible, whatever class you want to name, that  
14 they should not have any special provisions that apply only  
15 to them other than what's in the tariffs?

16 A. I missed the first part of that.

17 Q. Okay. What I'm asking is, do you believe  
18 that, as a matter of policy, that any class of customers  
19 should have -- prior to a rate case should have special  
20 protection from any cost that they might cause?

21 A. The only protection would be by law, if  
22 there's some law.

23 Q. Okay. Do you believe such a law, if it was  
24 passed, that created -- that exempted a class of customers  
25 from certain costs -- let's assume also for purposes of this

1 question that the particular class of customers incurred  
2 those costs, do you believe it's a good policy to insulate a  
3 particular class of customers from such costs?

4 A. I don't think it's a good policy to go against  
5 the law, so I'd follow whatever the law says.

6 Q. Okay. Let's step back. That was not my  
7 question.

8 My question is, you're advising some -- you're  
9 advising the legislature and they're thinking about setting  
10 various policies and the question comes up, is it a good  
11 idea to say in a statute that a particular class of  
12 customers, any class of customers, should be insulated from  
13 costs that that class of customers may have caused?

14 A. My answer would be in a general sense, no,  
15 they should not be insulated any more than what the  
16 Commission has deemed reasonable for similar type customers.

17 Q. Okay. But that wasn't my question. We're not  
18 talking about what the Commission might deem. We're talking  
19 about an entity setting the law, the statutes before we even  
20 get to the Commission setting policy and saying, We're going  
21 to do this. So you understood my question, didn't you?

22 A. I think I did. And I really don't have an  
23 opinion on -- on your question.

24 Q. Okay. I guess, Mr. Ervin, bottom line is, if  
25 under this program the school causes cost above and beyond

1 any other -- well, let's do it this way, Mr. Ervin.

2 Do you agree that in the current version of  
3 Section 393.310, the intent is that schools pay the cost of  
4 this -- that they incur in this experimental program?

5 A. Only to the extent that it is specified under  
6 5 that they would pay equal to all incremental costs caused  
7 by the experimental aggregation program.

8 Q. Would you agree that the main difference  
9 between the parties in this case is how they interpret  
10 paragraph 5 -- or one of the main differences, I should say?

11 A. Yes. Five and maybe some of four.

12 MR. FRANSON: No further questions.

13 JUDGE MILLS: Thank you.

14 Mr. Micheel?

15 MR. MICHEEL: I have no questions for

16 Mr. Ervin.

17 JUDGE MILLS: Laclede?

18 MR. ZUCKER: Thank you, your Honor.

19 JUDGE MILLS: Watch the cable.

20 CROSS-EXAMINATION BY MR. ZUCKER:

21 Q. Good morning, Mr. Ervin.

22 A. Good morning.

23 Q. My name's Rick Zucker. I represent Laclede  
24 Gas Company. We've met before. Right?

25 A. Yes, we have.

1 Q. What you've testified to is that you would  
2 like to see the schools treated in the same manner as a  
3 large volume transportation customer in Laclede's territory;  
4 is that right?

5 A. Almost right. With regard to pipeline  
6 capacity.

7 Q. Okay. And your goal there is to have the  
8 schools be able to leave Laclede's sale service and not be  
9 responsible for the pipeline capacity they leave behind. Is  
10 that the effect?

11 A. They would only be responsible to the same  
12 extent that other large commercial industrial customers  
13 would be. And I think I've heard that there are some  
14 responsibilities there.

15 Q. Okay.

16 A. Particularly if they go back to sales service.

17 Q. Okay. So to the extent that there are some  
18 responsibilities, you would say that they should take those  
19 on and to the extent that there aren't, they should have --  
20 the schools should have the benefit of those?

21 A. Yeah. I think they should be treated -- with  
22 regard to pipeline transportation capacity, they should be  
23 treated in a similar fashion.

24 Q. So you're not bothered by -- as long as  
25 they're treated like that, you're not bothered by the fact

1 that the effect of that may be to shift costs onto other  
2 customers?

3 A. Well, I -- it's not a matter of being  
4 bothered. It's a matter of what the Commission decides is  
5 just and reasonable for the large commercial type customer  
6 should be just and reasonable for a school.

7 Q. Okay. At page 5 of your Supplemental Direct  
8 Testimony you state that no schools are participating in  
9 Laclede's aggregation program because of an outstanding  
10 issue regarding interstate pipeline capacity; is that  
11 correct?

12 A. That is correct.

13 Q. But the schools are participating in  
14 experimental programs on other LDC systems; is that right?

15 A. On some of the others, yes.

16 Q. And does that include MGE, AmerenUE, Aquila  
17 and Atmos?

18 A. It includes MGE, Ameren, Atmos.

19 Q. Are you saying not Aquila?

20 A. Not Aquila for similar reasons.

21 Q. Okay. On page 5, line 10 Aquila is included  
22 in the list of --

23 A. I'm sorry. Where?

24 Q. I'm sorry. This is page 5, line 10 of your  
25 supplemental Direct Testimony. You say the MSBA and CSD

1 program now has school participation in the experimental  
2 program on the systems of MGE, AmerenUE, Aquila and Atmos?

3 A. Yes. There were I think two schools that  
4 signed up on Aquila and I thought that they had actually  
5 gotten enrolled, but they did not.

6 Q. Okay. So you're withdrawing Aquila as one of  
7 the LDCs who participate in the program?

8 A. Yes.

9 Q. How about Southern Missouri?

10 A. No.

11 Q. Okay. So just MGE, AmerenUE and Atmos?

12 A. Correct.

13 Q. And how much capacity were schools required to  
14 take under the first year of the programs for those three  
15 utilities?

16 A. On -- on the Ameren tariff there is no --  
17 there is no requirement in their tariff for any specific  
18 amount. It's just that they will at the request of the  
19 schools provide capacity up to one year.

20 With regard to Atmos, it's equal to what is  
21 termed, quote, peak day need, which would be basically  
22 100 percent of the -- of the peak day needs of the school,  
23 not -- not 150 percent and it's for only one year.

24 With regard to MGE, the month of January '01  
25 was weather normalized to 93 percent and February of '01 was

1 normalized -- was basically a normal month and was used  
2 100 percent. December of '02 was milder and it was weather  
3 normalized to 129 percent. And then January of '02 was a  
4 little warmer than normal and it was weather normalized to  
5 117 percent. And then those four months were averaged and  
6 we agreed for the initial one year -- up to one year to take  
7 150 percent of the average of those four months.

8 Q. Okay. So you took 150 percent of the average?

9 A. Of the weather normalized average.

10 Q. Okay. And is that capacity amount roughly  
11 equivalent to, greater or less than the amount under the  
12 Laclede tariff?

13 A. Less. Particularly for years two and three,  
14 MGE has 0 and Laclede has 150 percent.

15 Q. Let me just focus on year one then to compare  
16 apples to apples. You said year one is 150 percent of the  
17 average of four weather normalized months. How does that  
18 compare to the Laclede tariff in its first year?

19 A. I don't know.

20 Q. You said Atmos was based on peak day need.  
21 What was the peak day based on?

22 A. We looked at the peak day -- 100 percent of  
23 the peak day in the most recent available data that could  
24 have gone up to two years, but I don't think Atmos had  
25 records for a full 24 months there. So I -- I believe the

1 answer to your question is 100 percent of the maximum -- or  
2 100 percent of the average of the maximum month at least for  
3 18 months.

4 Q. In the MGE program where you took 150 percent  
5 of the weather normalized average, did you need to buy any  
6 more pipeline capacity to serve your clients that winter?

7 A. No. In fact, we turned around and posted to  
8 release some of that capacity. We recognized that it was  
9 more than what we needed, the 150 percent, but we were  
10 willing to get the program started and go ahead and take  
11 that amount.

12 Q. So you --

13 A. For -- for only that -- only for that partial  
14 year.

15 Q. Okay. For the full first year?

16 A. Yes.

17 Q. Okay. So you bought the required capacity,  
18 you found in some cases it was more than you needed and you  
19 posted and released it?

20 A. We posted it. I'm -- I don't know without  
21 checking with the third-party administrator if anybody took  
22 it from the bulletin board.

23 Q. Who handles that for you?

24 A. In that particular case, we asked the supplier  
25 to take that capacity. And the low bid on that was Ameren

1 Fuels.

2 Q. That's who you sold the capacity to, you're  
3 saying?

4 A. No. We didn't --

5 Q. -- or that's who posted --

6 A. We didn't sell the capacity. We bought the  
7 commodity from Ameren Fuels and we asked Ameren Fuels to  
8 take that release capacity that was for us and utilize it  
9 for delivering their commodity. And that part that we  
10 didn't need, we asked them to post it for release to others.

11 Q. In the Atmos territory where you took  
12 100 percent of a maximum peak day, did you need to  
13 supplement that with any more pipeline capacity this past  
14 winter?

15 A. No.

16 Q. Okay. Let's talk about the AmerenUE program a  
17 minute. How did the schools do during the first year under  
18 the AmerenUE program?

19 A. How did they do with regard to capacity?

20 Q. Well, how did they do with regard to what they  
21 paid for their gas supplies?

22 A. We haven't received all of the accounting on  
23 that yet.

24 Q. Okay. Is it your intention to compare what  
25 the schools in AmerenUE's territory paid this past winter to

1 what they would have paid as Ameren sales customers?

2 A. I think we will do that over the term of the  
3 experimental program. We recognize that there are bumps  
4 with regard to the gas market that -- see, we really only  
5 had them on since February 1st, so two months really didn't  
6 give us a picture.

7 Q. You're saying you didn't start -- schools in  
8 Ameren's territory didn't start on your program until  
9 February 1st?

10 A. That is correct.

11 Q. What about MGE? When did schools start in  
12 that program?

13 A. It was either January or February.

14 Q. And how about Atmos?

15 A. I believe those were February.

16 Q. Okay. Can you tell me today what -- what  
17 price that you bought gas at for those programs?

18 A. No, I can't. I can tell you that we bought  
19 under a formula for a base amount that was on a monthly  
20 NYMEX index, and then supplemental gas would be purchased at  
21 a daily index and any excess gas out of the base volumes  
22 would be sold back under a daily index.

23 Q. Okay. And so for the month of March did you  
24 buy gas based on the March NYMEX price, the closing price at  
25 the end of February?

1           A.       Some of the gas, yes.

2           Q.       When you say "some of the gas," did you have  
3 for March any other sources of gas?

4           A.       Well, some of it may have been daily.

5           Q.       Okay. So swing?

6           A.       Swing. Swing was daily. We typically and --  
7 intend to lock in fixed prices for fairly significant  
8 portions of the expected use, but the market was so high  
9 that we didn't think it was prudent to trigger a fixed price  
10 at that time.

11          Q.       And how did that decision work out?

12          A.       I think it was -- I think that it was the  
13 right decision given the high level of the market not to  
14 trigger at that high price.

15          Q.       Do you generally follow the PGA/ACA filings of  
16 the LDCs to see what they're selling their gas to -- they're  
17 selling their gas at?

18          A.       I don't regularly follow them. I do look at  
19 them from time to time.

20          Q.       Were you familiar with Laclede's gas costs for  
21 this winter?

22          A.       I did look at the PGA filings. Let's see.  
23 I'm trying to remember. I think you filed maybe in November  
24 and I looked that one. And then I think there was another  
25 filing two or three months after that. I basically looked

1 at that after we'd gotten so far into the winter that it was  
2 basically a decision not to go ahead.

3 Q. And would you agree that Laclede's PGA rates  
4 were significantly lower than the NYMEX gas prices for this  
5 winter?

6 A. I don't specifically recall, but I -- I  
7 suspect that they were.

8 Q. And you don't have any calculation now about  
9 how much the school saved this winter in Laclede's territory  
10 by not -- by staying on Laclede's sale service?

11 A. No, I don't. And, you know, I can tell you  
12 this. They would have saved a lot had we been able to get  
13 this program started earlier and we were able to do what the  
14 Iowa schools did and the Kansas schools did and lock in  
15 prices well in advance of the spike in the market.

16 Q. Why didn't the MGE and Atmos -- I forget what  
17 you said about Ameren -- why didn't those programs start  
18 until January or February?

19 A. Atmos basically said they were more manual in  
20 billing, they weren't set up to handle it, they needed more  
21 time and we said okay.

22 In the case of Ameren -- in the case of Ameren  
23 I think the tariffs were filed November, we went out for bid  
24 in November. By the time we got the gas supply purchased or  
25 contracted for and got all of the paperwork done, we were at

1 the point where we couldn't make the January 1st date.

2 And I think it was the same situation for MGE.  
3 It was a matter of meeting all of the tariff requirements,  
4 getting all of the meter numbers and account numbers and  
5 submitting them, getting them into the system. It was a  
6 rather time intensive process.

7 Q. So getting back to Laclede, did you do a  
8 specific cost comparison between Laclede's PGA rate and the  
9 price at which you were able to buy gas?

10 A. I didn't do a specific analysis that way.  
11 What I basically did was I took a look at what Laclede  
12 tariff was requiring for 150 percent, computed what I  
13 thought would have been the total cost of that capacity and  
14 then -- and then backed into what it would take to break  
15 even. And -- and at that high level of capacity it did not  
16 look attractive to get into -- start the program on Laclede.

17 Q. Thank you. Can you give me a rough estimate  
18 of what percentage of the total price of gas is covered by  
19 capacity?

20 A. Well, the total -- I mean, it really changed  
21 dramatically this last winter. I think maybe this will  
22 help. If gas were what it is today -- it's roughly 5 plus  
23 dollars MMBtu on the NYMEX and it may be 50, 60 cents per  
24 MMBtu to have it delivered across the MRT system and then  
25 I'm not sure what the LDC charges are, probably another

1 dollar or so.

2 But I think the key point there is it's -- the  
3 market -- the piece as far as the market supply is a piece  
4 that has to be managed and is changing constantly. The  
5 piece is that the LDC, or the local distribution company  
6 like Laclede, that is set by tariff. The in between piece  
7 on the pipeline transportation, that is a significant  
8 portion of where the program benefits can come.

9 Q. So did you tell the schools in Laclede  
10 territory that based on the price of gas in Laclede's PGA,  
11 they were better off staying with Laclede's service?

12 A. No. I didn't tell them that. What I did say  
13 was -- and I didn't specifically talk to the individual  
14 schools. What I told the Missouri School Board Association  
15 is that until we had more certainty as to what capacity the  
16 schools are going to have to pay for the second and third  
17 year, that it didn't make a whole lot of sense to start them  
18 in February and March and only have them in for two months  
19 and then at the end of May pull them back out of the program  
20 until we knew what the resolution was on this issue.

21 Q. But don't the schools have an option to sign  
22 up every fall?

23 A. I believe they do.

24 Q. Okay. So whatever decision was made, the  
25 schools would only have been locked in, had they signed up

1 in the program, until October of this year; is that correct?

2 A. Well, to the -- as far as you went, that's  
3 correct. But the rest of the story is that there's a lot of  
4 work for nearly 500 accounts to try to get them set up, get  
5 them in the billing program, go out and contract for the gas  
6 supply, make all the nominations and get the program running  
7 when they're only going to be heating for February and  
8 March, a little bit of April and then pull them back out of  
9 the program in May. It just didn't look practical.

10 Q. Okay. On page 6 and 11 of your Direct  
11 Testimony, you make a point that you have paid one year's  
12 worth of capacity to other LDCs because they had already  
13 firmed up or finalized winter plans for the first year of  
14 the program. Is that an accurate summary of your testimony?

15 A. Yeah. That was -- that was one of the  
16 considerations.

17 Q. Okay. So if an LDC had firmed up or finalized  
18 capacity for two years, would you have been willing to pay  
19 for two years of their capacity?

20 A. No.

21 Q. Okay. So regardless of what was firmed up or  
22 finalized, one year was your max?

23 A. Yes.

24 Q. Okay. You've taken the position in your  
25 testimony on page 9 of your Supplemental Direct that the

1 legislature intended the negative financial impact to just  
2 apply to administrative costs, balancing and aggregation  
3 fees; is that correct?

4 A. With regard to -- with regard to the company,  
5 that's correct. The statute also addressed taxing  
6 authorities, which is not an issue. We agreed to continue  
7 paying those taxes.

8 Q. When you say you agreed to continue paying  
9 them, the statute required you to pay them?

10 A. Well, we -- we agreed when the statute  
11 language was being developed, that we would include language  
12 that we would continue to pay them.

13 Q. Are you saying you agreed as part of the  
14 legislative process that that would go into the statute?

15 A. Yes.

16 Q. Okay. And you've just said that the  
17 administrative cost applies to the gas corporation; is that  
18 correct?

19 A. Yes.

20 Q. The administrative balancing and aggregation  
21 fee?

22 A. Yes.

23 Q. What about the other customers of the gas  
24 corporation? Does the administrative balancing and  
25 aggregation fee apply to them?

1           A.       Only to the extent that the Commission would  
2 adopt other procedures not inconsistent with the rest of the  
3 statute. So basically the statute left that for the  
4 Commission to decide.

5           Q.       Okay. Well, let me read from -- on page 9,  
6 lines 11 to 15 of your testimony. And tell me if I read  
7 this wrong. In my opinion, paragraph 5 -- the paragraph 5  
8 phrase will not have any negative financial impact on the  
9 gas corporation -- you've added an end quote there -- has  
10 nothing to do with interstate pipeline capacity but instead  
11 refers to ensuring the gas corporation's incremental  
12 administrative costs of aggregating school purchases for  
13 resale or for balancing school usage is paid by participant  
14 schools and not the gas corporation or other customers.

15                   Did I read that correctly?

16           A.       Yes, I did.

17           Q.       So what you're saying is that Section 5, the  
18 no negative financial impact section, protects the gas  
19 corporation and its other customers from paying for  
20 administrative costs of aggregation and balancing?

21           A.       Correct.

22           Q.       Okay. So tell me what was the legislature  
23 thinking when they said that they need to protect customers  
24 from these administrative costs? How would these  
25 administrative costs fall on customers?

1           A.       I believe, in my opinion, what they were  
2           thinking is that there would be some cost associated with  
3           the administration aggregation and balancing, and that the  
4           schools should pay those and the corporation should not have  
5           to absorb them nor should those aggregation and balancing  
6           charges be placed on other customers.

7           Q.       And I understand how the law would save the  
8           gas corporation from incurring those costs because they're  
9           the ones that do incur them. I'm just wondering what could  
10          the legislature have intended in protecting customers from  
11          these costs when the customers don't incur these costs?

12          A.       I don't know. That was a Laclede lobbyist  
13          language that we got at the last hour and we said, okay,  
14          fine.

15          Q.       Well, here's the punch line, Mr. Ervin. Isn't  
16          it more likely that including other customers from incurring  
17          a negative financial impact, that was more likely to apply  
18          to something like having to pay for excess capacity rather  
19          than paying for incremental administrative costs?

20          A.       Absolutely not.

21          Q.       I assumed that would be your answer.

22                   MR. ZUCKER: No further questions.

23                   JUDGE MILLS: Thank you. We'll do a quick  
24          series of questions from the Bench, then depending on how  
25          quickly that goes, we'll either do cross-examination based

1 on those questions or we'll break for lunch.

2 MR. BROWNLEE: Lewis, could we go off the  
3 record a minute?

4 JUDGE MILLS: Why?

5 MR. BROWNLEE: I want to chat about -- well,  
6 we're on the record.

7 JUDGE MILLS: We can do this on the record.

8 MR. BROWNLEE: I've only got like a couple  
9 questions for Staff witness. I mean, literally two  
10 questions. And I wondered if we -- actually I'm hungry  
11 myself, but I just wonder if we could sort of poll the  
12 parties starting with you, who has to make the decision,  
13 whether we could wrap this thing up.

14 JUDGE MILLS: That's fine with me. I  
15 anticipated you would have a fair amount of questioning, but  
16 if you don't --

17 MR. BROWNLEE: I really don't. I'm very  
18 serious.

19 JUDGE MILLS: Let's keep moving and --

20 MR. BROWNLEE: Is that okay? I just spoke  
21 out. Is that okay with everybody?

22 MR. FRANSON: Yes.

23 MR. MICHEEL: Yes.

24 JUDGE MILLS: It's of no one's interest to  
25 break for an hour and come back for 10 minutes. If we're

1 going to be that close, we'll keep going.

2 MR. BROWNLEE: Sorry to butt in.

3 JUDGE MILLS: No, I appreciate that.

4 QUESTIONS BY JUDGE MILLS:

5 Q. Mr. Ervin, in 393.310 I believe you testified  
6 that it was intended to be an experiment -- and this may not  
7 be your exact words, but it's fairly close -- an experiment  
8 to look at small volume aggregation rather than an  
9 experiment to look at school aggregation. Is that your  
10 understanding of what the experiment is about?

11 A. Yes, sir.

12 Q. Is there anything in -- well, when it was 1402  
13 or as it is now, 393.310, that would let someone who wasn't  
14 in on the drafting of the legislation know that?

15 A. I -- I don't think so. I think the -- I think  
16 that's a fair statement.

17 Q. Then in staying with 393.310 in your  
18 interpretation of Section 5, would your interpretation of  
19 what that section says change if the phrase about that  
20 implementation of the aggregation program will have no  
21 negative financial impact was simply removed from that  
22 section?

23 And let me show you a copy with that section  
24 stricken. And the portion I've crossed out and read, if  
25 that was simply not in the legislation, would your

1 interpretation change?

2 A. The only inter-- the only part that would  
3 change is that part with regard to local taxing authorities.

4 Q. Okay.

5 A. But with regard -- I mean, that's not an issue  
6 here. So with regard to -- to the pipeline capacity issue,  
7 no, my interpretation would not change.

8 Q. So, in your view, that section of the  
9 legislation doesn't add anything to the statute other than  
10 local taxing authorities?

11 A. That's correct.

12 Q. Okay. Thank you. Let me grab that back from  
13 you.

14 And just so the record is clear, the section  
15 I'm talking about is the -- at least on the copy that was  
16 passed out is the section of lines 30 through 32 that reads,  
17 That implementation of the aggregation program set forth in  
18 such tariffs will not have any negative financial impact on  
19 the gas corporation, its other customers or local taxing  
20 authorities, comma and.

21 So that Section 5 without that section would  
22 read as follows: The Commission may suspend the tariff as  
23 required pursuant to subsection 3 of this section for a  
24 period ending no later than November 1st, 2002, and shall  
25 approve such tariffs upon finding that the aggregation

1 charge is sufficient to generate revenue at least equal to  
2 all incremental costs caused by the experimental aggregation  
3 program.

4 Okay. And then let me turn your attention to  
5 Exhibit 9. Do you have a copy of that?

6 A. Is that the new proposed legislation?

7 Q. That was the Senate Amendment No. 4.

8 A. Yes, sir, I have it.

9 Q. And I'll ask you the same question I asked  
10 Mr. Cline. If this amendment were in effect today, how  
11 would that affect the issues that are set out in this case?

12 A. It would totally resolve the issue in this  
13 case.

14 Q. Resolve it in which direction?

15 A. And it would resolve it to be totally  
16 consistent with the proposed tariff that I've submitted on  
17 behalf of the Missouri School Boards Association.

18 JUDGE MILLS: Okay. And that's all the  
19 questions that I have. We'll do a round of further  
20 cross-examination based on those questions beginning with  
21 Staff.

22 FURTHER CROSS-EXAMINATION BY MR. FRANSON:

23 Q. Mr. Ervin, if you could turn to your Direct  
24 Testimony, Exhibit C, please.

25 A. That's the proposed tariff?

1 Q. Yes.

2 A. Yes, sir.

3 Q. Could you read the title of that, please?

4 A. Experimental School District Aggregation

5 Service.

6 Q. And would you agree with me that this tariff,

7 even with your changes, is designed to implement an

8 experimental school district aggregation service?

9 A. Yes. As --

10 MR. FRANSON: Thank you very much.

11 JUDGE MILLS: Are you finished, Mr. Franson?

12 MR. FRANSON: Yes, I am, your Honor.

13 JUDGE MILLS: Further cross-examination based

14 on questions from the bench, Mr. Micheel?

15 MR. MICHEEL: Yes, your Honor.

16 FURTHER CROSS-EXAMINATION BY MR. MICHEEL:

17 Q. Mr. Ervin, Judge Mills asked you some

18 questions about House Bill 1420. Do you recall those

19 questions?

20 A. 1402?

21 Q. Or 1402. I'm sorry.

22 A. Yes, sir. Or generally, yes.

23 Q. And you gave your interpretations of what you

24 thought Section 5 meant; is that correct?

25 A. Yes, sir.

1 Q. You're not a lawyer, are you, Mr. Ervin?

2 A. No, I'm not.

3 Q. And you're not offering up a legal opinion  
4 either in your answer to Judge Mills or in your testimony,  
5 are you?

6 A. I'm not offering a legal opinion, no.

7 MR. MICHEEL: Thank you.

8 JUDGE MILLS: Okay. Redirect, Mr. Brownlee,  
9 based both on the first cross-examination and the questions  
10 from the Bench and the further cross-examination.

11 REDIRECT EXAMINATION BY MR. BROWNLEE:

12 Q. I have one question. Would you like to finish  
13 your answer to Mr. Franson's question regarding the title of  
14 tariff on Exhibit C?

15 A. Yes.

16 MR. ZUCKER: Your Honor, before he answers  
17 that question, I didn't get an opportunity.

18 JUDGE MILLS: I'm sorry.

19 MR. BROWNLEE: Well, that's the only question  
20 I have if I'm out of order.

21 JUDGE MILLS: We'll get back. I apologize.

22 FURTHER CROSS-EXAMINATION BY MR. ZUCKER:

23 Q. Good morning again.

24 A. Good morning.

25 Q. Very quickly, Mr. Ervin, you were asked a

1 question by Judge Mills about the new Senate amendment. And  
2 that amendment would allow the schools to leave capacity  
3 behind that shifts costs to either Laclede or more likely  
4 other customers?

5 A. I don't agree with that characterization at  
6 all. I think what says is that the Commission will treat  
7 schools like other large industrial and commercial customers  
8 with regard to pipeline capacity.

9 Q. Right. And isn't the effect of that -- I'm  
10 just looking for a yes or no here -- that schools would be  
11 allowed to not pay for all the capacity that was reserved  
12 for them?

13 A. I think that begs the questions as to what was  
14 reserved for them. I don't think there is a clear cut yes  
15 or no answer to that question. I think that's a judgmental  
16 call by the Commission.

17 Q. Let me ask this question then. If it's your  
18 position that this really isn't a school program, but more  
19 an aggregation program and that other aggregation programs  
20 should follow, would you say that those other aggregation  
21 programs should also work like the school program as you're  
22 describing it?

23 A. Not necessarily. This is an experimental  
24 program to gain insights into how best to model what comes  
25 afterwards. There's going to be some learning here. We've

1 got a lot of different utilities, the tariffs are different,  
2 the experiences may be different. And before launching into  
3 a system-wide small volume transportation program, there's  
4 going to be some things learned here that may modify the way  
5 these tariffs are today.

6 Q. Let me ask this. I know what your position is  
7 on the school aggregation program. Let's say the next in  
8 line was the barber shop aggregation program. Would you say  
9 that one should also be treated like large industrial or  
10 commercial customers?

11 A. You know, I really think that this is the  
12 experimental program that would provide insights not for  
13 other narrow groups, but for classes of customers like small  
14 volume, commercial industrial type customers.

15 Q. Okay.

16 A. And not just a barber shop, per se. I don't  
17 envision a barber shop aggregation.

18 Q. You've got bigger plans than just barber  
19 shops. You're saying it's an entire small volume class?

20 A. It's not so much my plan. It's exactly what  
21 Kansas has, Illinois has, Georgia has, Michigan has. So  
22 it's a matter of stepping into what is happening around the  
23 country from a progression back in the '80s where large  
24 customers started transporting and now small customers  
25 are -- are transporting. And this allows Missouri some

1 experiment before --

2 Q. I think you've answered my question. Let me  
3 move onto the next one.

4 A. Okay. Sorry.

5 Q. And that is that if there was a small volume  
6 transportation tariff, would you want that treated the same  
7 way as the large industrial or commercial customers?

8 A. I'd want it to be treated consistent, yes.

9 Q. Okay. And any other class that you might have  
10 would also be treated consistently with those?

11 A. Yes. In fact, there are some residential  
12 transportation programs around. And I think that's all in  
13 front for the Commission to decide at that time.

14 Q. And to the extent that each of those programs  
15 shift costs onto other customers, that would be the way it  
16 would go?

17 A. Whatever the Commission decides is the way it  
18 would go.

19 MR. ZUCKER: Okay. Thank you.

20 JUDGE MILLS: Okay. Mr. Zucker, I apologize  
21 for forgetting you earlier. Now we're up to Mr. Brownlee  
22 for redirect.

23 REDIRECT EXAMINATION (CONT'D) MR. BROWNLEE:

24 Q. Mr. Ervin, I think you in response to an  
25 answer regarding your Exhibit C tariff you were beginning to

1 offer an explanation and I think were, unfortunately, cut  
2 off. Would you like to go ahead and finish what you were  
3 going to conclude?

4 MR. FRANSON: Your Honor, actually the  
5 question was specifically isn't -- the question was far more  
6 specific. The question was, isn't it true that the tariff  
7 is designed to implement an aggregation program for schools.  
8 So if that's what he's responding to, I have no objection.  
9 But if he's responding to anything else, I do object, your  
10 Honor.

11 MR. BROWNLEE: He's objecting to the question  
12 that he asked.

13 JUDGE MILLS: I don't understand.

14 MR. FRANSON: No. My question was answered,  
15 Judge. I'm objecting if he's going to expound upon more  
16 than what was asked to him.

17 JUDGE MILLS: Are you objecting to the  
18 question or are you objecting to the fact that the witness  
19 may go afield from the question?

20 MR. FRANSON: We'll know when the witness  
21 answers, but I object to the characterization. The witness  
22 was asked a question by me and he answered that question.  
23 If he wants to expound upon that answer, I have no  
24 objection. But if he's going to go into other things, your  
25 Honor, then you will hear from me further. I was just

1 reminding you of what my question was. It was about the  
2 specific tariff attached to his --

3 JUDGE MILLS: In other words, you don't have a  
4 specific objection right now.

5 MR. FRANSON: Not right now.

6 JUDGE MILLS: Thank you. You can go ahead and  
7 answer.

8 THE WITNESS: Okay. The question dealing with  
9 aggregation service, I was just going to add that  
10 aggregation is defined -- or the term aggregate is defined  
11 under 393.310 paragraph 2.1. And it says, Aggregation, the  
12 combination of natural gas supply and transportation  
13 services. And that's really my only -- only thing I wanted  
14 to add is that it does include transportation services.

15 MR. BROWNLEE: Thank you. That's all.

16 JUDGE MILLS: Thank you. Mr. Ervin, you may  
17 step down.

18 THE WITNESS: Thank you.

19 JUDGE MILLS: We will do -- take you all at  
20 your word that the remaining cross-examination will be  
21 fairly short. We will go ahead before we break for lunch,  
22 but let's take a five-minute recess before we go onto the  
23 next witness. We're off the record.

24 (A RECESS WAS TAKEN.)

25 (Witness sworn.)

1 JUDGE MILLS: Thank you. You may be seated.

2 MR. FRANSON: May I proceed, your Honor?

3 JUDGE MILLS: Please do.

4 MR. FRANSON: Thank you.

5 THOMAS M. IMHOFF testified as follows:

6 DIRECT EXAMINATION BY MR. FRANSON:

7 Q. Sir, please state your name.

8 A. It is Thomas M. Imhoff.

9 Q. Mr. Imhoff, did you in this case -- well,

10 first of all, how are you employed?

11 A. I am employed by the Missouri Public Service

12 Commission as the rates and tariff energies supervisor.

13 Q. And you are, in fact, employed by the Staff of

14 the Public Service Commission?

15 A. Yes.

16 Q. Sir, are you the same Thomas M. Imhoff that

17 prepared and caused to be filed in this case Supplemental

18 Rebuttal -- Supplemental Direct Testimony, which I believe

19 has been previously marked as Exhibit 5?

20 A. Yes.

21 Q. And are you also the same Thomas M. Imhoff who

22 also caused to be filed Supplemental Rebuttal Testimony in

23 this case?

24 A. Yes.

25 Q. Mr. Imhoff, if you were asked these same

1 questions today, would your answers be substantially  
2 similar?

3 A. Yes.

4 Q. Do you have any additions, deletions or  
5 corrections to your testimony?

6 A. No.

7 MR. FRANSON: Your Honor, at this time I offer  
8 into evidence Exhibits 5 and 6 and tender the witness for  
9 cross-examination.

10 JUDGE MILLS: Are there any objections to  
11 Exhibits 5 or 6?

12 Hearing none, they will be admitted.

13 (EXHIBIT NOS. 5 AND 6 WERE RECEIVED INTO  
14 EVIDENCE.)

15 JUDGE MILLS: Cross-examination, Mr. Micheel?

16 MR. MICHEEL: No questions for Mr. Imhoff.

17 JUDGE MILLS: Mr. Brownlee?

18 CROSS-EXAMINATION BY MR. BROWNLEE:

19 Q. Good morning -- or good afternoon.

20 MR. BROWNLEE: Your Honor, I'd like to  
21 approach the witness. I have one question regarding the  
22 Direct Testimony that he filed, which would be the testimony  
23 prepared on or about September 23, 2002, which was his  
24 Direct Testimony in the original Laclede case.

25 JUDGE MILLS: Go ahead.

1 MR. FRANSON: Your Honor, I believe that's  
2 already been admitted into evidence.

3 JUDGE MILLS: It has. Although none of the  
4 earlier pre-filed testimony was assigned exhibit numbers, it  
5 was all admitted.

6 BY MR. BROWNLEE:

7 Q. Mr. Imhoff, I'm going to hand you what was  
8 your prior Direct Testimony that you filed in this case. Do  
9 you have that in front of you?

10 A. Yes, I have.

11 Q. Would you make reference to page 3. Do you  
12 have that?

13 A. Just a minute.

14 Q. Make sure we're on the same page here, Tom.

15 A. Yes.

16 Q. And question at line 12 is, How should Laclede  
17 release its firm interstate pipeline transportation capacity  
18 to participants in the program.

19 Do you see that?

20 A. Yes.

21 Q. And you have an answer -- and I'm not going to  
22 read the whole thing in the record. We can, but on line 20  
23 you state, The release of the capacity should be for a  
24 period of one year with annual notifications by the school  
25 aggregator, the company, indicating if they wish to continue

1 using the released capacity.

2 Do you see that?

3 A. Yes.

4 Q. Is that answer contrary to the present Laclede  
5 tariff that would require them to take -- the schools to  
6 take this for three years as opposed just to the one?

7 A. I'm just trying to get the tariff.

8 MR. FRANSON: Mr. Imhoff, do you have the  
9 tariff that you need?

10 THE WITNESS: I'm currently looking at it.  
11 And my -- in my Direct Testimony filed back in September  
12 I -- I did state one year. In the tariff itself I'm still  
13 trying to find three years. I don't see it, so --

14 BY MR. BROWNLEE:

15 Q. Okay. And since that time of filing your  
16 original testimony, has your position changed regarding the  
17 one year for release aside from what the tariff may say?

18 A. Okay. It is my understanding that we are --  
19 that -- that we have a Stipulation and Agreement pertaining  
20 to how that would account for -- it is my understanding that  
21 this particular issue that we have at hand pertains to the  
22 cost of it. That's my understanding.

23 Q. Okay. Thank you. I believe in your  
24 Supplemental Rebuttal Testimony, which Mr. Franson has just  
25 marked and has admitted, if you'll refer to that on page 1,

1 line 19?

2 A. Yes.

3 Q. You make the statement, The Staff's position  
4 on the capacity release issue remains the same. The Staff  
5 believes that the Commission should select a program that is  
6 similar to the programs that all the other local  
7 distribution companies in the state are currently operating  
8 under.

9 Have you compared -- with knowledge that you  
10 make that sworn statement, have you compared the Laclede  
11 proposed tariff in this particular case to the other ones  
12 that the Commission has approved in terms of issues dealing  
13 with the statute, with aggregation costs, with pipeline  
14 capacity release, with term, with volume? Have you made  
15 that comparison?

16 A. We made the comparison back when everything  
17 was first filed. As far as making any comparison currently,  
18 that I have not done.

19 MR. BROWNLEE: Thank you, sir. I have nothing  
20 further.

21 JUDGE MILLS: Laclede?

22 MR. ZUCKER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. ZUCKER:

24 Q. Good afternoon, Mr. Imhoff.

25 A. Good afternoon, Mr. Zucker.

1 Q. Do you believe that Laclede's tariff -- or  
2 Laclede's proposal with regard to capacity release complies  
3 with the law?

4 A. I --

5 MR. FRANSON: Your Honor, I believe the  
6 question calls for a legal conclusion the way it's phrased  
7 and I'll object on that basis.

8 JUDGE MILLS: Well, that may technically be  
9 correct. This entire case is an intersection of legal  
10 conclusions, policy conclusions, tariff interpretation. I'm  
11 going to allow the question.

12 THE WITNESS: Would you please repeat the  
13 question?

14 BY MR. ZUCKER:

15 Q. Well, I may not. I may ask a different  
16 question.

17 MR. BROWNLEE: Why don't you withdraw it?

18 BY MR. ZUCKER:

19 Q. I thought that question was a lot easier than  
20 it turned out to be. Let me try a different one. Is it  
21 Staff's position that Laclede's tariff is the only tariff  
22 that -- the only proposal in this case that complies with  
23 the statute?

24 A. Yes.

25 Q. And back last fall when you filed testimony,

1 were you aware at that time, if you recall, whether  
2 Laclede -- were you aware that Laclede was not able to shed  
3 its capacity from pipelines like MRT?

4 A. I was not aware.

5 Q. And so your testimony, both what Mr. Brownlee  
6 showed you from last fall and what he showed you in your  
7 Rebuttal Testimony, page 1, line 19, the basic point of that  
8 is that you would like to see Laclede's tariff conform to  
9 other LDC tariffs; is that right?

10 A. I would have liked to -- I would have liked to  
11 have seen that, but since we -- since we have entered into a  
12 Stipulation and Agreement, it's my understanding that that  
13 is not an issue. So it's my understanding that what the  
14 issue is is the cost -- or who's going to pay for the  
15 capacity release. That's my understanding.

16 Q. Let me refer you again to page 1 of your  
17 Supplemental Rebuttal, line 20. You say the Commission  
18 should select a program that's similar to programs of other  
19 local distribution companies. That was the point of my  
20 question --

21 A. That's what it says.

22 Q. -- that it's good to conform.

23 Okay. And would you agree with me that in  
24 this circumstance because of the Laclede's situation with  
25 its pipeline operators, that conforming to other LDCs may

1 result in Laclede not complying with the statute?

2 A. That's a possibility, yes.

3 Q. In other words, if Laclede conformed to what  
4 other LDCs have done, which is to only charge capacity for  
5 the first year, because of Laclede's circumstance, that  
6 would result in a negative financial impact on the gas  
7 corporation. Do you agree with that?

8 A. Yes.

9 Q. And do you believe that it's more important to  
10 comply with the law rather than conform with other LDCs?

11 A. Yes.

12 Q. Do you have the House Bill 1402 in front of  
13 you, the statute?

14 A. No, I do not.

15 Q. No. Let's see. I think I have an extra one.  
16 Okay. This will work.

17 Okay. I'm interested in the use of the term  
18 "transportation." Would you please look at Section 2,  
19 Part 1 definition of the word "aggregate"?

20 A. Yes.

21 Q. Do you see that? Do you see it talks about  
22 the combination of natural gas supply and transportation  
23 services?

24 A. Yes.

25 Q. Is that LDC transportation or pipeline

1 transportation?

2 A. I believe that's an LDC.

3 Q. Well, let's kind of go through it real  
4 quickly. Aggregate, the combination of natural gas supply  
5 and transportation services. Are those transportation  
6 services that come with the gas to the LDC's city gate?

7 A. Yes.

8 Q. So would you say that that's more likely  
9 pipeline transportation services?

10 A. That particular instance, yes. I just read  
11 the entire section and then it said serve through a Missouri  
12 gas corporation's delivery systems, so I -- I guess I didn't  
13 quite understand your question, so -- but as it relates to  
14 that, yes, it's through the interstate pipeline.

15 Q. Okay. Thank you. And going down to  
16 Section 4, Part 1 it refers to provide for the aggregate  
17 purchasing of natural gas supplies and pipeline  
18 transportation services. Again, that refers to pipeline  
19 transportation and not to LDC transportation; is that  
20 correct?

21 A. That's correct.

22 Q. And, finally, in Part 4, Section 2 --  
23 paragraph 4, Section 2, provide for the resale of such  
24 natural gas supplies including related transportation  
25 service costs. And are, again, those pipeline

1 transportation service costs versus LDC transportation?

2 A. Those are pipeline.

3 MR. ZUCKER: Okay. Thank you, Mr. Imhoff.

4 QUESTIONS BY JUDGE MILLS:

5 Q. Okay. I just have a quick question and it's  
6 the same that I've asked the other witnesses and that has to  
7 do with Exhibit 9, which is Senate Amendment No. 4. Do you  
8 have a copy of that?

9 A. No.

10 Q. Okay.

11 A. I'm sorry.

12 Q. I'll hand you a copy. And the question is, if  
13 that amendment were to have passed some time in the past and  
14 were in effect today, how would that affect the issues in  
15 this case?

16 A. I view it as -- as it relates to the pipeline  
17 capacity costs, that if the school boards would leave,  
18 someone has to pick up that. So if the school boards were  
19 granted this particular part, then I don't believe we would  
20 have an issue from the Staff's perspective --

21 Q. Okay.

22 A. -- because we view it as the cost --

23 Q. Okay.

24 A. -- is the issue.

25 JUDGE MILLS: Thank you. That's the only

1 question I have.

2 Are there any further cross-examination  
3 questions based on that question? Mr. Micheel?

4 MR. MICHEEL: No, your Honor.

5 JUDGE MILLS: Mr. Zucker?

6 MR. ZUCKER: No, sir.

7 JUDGE MILLS: Mr. Brownlee?

8 MR. BROWNLEE: No.

9 JUDGE MILLS: Then we will do redirect.

10 REDIRECT EXAMINATION BY MR. FRANSON:

11 Q. Mr. Imhoff, is it fair to say that when you  
12 filed your earlier testimony in this case in September of  
13 2002, the positions you took at that time, you didn't know  
14 there was going to be a Stipulation and Agreement?

15 A. That is correct.

16 Q. So you agree with the Stipulation and  
17 Agreement in this case and this program as implemented by  
18 the tariffs that are currently in effect?

19 A. Yes, I do.

20 MR. FRANSON: No further questions, Judge.

21 JUDGE MILLS: Okay. Mr. Imhoff, you may step  
22 down.

23 Okay. It's my understanding that pursuant to  
24 the Stipulation and Agreement, the parties want the  
25 Commission to have a decision effective by May 31; is that

1 correct?

2 MR. BROWNLEE: Yes.

3 MR. ZUCKER: Yes, your Honor.

4 JUDGE MILLS: That puts the onus on you all to  
5 brief it fairly quickly. I would suggest that briefs be --  
6 in order to have an order effective May 31st, the order  
7 would have to be issued with a 10-day effective date, which  
8 means roughly around the 20th of May.

9 In order to have the Commission discuss it in  
10 at least one agenda and vote on it in another agenda, we  
11 really need to have briefs done by roughly the beginning of  
12 May, certainly no later than, say, the Monday the 5th or  
13 Tuesday the 6th. Do the parties anticipate one round or two  
14 rounds of briefs?

15 MR. FRANSON: I was hoping one round, Judge,  
16 because we do have such an expedited schedule is Staff's  
17 suggestion.

18 JUDGE MILLS: That certainly would be fine  
19 with me. Why don't we -- and I'll leave it up to you all.  
20 We'll do it either Friday the 2nd or Monday the 5th of May.

21 MR. BROWNLEE: Monday.

22 JUDGE MILLS: Monday? Okay. We'll do briefs  
23 Monday, the 5th. And we will arrange to get the transcript  
24 expedited. Anything else we need to take up while we're on  
25 the record?

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Okay. Seeing nothing, we're off the record.  
WHEREUPON, the hearing was adjourned.

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