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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

December 8, 1997
Jefferson City, Missouri
Volume 2

In the Matter of Missouri Public)
Service, a Division of UtiliCorp)
United, Inc.'s Tariff Designed to)
Increase Rates for Electric Service) Case No. ER-97-394
to Customers in the Missouri)
Service Area of the Company.)

and

In the Matter of the Filing of)
Tariff Sheets by Missouri Public)
Service, a Division of UtiliCorp)
United, Inc., Relating to Real-Time) Case No. ET-98-103
Pricing, Flexible Rates/Special)
Contract, Line Extension Policy and)
Energy Audit Program.)

and

The Staff of the Missouri Public)
Service Commission,)
Complainant,)
v.) Case No. EC-98-126
UtiliCorp United, Inc., d/b/a)
Missouri Public Service,)
Respondent.)

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JOSEPH A. DERQUE, III, Presiding,
REGULATORY LAW JUDGE.
SHEILA LUMPE, Chairperson,
HAROLD CRUMPTON,
M. DIANNE DRAINER,
CONNIE MURRAY,
COMMISSIONERS.

REPORTED BY:

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P R O C E E D I N G S

JUDGE DERQUE: We're on the record in the matter of Case No. ER-97-394, EC-98-126 and ET-98-103, those being, 98-126 Staff complaint against UtiliCorp United, 97-394 being a rate filing for UtiliCorp United, and ET-98-103 being a proposed tariff filing of UtiliCorp United, all three cases having been consolidated by the Commission.

Has everybody given the court reporter a Written Entry of Appearance?

Okay. Representing UtiliCorp is Mr. Swearengen; is that correct?

MR. SWEARENGEN: That's correct. Excuse me. Also Mr. Cooper and Ms. Egbarts.

JUDGE DERQUE: Periodically?

MR. SWEARENGEN: Periodically.

JUDGE DERQUE: Representing the Staff, Mr. Woodsmall.

MR. WOODSMALL: Myself, Steven Dottheim, Roger Steiner, Tim Schwarz and Steve Gunn periodically.

JUDGE DERQUE: Are you going to make opening statement for the Staff?

MR. WOODSMALL: I will.

JUDGE DERQUE: The Office of the Public

1 Counsel, Mr. Mills.
2 MR. MILLS: That's correct.
3 JUDGE DERQUE: For the Sedalia Industrial
4 Energy Users, Mr. Brownlee.
5 MR. BROWNLEE: Yes.
6 JUDGE DERQUE: For the IBEW, Mr. Keevil.
7 MR. KEEVIL: Yes.
8 JUDGE DERQUE: And for Jackson County,
9 Mr. Finnegan.
10 MR. FINNEGAN: That's correct.
11 JUDGE DERQUE: Is there anybody I left out?
12 Mr. Fischer?
13 MR. FISCHER: For Kansas City Power & Light.
14 JUDGE DERQUE: Okay.
15 MR. COMLEY: Mark Comley for the City of
16 Kansas City.
17 MR. NIEHOFF: Bill Niehoff, Union Electric
18 Company.
19 JUDGE DERQUE: Do any of you intend to
20 cross-examine somewhere in this proceeding? You don't
21 have to. I'm not asking you to waive cross. I'm
22 just --
23 MR. COMLEY: I anticipate there may be one
24 witness we'll cross-examine, but it's not necessarily
25 etched in stone.

1 JUDGE DERQUE: Mr. Fischer?

2 MR. FISCHER: Your Honor, I think we're

3 going to want to be excused after today's proceeding.

4 JUDGE DERQUE: Okay. I will do that. Don't

5 let me forget about you.

6 MR. NIEHOFF: And I echo Mr. Fischer. It's

7 unlikely we'll cross-examine and would ask to be

8 excused after today's proceeding.

9 JUDGE DERQUE: When and if you wish to be

10 excused, please let me know. And it would be helpful

11 if you got up on this side of the rail if you want

12 something so I can see you.

13 Yes, Mr. Finnegan?

14 MR. FINNEGAN: Jackson County would like to

15 echo those sentiments also. We will be in and out of

16 the hearing intermittently, budgetary reasons

17 basically and concerns there, and actually I'll be

18 asking to leave after the oral argument today since

19 Mr. Woodsmall and I both have a little to do in the

20 Court of Appeals tomorrow.

21 JUDGE DERQUE: Okay. That sounds like fun.

22 MR. KEEVIL: While we're doing this, I'd

23 like to echo the first part of what Mr. Finnegan said.

24 I'll probably be here some days and not here other

25 days.

1 JUDGE DERQUE: Okay.

2 MR. BROWNLEE: Same for me, your Honor.

3 MR. SWEARENGEN: I think if I have to stay

4 the whole time --

5 (Laughter.)

6 MR. BROWNLEE: Mr. Swearengen would like to

7 leave.

8 MR. WOODSMALL: Your Honor, I would note

9 that I received a call from Rob Hack who represents

10 Missouri -- I'm sorry.

11 JUDGE DERQUE: I'm going to do that right

12 now. That's okay. I was going to do it right now.

13 On my voice mail I received a call from Mr. Hack

14 representing Missouri Gas Energy who asked to be

15 excused. What he said on my voice mail was excused

16 from opening statements. That, in my opinion, is not

17 a waiver of cross.

18 MR. WOODSMALL: He has indicated to me, and

19 I believe it's indicated in the Hearing Memorandum,

20 that Missouri Gas Energy is waiving cross on all

21 issues except for the line extension issue, which I

22 believe comes up a week from Thursday or a week from

23 Friday. But all other issues he has informed me that

24 they are waiving cross on.

25 JUDGE DERQUE: Okay. I will certainly

1 excuse Mr. Hack if he wants to be. Is there any
2 objection to that?

3 (No response.)

4 JUDGE DERQUE: Seeing none, Missouri Gas
5 Energy is excused.

6 In the -- several housekeeping chores. In
7 the Hearing Memorandum, the unions were referred to as
8 the Union. Since we have a company in this case
9 called Union Electric, I would ask -- and it was
10 really confusing to read. I would ask you to refer to
11 the unions as the IBEW or the locals, whichever you
12 prefer. You have some objection to that, Mr. Keevil?

13 MR. KEEVIL: No. That's fine.

14 JUDGE DERQUE: And that's just to prevent
15 confusion.

16 Also, because there are corporate allocation
17 issues and several other issues in this case that
18 involve the differentiation between UtiliCorp United
19 and Missouri Public Service, I would ask counsel that
20 you please advise your witnesses to be specific so
21 that there is no confusion on the record as to who
22 we're talking about.

23 I've done one of these before involving
24 multiple companies, and we got -- I got a lot of we,
25 they, us, and that's really confusing.

1 Are there any pending motions? I don't
2 think there are, but I inherited this case, and I'm
3 not entirely certain.

4 MR. SWEARENGEN: I'm not aware of any.

5 JUDGE DERQUE: Are there any agreed-upon
6 issues which need to be reflected in the Report and
7 Order?

8 MR. WOODSMALL: The only thing I would
9 mention, and I clarify here that it doesn't need to be
10 reflected in the Report and Order but will be
11 reflected in the tariffs that are filed from this
12 case, there is an agreement regarding interest on
13 customer deposits to be paid.

14 That was an issue between Staff and Public
15 Counsel, and we have agreed to reflect in MoPub's
16 tariffs whatever the decision is of the Commission in
17 the recent Associated Natural Gas case.

18 So while that doesn't need to be reflected
19 in the Report and Order, it will be contained within
20 the Company's tariffs.

21 JUDGE DERQUE: Okay. That doesn't -- that
22 doesn't trouble me. Mr. Swearengen?

23 MR. SWEARENGEN: I think that's fine. If I
24 understand what he's saying, whatever the interest
25 rate that is determined in the ANG case, that will be

1 the interest rate here, and we will get the revenues
2 associated with that and be permitted to file tariffs
3 designed to recover that revenue; is that correct?

4 MR. WOODSMALL: Right.

5 JUDGE DERQUE: Again, does any party want me
6 to reflect that in the Report and Order when it's
7 written?

8 MR. SWEARENGEN: Well, I think it probably
9 would need to be because the Reconciliation right now,
10 which is the starting point, does not reflect those
11 dollars.

12 JUDGE DERQUE: Why don't you file an agreed
13 upon --

14 MR. WOODSMALL: We'll put something
15 together.

16 JUDGE DERQUE: Yeah. A request to include
17 that in the -- typically what I do when I write a
18 Report and Order is I put stipulated issues and then I
19 put whatever was stipulated needs to be reflected in
20 the Report and Order.

21 If this needs to be reflected, and I don't
22 have any objection to that, please file a request to
23 reflect this statement in the Report and Order.

24 MR. WOODSMALL: I would note, too, there is
25 a second issue that was brought up in, it was either

1 in the direct or rebuttal of Public Counsel, and that
2 dealt with the low income weatherization program.

3 The parties have all agreed to that in an
4 amount of \$100,000. While I don't know if that is
5 reflected in the Reconciliation at this time, we will
6 reflect that in the ultimate scenario put out, and we
7 will include that in any document in the agreed-upon
8 issues. Mr. Mills may be able to clarify more. It
9 was a Public Counsel issue.

10 JUDGE DERQUE: Mr. Mills, do you want --
11 does the Office of the Public Counsel want me to
12 reflect that in the stipulated issues or simply in the
13 Reconciliation?

14 MR. MILLS: Actually, I think it probably
15 needs to be in stipulated issues as long as there's a
16 revenue requirement impact.

17 JUDGE DERQUE: Maybe you ought to include
18 that in the request.

19 MR. MILLS: Right.

20 JUDGE DERQUE: And certainly it doesn't need
21 to be fancy. Just tell me what needs to be written in
22 there.

23 MR. MILLS: Okay.

24 JUDGE DERQUE: Mr. Swearengen, does
25 UtiliCorp have any objection to that?

1 MR. SWEARENGEN: No objection, your Honor.

2 JUDGE DERQUE: Also on my e-mail, Mr. Duffy
3 representing Empire District Electric and St. Joe
4 Light and Power asked also to be excused. Is there
5 any objection to that?

6 (No response.)

7 JUDGE DERQUE: I also need to state for the
8 record that Mr. Duffy is in the firm of Brydon,
9 Swearengen & England along, of course, with
10 Mr. Swearengen representing UtiliCorp.

11 I need to note for the record that if there
12 is a possible conflict, I have advised Mr. Swearengen
13 of that fact, and that's up to the discretion of
14 Brydon & Swearengen as to how to treat that. I don't
15 for the record note any conflict on the -- in the
16 testimony or Hearing Memorandum that's been submitted
17 to this point.

18 Is there anything else I need to deal with
19 before we begin opening statements?

20 MR. WOODSMALL: I don't know how you want to
21 handle possibly prefiling.

22 JUDGE DERQUE: I'm going to get to it.

23 MR. WOODSMALL: Okay. I'm reading your
24 mind.

25 MR. KEEVIL: What order are you going to

1 take opening?

2 JUDGE DERQUE: That's what I was going to
3 deal with right now.

4 MR. WOODSMALL: I was going to mention the
5 premarking of any exhibits, Hearing Memorandum or
6 anything.

7 JUDGE DERQUE: On the first witness, we'll
8 mark the Hearing Memorandum No. 1 and proceed from
9 there.

10 Opening statements, the Staff has requested
11 that they proceed first with opening statements
12 because they filed the original complaint which
13 initiated these three consolidated cases and a couple
14 of others. Mr. Swearengen, is there some objection to
15 that?

16 MR. SWEARENGEN: Yes. I think we really
17 have the ultimate burden here, whether it's considered
18 to be a tariff filing which we initiated or whether
19 we're defending the complaint. I think the Company
20 ought to be entitled to open.

21 MR. WOODSMALL: Your Honor, I would note
22 that the Staff did file a complaint that started these
23 slew of cases and, in fact, has a second complaint
24 pending now which is being consolidated.

25 In order to remove any concern about burden

1 of proof, Staff has accepted the burden of proof on
2 every issue and has been willing to put up its
3 witnesses first on every issue, except where witness
4 availability problems have dictated otherwise.

5 Given Staff acceptance of the burden of
6 proof, I think it is appropriate that Staff does its
7 opening statement first.

8 JUDGE DERQUE: Mr. Mills?

9 MR. MILLS: Given the fact that the Staff
10 has taken a position of the moving party, it's
11 traditionally the moving party in a case that is
12 allowed to make a first opening statement. So I would
13 support the Staff's position.

14 JUDGE DERQUE: Intervenors have a position?

15 (No response.)

16 JUDGE DERQUE: I think since the Staff, out
17 of these three consolidated cases, filed the original
18 case and on that filing has the burden of going
19 forward with the evidence, and since their witnesses
20 in the Hearing Memorandum are first to take the stand,
21 I'm going to let the Staff proceed first, UtiliCorp
22 second, Office of the Public Counsel third,
23 Mr. Brownlee, Sedalia Industrial Energy Users fourth,
24 the IBEW, Jackson County.

25 Does Kansas City Power & Light have an

1 opening statement?

2 MR. FISCHER: I will waive that on the
3 record.

4 JUDGE DERQUE: Thank you, Mr. Fischer.
5 Mr. Comley, City of Kansas City?

6 MR. COMLEY: I'll be waiving it on the
7 record, at the same time joining others who have
8 requested leave to be excused from the hearing from
9 time to time.

10 JUDGE DERQUE: That's fine. I have no
11 objection. Does anybody have any objection?

12 (No response.)

13 JUDGE DERQUE: City of Kansas City may come
14 and go as it pleases.

15 MR. COMLEY: Thank you.

16 JUDGE DERQUE: And Union Electric,
17 Mr. Niehoff?

18 MR. NIEHOFF: We'll be waiving opening
19 statement.

20 JUDGE DERQUE: Did I leave anybody out?
21 Okay.

22 MR. SWEARENGEN: Could I just ask a
23 clarifying question, your Honor?

24 JUDGE DERQUE: Yes.

25 MR. SWEARENGEN: Do I understand, then, that

1 it's the Commission's position that the Company, MPS,
2 does not have the burden of proof with respect to
3 either of its filings?

4 JUDGE DERQUE: I don't believe that's what
5 the rules in the statute say, Mr. Swearengen. No.
6 No. I was just making a judgment as to who should
7 make their opening statement first and nothing more.

8 MR. SWEARENGEN: Okay.

9 JUDGE DERQUE: I wouldn't imply anything
10 else from that.

11 MR. SWEARENGEN: Thank you.

12 JUDGE DERQUE: Is there anything else I need
13 to deal with before opening statements? We'll go off
14 the record.

15 (Discussion off the record.)

16 JUDGE DERQUE: On the record. Yes, sir?

17 MR. SWEARENGEN: Are we on the record?

18 JUDGE DERQUE: Yes, sir.

19 MR. SWEARENGEN: Before we begin opening
20 arguments, I would ask you to perhaps reconsider the
21 ruling that was made previously about what party goes
22 first in presenting evidence and in making argument.

23 I would call to the Commission's attention
24 that really both of the cases, both of the MPS
25 initiated cases which are consolidated today were

1 filed prior to the Staff's complaint. The rate case,
2 ER-97-394, was filed in March of 1997. The ET case
3 was filed on August 18, 1997. And the Staff
4 complaint, which is actually the subject of this
5 proceeding, EC-98-126, was not filed until
6 September 16th, 1997.

7 So under the theory that whoever filed first
8 is the moving party and has the burden of proof,
9 certainly with respect to the two cases that the
10 Company initiated, we ought to be entitled to proceed.
11 So I would ask you to reconsider that. Thank you.

12 JUDGE DERQUE: Well --

13 MR. WOODSMALL: Your Honor, the only
14 clarification I would note is, when I referred to the
15 Staff having initiated these cases, Staff filed its
16 first complaint March 3rd of 1997, well before the
17 Company filed any of its cases. So that was what
18 started these slew of cases.

19 I would agree that, of the consolidated
20 cases, the rate case was the first one filed.

21 MR. SWEARENGEN: And, of course, I would
22 disagree that that's what started our filing. I think
23 the record will show that that's not the case.

24 JUDGE DERQUE: Let's not be confused. When
25 I said the ruling is that the Staff will make their

1 opening statement first, this is not a ruling on the
2 evidence and it's not a ruling on the law. It's
3 simply a decision made. It's a housekeeping decision.

4 Do you think, are you being denied due
5 process, Mr. Swearengen?

6 MR. SWEARENGEN: I'm not saying that at all.
7 I'm just saying I think as the moving party I ought to
8 be entitled to proceed first.

9 JUDGE DERQUE: Mr. Woodsmall, do you find
10 this to be a due process issue of some sort?

11 MR. WOODSMALL: No. Well, not a matter of
12 due process. It's a matter of when this case
13 ultimately goes to court, I'm concerned that the
14 Company may claim that Staff hasn't met its burden of
15 proof.

16 And in an effort to avoid that, Staff in a
17 Hearing Memorandum signed by the Company put up all of
18 its witnesses first except where witness availability
19 dictated otherwise.

20 Similarly, Staff takes on the responsibility
21 as the moving party in opening statements and should
22 be allowed to go first.

23 MR. SWEARENGEN: Well, now, I would say, of
24 course, with respect to the cases that we filed, we're
25 the moving party and we have the burden of proof.

1 With respect to the proposed rate reduction, obviously
2 they have the burden of proof.

3 I think the ultimate outcome here is going
4 to be a determination as to what the Company's revenue
5 requirement is based on the evidence.

6 So I've never been in a rate case before
7 where the Company wasn't entitled the opportunity to
8 proceed to put its witnesses on first. We have that
9 burden of proof, and I think we ought to be allowed to
10 go forward.

11 I think perhaps what confused us earlier was
12 Mr. Woodsmall's reference to a complaint case which
13 was filed previously, but that case was dismissed by
14 order of the Commission.

15 JUDGE DERQUE: Well, I think -- yeah. I
16 think we need to confine this case to the three
17 consolidated cases. I will say that.

18 MR. MILLS: Can I add something just
19 briefly?

20 JUDGE DERQUE: Sure.

21 MR. MILLS: To the extent that we're arguing
22 about who goes first in opening statements, I don't
23 think there's any due process. I don't think it's
24 really that big of a deal.

25 But to the extent we're arguing about who

1 puts their witnesses on first, I think that's a
2 question that should have been argued long before we
3 signed and submitted the Hearing Memo. I think
4 they're set out and everybody agreed to them.

5 I think it's a little disconcerting that
6 we're questioning that this morning as we're getting
7 ready to start opening statements and cross-examine
8 witnesses.

9 JUDGE DERQUE: I do, too, Mr. Mills. In the
10 Hearing Memorandum the Staff witnesses were on first,
11 and, therefore, the Staff's going to make its opening
12 statement first right now, Mr. Woodsmall.

13 MR. WOODSMALL: Thank you, your Honor, and
14 good morning, Commissioners. I appreciate you being
15 here on this snowy morning.

16 On March 3rd, 1997 Staff filed a complaint
17 documenting MoPub overearnings in the amount of \$23
18 million. Prior to filing the Staff's testimony in
19 that case, however, MoPub hurriedly filed its present
20 case. MoPub proudly trumpeted, quote, that this
21 filing -- that its filing presents the next step in
22 MoPub's movement towards a competitive environment,
23 unquote.

24 Today, while that competitive environment
25 looms ahead, the Company's competitive filing has

1 already been whittled down by over \$10 million.

2 Meanwhile, Staff, while updating its case to
3 an entirely new test year, continues to document
4 overearnings in excess of \$26 million. When one
5 analyzes the remaining issues in this case, it becomes
6 apparent that competition was merely a guise for
7 MoPub's unsupportable rate increase.

8 In actuality, Company's case is not about
9 competition at all. Rather, their case represents an
10 attempt to extract the last possible dollar from its
11 captive ratepayers while still operating under the
12 protections of regulation. Staff has come to refer to
13 this company's strategy as the last fling of the
14 monopolist.

15 As you look at the Reconciliation, the
16 Commission may notice that over 80 percent of the
17 dollars remaining in the case between Staff and
18 Company is tied up in four specific issues: First,
19 depreciation; second, rate of return/capital
20 structure; third, corporate allocations; and fourth,
21 the accelerated amortization of regulatory assets.

22 A glance at the issues in the Hearing
23 Memorandum clearly indicates that Company's positions
24 are in no way tied to the impending competitive
25 environment. This fact is best seen when you realize

1 that the Company's positions have been repeatedly
2 presented to the Commission over the last 15 years by
3 numerous companies in numerous industries facing
4 numerous differing levels of competition.

5 Given the magnitude of these dollars, I will
6 only be discussing these four revenue requirement
7 issues.

8 The largest single dollar issue in this case
9 is depreciation. Logic dictates that a monopolist
10 engaged in the last fling with regulation would
11 attempt to increase depreciation as much as possible,
12 thereby decreasing the book value of its assets and
13 the depreciation expense it must book when competition
14 ultimately arrives. In this way, the Company is
15 better able to eventually compete.

16 Not surprisingly, this is exactly what MoPub
17 has done in this case. Using a seemingly endless bag
18 of depreciation tricks, MoPub, under a guise of
19 competition, has asked this Commission to approve an
20 unprecedented 50 percent increase in depreciation.

21 A mere seven years ago MoPub trotted out
22 several of these same depreciation tricks in Case
23 No. ER-90-101. Included in these tricks were terminal
24 net salvage, interim future additions and remaining
25 life. Across the board the Commission rejected every

1 one of these depreciation tricks.

2 Similarly, MoPub proposes in this case to
3 calculate depreciation based upon the equal life group
4 method. Unfortunately, the Commission did not have an
5 opportunity to address that issue in the case seven
6 years ago. Instead, MoPub dropped its request prior
7 to going to hearing in that case.

8 The final major depreciation issue involves
9 the life spans underlying the production units. In
10 its effort to increase depreciation expense, MoPub has
11 utilized retirement dates that are well in advance of
12 the dates these units will actually be retired.

13 Amazingly, in its -- for instance, the
14 Company has estimated retirement dates for some units
15 as early as next year. In its integrated resource
16 plan, the Company has projected that for planning
17 purposes these units will all be available for
18 operation through the year 2013.

19 Further, the Company in the case of the
20 Jeffrey Energy Center estimates a retirement date a
21 full two years before this current coal contract even
22 expires.

23 Suffice it to say, the Staff asks the
24 Commission to peer through these depreciation tricks
25 and approve Staff's sets of depreciation rates.

1 The next issue is rate of return/capital
2 structure. While all the parties in this case have
3 utilized the DCF method of calculating return on
4 equity, the Company's calculation is artificially
5 inflated through at least nine separate arbitrary
6 increases in the inputs and results of the DCF
7 calculation, several of these allegedly resulting from
8 MoPub's increased riskiness in the competitive
9 environment.

10 Competitive environment aside, the vast
11 majority of these arbitrary adjustments have been
12 rejected by this Commission as well as numerous other
13 commissions regulating MoPub, or regulating UtiliCorp.
14 Excuse me. In fact, the vast majority of these
15 adjustments have been rejected by MoPub's own rate of
16 return witness in previous cases.

17 Similarly in regards to capital structure,
18 the Company takes a position that the Commission --
19 that competition -- similarly, in regard to capital
20 structure, the Company takes a position not related to
21 competition, that the Commission should utilize the
22 allocated capital structure assigned to MoPub.

23 As the Commission may recall from its
24 steadfast opposition to allocated capital structures
25 in FERC proceedings, a parent company often allocates

1 a capital structure to inflate the equity ratio of a
2 wholly owned subsidiary.

3 Although MoPub will undoubtedly point to the
4 Commission's decision on remand in MoPub's last rate
5 proceeding, the fact is this Commission has repeatedly
6 rejected use of the allocated capital structure.

7 Even in that last proceeding, which is still
8 pending after five years, the result is likely
9 dictated from the confusion inherent in the Staff and
10 Company's decision to enter into a non-unanimous
11 Stipulation.

12 The Staff accepts full responsibility for
13 the decision to sign that Stipulation and also accepts
14 full responsibility for the decision not to fully
15 brief the issues in that case.

16 Without question, the record in this case
17 will detail the deficiencies of the allocated capital
18 structure and will mandate the use of the consolidated
19 capital structure as requested by the Staff.

20 The third issue today, or in this hearing,
21 third major issue is the allocation of parent company
22 costs. This is another issue that the Commission
23 should be readily familiar with based upon the
24 positions it has taken in the recent FERC case,
25 Williams Natural Gas rate case.

1 While the issue consists of approximately
2 ten different subissues, the theme throughout these
3 issues is the same as that encountered by the
4 Commission in that Williams Natural Gas case.

5 UtiliCorp is overallocating costs to its
6 regulated subsidiaries while still under the
7 protections of regulation in an effort to subsidize
8 its unregulated subsidiaries. This can be best seen
9 by UtiliCorp's decision to allocate unprecedented
10 levels of marketing costs to MoPub during the test
11 year and the previous years.

12 As demonstrated in the direct testimony of
13 MoPub, the Company originally intended to try and seek
14 recovery of these marketing costs. However, obviously
15 recognizing that such costs are in no way regulated to
16 the provision of electric service in Missouri, the
17 Company has accepted the Staff's marketing adjustment.

18 Nevertheless, the mere fact that the Company
19 attempted to allocate these costs and seek recovery of
20 these costs should provide a serious taint over the
21 entire allocation structure utilized by UtiliCorp.

22 The final large issue in this case is the
23 amortization of regulatory assets. Although the
24 Company attempts to classify this issue as a
25 transition cost issue, the testimony has made it

1 abundantly clear that this issue is nothing more than
2 the Company attempting to piecemeal the issue of
3 stranded costs and seek recovery of those stranded
4 costs.

5 Obviously this issue is premature, and the
6 Commission should reject the Company's position until
7 the Commission's Electric Restructuring Task Force has
8 had an opportunity to finish its work and allow the
9 Commission to implement any decisions on a consistent
10 basis throughout the electric industry.

11 Those are the four revenue requirement
12 issues. The only other issue I'd like to mention for
13 the Commission is the MoPub's request for an incentive
14 plan. Staff has three primary concerns with MoPub's
15 request for an incentive plan.

16 First, the incentive plan has been called
17 numerous times as a cooperative effort between the
18 Company and the Staff as well as Public Counsel.
19 Based upon that cooperative effort, Staff and Public
20 Counsel would need to have discovery requests turned
21 around on a timely basis as well as a complete basis.

22 Given the motions and other testimony filed
23 in this case, it's clear that that cooperative effort
24 does not exist with MoPub.

25 The second source of concern is the

1 allocation scheme utilized at UtiliCorp. As I've told
2 you, UtiliCorp has allocated several -- or several
3 items of costs in unprecedented levels. Given those
4 concerns over the allocation process, Staff has
5 concerns about its ability to effectively implement an
6 incentive plan with the Company.

7 The third issue is the complexity of this
8 company. You may have noticed from the organizational
9 charts that this company is unprecedented in the level
10 of complexity at the corporate level. This complexity
11 is reflected through the number of Data Requests as
12 well as the allocations in this case.

13 Given the complexity of this company as well
14 as the continually changing organizational structure
15 of this company, Staff has serious concerns about an
16 incentive plan.

17 Once the Commission has accepted the Staff's
18 position on the four revenue requirement issues, it
19 becomes patently obvious that MoPub is due a
20 significant rate decrease. In fact, based upon the
21 four issues alone, MoPub would face a rate reduction
22 of over \$20 million. This represents an approximate
23 7 percent rate reduction.

24 Now, the Commission may be asking itself, as
25 it has in past reductions, how can we order such a

1 significant rate reduction? Fears may exist that
2 following such a rate reduction the Company will
3 immediately file for a rate increase.

4 Let me put those fears to rest right now.
5 Staff began auditing this company in March of '96.
6 During that time, Staff has looked at essentially
7 three different time periods for its analysis of MoPub
8 earning.

9 First Staff looked at calendar year 1995.
10 That audit revealed overearnings in an amount in
11 excess of \$23 million, and Staff filed a complaint
12 based upon that audit.

13 Then, in the context of the current
14 proceeding, Staff audited MoPub's earnings based upon
15 a calendar year of 1996. That audit revealed
16 overearnings of approximately \$28 million. Finally,
17 Staff updated its case and conducted a true-up audit
18 as requested by MoPub. Staff's case has not changed.

19 Staff can assure the Commission -- excuse
20 me.

21 Staff has analyzed in excruciating detail
22 MoPub's earnings over the last two and three-quarter
23 years. Staff can assure the Commission that MoPub's
24 earnings are significant and will continue absent a
25 Commission order reducing earnings in an amount

1 requested by the Staff.

2 Additionally, recognizing that this is a
3 complaint proceeding, Staff has been intentionally
4 conservative in its approach to numerous issues.
5 Where Commission precedent would have justified
6 complete disallowances of numerous cost items, Staff
7 has recommended conservative 50 percent disallowances
8 or no adjustment at all.

9 For instance, although there were severe
10 concerns regarding UtiliCorp's incentive compensation
11 plan, Staff has not recommended any adjustment.
12 Additionally, Staff has requested only a 50 percent
13 disallowance of MoPub's economic development and
14 community relations costs. Commission precedent would
15 dictate that all such costs be disallowed.

16 Also, the Staff has utilized conservative
17 life spans in its calculation of depreciation rates.
18 The evidence indicates that these units will continue
19 to operate well after the retirement dates built into
20 Staff's depreciation study.

21 Finally, Staff in its true-up audit did not
22 update for revenues received from off-system sales.
23 That mere fact allowed MoPub to earn an additional
24 \$1 million over the last three months.

25 The Commission can rest assured that the

1 Staff has been thorough in its audit, but due to the
2 conservatism inherent in that audit, a Commission
3 order adopting every Staff position will not result in
4 a legitimate rate increase filing by MoPub.

5 In conclusion, I would like to point out
6 that this hearing represents a long road, the end of a
7 long road for Staff. Obviously as an attorney I have
8 not been involved in the day-to-day aspects of this
9 proceeding as the numerous Staff witnesses have been.
10 Throughout this case I have marveled at their ability
11 to remain focused on the ultimate goal, this hearing
12 today.

13 For approximately -- for a period of
14 approximately two years, through endless discovery
15 problems, motions to compel and requests for discovery
16 moratoriums, these Staff witnesses have remained
17 focused on the job that the State pays them to do, a
18 job which is often in the eyes of the general public
19 thankless.

20 The Commission should not be swayed by
21 MoPub's repeated references to competition this and
22 competition that. The evidence reveals in abundant
23 detail that MoPub should have its rates cut
24 significantly.

25 I ask you to consider the evidence and

1 return a Report and Order reducing MoPub's electric
2 earnings by an amount in excess of \$25 million.

3 Thank you.

4 JUDGE DERQUE: Thank you, Mr. Woodsmall.
5 Mr. Swearengen for UtiliCorp and Missouri Public
6 Service?

7 MR. SWEARENGEN: Thank you, Judge Derque.
8 May it please the Commission? I'm Jim Swearengen
9 appearing on behalf of UtiliCorp United, Inc. and its
10 Missouri Public Service operating division.

11 Christine Egbarts and Dean Cooper are also
12 at the counsel table with me this morning, and they
13 will be representing MPS from time to time throughout
14 the next two weeks.

15 I think the Commission is aware that the
16 rate case portion of this proceeding was initiated by
17 a tariff filing and related application made by
18 UtiliCorp's Missouri Public Service operating division
19 on March 21 of 1997.

20 At that time, through its tariff filing, MPS
21 sought to increase its electric rates by approximately
22 \$24 million annually. And, in addition to those rate
23 schedules, the Company also filed an application at
24 that time to transfer its generating assets to a
25 wholly-owned subsidiary, which would be an exempt

1 wholesale generator, or EWG as it is referred to in
2 the industry.

3 And as I will mention in a few minutes, the
4 EWG portion of that filing has been placed in a
5 separate docket and is being processed by the
6 Commission in that docket. Also, as I will note, many
7 of the rate design concepts which we propose in
8 connection with our filing have been stricken from
9 this proceeding.

10 As a consequence, as Mr. Woodsmall's pointed
11 out, the remaining issues that we have to try in the
12 next two weeks have been narrowed somewhat, and
13 they're set out in the Hearing Memorandum which was
14 filed December 1, and the Reconciliation that was also
15 filed at that time sets out the value of those issues.

16 Before getting in and discussing with you
17 the issues which we will try over the next couple of
18 weeks, I think it may be helpful to just take a few
19 minutes and give you a brief description of UtiliCorp
20 and how it has transformed itself over the last 12
21 years or so.

22 In that regard I've got a handout. We also
23 have a chart, which we will set up on the easel there
24 that will give you some idea of how the Company has
25 evolved.

1 Prior to 1984 what is now UtiliCorp was
2 essentially a Missouri-based gas and electric utility
3 company serving western Missouri and the area around
4 Kansas City, and at that time it was known as the
5 Missouri Public Service Company.

6 Those gas and electric operations are now
7 operated through the Missouri Public Service operating
8 division subject to the Commission's jurisdiction.

9 And over the last four years, as this
10 operational map will show you, what was originally a
11 Missouri-based utility has been transformed into an
12 international energy company, and that transformation
13 began in 1984 with the acquisition of the Kansas
14 Public Service Company, a gas utility serving
15 Lawrence, Kansas.

16 Also in 1985, the Company changed its name
17 to UtiliCorp United, Inc., and it was at that time
18 that the Missouri properties came to be known as the
19 Missouri Public Service Operating Division.

20 Also in 1985 UtiliCorp acquired the People's
21 Natural Gas Company and through that acquisition
22 expanded its operations into four states: Colorado,
23 Nebraska, Minnesota and Iowa. They were already in
24 Kansas given the fact that they'd acquired the gas
25 company at Lawrence, Kansas.

1 Northern Minnesota Utilities was acquired in
2 1986, West Virginia acquired in 1987. West Cutney
3 Power, which is a Canadian subsidiary corporation, was
4 acquired in 1987, and it is located in British
5 Columbia.

6 UtiliCorp added Michigan Gas Utilities in
7 1989. West Virginia Gas was added in 1990. And also
8 in that year UtiliCorp acquired an equity interest in
9 Norland Pipeline, which is a gas transportation
10 company located in Great Britain.

11 Then in 1991 what is now known as West
12 Plains Energy was acquired. Those are electric
13 properties in western Kansas and in Colorado

14 In 1991 UtiliCorp acquired a 75 percent
15 interest in United Gas Company, which is a company
16 involving gas marketing in Great Britain. And in
17 1993, the New Zealand Electric Properties were
18 acquired.

19 Closer to home, in 1995 UtiliCorp acquired
20 some intrastate pipeline operations along the I-44
21 corridor. A 49.9 percent interest in United Energy,
22 which is the electric utility in Australia, was
23 accomplished in 1995.

24 In addition to these acquisitions,
25 UtiliCorp's wholly-owned subsidiary, Aquila, is

1 engaged in gathering and marketing natural gas.
2 Another subsidiary UtiliCorp group which formed in
3 1986 develops, owns and operates independent
4 generating projects around the country.

5 Then in 1995 UtiliCorp launched Energy One,
6 which is the electric industry's first national brand
7 name. The brand recognition concept promoted by
8 Energy One is based on the idea that the energy
9 commodity is becoming competitive and will be
10 distinguished from a marketing standpoint when
11 delivered in a reliable and cost-effective manner over
12 a wide geographic area.

13 In 1996, last year, UtiliCorp began the
14 process of restructuring the implementation of that
15 strategy and in June of this year formally entered
16 into a partnership to franchise the Energy One concept
17 to distributors throughout the United States.

18 I give you this brief background so that you
19 can see that for many years UtiliCorp has, in fact,
20 been on the forefront of change.

21 In the Company's 1985 Annual Report, Rick
22 Green stated: Our philosophy in managing UtiliCorp is
23 to plan aggressively and anticipate events rather than
24 letting them overtake us. And that is the strategy
25 which his company has filed for the past 14 years, and

1 the Commission has been an integral partner in this
2 strategy by approving acquisitions and related
3 financings and other undertakings when they have been
4 necessary, and we appreciate that.

5 Some early examples of the Commission's
6 assistance would involve the financing necessary to
7 acquire the Kansas Public Service properties in
8 Lawrence, Kansas, the financings necessary to acquire
9 the People's Natural Gas properties, and then the West
10 Cutney acquisition was itself a stock acquisition
11 which required Commission approval, and we were able
12 to obtain that in a timely fashion.

13 Now, while the Commission has been
14 supportive of UtiliCorp's strategy and structure over
15 the years, I think it's fair to say that the Staff has
16 come along only reluctantly and in some cases has
17 opposed UtiliCorp's efforts.

18 I can give you a couple of examples of the
19 Staff's opposition. Back in the 1990 rate case, the
20 Staff made what I think we would consider a direct
21 attack on UtiliCorp's corporate structure at that time
22 by seeking to exclude all of UtiliCorp's corporate
23 office costs from rate recovery, sought to eliminate
24 the entirety of those costs claiming they were
25 excessive, duplicative and unnecessary.

1 That issue was litigated to the Commission,
2 and the Commission found that the corporate costs were
3 not excessive and not duplicative. In fact, the
4 Commission found that, and I quote, unifying
5 management responsibilities at the UtiliCorp level has
6 resulted in significant savings.

7 The Staff also has a history of opposing
8 UtiliCorp's efforts to carry out its strategy through
9 expansion of its gas business in Missouri.

10 Beginning with what is referred to as the
11 Smithton/Otterville case back in 1993 through the
12 application to acquire the gas transmission line along
13 the I-44 corridor, efforts to expand gas service in
14 Rolla, Salem and Owensville, the Staff has been on the
15 other side opposing UtiliCorp. All those cases were
16 litigated to the Commission, and UtiliCorp prevailed
17 in each and every one.

18 Now, I'm pointing all this out not to
19 complain or to object, but simply to make the point
20 that, as seen in this light, the Staff's opposition to
21 UtiliCorp's March 1997 competitive filing is really
22 just a continuation of what has been the Staff's
23 historical practice for the most part.

24 The tone in this particular case, however,
25 with the personal attack on Rick Green and the

1 suggestion that since 1988 he has engaged in a
2 conspiracy to manage or hide earnings is a new twist,
3 although I will tell you that this charge was raised
4 by the Staff seven years ago in the 1990 case that I
5 referred to.

6 It came up at that time in the last round of
7 Staff testimony, Staff surrebuttal. So the Company
8 had no opportunity in that proceeding to respond
9 through written testimony. When Rick Green testified
10 in that case, the 1990 rate case, the Staff didn't ask
11 him any questions about that subject matter.

12 In the 1993 rate case, ER-93-37, I believe
13 was the citation, the Staff didn't repeat the charge
14 about manipulating earnings and again didn't ask Rick
15 Green any questions on the topic when he took the
16 witness stand.

17 So he's here today, and he's looking forward
18 to testifying and answering any questions that you
19 have on this or any other subject.

20 Turning back for a minute to UtiliCorp's
21 overall corporate strategy, I think it's fair to say
22 that the Company does not expect the Staff or
23 certainly the Commission for that matter to rubber
24 stamp its philosophy. We would agree that close
25 regulatory scrutiny of UtiliCorp undertakings is

1 certainly appropriate.

2 And along those lines, UtiliCorp is willing
3 to accept the fact that harsh criticisms are sometimes
4 made against those who attempt to be out in front on
5 the edge of change as UtiliCorp has been over the
6 years.

7 In UtiliCorp's 1990 Annual Report Rick Green
8 said: We must anticipate and react to changing
9 conditions. Our industry and the policymakers who
10 govern it must formulate strategies that are flexible
11 and adaptable.

12 And it's these fundamental beliefs held by
13 the Company that are the motivating factors behind
14 MPS's competitive filing which it made in March of
15 1997.

16 The idea of bringing to the Commission these
17 competitive concepts became a focal point in 1996 in
18 connection with the proposed merger between UtiliCorp
19 and Kansas City Power & Light Company.

20 Those two companies at that time decided to
21 simplify the merger case in their presentation to the
22 Commission and as a consequence did not incorporate
23 many of these concepts in the docket through which
24 they were seeking approval of the merger.

25 However, when the KCPL/UtiliCorp merger

1 folded in the early fall of 1996, UtiliCorp as a
2 company refocused quickly on what it wanted to do in
3 the area of competition.

4 Those plans jelled, and Rick Green advised
5 the Commission in a meeting here in Jefferson City on
6 October 17, 1996 in the context of discussions
7 concerning the McDonald's tariff that MPS, the
8 Missouri operating division would be making a
9 comprehensive filing to address competitive issues in
10 the first quarter of 1997. And that's what brings us
11 to the filing that we made in the first quarter of
12 1997.

13 I have one other handout to help describe
14 what took place at that time, and I think we have
15 another display.

16 What we have referred to throughout as the
17 competitive filing initially consisted of several key
18 elements. We made this filing in March of 1997, and
19 as you can see from the handout, the matters docketed
20 as ER-97-394 remain in the proceeding which is before
21 you today, and they cover issues such as the
22 transition costs that we're seeking to recover, and
23 arguably you could say that the depreciation and
24 perhaps the performance based regulation are also in
25 the category of competitive issues.

1 Also at that time we filed an application to
2 transfer generating units to the wholly-owned
3 subsidiary. That was docketed as EM-97-395. We
4 wanted to consolidate that case with this one and
5 process them together, but the Staff opposed that, and
6 so that case is on its own separate track.

7 The arrow pointing down with respect to the
8 rate design changes that we've proposed which include
9 unbundling of rates, eliminating the base seasonal
10 nature of the rate structure, eliminating several rate
11 classes, eliminating inter-class subsidies, green
12 power pricing, street and private lighting and social
13 policy surcharge, those items are all the subject of a
14 Staff Motion to Strike, and they have been severed
15 from this case.

16 It is the Company's intention to refile
17 those proposals in a separate docket sometime in 1998,
18 and we want to do that at a time when the Staff will
19 be accommodated and can devote its attention to that
20 so we can get those processed.

21 Finally, the area pointing out to the right,
22 ET-98-103, lists several other rate design concepts
23 which were initially stricken but now are back in this
24 case. So what you have in front of you for the next
25 two weeks will be the items under ER-97-394 and the

1 items under ET-98-103.

2 Let me briefly touch on the -- some of the
3 key issues that you'll be hearing over the next two
4 weeks. I'll lead off with what we refer to as the ESF
5 issue. ESF stands for enterprise support function
6 within UtiliCorp.

7 Basically, that is the UtiliCorp corporate
8 cost issue again. You will recall that earlier I
9 mentioned in the 1990 UtiliCorp rate case the Staff
10 sought to exclude from rate recovery all of
11 UtiliCorp's corporate office costs.

12 In that case the Company had identified
13 certain costs which it considered to be merger and
14 acquisition related or corporate development related
15 and had -- the Company did not seek recovery of those
16 costs at that time. And, in fact, the Commission then
17 granted UtiliCorp recovery of all of the other
18 corporate office costs other than the merger and
19 acquisition costs.

20 So having lost that issue back in 1990, the
21 Staff came back in the next case, the ER-93-37 case,
22 with a different approach which they have modified for
23 purposes of this case.

24 Rather than a wholesale elimination of all
25 of UtiliCorp's corporate office costs, the Staff now

1 proposes a percentage disallowance with respect to
2 each enterprise support function within UtiliCorp.

3 I can digress here for a second and tell you
4 that an ESF is a centralized UtiliCorp service
5 organization which provides services to more than one
6 unit and to one jurisdiction within UtiliCorp. An
7 example would include accounting, rates and
8 regulation, human resources and information
9 technology.

10 So the Staff was partially successful with
11 their approach in the last case, and they now seek to
12 increase the percentage disallowance here.

13 MPS believes that the proposed disallowances
14 are not supported by any evidence but are simply
15 arbitrary calculations designed to lower the revenue
16 requirement in this case.

17 Furthermore, we would point out that the
18 Staff adjustment on this issue ignores the fact that
19 UtiliCorp's real strategy over the years has, in fact,
20 provided benefits for customers, but the Company
21 historically has not sought recovery of the corporate
22 development costs which have brought about these
23 benefits.

24 So there's some benefits that are flowing to
25 the customer, but we're not seeking recovery of the

1 costs associated with those benefits.

2 The second issue I will note is what we have
3 called transition cost recovery. Others sometimes
4 refer to it as the regulatory asset issue. What this
5 boils down to is MPS is requesting recovery of amounts
6 which we have classified as regulatory assets, and we
7 would like this recovery to occur prior to the
8 establishment of a competitive market in Missouri.

9 As you'll recall from the testimony,
10 Missouri Public Service and UtiliCorp believe that
11 that competitive market will be here within the next
12 five years.

13 The amounts in question are amounts which
14 the Commission has already said the Company is
15 entitled to recover in past cases. All we're seeking
16 to do is recover them more quickly.

17 Mr. Woodsmall talked about depreciation.
18 That's an issue, and the Company is seeking the
19 authority to change its depreciation rates to reflect
20 the results of its depreciation study.

21 The Company is also seeking approval for the
22 use of an amortization accounting for certain of its
23 general plant asset categories. Such a process we
24 believe would simplify the property accounting
25 efforts.

1 The primary issues associated with the
2 depreciation study are the power plant retirement
3 dates, the use of equal life group versus average life
4 group depreciation procedure, and the use of the
5 remaining life technique versus the whole life
6 technique, and you'll hear testimony on those issues,
7 I believe, next week.

8 MPS is also requesting that the Commission
9 authorize it to operate under a performance-based
10 regulatory model which it has proposed. Similar
11 models have been approved by this Commission for use
12 by Union Electric Company and Kansas City Power &
13 Light Company.

14 Capital structure, cost of net return on
15 equity are all issues. Once again, the Company is
16 arguing that its divisional capital structure should
17 be utilized for purposes of setting rates in this
18 case.

19 We believe that the divisional capital
20 structure insulates the Company's customers from
21 UtiliCorp's other nonregulated activities, and we
22 believe it is an appropriate capital structure. It's
23 been accepted by several regulatory bodies to which
24 this company is subject, including the Missouri Public
25 Service Commission.

1 On the other hand, the corporate capital
2 structure, which is the capital structure that the
3 Staff is arguing for, we believe is inappropriate for
4 several reasons. I would note two of them. The
5 corporate capital structure contains over \$384 million
6 of foreign debt, which is more than 25 percent of the
7 corporation's entire debt, and this debt cannot be
8 used in the United States.

9 Also, the corporate capital structure
10 contains \$75 million of Aquila Southwest debt. Aquila
11 is a separate corporation with its own publicly traded
12 stock, and its debt can only be used for Aquila
13 purposes.

14 There are other reasons, and those will be
15 developed when that issue is tried later this week.

16 There's a cost of debt issue. We believe
17 that only the cost of long-term debt that is assigned
18 to MPS should be included in the calculation of cost
19 of debt. We also believe the cost of short-term or
20 international debt should not be included.

21 On return on equity, we believe that the
22 Company ought to be allowed to earn a return of
23 12.5 percent on its common equity in order to meet the
24 investor expectations and earn at a level consistent
25 with the earnings produced by comparable electric

1 utilities.

2 Other issues that you will hear evidence on
3 over the next two weeks include the appropriate level
4 of maintenance expense. There's a FAS 87 pensions
5 issue, a FAS 106 OPEBs issue. There's a weather
6 normalization issue. There's an issue relating to
7 off-system sales and the economic development rider
8 and various miscellaneous tariff matters.

9 In closing, I would like to tell the
10 Commission that Missouri Public Service and UtiliCorp
11 believe that it is important to have strong electric
12 service providers in place in Missouri when
13 competition arrives so that when competition does
14 come, it will produce the maximum benefits for the
15 public.

16 If Missouri Public Service, for example, is
17 not kept in a strong position, it will not be able to
18 compete effectively with these other companies when
19 they do arrive and force others to offer the lowest
20 prices possible.

21 We think there's a window of opportunity
22 here to move in this direction now by allowing MPS to
23 have the quicker amortization of the transition costs,
24 the regulatory assets that it has requested in this
25 case, and also if you would favorably consider its

1 other competitive issues, that would be a step in the
2 right direction.

3 Members of the Commission have in the past
4 called for utilities to come forward and put
5 competition to the test rather than just talking about
6 it. UtiliCorp has done that with its McDonald's
7 tariff filing, and in its March 1997 filing again took
8 the initiative to move forward in this area.

9 We believe that the foundation that this
10 Commission has started to lay in cases such as the
11 McDonald's tariff must be expanded through proceedings
12 such as this so that the public will be in a position
13 to realize the benefits of competition as soon as
14 possible.

15 Thank you very much for your attention.

16 JUDGE DERQUE: Thank you, Mr. Swearingen.

17 Mr. Mills?

18 MR. MILLS: Thank you. May it please the
19 Commission? My name is Lewis Mills. I'm appearing
20 this morning on behalf of the Public Counsel's Office.

21 The first issue that you're going to be
22 called on to decide not only in terms of the order in
23 which the evidence is presented in the hearing but
24 really in terms of the way that you should look at
25 this case is, can UtiliCorp take actions that are

1 detrimental to its currently captive ratepayers as
2 well as unfair to its potential competitors solely so
3 it can be in a better position when that competition
4 arrives?

5 I think if you agree with me that this is
6 the effect of many of UCU's proposals in this case, it
7 seems to me that you must decide to deny these
8 proposals.

9 Once you decide about these novel proposals
10 that UCU has made in the guise of getting ready for
11 competition, there becomes mostly fairly typical rate
12 case issues in this case.

13 These are issues in which the Staff, my
14 office and the Intervenors have identified areas where
15 the Company has included expenses where they should be
16 excluded, used unusual methods of calculation in order
17 to inflate and maximize expenses.

18 Of course a lot of the issues that are in
19 this case are both. They're issues that the Company
20 has proposed under the guise of competition but that
21 generally have the effect, not coincidentally, of
22 increasing revenue requirements.

23 For example, the Company has talked almost
24 exclusively in its opening statement and a lot in its
25 testimony about the way they've proposed a competitive

1 filing, but if you look at this chart, the thing that
2 you don't see on there is that there's an enormous
3 rate increase at stake. Nowhere on that chart will
4 you see rate increase as an issue. And I think that's
5 a major oversight to say the least.

6 There's a -- there's a huge difference in
7 this case between the revenue requirement that the
8 Staff is recommending and that the Company is
9 recommending, and not all of that is even remotely
10 related to getting ready for competition.

11 There's a lot of revenue requirement issues
12 that need to be decided in this case. For example,
13 look at the depreciation issues. The Company has
14 proposed some things that are novel at best and maybe
15 even outlandish.

16 Some of the proposals in the depreciation
17 area would allow the Company to recover costs much
18 more quickly than traditional regulation would allow.
19 Some of these proposals would allow the Company to
20 recover costs through depreciation that may never even
21 be incurred.

22 Another issue that's premised on the
23 Company's desire to get ready for competition that
24 also has the result of raising rates for currently
25 capital ratepayers is the amortization of regulatory

1 assets.

2 You'll be called on in this case in that
3 issue to decide whether the arrival of competition is
4 so eminent and the consequences of traditional
5 regulatory accounting are so dire that rates need to
6 be raised now in this case so that UCU will be able to
7 compete more effectively in the future.

8 I think the evidence on this issue and many
9 of the other issues will demonstrate that it should
10 not.

11 Another big policy issue -- and by the way,
12 I'll point out that I'm not going to address every
13 issue in this case in my opening statement as the
14 other two attorneys so far have done because there are
15 simply too many. Our positions on all the issues are
16 reflected in the Hearing Memorandum, and I won't go
17 through all of them this morning.

18 But the earnings sharing plan, which both
19 Mr. Swearngen and Mr. Woodsmall have discussed this
20 morning, is premised on the Company's desire to get
21 ready for competition. The Commission has in the past
22 approved a couple of earnings sharing plans on an
23 experimental basis, and I don't know if anyone has yet
24 decided whether or not those experiments are
25 successful or not.

1 The two that I'm thinking of are the
2 Southwestern Bell plan and the -- which has expired,
3 and the Union Electric plan which is ongoing
4 currently. I'm not aware of an earnings sharing plan
5 that KCPL is involved in.

6 Furthermore, in terms of earnings sharing
7 plans, I don't believe that earnings sharing plans in
8 Missouri have yet been subjected to critical judicial
9 review. In this case, Jackson County, one of the
10 Intervenors, has taken the position that such plans
11 are not legal in Missouri.

12 In any event, the evidence in this case will
13 show that Missouri Public Service is a poor choice to
14 be allowed to participate in an earnings sharing plan
15 for a variety of reasons.

16 As both of the other attorneys have said so
17 far, rate of return and capital structure are a big
18 issue in this case. Rate of return on equity is
19 always a big issue in rate cases, and this is no
20 exception.

21 However, capital structure is not as
22 commonly a major issue, and it certainly is in this
23 case. There are really two parts of the capital
24 structure in this case, and one is how recent of
25 capital structure should be used.

1 But the most important issue on the capital
2 structure is whether the fictional assigned capital
3 structure should be used or the UtiliCorp United
4 actual capital structure should be used for Missouri
5 Public Service.

6 I think the evidence will show that the most
7 recent actual capital structure is the most reflective
8 of MoPub's operations and the one that should be used
9 in this case.

10 There are a number of rate design issues as
11 well in this case. I'm not going to get into them in
12 my opening statement this morning. Our position on
13 those issues is reflected in the Hearing Memorandum.

14 I think in closing, it's important that you
15 know that we've gotten a bunch of letters from MoPub
16 customers as well as quite a few phone calls. Not one
17 of them, not one of these customers has said that
18 they're in favor of having their rates increased now
19 so that UtiliCorp can be a better competitor in the
20 future.

21 Thank you.

22 JUDGE DERQUE: Thank you, Mr. Mills.
23 Mr. Brownlee?

24 MR. BROWNLEE: Thank you, Judge Derque,
25 members of the Commission. I'm representing the

1 Sedalia Industrial Energy Users Association, which are
2 eight major large power service class customers in the
3 Sedalia area.

4 It's interesting to note that we've been
5 assigned an acronym, which is SIEUA, which is a
6 consonant and four vowels and I don't pronounce it.
7 So when you see reference to that, that's who I am.
8 You can practice on this. It doesn't come out right.

9 In any event, we have an interest
10 essentially in three different areas, and I'll briefly
11 try to cover them. One is in rate design. We believe
12 that a subclass under the large power service should
13 be set up which would be called network service
14 direct.

15 That's a customer class that requires very
16 little actual service from the company aside from just
17 taking direct power off of the line. We believe that
18 the rates, the cost of service would indicate that we
19 should receive a substantial rate reduction even under
20 the large power.

21 Secondly, we believe that real-time pricing
22 should be adopted. We believe that there should be
23 one part which is a markup over marginal costs across
24 all prices. It should be equally available to both
25 new and existing customers, and finally price quotes

1 should be available to all.

2 Third and of equal importance, we believe
3 that there should be under the competitive arena
4 flexible pricing tariffs and special contracts
5 available.

6 Our positions are set forth in more detail
7 in the Hearing Memo, and our supporting witness will
8 be a Don Johnstone who will be here tomorrow.

9 Thank you.

10 JUDGE DERQUE: Thank you, Mr. Brownlee.
11 Mr. Keevil for the IBEW?

12 MR. KEEVIL: Thank you, Judge Derque. May
13 it please the Commission?

14 As I believe you're all aware, my name is
15 Jeff Keevil, and as Judge Derque mentioned, I'm
16 representing the IBEW Local 814 in this case, who in
17 turn represents the bargaining unit employees of
18 Missouri Public Service.

19 And as you are undoubtedly by now aware,
20 throughout this case Missouri Public Service has
21 referred to this as their, quote, competitive filing,
22 and in their prefiled testimony they've stated their
23 support for a rapid restructuring of the electric
24 industry.

25 My client has seen firsthand the effect of

1 utility cost cutting in the name of competition, and
2 the evidence will show the safety and reliability
3 problems associated with that, safety not only of the
4 general public but of the employees who actually work
5 on systems themselves.

6 The evidence will also show that in order to
7 receive any cost benefit from this type of
8 restructuring, small users such as residential and
9 small commercial customers would have to either
10 aggregate their loads or take some sort of reduced
11 level of service like interruptible service.

12 And it's interesting to note that I believe
13 even Missouri Public Service agrees that in order to
14 receive some cost benefit, there will be some
15 customers who will be required to join together in
16 order to get that cost benefit.

17 Now, in their testimony Missouri Public
18 Service has pointed to other deregulated industries as
19 shining examples of what one can expect for the future
20 of the electric industry if deregulation occurs, and
21 among those that they point to are the airline
22 industry, which if you've ever tried to catch a flight
23 between two secondary markets at a reasonable price
24 you know what a fine example of deregulation the
25 airline industry has proven to be.

1 Natural gas, this Commission themselves is
2 aware of the problems that deregulation has caused
3 there with your own PGA process and the extremes to
4 which this Commission has had to go at FERC to attempt
5 to lessen the impacts of some of the FERC policies on
6 the small users in Missouri. Don't let that happen in
7 the electric industry, please.

8 Now, as you are aware, this Commission has
9 set up a task force to study the issues associated
10 with electric industry restructuring, and what we
11 would ask of you in this case is wait for your task
12 force report. Don't act prematurely here, because
13 once you get down too far on a slippery slope, you may
14 not be able to get back up if the report comes in at
15 odds with what Missouri Public Service has proposed in
16 this case.

17 Now, this Commission has previously
18 recognized that retail electric competition is
19 unlawful currently in the state of Missouri in the
20 Empire pilot open access service case. And therefore,
21 despite what Missouri Public Service would have you
22 believe, competition is not inevitable so long as a
23 change in the law is required.

24 You're also probably aware that the
25 legislature has a joint interim committee currently

1 studying the issue, and what or when -- what they will
2 do or when they will do it is really anybody's guess.
3 And at this time, again, action which Missouri Public
4 Service is asking you to take would be premature at
5 best, I believe.

6 In conclusion, and I'm going to make this
7 short, we are simply asking in this case that you
8 resist the invitation of Missouri Public Service to
9 proceed further down this deregulation restructuring
10 competition road until the task force and the
11 Legislature has completed their work on this matter
12 and so that you have more to work with and you know
13 the public policy decisions have already been made and
14 will not be made on a piecemeal basis for this one
15 company when there are statewide implications at issue
16 here.

17 Thank you very much.

18 JUDGE DERQUE: Thank you, Mr. Keevil. It's
19 my understanding that Mr. Fischer, Kansas City Power &
20 Light, are you going to waive?

21 MR. FISCHER: Kansas City Power & Light
22 would waive its opening statement at this time, and
23 note for the record we will be in and out during the
24 next two weeks. We would ask to be excused when we're
25 not here.

1 JUDGE DERQUE: Thank you, Mr. Fischer.

2 Mr. Comley for the City of Kansas City?

3 MR. COMLEY: I would repeat what Mr. Fischer
4 said. City of Kansas City waives its opening remarks
5 and would point out that we do intend to come in and
6 out of the hearing, and thank you for allowing us the
7 opportunity to do so.

8 JUDGE DERQUE: Thank you, Mr. Comley.
9 Mr. Niehoff for Union Electric?

10 MR. NIEHOFF: Yes. Union Electric will
11 waive its opening statements and, too, will be in and
12 out of the hearing and request permission or leave to
13 do so. Thank you.

14 JUDGE DERQUE: Thank you, Mr. Niehoff. I'm
15 sorry, Mr. Finnegan. I got off my list here.

16 MR. FINNEGAN: That's all right.

17 JUDGE DERQUE: Jeremiah Finnegan for Jackson
18 County.

19 MR. FINNEGAN: May it please the Commission?
20 It has been 25 years this month since I have so whole-
21 heartedly supported the Staff and the Public Service
22 Commission, and I know that -- I know that as a fact
23 because December of 1972 was my last month as General
24 Counsel to the Public Service Commission.

25 Since that time, I have -- and I just

1 recently went through the CD roms and West Law and
2 pulled my name up and noted that I'd been involved in
3 some 20 appeals in the Supreme Court and Court of
4 Appeals where the Public Service Commission was on the
5 other side, and most of those cases I'm sure the Staff
6 was on the other side.

7 However, in this case, we believe the Staff
8 has done a tremendous job and that, on behalf of the
9 citizens of Jackson County and Jackson County, we
10 thank the Staff for the two years of effort. We
11 really appreciate it.

12 As you go through the Hearing Memorandum,
13 you'll note that what you find following every issue
14 is Jackson County supports the Staff's position with
15 two exceptions.

16 One is with respect to incentive regulation
17 where not only do we support the Staff position but we
18 add the Public Service Commission law does not
19 authorize incentive regulation. And the Commission is
20 a creature of statute. I find no statutes that
21 authorize incentive regulation in the -- for electric,
22 gas or water companies.

23 The other issue where we diverge is on rate
24 of return. It's not that we don't support the Staff.
25 It's just that we think the Public Counsel's position

1 is better because they're offering a lower rate of
2 return than the Staff is. And we believe that when a
3 company files a frivolous rate case, that they should
4 get the lowest rate of return out there and their rate
5 case expense should be disallowed.

6 Since our interests are so ably protected by
7 the Staff and Public Counsel in this case, Jackson
8 County, too, will be an intermittent participant, not
9 because of lack of interest, but because of budgetary
10 constraints. We will save our money for future
11 battles and perhaps an appeal of this one on the
12 Staff's behalf if necessary. Hopefully it won't be,
13 though.

14 Thank you.

15 JUDGE DERQUE: Thank you, Mr. Finnegan. I'm
16 sorry for taking you out of order. I got off on my
17 score card here.

18 MR. FINNEGAN: That's quite all right.

19 JUDGE DERQUE: We are off the record.

20 (A recess was taken.)

21 JUDGE DERQUE: We're on the record.

22 Mr. Swearngen, would you like to call
23 Mr. Green, please.

24 MR. SWEARENGEN: Yes. Call Rick Green at
25 this time.

1 MR. WOODSMALL: Your Honor, did you want to
2 mark the Hearing Memo and the Reconciliation?

3 JUDGE DERQUE: I believe Mr. Swearengen's
4 going to offer that.

5 MR. WOODSMALL: I believe I am.

6 JUDGE DERQUE: Okay. That's fine.

7 MR. WOODSMALL: Did you want the
8 Reconciliation marked also?

9 JUDGE DERQUE: Hearing Memorandum and
10 Reconciliation will be No. 1.

11 MR. WOODSMALL: Both of them together?
12 They're separate documents.

13 JUDGE DERQUE: Okay. 1 and 2. That's fine.
14 Off the record.

15 (Discussion off the record.)

16 (EXHIBIT NOS. 1 THROUGH 5 WERE MARKED FOR
17 IDENTIFICATION.)

18 JUDGE DERQUE: We're on the record. I have
19 what is marked as Exhibit No. 1, the Hearing
20 Memorandum. Mr. Woodsmall?

21 MR. WOODSMALL: Yes.

22 JUDGE DERQUE: Do you want to offer the
23 Hearing Memorandum?

24 MR. WOODSMALL: Oh, yes. At this time I'd
25 offer Exhibit No. 1, the Hearing Memorandum and

1 Reconciliation into evidence.

2 JUDGE DERQUE: Is there any objection?

3 (No response.)

4 JUDGE DERQUE: They will be admitted.

5 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO

6 EVIDENCE.)

7 JUDGE DERQUE: Mr. Swearengen, I have what's

8 marked Exhibit No. 3, No. 4 and No. 5, the direct

9 testimony of Mr. Richard C. Green, the rebuttal

10 testimony of Mr. Green and the surrebuttal testimony

11 of Mr. Green.

12 MR. SWEARENGEN: That's correct.

13 JUDGE DERQUE: You may proceed. Let me

14 swear Mr. Green.

15 (Witness sworn.)

16 JUDGE DERQUE: Thank you, sir.

17 Mr. Swearengen.

18 MR. SWEARENGEN: Thank you.

19 RICHARD C. GREEN testified as follows:

20 DIRECT EXAMINATION BY MR. SWEARENGEN:

21 Q. Would you state your name for the record,

22 please.

23 A. Richard C. Green.

24 Q. And by whom are you employed and in what

25 capacity?

1 A. I'm employed by UtiliCorp United, and I am
2 chairman and CEO.

3 Q. Did you cause to be prepared for purposes of
4 this proceeding three pieces of testimony in question
5 and answer form?

6 A. Yes, I did.

7 Q. And do you have that testimony in front of
8 you this afternoon?

9 A. Yes, I do.

10 Q. And is it your understanding that your
11 direct testimony has been marked as Exhibit 3, your
12 rebuttal testimony as Exhibit 4, and your surrebuttal
13 testimony as Exhibit 5?

14 A. Yes.

15 Q. If I asked you the questions which are
16 contained in those three pieces of testimony, would
17 your answers this afternoon be substantially the same?

18 A. Yes, they would.

19 MR. SWEARENGEN: With that, your Honor, I
20 would offer into evidence Exhibits 3, 4 and 5 and
21 tender Mr. Green for cross-examination.

22 JUDGE DERQUE: Is there any objection to the
23 admission into evidence of Exhibits 3, 4 and 5, the
24 testimony of Mr. Richard C. Green?

25 (No response.)

1 JUDGE DERQUE: They will be admitted.
2 (EXHIBIT NOS. 3, 4 AND 5 WERE RECEIVED INTO
3 EVIDENCE.)

4 JUDGE DERQUE: Cross-examination,
5 Mr. Brownlee?

6 MR. BROWNLEE: I have no questions.

7 JUDGE DERQUE: IBEW, Mr. Keevil?

8 MR. KEEVIL: Yes, very briefly.

9 CROSS-EXAMINATION BY MR. KEEVIL:

10 Q. Good afternoon, Mr. Green.

11 A. Good afternoon.

12 Q. Mr. Green, it's my understanding that it is
13 your company's position concerning this move to retail
14 competition that some customers will have to join
15 together to take advantage of the lower priced
16 wholesale market; is that correct?

17 A. That is correct. When you start to move the
18 benefit of competition from the big customers to the
19 small customers, it makes more sense that they
20 aggregate, increase their load, and, therefore, can
21 achieve those benefits going forward.

22 Q. So in order for the small customers to
23 receive those benefits, they would have to aggregate
24 their loads?

25 A. At this point in time, that is the best we

1 can see in that, but we need to take it a step at a
2 time in opening up the markets.

3 The thing that's the real point here is to
4 try to get the benefits from just being exclusively
5 with big customers and starting to move down market to
6 smaller customers. And the more we can do that, the
7 more we can share the benefits with everybody and not
8 just a selected group.

9 Q. Certainly the small guys at present could
10 not receive benefits by themselves; they would have to
11 join together with some other customers that are
12 similarly situated, correct?

13 A. Well, right now, except for 15 states and --
14 there is no schedule for them to get any benefits.
15 Therefore, we can't be exact on what they'll have to
16 do or not do in order to get those benefits.

17 Q. Okay. Thank you. Now, in your direct
18 testimony, I believe it's been marked as Exhibit 3,
19 the bottom of page 7, I believe, yes, and continuing
20 over onto the top of page 8, you refer to three
21 specific surveys which you state, based on those
22 surveys, that customers are hungry for choice in their
23 electric supplier.

24 Have I accurately described your testimony
25 on those pages?

1 A. Yes. The vast majority do want a choice in
2 energy suppliers.

3 Q. Okay. Now, of those customers who were
4 surveyed in those three surveys there to which you
5 refer, those were residential customers or included
6 residential customers?

7 A. Certainly the one from Carlton says it
8 was -- it surveyed 1,200 households. So that would be
9 residential customers there.

10 Q. Okay. Now, were those customers told that
11 in order to receive the benefits of this choice
12 environment they would have to aggregate with other
13 customers?

14 A. I don't remember the survey specifically,
15 but I doubt it would have gone into that kind of
16 conjecture.

17 Q. Okay. Well, I have the survey here if you'd
18 like to check. Are you willing to accept, subject to
19 check, that they were not told that in those
20 questions?

21 A. That would be fine.

22 Q. Okay. So these customers here who said they
23 would be -- are these the -- yes. I believe these are
24 the ones that said they would switch for savings of
25 10 percent. 78 percent of them, according to your

1 testimony, said they would be likely to switch for a
2 78 -- or a 10 percent savings.

3 They weren't taking into consideration the
4 fact that they would have to aggregate with who knows
5 how many other residential users to achieve that
6 10 percent savings, correct?

7 A. No. It was a very honest, genuine statement
8 that they wanted choice, and I think it's very open in
9 how they achieve that choice. The big issue here is
10 to be able to have choice and the kind of savings that
11 perhaps would come from that.

12 Q. But I think, and correct me if I'm wrong,
13 you stated a moment ago that without aggregating they
14 wouldn't really have savings. The small guys I'm
15 talking about.

16 A. Well, that presumes a single scenario that's
17 in aggregation. There are other technological
18 developments, other things that could happen to, you
19 know, change that situation. That's why it's so
20 important to start to walk down the road and see how
21 we can deliver that benefits and give it to all the
22 customers instead of just the big customers.

23 Q. If I could direct you to page -- I'm looking
24 at your surrebuttal testimony.

25 JUDGE DERQUE: Excuse me. Are you going to

1 use the survey any longer?

2 MR. KEEVIL: I hadn't planned to use the
3 specific survey itself.

4 JUDGE DERQUE: That's fine. If you use it
5 again, rather than having it subject to check, just
6 have him identify it, if he can, and let's do it that
7 way.

8 BY MR. KEEVIL:

9 Q. In your surrebuttal testimony, Mr. Green,
10 which I believe has been marked Exhibit 5, page 3,
11 line 4, you state that basically because customers
12 will be able to exercise choice and in effect control
13 their own destiny. Again, you're referring to
14 benefits that you believe will come from competition.

15 Again, I mean, this -- the residential and
16 small commercial customers will not be able to
17 exercise that choice or control their own destiny
18 without aggregating with like customers, correct?

19 A. Well, again, I think that is a single
20 scenario right now, but, you know, households
21 aggregate all the time to get benefits. Look at
22 neighborhood associations, political districts,
23 et cetera. I mean, the idea to band together to be
24 able to achieve a benefit for a group is not an
25 unusual type of approach.

1 But again, I think this early on in moving
2 benefits to other markets, it's unfair to put a
3 specific scenario out there as being the absolute.

4 Q. All right. If I could turn you or have you
5 turn over to page 11 of your surrebuttal testimony,
6 you're referring to accidents in the 12 months ended
7 August 1997, safety incidents.

8 Of those incidents you refer to there at the
9 top of page 11, how many of those were lost time
10 accidents?

11 A. I cannot tell you that.

12 Q. Okay. On page 10, if you turn back one
13 page, of your surrebuttal, you refer to a Staff
14 letter. Who was the Staff member that wrote that
15 letter?

16 A. We were just going to get that letter during
17 lunch, and I don't recall the name right now, but it
18 is well known among my associates.

19 Q. But you don't recall off the top of your
20 head?

21 A. No, I don't.

22 MR. KEEVIL: Okay. I think that's all the
23 questions I have.

24 JUDGE DERQUE: Thank you, Mr. Keevil. Is
25 Mr. Finnegan here?

1 MR. WOODSMALL: No. He left.

2 JUDGE DERQUE: Okay. Mr. Mills?

3 MR. MILLS: Thank you.

4 CROSS-EXAMINATION BY MR. MILLS:

5 Q. I have a few questions, and I'm going to ask
6 some questions about some highly confidential stuff.
7 I think we're going to be able to do it so that we
8 don't have to get any highly confidential information
9 on the record, but we may. I just want to caution you
10 that some of the documents I'm going to be talking
11 about will have highly confidential information in
12 them.

13 A. Okay.

14 Q. First let me ask --

15 JUDGE DERQUE: Excuse me, Mr. Mills. Is
16 there anything -- I have the direct, rebuttal and
17 surrebuttal of Mr. Green, Exhibits 3, 4 and 5, and I
18 don't see any confidential information in them.

19 MR. SWEARENGEN: That's correct. There
20 isn't.

21 MR. MILLS: That's right.

22 JUDGE DERQUE: Thank you. Excuse me,
23 Mr. Mills. Go ahead.

24 BY MR. MILLS:

25 Q. Mr. Green, to your knowledge, has your

1 company ever produced any documents that attempt to
2 quantify your potential stranded cost exposure?

3 A. I remember a graph. I don't remember
4 documents or any real studies.

5 Q. How do you define documents and how do you
6 define studies in your answer?

7 A. Well, a document or a study would be
8 something that's multi-paged. A graph would be just a
9 single illustration.

10 Q. So if it's only one page, it's not a
11 document?

12 A. In what I just spoke of, that's correct.

13 Q. Do you know of any one-page presentations
14 that attempt to quantify your potential stranded
15 costs?

16 A. Not that I've seen.

17 Q. So you don't know of any documents or one-
18 page presentations that offer any facts?

19 A. Well, that one page is what I referred to in
20 the sense I remember a graph some time ago that talked
21 about that and putting out possible scenarios,
22 understanding that it's somewhat difficult to
23 understand what that is since we don't have a forward
24 price curve, but starting to get an understanding of
25 what it would be depending on what price was out there

1 in the marketplace.

2 Q. Are the graphs that you're referring to, are
3 those the ones that have been introduced in various
4 people's testimony in this case or do you know?

5 A. I don't know that.

6 Q. Okay. Have you read the direct testimony of
7 Staff witness Oligschlaeger in this case?

8 A. I have not.

9 Q. Okay. Do you have a copy of it with you
10 there?

11 A. I do not.

12 MR. MILLS: May I approach the witness?

13 JUDGE DERQUE: Certainly.

14 BY MR. MILLS:

15 Q. I've got a copy here in a notebook. This is
16 his direct testimony that was filed in the case, and
17 attached to it as Schedule 2 is a multi-page document
18 that was provided to the Staff in response to one of
19 the Staff's Data Requests.

20 A. Okay.

21 Q. Here's the document, and the specific
22 portion that I want to refer you to is in
23 Mr. Oligschlaeger's direct testimony denominated as
24 Schedule 2-13, and the very first sentence on that
25 page, I don't believe that that particular sentence

1 would be highly confidential, but I don't want to read
2 it, but --

3 JUDGE DERQUE: Would you repeat the
4 schedule?

5 MR. MILLS: Schedule 2-13 to Mark
6 Oligschlaeger's direct testimony.

7 MR. SWEARENGEN: I don't think that
8 statement in and of itself is.

9 BY MR. MILLS:

10 Q. Can you read the highlighted portion that I
11 have on that page?

12 A. An analysis of the competitive position of
13 existing regulatory generation assets in Missouri,
14 Kansas and Colorado have been completed to assess the
15 level of stranded investment exposure for the Company.

16 Q. Thanks. Now, are you familiar with the
17 analysis referred to there?

18 A. No, I'm not.

19 Q. Do you know if, in fact, it ever was -- the
20 analysis ever was completed as that statement you just
21 read seems to indicate?

22 A. I just don't know. I haven't had an
23 analysis presented to me, mainly because it is
24 something that is very uncertain at this point in
25 time.

1 A recent example, we had thought earlier
2 that we would get into prices out there, maybe 2 1/2
3 and 3 percent. We've seen in our recent McDonald's
4 experiment and more recently than that the Associated
5 Grocers experiment where the price for that power to
6 those customers, the McDonald's had just been over 2
7 percent and the Associated one has been under --
8 cents, not percent -- has been under 2 cents.

9 So right there's an example of what I would
10 say the uncertainty of being able to predict the
11 forward pricing curve and therefore come up with some
12 indication of what kind of stranded costs we would
13 have.

14 Q. If, as you indicate in your last answer, the
15 price does turn out to be around 2 cents, wouldn't
16 stranded costs be something that should concern a
17 utility company?

18 A. There's no question about it. If it's 2
19 cents or somewhere below there, I would guess that we
20 have something in excess of \$100 million in stranded
21 costs.

22 And I think a lot of that goes to the
23 motivation behind our EWG filing, that we go ahead and
24 start to move toward competition in trying to really
25 protect the ratepayer from the volatilities of dealing

1 with a commodity in the marketplace and, therefore,
2 come back and deal with that contract, at the same
3 time flowing benefits back to them with lower power
4 costs.

5 So that whole motivation of how you really
6 attack an uncertainty when you can't come up with
7 specifics because of the volatility of the commodity
8 price is something that certainly needs to be
9 addressed, and that's what we're doing.

10 Q. So even though you've had some indications
11 that you may have unrecoverable costs in excess of
12 \$100 million, you have not completed a study to try to
13 quantify those?

14 A. Yeah. I think it's exactly what I said. A
15 study would simply say your stranded cost is going to
16 be volatile depending on what the price is.

17 And the issue here is not to detail what the
18 stranded cost is; it's to effectively recognize that
19 you have that problem and how do you address the
20 problem. And the way we're approaching that is
21 setting up the EWG structure going forward.

22 Q. Now, in your testimony, you use the terms
23 stranded costs and transition costs. Are those terms
24 the same, different? How do you define them?

25 A. Stranded costs would be more associated with

1 the generating assets mostly. Transition costs would
2 deal more with what I would say regulatory assets, the
3 specific things of regulatory treatment with power
4 plant outages, special accounting orders that amortize
5 over a number of years, around 20 years out.

6 The issue there being that moving toward a
7 competitive market we need to start to match some of
8 our practices with the competitive markets, and that
9 would be move that 20 years down to what we're
10 suggesting is four or five years.

11 Q. So at least in your mind, stranded costs and
12 transition costs are totally different items?

13 A. I don't think we can be that specific with
14 those kind of terms that are being bandied about in
15 the industry. As we're talking here and as I'm
16 talking to you, those are the two definitions, but I
17 think you'd find others that could use stranded costs
18 to encompass, you know, all of what I just talked
19 about and not take out transition costs.

20 Q. Others meaning others at UtiliCorp or others
21 in the utility industry?

22 A. In the industry.

23 Q. So at least among people at UtiliCorp, the
24 definitions you've given are pretty constant?

25 A. Yes.

1 Q. Is it UtiliCorp's position that stranded
2 costs should be addressed in generic proceedings in
3 each state that UtiliCorp operates in?

4 A. Yes. We see stranded costs as something
5 that needs to be addressed in specific jurisdictions,
6 and that position goes to our regulated states as well
7 as the position we would take broader than that.

8 Q. Is your position on transition costs
9 similar? That is, do you believe that transition
10 costs should be addressed in a generic manner in each
11 state in which you operate?

12 A. Yes. I think the issue there is that they
13 start to be addressed and recognized, the transition
14 we need to go through.

15 MR. MILLS: Your Honor, I'd like to have an
16 exhibit marked.

17 JUDGE DERQUE: Certainly. We're off the
18 record.

19 (Discussion off the record.)

20 JUDGE DERQUE: We're on the record.

21 That will be No. 6HC, DR response No. -- did
22 you have a number, Mr. Mills?

23 MR. MILLS: It is response to our Data
24 Request No. 556.

25 JUDGE DERQUE: 556. We're off the record.

1 (Discussion off the record.)

2 (EXHIBIT NO. 6HC WAS MARKED FOR
3 IDENTIFICATION.)

4 JUDGE DERQUE: We're back on the record.

5 I want to mention at this time, since this
6 exhibit is No. 6HC, that I noted that scattered
7 throughout the record, the testimony in this case
8 there is highly confidential testimony. It is spread
9 pretty thoroughly throughout the ten scheduled days of
10 hearing.

11 I want to advise the attorneys that when and
12 if it comes up and we need to go in-camera, we will
13 discuss how to take care of this in an efficient
14 manner.

15 Up until that time, particularly the
16 attorneys for UtiliCorp, I'm going to caution you to
17 please be aware of highly confidential information
18 that I may not catch or individuals in the room that
19 may not belong here when highly confidential material
20 comes up.

21 I'll make it partially the responsibility of
22 the attorneys to make sure that individuals aren't in
23 the room that don't belong here when we're dealing
24 with confidential material. I appreciate it.

25 Go ahead, Mr. Mills.

1 MR. MILLS: Thank you. Can we stay off the
2 record for just a minute?

3 MR. DERQUE: Sure. Off the record.

4 (Discussion off the record.)

5 JUDGE DERQUE: We're back on the record.

6 BY MR. MILLS:

7 Q. Mr. Green, what I've handed you is a portion
8 of a notebook that was provided to us in response to
9 our OPC Data Request No. 556. The entire notebook
10 covers not only electric retail access issues but gas
11 as well. What I've handed you is just the first part
12 of the notebook that covers electric.

13 If the Company is concerned that only half
14 of it, the document is here. We can certainly
15 reproduce the part what deals with gas as well. It's
16 not relevant to my questions. I'm not sure it's
17 relevant to this proceeding.

18 But if you would, I'd like to have you turn
19 in Exhibit 6HC to the table of contents on page 1-15,
20 and if you'll tell me when you're looking at that
21 page.

22 A. I'm there.

23 Q. Okay. Under the list of transition issues
24 on that page is listed No. 8, stranded costs; is that
25 correct?

1 A. That's correct.

2 Q. Now, if you will flip through, it's about --
3 the page numbering doesn't follow the number of the
4 headings, but about five pages back to page 1-19
5 you'll see No. 8, and that is listed as No. 8
6 transition costs; is that not correct?

7 A. That's correct.

8 Q. Given that the table of contents calls it
9 stranded costs and the section itself calls it
10 transition costs, can you tell me what it's discussing
11 there, if those are two separate concepts, which one
12 it's talking about?

13 A. What we're doing here is talking about
14 utility costs expected to be unrecoverable in a
15 competitive marketplace and calling them transition
16 costs or said to be stranded, is what this talks
17 about.

18 Q. So at least in terms of this document that
19 UtiliCorp put out, there's no real distinction between
20 transition costs and stranded costs; is that right?

21 A. In this document, which I need to recognize
22 is a year old, which I think should have some bearing
23 on it, but I think it just reinforces my point that,
24 you know, instead of getting hung up on terms we need
25 to be clear what we're talking about because of all

1 the terms that are being used in this moving to a
2 competitive market.

3 Q. Thank you.

4 MR. MILLS: I'd like to offer Exhibit 6HC
5 into the record.

6 JUDGE DERQUE: I have Exhibit 6HC, response
7 to Data Request, offered for admission into evidence.
8 Is there any objection?

9 MR. SWEARENGEN: No objection.

10 JUDGE DERQUE: Seeing none, it will be
11 admitted.

12 (EXHIBIT NO. 6HC WAS RECEIVED INTO
13 EVIDENCE.)

14 MR. MILLS: That's all the questions I have
15 for this witness. Thank you.

16 JUDGE DERQUE: Thank you, Mr. Mills.

17 Mr. Woodsmall for the Staff?

18 MR. WOODSMALL: Yes. This shouldn't be
19 long.

20 CROSS-EXAMINATION BY MR. WOODSMALL:

21 Q. A couple of quick follow-ups to Mr. Mills'
22 questions before I start on mine. You mentioned that
23 this document, Exhibit 6HC, is almost a year old. Has
24 it been updated in any way?

25 A. Not that I'm aware of.

1 Q. Okay. Similarly, you were talking about --
2 Mr. Mills asked you about concerns UtiliCorp may have
3 regarding stranded costs in the event that price for
4 the commodity went below 2 cents. Do you recall that
5 question?

6 A. I think it was generally as the price goes
7 down, we have more of a stranded cost concern, yes.

8 Q. And I believe you quantified an amount of
9 \$100 million. Do you recall that?

10 A. I said upwards of 100 million in a general
11 statement, not a specific, yes.

12 Q. Okay. Can you tell me, is that a number
13 that you calculated while you were on the stand in
14 your head, or where did you get the calculation for
15 that number?

16 A. General estimates from conversations over
17 past months, even years.

18 Q. Conversations with who?

19 A. People in the Company.

20 Q. Can you tell me, quantify a number of
21 individuals or can you give me names?

22 A. It's just a general recollection. I don't
23 remember specific names. It probably would be --
24 probably be less than ten people.

25 Q. So I'm to understand that there are

1 conversations with maybe a maximum of ten people
2 regarding stranded costs, and the calculation of
3 \$100 million is tossed around, but that is not based
4 upon any study or any documentation; is that correct?

5 A. That's right. I have not had any study or
6 documentation presented to me.

7 Q. Okay. Something came up in the opening
8 statement this morning of Mr. Swearengen, and I want
9 you to clarify for me. He mentioned that KCP&L has an
10 incentive plan. Is that UtiliCorp's understanding?

11 A. I don't know.

12 Q. Okay. You have no knowledge of Kansas City
13 Power & Light having an incentive plan?

14 A. Well, I think in our conversations with them
15 in the past, I recall that they probably do, but
16 that's kind of the depth of my knowledge of their
17 planning, incentive planning or comp planning.

18 Q. When you make your statements about Staff
19 being unreceptive to change, did you in any way
20 attempt to determine the competitive aspects that
21 Staff is receptive to in regards to other utilities?

22 A. I think I'm aware of those in the sense of
23 with Union Electric and maybe with Kansas City Power &
24 Light.

25 Q. But you're not familiar with Kansas City

1 Power & Light for certain; is that correct?

2 A. No, not if it was around the incentive.

3 Q. And you would agree that an incentive plan
4 is a recommendation that would be, I guess, responsive
5 to competitive changes?

6 A. No, I would not say that. I would say that
7 an incentive plan is something that is just relevant
8 to managing a good work force in today's business
9 climate.

10 Certainly you could group it with moving to
11 a competitive change, but I think it comes way ahead
12 of that and just into good solid management of the
13 corporation today.

14 Q. On the chart behind you, I believe at the
15 top there is an acronym, PBR. Could you identify that
16 for us?

17 A. Performance-based rates.

18 Q. Performance-based regulation?

19 A. Regulation.

20 Q. Okay. And in your mind, is that synonymous
21 with incentive regulation?

22 A. I suppose, but I don't want to get tripped
23 up on the specific definitions of terms.

24 Q. Generically it's synonymous?

25 A. Yes.

1 Q. And I believe in that chart it is labeled as
2 a competitive issue; is that correct?

3 A. Yes.

4 Q. Okay.

5 A. There is a difference between incentive pay
6 and incentive regulation.

7 Q. Correct. Yes. I'm talking about incentive
8 regulation, not incentive compensation.

9 A. Okay.

10 Q. Do you have your direct testimony, what has
11 been marked Exhibit No. 3, in front of you?

12 A. I do.

13 Q. On page 13 and 14 -- I'll give you a second
14 to get to that -- you mention eight competitive
15 changes that MoPub was initially proposing in this
16 case. Do you see those?

17 A. I do.

18 Q. No. 6 on page 14 states: We are proposing
19 to begin the process of recovery of some transition
20 costs. Can you tell me what those transition costs
21 are?

22 A. I can generally describe those as some
23 things I mentioned earlier on transition costs dealing
24 with the amortization of plan and special accounting
25 orders and shortening that time. I think it would be

1 far more appropriate to ask Mr. McKinney in more
2 detail about those.

3 Q. Can you tell me -- okay. And similarly,
4 it's my understanding that what you called
5 re-engineering costs were also considered transition
6 costs; is that correct?

7 A. I believe so.

8 Q. Okay. This sentence says some transition
9 costs. Can you tell me, other than re-engineering
10 costs and regulatory assets, what would be some other
11 transition costs that you have not sought recovery of?

12 A. I would leave that to Mr. McKinney.

13 Q. Is this not in your testimony, Mr. Green?

14 A. It is in my testimony, as is the reference
15 that John McKinney will give a more detailed proposal.

16 Q. Can you tell me how the -- what your
17 involvement was in the decision as to what would be
18 sought in this case by MoPub?

19 A. As far as transition costs?

20 Q. Transition costs or any of the issues you
21 see on the chart behind you.

22 A. My direction really started back in 1995
23 recognizing that a competitive market continues to
24 move our direction. We need to start to do things
25 about that.

1 My direction to the people that work with me
2 was to bring all those issues together and put them
3 together so we can take them up with the Commission
4 here and start to understand them.

5 We're very firm believers that it's time to
6 get prepared and don't like at all the fact that
7 benefits of competition just flow to the larger
8 customers, and we need to start working that out.

9 Quite frankly, we recognize and appreciate
10 the generic hearings that are taking place, but we
11 think it is really essential to take them issue by
12 issue and start to talk about them, and we've really
13 kind of put ourselves out there as being the first one
14 to start those discussions.

15 And starting that activity in '95 was
16 delayed some in the Kansas City Power & Light merger,
17 but we took that up very quickly afterwards in October
18 when I came down here and mentioned we were going to
19 move toward a competitive filing, which we have.

20 We think it's a very healthy way to start to
21 work through the issues and try to determine how we
22 can get benefits to the customers.

23 Q. Did you have any input into the specifics of
24 this case? Excuse me.

25 Did you have any input into the specific

1 requests MoPub made in this case?

2 A. No, just the general direction.

3 Q. Can you tell me at what level those
4 decisions were made?

5 A. It would have been at the officer level.

6 Q. And are there any witnesses here testifying
7 on behalf of MoPub that are officers?

8 A. Yes. John Empson is a senior vice
9 president.

10 Q. So any issues regarding transition costs
11 would have certainly been run up at least through the
12 level of Mr. Empson; is that correct?

13 A. That's correct.

14 Q. And you would expect him to be able to
15 testify on those matters?

16 A. Well, I think we have -- Mr. McKinney is
17 going to testify on those matters specifically.

18 Q. Well, I'm trying to understand where the
19 corporate policy comes from. I understand it's not
20 Mr. McKinney making a corporate policy, that that is
21 made somewhere above him, and it's my understanding
22 that you've told me that that's Mr. Empson?

23 A. Yes.

24 Q. No. 7 on page 14 of your direct, you state:
25 We are proposing to accelerate the write-off of

1 certain assets in order to align the remaining book
2 value of those assets with the anticipated market
3 value. And you mention a company witness Donald Roff
4 of Deloitte & Touche. Do you see that?

5 A. I do see that.

6 Q. And would you agree that that is describing
7 the depreciation proposals of MoPub in this case?

8 A. I believe it is.

9 Q. Okay. Can you tell me what assets you are
10 referring to there?

11 A. No, I cannot.

12 Q. Okay. Can you tell me -- can you tell me
13 how the market value of those assets are calculated?

14 A. No, I cannot.

15 Q. Can you tell me who can?

16 A. No, I cannot.

17 Q. Can you tell me how those -- that market
18 value was communicated to Mr. Roff?

19 A. No. I mean, you know, these things
20 obviously can be answered and we have them, but I
21 cannot give you those specifics.

22 Q. So you can't tell me who would be -- even
23 though you have this in your testimony, you can't tell
24 me who of MoPub's witnesses I can talk to about
25 anticipated market value?

1 A. No. What I did was come and prepare to talk
2 about general policy, not the specifics of the
3 implementation of the different parts of the
4 competitive filing.

5 And I think it's very clear the reason we
6 have dozens of people working on this day and night,
7 over the weekend, they're going to be down here for
8 two weeks, is that you can get the appropriate details
9 from the appropriate people, and so those will be
10 forthcoming.

11 Q. And I would agree with that. I'm just
12 trying to understand, who am I supposed to address
13 these questions to? You couldn't tell me. At what
14 point will the Company tell me who I can address these
15 questions to?

16 A. We can look into that and get back to you.

17 Q. Okay. Can you tell me what Mr. Roff or what
18 role market value plays in Mr. Roff's calculation of
19 depreciation?

20 A. No, I cannot.

21 Q. Okay. Based upon this statement, though,
22 it's your understanding that market value does play
23 some role in depreciation?

24 A. I mean, I'm going to back off of all this
25 stuff. I mean, I don't understand where you're going

1 and what you get out of this detail. I don't feel
2 that I'm here to address the details of how each of
3 the points were implemented here.

4 Again, I'm willing to talk about policy to
5 any degree you might. If you have questions about
6 implementation and where the facts are and who has the
7 details, we can work with that.

8 Q. Well, I apologize, then, and I'll leave the
9 question, but that was the only place I saw that
10 statement in all the testimony. So I thought you
11 would be the only person I could ask. But we'll move
12 on.

13 Your rebuttal testimony, what has been
14 marked Exhibit No. 4, do you have that?

15 A. I do.

16 Q. On page 8 of that rebuttal testimony,
17 lines 17 and 18, you state: The Staff's position on
18 this point and, in fact, in this case in general leads
19 me to a continued realization that the Staff is simply
20 not ready to embrace change.

21 Similarly, on page 7 of your rebuttal
22 testimony, you state -- excuse me. Page 7 of your
23 surrebuttal testimony, you state: While I didn't
24 necessarily assume that all of our proposals would be
25 accepted by the parties, I was somewhat surprised by

1 the just say no reaction of the Staff and OPC.

2 Do you recall those comments?

3 A. Yes.

4 Q. Okay. And I want to go into a little bit of
5 detail as to what you considered when you made those
6 comments.

7 When you made those comments, were you
8 referring just to Staff's reaction to changes in the
9 electric industry?

10 A. I think that would be the focus of this
11 testimony.

12 Q. Okay. And are you aware of Staff's position
13 in regard to the Union Electric merger?

14 A. I understand that there's been some
15 incentive/performance-based rates discussion there.

16 Q. Okay. And are you aware that Staff
17 recommended approval of that merger?

18 A. Yes, I am. But I think the point here is, I
19 will readily concede that there is glimpses of looking
20 at things that might be considered a part of the
21 competitive world going forward, but what you have in
22 this competitive filing is a vast list of the issues
23 that we all have to start to walk through.

24 This is not something that any one of us do
25 in a singular fashion, and the only way we get it

1 accomplished is to start to walk through them and talk
2 about them, not just discount them and throw them away
3 because you don't believe in competition.

4 Competition is real out there. There's 15
5 states that have already set open access dates from
6 '98 and it will be complete by 2003. There's another
7 15 that are considering proceedings. There were 9
8 bills introduced in the -- in the U.S. Congress.

9 I mean, all this is moving, and the genuine
10 concern here is that we don't start to prepare, and
11 that doesn't mean a radical restructure. That's not
12 what we're after. That's another misconstruing
13 things. It's starting to identify the issues, talk
14 about them and work out the solutions.

15 I really think that we can end up in a
16 position here in the state of Missouri that we don't
17 like if the face of competition continues like this
18 and we have not done anything to start to address
19 those issues, we're going to find ourselves behind an
20 eight ball in trying to deliver benefits to our
21 customers. And so a step to start to consider these
22 things I think is very important.

23 Q. I understand all that, and I appreciate
24 that, but I need to get back. You leveled some very
25 serious charges against Staff in your testimony, and I

1 want to understand what you considered when you did
2 that.

3 You mentioned brief glimpses of Staff being
4 receptive. Can you tell me what Staff's position was
5 in regard to your McDonald's aggregation tariff?

6 A. You know, that clearly was approved, and so,
7 you know, there's a glimpse.

8 Q. Okay. Can you tell me what Staff's
9 recommendation is in regard to your real-time pricing
10 tariff?

11 A. I think the point here is that --

12 Q. Mr. Green, can you -- it's a yes or no
13 question. When Mr. Swearengen wants to redirect you,
14 I'll let him, but that was a simple yes or no
15 question.

16 Do you know what Staff's position was in
17 regards to your real-time pricing tariff?

18 JUDGE DERQUE: Excuse me. Is or was?

19 BY MR. WOODSMALL:

20 Q. Staff's recommendation is in this case in
21 regard to your real-time pricing tariff.

22 A. I suppose that you were probably in favor of
23 that because you're trying to pick out the glimpses of
24 where you have embraced competition. But again, I
25 refer to them as glimpses.

1 We've got a lot of work to do that we want
2 to do with this Commission, we want to do with this
3 Staff to work through these issues, and delaying them
4 and putting them off is not going to get anything
5 accomplished.

6 Q. Can you tell me what Staff's position was in
7 regard to your flexible rate special contract tariff?

8 A. For the larger customers?

9 Q. Yes.

10 A. I think that that was -- I don't know.

11 Q. Okay. Can you tell me if Staff has placed
12 an opinion out there regarding opposition to the rate
13 design matters that you initially filed in this case?

14 A. Well, I know there was a motion to dismiss
15 to get them totally out of the way.

16 Q. Do you know what the basis of that was?

17 A. Didn't want to deal with them. In fact, I
18 understand they probably can't deal with them 'til the
19 end of next year.

20 Q. Well, but it's not -- is it your
21 understanding that it is an absolute opposition to
22 those issues?

23 A. Dismiss hits me as being something that's
24 not willing to tackle them right now.

25 Q. Okay. On page 17 of your surrebuttal

1 testimony, what has been marked as Exhibit 6 --
2 Exhibit 5. I'm sorry.
3 A. Did you say surrebuttal?
4 Q. Yes.
5 JUDGE DERQUE: That's Exhibit 5.
6 BY MR. WOODSMALL:
7 Q. I'm sorry. Page 17, you discuss some of the
8 discovery problems that have existed in this case. Do
9 you recall that?
10 A. I do.
11 Q. And I believe in general you refer this
12 discussion to Mr. McKinney again. Do you recall that?
13 A. Yes, I do.
14 Q. Okay. Nevertheless, at page 14 -- at lines
15 14 through 16, you make a statement regarding
16 corporate policy. I want to assure the Commission
17 that there has never been any corporate policy
18 decision made to restrict the flow of information to
19 the Commission, its staff or to the Public Counsel.
20 Do you see that?
21 A. I do see that.
22 Q. Could you define for me what a corporate
23 policy would be?
24 A. It is a practice that the corporation
25 follows.

1 Q. Okay. And at what level would a corporate
2 policy have to be approved before it's a corporate
3 policy?

4 A. That would have to be at least at the
5 officer level, and depending on what it is, it could
6 come to my level.

7 Q. Okay. Are you familiar with MoPub's request
8 in January of this year for a discovery moratorium in
9 Staff's earnings investigation case?

10 A. Generally, yes.

11 Q. Okay. And are you aware that the Verified
12 Statement attached to that request was made by
13 Mr. John Empson? Is that correct?

14 A. I don't know that.

15 Q. Okay. Would you agree that Mr. Empson is an
16 officer?

17 A. Yes, I would agree to that.

18 Q. And so any statements regarding company
19 policy that he put in his Verified Statement would be
20 considered a corporate policy?

21 A. Yes. I would back his statements.

22 Q. Okay. Would you agree that a company
23 request for a discovery moratorium would restrict the
24 flow of information to the Staff?

25 A. Well, you know, here again, you're going

1 into a piece of what's a lot bigger subject, and --
2 and I don't think it's terribly productive because
3 when we sit here and discuss that Staff has embraced
4 competition, your return is to accuse me of hiding
5 earnings for ten years with very weak evidence, to
6 misconstrue statements in our budget information, to
7 misconstrue the corporate development allocations.
8 All that's really not the issue, is it?

9 Q. No, it's not.

10 A. What we're trying to get through is to try
11 to move benefits to smaller customers.

12 Q. Mr. Green --

13 A. And I spend most of my time --

14 Q. May I have the witness --

15 A. -- in my testimony is rebuffing things that
16 just don't have any foundation, and you sit here and
17 start talking about the Staff. It's not a productive
18 exchange. Let's get on with getting benefits to
19 customers.

20 Q. Let's do. Would you agree that a Motion for
21 a Discovery Moratorium would restrict the flow of
22 information to the Staff?

23 MR. SWEARENGEN: Your Honor, I'm going to
24 object to that. A motion doesn't accomplish anything
25 until the Commission rules on it.

1 MR. WOODSMALL: Okay. Let's change that.

2 BY MR. WOODSMALL:

3 Q. Did you realize that after the Motion for a
4 Discovery Moratorium was denied by the Commission, the
5 Company across the board for every Data Request filed
6 sent a letter saying they would be unable to answer
7 those Data Requests for a period of two months?

8 A. My understanding of that issue is that we
9 needed to handle our problems with the volume of the
10 Data Requests in different avenues as opposed to the
11 general request or order that you talk about.

12 And, you know, I'll freely admit it was a
13 difficult time for us. We were in the middle of
14 putting together this competitive filing. At the same
15 time we were realigning the corporation.

16 And so it was a very difficult thing for us
17 to keep up with all of that, but yet the corporate
18 policy still is to be cooperative, and I can only work
19 the people so hard when it gets into nights and
20 weekends. And I think that's what we really ran into
21 in that whole process was how to manage that given the
22 circumstances at UtiliCorp at the time.

23 Q. But corporate policies, as I understand it,
24 are not absolute. They're subject to change depending
25 on circumstances; is that correct?

1 A. I think what we're talking about here is a
2 definite corporate policy, an attitude of being
3 cooperative and helpful with the Staff and Commission,
4 and we've got a long history of doing that.

5 And when we were overwhelmed with the volume
6 of questions and Data Requests at a time when we were
7 trying to put together a competitive filing as well as
8 relining and saving costs in the corporation, we had
9 to find an avenue to deal with it.

10 Q. A couple other brief questions. UtiliCorp
11 has an incentive compensation plan; is that correct?

12 A. Yes, we do.

13 Q. And can you tell me what officers or what
14 individuals of UtiliCorp are compensated under such a
15 plan?

16 A. We really have incentive compensation that
17 goes really to all non-union employees to some degree.

18 Q. And can you tell me what the basis for the
19 incentive compensation awards are?

20 A. It would be particular goals that those
21 individuals had to achieve.

22 Q. Okay. Can you tell me what your incentive
23 compensation award is based upon?

24 A. My incentive award is based on, this last
25 year has to do with earnings per share with threshold.

1 And what I mean by threshold, I call them trigger
2 amounts where, you know, for example, the dividend
3 can't go down. There can't be a deterioration in
4 customer service and those kind of threshold things
5 before the comp committee would grant my incentive
6 comp.

7 Q. Okay. There are, as I understand it, no
8 other bases besides financial criteria that form the
9 basis for your incentive compensation award; is that
10 correct?

11 A. No. It would be in the trigger events. The
12 incentive comp is not something that is absolute no
13 matter what. It's at the discretion in my case of the
14 compensation committee of the board.

15 Q. Okay. But in general, that is driven by
16 financial criteria?

17 A. That's the goal, yes.

18 Q. Okay. Finally, in rebuttal testimony, you
19 talk about some concerns Staff had regarding the
20 allocation of marketing costs. Do you recall that?

21 A. I do.

22 Q. And you state that, I guess on page 8 of
23 your rebuttal testimony, that -- basically that
24 Staff's accusations were wrong and that such marketing
25 costs were, quote, clearly delineated, unquote, on

1 FERC Form 1; is that correct?

2 A. Let me just -- you said you're on page 8.

3 Q. Page 8 of your rebuttal testimony.

4 A. Yeah. Annually filed Commission -- yes.

5 Q. Have you ever seen a FERC Form 1?

6 A. Sure have.

7 Q. Okay. I'm going to show you -- and I only

8 have one copy -- the 1996 FERC Form 1 filed with the

9 Commission as an annual report. Have you seen this

10 document or something like that before?

11 A. I have.

12 Q. Can you tell me where in that document

13 marketing costs are clearly delineated?

14 A. Yeah, I can, but I can't read the -- can I

15 take -- I can't read the lines.

16 Q. Go ahead and take apart that binding. And

17 what I'm referring to is marketing costs allocated

18 specifically from UtiliCorp.

19 A. Okay. Well, yeah. Here they are. On

20 page 322, line 147, miscellaneous sales expense shows,

21 this looks like '96 reports. So that's where --

22 miscellaneous sales expense is where it is.

23 Q. Okay. Can you tell me if there's any other

24 items in miscellaneous sales expense besides marketing

25 cost?

1 A. Well, yeah. It's general sales and
2 marketing costs.

3 Q. Okay. So there is no designation there as
4 to the marketing costs specifically allocated from
5 UtiliCorp; is that correct?

6 A. Well, sure. I mean, I think when you see
7 something jump up to over \$7 million, that is the
8 marketing costs that are allocated to the state of
9 Missouri.

10 And by the way, you know, that's something
11 that again is, I think, very definitely needed when we
12 look at the environment out there. And, again, it
13 gets back to this preparation situation.

14 We're going to have at some point in time,
15 as other states have, different people marketing and
16 soliciting our customers, and in order to get prepared
17 for that we think we need to start to build that brand
18 recognition because basically they need to have a good
19 choice in their incumbent supplier. They cannot just
20 kick back and have any supplier that might be
21 unreliable.

22 And to take an indifferent view of the
23 customer and allow that to happen without competing
24 with them is, we think, contrary to good customer
25 service.

1 Q. I see I had one further question. In your
2 rebuttal testimony, on page 12 --

3 A. Just a minute. I'm still dealing with your
4 FERC report.

5 Q. I'll put it back together. Don't worry
6 about that.

7 A. Page 12?

8 Q. Yes. You state: Ratepayer benefits are a
9 corporate development -- excuse me. Ratepayer
10 benefits from our corporate development costs
11 described in the 1990 and '93 cases stand as unrefuted
12 evidence, unquote. Do you see that?

13 A. Yes.

14 Q. Would you agree that in the last case Staff
15 never looked at ratepayer benefits because the Company
16 had always voluntarily eliminated corporate
17 development costs?

18 A. I am not sure what the Staff's position was.

19 MR. WOODSMALL: Okay. That's all I have.

20 JUDGE DERQUE: Thank you, Mr. Woodsmall.

21 Commission questions, Chair Lumpe?

22 QUESTIONS BY CHAIR LUMPE:

23 Q. Mr. Green, you talked about surveys, polls,
24 et cetera. Were those national surveys? Were any of
25 those Missouri specific?

1 A. They were really both, the national and then
2 we've done surveys specific for each of our regulated
3 jurisdictions.

4 Q. And were the numbers similar? In other
5 words, if two-thirds of the people said something
6 nationally, did two-thirds of the people in Missouri
7 say the same thing, or were there variances in the
8 numbers?

9 A. They were -- I'd have to say they're in the
10 same range. I mean, you're talking in the 70, 75
11 percentile.

12 Q. How do I put that together with polls that
13 tell me that two-thirds of the people don't even have
14 the issue of competition on their radar screen? How
15 do I know that two-thirds want this when I'm told that
16 two-thirds don't even know it's out there?

17 A. Well, first off, I think you speak exactly
18 to a lot of the difficulty in going through the change
19 in a lot of the information out there.

20 I think the big difference there is what we
21 found out in the markets, is the general education of
22 the customer that, in fact, they could have choice.
23 And so when it's not on their radar, it's not on their
24 radar because the idea has never occurred to them.

25 But yet once they experience some education,

1 once they understand other customers, and obviously
2 from households those would be other larger customers
3 are getting benefits, then that's when it starts to
4 click, can I get choice, too, in order to maybe get
5 control of my energy costs?

6 Q. Would you call these surveys educational
7 surveys, then, to suggest to people you might -- if
8 you were to have choice, you might have a 5 percent
9 reduction in your rate? And I can't imagine anyone
10 saying no to that.

11 So did you consider this more of an
12 educational survey than a straight do you want choice,
13 do you want to go and pick your electric company?

14 A. Well, I think it's educational in the sense
15 of understanding what the customers really think, and
16 what we begin to learn is that the momentum behind
17 competition is starting to be taken up more and more
18 by customers because they're starting to learn that
19 they can get this choice.

20 And another interesting thing that has
21 started to develop, and I'll refer to it as inertia,
22 that the incumbent utility needs to be careful of not
23 being too smug about their relationship because in the
24 beginning there's no question that the incumbent
25 utility has the advantage and the good reputation with

1 the customers.

2 But that starts to erode over time if that
3 incumbent utility doesn't start to show as a
4 competitive good choice. That has a lot of the reason
5 of why we started the Energy One brand number in '95
6 and now have shared those costs with others to bring
7 them down into a more reasonable range.

8 But we're going to see that marketing sales
9 expense for utilities go up as competition comes so
10 that you don't just have others coming in and taking
11 the customers away and offering the discounts.

12 Q. As part of your growth and strategy, you
13 talk about creating nonregulated affiliates or
14 companies, et cetera.

15 A. Yes.

16 Q. Is part of your strategy also, then, or do
17 you support that there should be standards or do you
18 think there should be just pure straight competition
19 without any sort of standards of affiliate
20 relationships?

21 A. I think very strongly there ought to be
22 affiliate rules because I don't think this market's
23 going to get anywhere if it's achieved in subsidizing
24 that, and I think there very definitely ought to be
25 those rules going forward.

1 Q. On your statement I think you made that
2 competition is always better, how do you deal, then,
3 with the issue of -- and you say environmental, you
4 know, concerns, conservation. I'm bringing up
5 universal service as another.

6 When you -- in your support of competition,
7 do you feel that competition should be modified to
8 address issues such as that, or should they sort of
9 see what happens?

10 A. No. You definitely should not see what
11 happens. That again is -- it's got to be a
12 step-by-step controlled approach on that. And I
13 think, for example, green power is a very good idea,
14 and the nice thing about it, it's a very marketable
15 idea. People are interested in that. So to shove
16 that aside would be to ignore what the customer wants.

17 The universal fund concept, like in TeleCom,
18 those kinds of initiatives and ideas are exactly what
19 we need to do. Again, the important thing is to get
20 into, okay, how does that happen, how does that work,
21 how do companies and others contribute to those kind
22 of things, certainly not in a position that you ignore
23 those kind of things.

24 Q. I was going to ask, but I think it's been
25 asked, on the performance-based regulation, I was

1 going to ask you for your definition of that, but what
2 you -- I think you defined it as incentive regulation.
3 Am I correct? Is that the way I heard it?

4 A. Yes. Basically, there is a sharing grid
5 based on return on equity, and at certain stages of
6 sharing it goes to the company and the customer,
7 ratepayer.

8 Q. Various percentages or proportions?

9 A. Various percentages as you move up.

10 Q. And that's how you would define performance-
11 based regulation?

12 A. Yes.

13 Q. Okay. And in the discussion on transition/
14 stranded costs, I got the impression that transition
15 was a broader term to you than stranded costs. What
16 else would you include in transition costs that would
17 not be in stranded costs?

18 A. Well, if we just talk about all of those
19 costs that would end up not fitting into a competitive
20 market, there certainly are the ones that would be in
21 the generation area if the price starts to get around
22 to 2 percent for us.

23 Secondly, there are the other things on the,
24 what I'll just categorize as special accounting
25 treatments and amortizations that happen in a

1 regulatory environment that need to be transitioned in
2 a way because those don't exist in a competitive
3 environment.

4 And so it's working through how to start to
5 identify those and start to take care of those kind of
6 costs.

7 Q. Mr. Green, what you have -- you've said that
8 what you want to do is prepare for competition. How
9 would you respond to the statement that perhaps you're
10 not positioning or preparing for competition but
11 preparing or establishing market power to assure there
12 wouldn't be a strong competitor?

13 A. I would -- I would say that there is a real
14 genuine, and I'll even use the word pure, move toward
15 competition. I don't see what we're doing is
16 necessarily going to be an advantage clear to the
17 point of some domination.

18 Clearly we've taken up the flag of
19 preparation before a lot of others, but I see that in
20 a sense of preparation that's going to be offered to
21 everybody, no kind of special case for us even though
22 we might walk through it first.

23 We just experienced it takes a lot of time
24 to prepare for this change, and it's best to get
25 started right now. Our initiatives, whether it's in

1 states we serve in or nationally, has been very much
2 to promote a competitive market and allow everybody to
3 be ready.

4 The Energy One partnership now where we've
5 put the brand name and develop that business is the
6 end use of -- the customer of that is the utility
7 itself. It's offering a utility a turnkey marketing
8 strategy for their regulated territory.

9 There we're clearly helping other utilities
10 get ready for competition. Competition won't work
11 with one or two players. It will only work if there
12 is a larger market and more players. And so we would
13 be really hurting or fooling ourselves if we try to do
14 this just in an isolated individual fashion.

15 CHAIR LUMPE: Thank you. That's all I have.

16 JUDGE DERQUE: Vice Chair Drainer?

17 QUESTIONS BY COMMISSIONER DRAINER:

18 Q. Good afternoon, Mr. Green.

19 A. Good afternoon.

20 Q. Let's first start with a few questions from
21 your direct testimony. You wrote this testimony,
22 correct?

23 A. I had it written, yes.

24 Q. You had it written. These were your
25 concepts?

1 A. Yes. Oh, yes.

2 Q. You asked somebody else to prepare it?

3 A. I'm not going to back away from it. This is

4 my testimony.

5 Q. Okay. Well, I guess I don't know what that

6 means. You had it written. These were your thoughts

7 and you had somebody put them in a formalized fashion?

8 A. Exactly.

9 Q. Okay. With respect to the surveys, you

10 referenced three surveys, and these were surveys that

11 you had -- on page 7 of your testimony, direct

12 testimony?

13 A. Uh-huh.

14 Q. These were surveys that you had read?

15 A. Yes.

16 Q. And felt that they showed that there were

17 customers wanting choice with their electric

18 providers, correct?

19 A. Exactly.

20 Q. The first survey, I believe you told

21 Mr. Keevil that had a hundred -- or had 1,007 adults.

22 You are not sure of the makeup of whether it was

23 residential or businesses, how they were polled. Do

24 you know how they were polled?

25 A. Not on the adults. We can certainly go back

1 and pull those. The other survey that's on the next
2 page --

3 Q. I'll get to that.

4 A. Okay.

5 Q. Just stay with me. Okay?

6 A. Okay.

7 Q. On this survey, do you know how -- what the
8 makeup of these 1,007 adults were?

9 A. No. I cannot recall that, but would be
10 happy to get that for you.

11 Q. Do you know whether it was a telephone
12 survey?

13 A. I'm almost certain it was, but again I can
14 get that for you.

15 Q. Do you know what the questions were in the
16 survey?

17 A. I can't recall that, no.

18 Q. Do you know that if at the end of the survey
19 it gave an analysis that each of these questions were
20 statistically significant in the response, the value
21 of the response?

22 A. That, I believe, is correct.

23 Q. So you're telling me I only have 1,007
24 adults and competition, to stand firm that 75 percent
25 of those believed it was a good idea to have

1 competition, that that's statistically significant
2 with some reliability factor that I should feel quite
3 comfortable about?

4 A. I think it's statistically significant, but
5 as far as comfort, I think what we --

6 Q. Okay. Stop. Let's stay with the
7 statistically significant. Do you know if it had,
8 like, a 95 percent confidence level?

9 A. I can't tell you what the confidence level
10 was, but again we can get you the surveys.

11 Q. Do you have any idea from recalling any
12 confidence level on any of the questions for the
13 survey? Do you recall reading about any confidence
14 levels analysis for any of these questions on the
15 first survey?

16 A. No, I don't recall those details.

17 Q. Okay. On the second questionnaire, that was
18 the thousand households, and you say that 83 percent
19 of the respondents wanted the opportunity to choose
20 their electric supplier. That was a national survey?

21 A. Yes, I believe it was.

22 Q. So that --

23 A. Well, that was for UtiliCorp. So it would
24 be our regulated territories.

25 Q. That you contracted with the Charlton

1 Research Company --

2 A. Yes.

3 Q. -- to do it for all of UtiliCorp's areas?

4 A. Yes.

5 Q. How many states would that be?

6 A. Eight states, and I'm not certain if it was

7 all or part of those states.

8 Q. Okay. So we don't know that it was all the

9 states, but do we know if Missouri was in there?

10 A. I can't tell you for sure.

11 Q. Do you know if that was a telephone survey?

12 A. No.

13 Q. Do you know how many questions they were

14 asked?

15 A. I don't recall.

16 Q. Do you know anything about the reliability

17 factors, statistical confidence levels?

18 A. I can't recall those.

19 Q. So I don't really know when we talk about

20 83 percent how much weight I should give to that

21 answer.

22 A. No. But again, I can produce the survey for

23 you that would answer all those questions.

24 Q. I'm going to ask for it.

25 A. Okay.

1 Q. Now let's get to the third survey, and that
2 was for Missouri Public Service customers, and it was
3 conducted by Gallup. How many households were in that
4 survey?

5 A. Again, I can't give you the details of this
6 survey any more than I could the other surveys.

7 Q. Okay. Well, I would like to have a copy of
8 the three surveys, complete copies --

9 A. That would be fine.

10 MR. SWEARENGEN: We'd be glad to do that.

11 BY COMMISSIONER DRAINER:

12 Q. -- for the file, late-filed exhibits.
13 I'd also like to ask, for the Gallup survey,
14 something that -- you're in here, the Company's in
15 here for a rate increase, correct?

16 A. Yes.

17 Q. You believe there should be a rate increase.
18 What should be the percentage of increase to your
19 customers?

20 A. Of the 24 million, I can't tell you
21 specifically.

22 Q. Do you feel a responsibility to your
23 customers, Mr. Green?

24 A. I do.

25 Q. Well, if you're going to come in here and

1 ask for a rate increase, don't you think you ought to
2 be able to just tell me off the top of your head that
3 that would be an X percent increase to your customers?

4 A. I think that's correct.

5 Q. What is the increase? It's just not there
6 today? What is the percentage increase to your
7 customers?

8 A. It is -- it's just not there today.

9 Q. Just not there today. Well, maybe one of
10 your other witnesses will be able to tell us. Do you
11 think it's probably 5 percent? Do you have any idea
12 at all?

13 I guess here's my question. Let me just
14 help you out here since you said it's not there. I
15 won't beat you on the percent.

16 When I read this, you're in for a rate
17 increase, but you're also telling me to be concerned
18 about competition and be ready for competition, that
19 you want to be ready for competition, and yet your own
20 survey tells you that, with just a 5 percent increase,
21 two-thirds of your customers would be very likely to
22 switch.

23 If competition's coming -- here's the point.
24 If competition is coming, and you tell me it is, and
25 if this Commission finds to give an increase to

1 Missouri Public Service, and let's say it is
2 5 percent, is it going to concern you that a year from
3 now, two years from now your customers will remember
4 that and be more ready to switch?

5 A. No. I guess the -- what I read the surveys
6 as being is that for the 5 to 10 percent discount
7 offer one would switch.

8 I think the point that all utilities are
9 facing is these costs that do not fit into a
10 competitive market and how do we deal with those in a
11 prudent fashion to be able to get the customers to a
12 point to where they can have a choice.

13 What we've offered up in the competitive
14 filing is suggestions and ideas to try to get there,
15 and I think as we solve those situations, I don't feel
16 that that's going to chase our customers away. I
17 think it's going to really allow us to have a more
18 open, competitive market so that they can reap
19 benefits in the future.

20 And it very much does become our
21 responsibility of what happens to that price. It
22 cannot continue to go up, but the -- the issue of what
23 you do with these regulated market costs that don't
24 fit in the competitive market costs is exactly what
25 this competitive filing's about and what we're trying

1 to discuss and solve.

2 Q. All right. A final thing about the surveys.
3 You're telling me that in all three surveys you do not
4 recall at all knowing the confidence level that you
5 could put with any of the questions that were answered
6 in these surveys, that you don't know with 95 percent
7 confidence if that was a statistical level that you
8 could stand for?

9 A. My --

10 Q. I mean, statistically speaking,
11 statistically speaking, do you recall looking at any
12 statistics on the confidence levels for these
13 questions?

14 A. I read and look at a lot of survey material,
15 and these were some representative examples that went
16 in here. And where I want to say that, agree with you
17 on the 95, I just don't remember these specifically to
18 answer your questions and really would prefer just to
19 give you the survey and let that speak for itself
20 instead of making a mistake.

21 Q. But this comes to -- you put the testimony
22 in here, and I really want to know whether you recall
23 at all any statistical percentages at all?

24 A. On the confidence level?

25 Q. Uh-huh. For any of these three surveys.

1 A. I do recall, you know, in the 95 percent
2 area, but I shy away from being specific because --

3 Q. All right.

4 A. -- of the amount of surveys that I review on
5 an ongoing basis.

6 Q. You say a lot of things in generalities, and
7 these are -- you're saying 93 percent of the folks
8 want the opportunity to choose. I will be looking
9 forward to seeing that survey and seeing how much
10 confidence I can give to those kind of responses.

11 A. And I --

12 Q. So I appreciate that you will provide me
13 with these three surveys.

14 A. And I don't mean to say that just because
15 surveys say something that's exactly what we should
16 do. I put them up as indications of -- that should
17 require us to look and study and find out what our
18 confidence level is.

19 Q. Well, we also have to know the demographics,
20 don't we?

21 A. Very much so, and the way the questions were
22 answered -- I mean asked.

23 Q. Asked. Thank you. Then I would like to
24 also ask you, with respect to moving towards
25 competition, in Missouri, what is our current form of

1 regulation for utilities?

2 A. Our current form of regulation moving
3 towards?

4 Q. You would like for us to move with you down
5 the road, although I don't suppose it's probably down
6 the road as we're going to cut a new road, aren't we,
7 as we move into competition?

8 A. Right.

9 Q. But right now, aren't we under rate of
10 return regulation?

11 A. Yes, we are.

12 Q. And under rate of return regulation, the
13 Missouri statutes haven't yet changed to anything
14 else, have they?

15 A. Not that I'm aware of.

16 Q. Do you think they will in 1998?

17 A. No, I don't think they will in 1998.

18 Q. So this year or next year I'm going to
19 probably have to operate under just rate of return
20 regulation when it comes to the electric industry,
21 correct?

22 A. Yes.

23 Q. And so with respect to that, when we look at
24 your earnings, we have to stay within certain
25 parameters of our current environment, don't we?

1 A. I think so, but again I would offer up the
2 beginning and the preparation of the costs moving
3 toward a competitive market. That's going to take a
4 number of years. It's not something that happens next
5 year or the year after. And so we are suggesting to
6 get started on that.

7 Q. We have to get educated, don't we?

8 A. That's exactly what this is about, yeah.

9 Q. Well, what's your best guess? As we move to
10 a competitive environment in Missouri, do you think
11 the residential ratepayers, the small business, those
12 individuals that do not do aggregate buying, that
13 their rates in Missouri through competition will
14 increase or decrease in the beginning?

15 A. Well, I'm a little -- on the aggregate
16 buying --

17 Q. These won't be able to do aggregate buying.
18 These will just be your residential ratepayers, your
19 small business that doesn't do an aggregate the way we
20 just did the McDonald's that you reference.

21 A. Uh-huh.

22 Q. And when you look at energy rates, electric
23 rates in Missouri versus Illinois and some of the
24 other states, we're lower, correct?

25 A. Oh, yes.

1 Q. So do you think we're going to -- do you
2 think our customers, our ratepayers in Missouri are
3 going to benefit from competition?

4 A. I think this is something that --
5 generically, I think customers in Missouri have to
6 benefit or it's not worth moving forward. And I think
7 as we start to look at each of these issues, we can
8 understand more how that can happen as opposed to not
9 look at it closely.

10 The way we set up the EWG situation with the
11 contracts is kind of an example of how we can keep our
12 very good low rates here in the state of Missouri in
13 the sense of a contract relationship that Missouri
14 Public Service would have, and, of course, the
15 Commission would have influence on that contract.

16 So you couldn't see an EWG just kind of all
17 of a sudden selling their cheap power to the east or
18 west coast and buying more expensive power to serve
19 that contract.

20 In a practical way, I don't think that can
21 happen, but just as you said, this is all a learning
22 event for all of us in here and how we can start to
23 construct a way to get benefits.

24 Q. Mr. Green, have you looked at the -- you
25 referenced our task force, I think, in your

1 surrebuttal. And the task force is looking at things
2 now such as market structure, toll calls, direct
3 access, bilateral contracts. What is your company
4 policy or position on these type of market structures?

5 A. That they --

6 Q. Do you have a preference for one?

7 A. No. The point we're making is that they
8 need to be looked at, and it very well might change
9 from state to state depending on the situation. And
10 what we want to do is offer up a particular company in
11 case that could be studied with, you know, kind of a
12 hands-on example.

13 Q. But you don't have a particular market
14 structure that you believe at this time the Commission
15 ought to favor?

16 A. No.

17 Q. I need a couple clarifications from
18 questions that you answered for the Chair. You
19 referenced 2 percent. Earlier when you were
20 discussing stranded costs you said 2 cents, and I'd
21 just like for you to explain for me what you're
22 talking about. Is it 2 percent? Is it 2 cents?
23 First which is it, and then explain why that's
24 relevant.

25 A. It's 2 cents --

1 Q. Okay.

2 A. -- per kilowatt, and this is the price of
3 the power that we saw in the McDonald's and the
4 Associated Grocers experiment. One was a little
5 north, one was a little south of 2 cents.

6 Q. And what does that do to you? Explain if
7 it's a little north what happens and if it's a little
8 south what happens.

9 A. This is where we get into the amount of
10 stranded costs speaking mostly to the generating
11 assets. And generally I think we think that in the 2
12 cent range, that we would have a stranded cost of
13 around 100 million. But again, that is an estimate, a
14 forecast. It's not something supported by a study.

15 Q. At 2 cents?

16 A. At 2 cents. And obviously if you went to
17 2 1/2 or 3 that number would come way down, and if you
18 went more it would go a lot higher.

19 Q. All right. That's 2 cents above or at 2
20 cents per kilowatt?

21 A. 2 cents per kilowatt hour.

22 Q. Above?

23 A. No. Just --

24 Q. Okay. And then what did you mean by a pure
25 move to competition? I know what pure competition is.

1 I don't know what a pure move to it is.

2 A. As we discuss our strategies and our
3 interest in moving toward competition, sometimes it is
4 taken that that is solely a self-serving type of
5 event.

6 And what we've been very careful to do is to
7 communicate that we really think that competitive
8 markets are inevitable because we're dealing in a
9 market where electricity and natural gas are
10 commodities, and there is very active competition in
11 the wholesale level.

12 But to have real competition is not an
13 individual thing. It is developing that whole market,
14 and our attitude to the market on competition is to
15 develop the market, not necessarily just develop a
16 place for UtiliCorp.

17 Q. All right. Thank you. I only have a couple
18 more questions. One is again with competition, when
19 you discuss competition is better, with respect to
20 issues such as provider of last resort, is Missouri
21 Public Service willing to remain the provider of last
22 resort for those customers that want to stay Missouri
23 Public Service as we enter competition?

24 A. Very much so. And Missouri Public Service
25 Company wants to actually be their primary provider,

1 but we feel we've got to prepare to be able to prove
2 to the customer that we can still achieve that
3 positioning with them.

4 And obviously we'll still be the last
5 resort, but what I'm saying is we don't want to just
6 kick back and become the last resort.

7 Q. But you're willing to be a provider of last
8 resort?

9 A. No question about it.

10 Q. Okay. And then finally, there seems to be
11 an under-current here or a tension with respect to the
12 turnaround time on Data Requests.

13 And my question is based on one of the
14 statements made by Mr. Woodsmall in his opening
15 remarks about if the Commission were to adopt an
16 incentive plan or an EER plan or one of the other more
17 progressive ideas that have been brought forth in this
18 filing and it would require the cooperation and the
19 review of Staff and the Office of the Public Counsel,
20 what assurances do we have that we're not going to
21 have paper flying back and forth to the Commissioners
22 saying that MoPub is not answering Data Requests with
23 respect to their incentive plan, that they're not
24 getting the information in a timely fashion to review
25 it, et cetera, et cetera?

1 A. I can just give you my personal assurance
2 that we do sincerely do everything that we can to get
3 those going, and with the volume plus on the timing
4 that I explained with the competitive filing and also
5 the realignment of UtiliCorp at the same time, it was
6 just a very difficult time for us to be as responsive
7 as we'd like.

8 And so I don't offer excuses. I offer an
9 explanation of why it was not as prompt as we'd like
10 to have, and that is --

11 Q. Let's go to the future.

12 A. The future is the same policy we've had in
13 the past, that we want to be cooperative, open, and
14 get the information that's needed.

15 Q. Now, where are my assurances? That's the
16 question. Where are the assurances that I will not
17 get the explanations? I know these are not excuses,
18 they're explanations. But what happens when there are
19 new explanations? And as you say, competition's
20 coming down the road.

21 So what happens when we're trying to do an
22 incentive plan and -- am I going to have MoPub saying,
23 well, you know, with competition coming down the road
24 and all the information we're trying to gather and,
25 well, competition's not here yet and Staff has another

1 filing and we've got all these other cases out there,
2 and there's only limited staff. And so even though we
3 told you we were going to work cooperatively and we
4 are working cooperatively, it's probably going to be
5 three months before we can give you any information on
6 the incentive plan for your monitoring.

7 Where are my assurances that I'm not going
8 to hear that?

9 A. Well, I can give you, one, my assurance that
10 we're going to do everything we can. I guess
11 something I have is that on occasion we'll disagree
12 with Staff, and we need to take that in the
13 appropriate channels.

14 But again, I can give you my personal
15 assurance that my mandate, our corporate policy is to
16 not arbitrarily delay things. It is to be responsive
17 and get things filed or whatever it might be so that
18 we can get to the issues.

19 Q. If you had an incentive plan and it had
20 monitoring, would you give this Commission your
21 commitment as the top officer that you would put the
22 resources to getting information to the Staff and the
23 Office of the Public Counsel to evaluate and help
24 monitor that program; that if it required shifting a
25 resource to make sure it was there to get the

1 information in a timely fashion, that we would have
2 that?

3 A. Certainly. And again, I just point out in
4 my explanations is somewhat the anomaly of catching us
5 in the realignment in the competitive filing, which I
6 would guess is not going to happen again and,
7 therefore, most assuredly --

8 Q. But something else might happen. So if
9 something else does happen, I want the assurance that
10 you will put the resources to helping with the
11 monitoring.

12 A. I will put the resources to it, to help the
13 monitoring.

14 Q. Thank you very much. I appreciate that.

15 COMMISSIONER DRAINER: I have no other
16 questions.

17 JUDGE DERQUE: Commissioner Crumpton?

18 COMMISSIONER CRUMPTON: Thank you.

19 QUESTIONS BY COMMISSIONER CRUMPTON:

20 Q. Good afternoon, Mr. Green.

21 A. Good afternoon.

22 Q. I'd like to address the position of the
23 Public Service Commission and UCU, UtiliCorp United,
24 being partners in a process. Is that your testimony?

25 A. Yes.

1 Q. That we're partners?
2 A. Yes.
3 Q. Is the customer also a partner?
4 A. Very much so.
5 Q. And what about the workers, are they
6 partners?
7 A. Very much so.
8 Q. And Office of the Public Counsel?
9 A. Yes.
10 Q. Is Staff a partner?
11 A. Yes.
12 Q. Can or should the partners decide when
13 issues are to be addressed on a unilateral basis, or
14 should all the partners get together and decide when
15 we're going to address various issues?
16 A. I think that is ultimately a decision that
17 the partners agree and obviously the Commission makes
18 a decision on.
19 Q. Well, on the timing of the recovery of
20 stranded investments and issues like that, are you
21 sort of giving the Commission your vision of how we
22 can go about addressing these issues, or are you
23 expecting us in this docket to make a decision on
24 these issues?
25 A. We would like to have a -- we'd like to have

1 a decision that we can create what would be a step in
2 that direction.

3 Q. Would that -- if we reach the decision in
4 this docket, would it not affect the other similarly
5 situated utilities?

6 A. No question that as we address that issue,
7 others would have to -- I mean, through their offering
8 up their own evidence and process would follow, I'm
9 sure.

10 Q. They're partners in this process also, are
11 they not?

12 A. Ultimately they are.

13 Q. Would it not be a better idea to have a
14 docket where we give them notice and permit them to
15 offer their suggestions and vision along with yours
16 and where you-all could even cross-examine each other?

17 A. Certainly that's a method. I guess where
18 we're reacting from is a feeling or an encouragement
19 to offer up issues that the partnership can tackle
20 firsthand and talk about, debate, discuss and come up
21 with a solution.

22 And I certainly think in this case with the
23 interventions we have or would have on EWG, et cetera,
24 that it brings the partners together.

25 Q. The Legislature is also a partner that I

1 didn't mention earlier; is that correct?

2 A. Yes.

3 Q. They're probably the most important partner
4 as far as the Public Service Commission is concerned;
5 would you agree?

6 A. They are.

7 Q. We cannot do things that the Legislature
8 does not directly empower us to do, can we?

9 A. Certainly not.

10 Q. On the stranded cost issue, I was pleased to
11 see you were able to quantify that issue. In making
12 the statement that the stranded cost issue was worth
13 2 cents per kilowatt hour, were the Commission to in
14 the future somehow decide that, yes, we're going to
15 permit this recovery and it will be a surcharge, would
16 that be a 2 cent per kilowatt hour surcharge on your
17 normal level of activity?

18 A. No, it wouldn't be that way. Really what
19 we're suggesting when we talk about stranded costs or
20 the generation assets, our solution is through the
21 EWG, that in essence we move that out of rate base.
22 It takes the risk of the stranded cost, and it has a
23 contract back to the customer.

24 So the customer contract is where that price
25 gets -- is where that discussion would happen in what

1 we've suggested.

2 Q. Some states are discussing securitization,
3 are they not?

4 A. Yes, they are.

5 Q. Would that be an alternative?

6 A. I think on stranded costs that that's one
7 and there's others, and I think it's very important
8 that the particular states determine what is best for
9 them, and through our EWG we offered up an example.

10 Q. The EWG assumes, does it not, that there is
11 a certain value to the asset that you're going to move
12 off your books into the EWG?

13 A. Yes.

14 Q. How can we decide what that is if we don't
15 have market bidding on it? In other words, would
16 it -- would the marketplace not be a better place to
17 determine the value of that asset, these assets?

18 A. It certainly could be. I think again that's
19 the whole EWG filing is a way for us to get at those
20 issues.

21 Q. Would you be willing to sell it if somebody
22 walked up to you and offered you a price that met your
23 book value?

24 A. No. I think generation is too important an
25 asset to divest. I'm not, nor is UtiliCorp, a

1 proponent of divestiture.

2 Q. Divestiture. Okay. But we will have to
3 give some type of value to that asset?

4 A. Certainly, yes.

5 Q. Okay. Now, I'd like to discuss very briefly
6 your McDonald's experiment so that I can understand
7 what Energy One is doing. First of all, how is the
8 experiment going? Are you pleased?

9 A. Yes, we're very pleased. It's working well,
10 and McDonald's, I think, is saving around 5 percent on
11 their electric bills.

12 Q. That's about what was projected, is it not?

13 A. It was the low end of the range. I think
14 they maybe had hoped to get it up to 10 percent.

15 Q. Is UtiliCorp selling to McDonald's in other
16 areas outside of your territory under Energy One?

17 A. I'm sure there's McDonald's restaurants in
18 some of our other regulated territories, but it
19 wouldn't -- it would be just a straight regulated
20 customer kind of relationship.

21 Q. Okay. I'm very intrigued by the process
22 whereby you extend the power and influence of Energy
23 One through the franchise mechanism. Is that one of
24 your options or one of your plans?

25 A. It is. Earlier this year, in partnership

1 with Pico Energy, we licensed the Energy One brand
2 name to a partnership, which we now own 50 percent of
3 along with Pico.

4 And then that partnership is talking to
5 utilities across the country in a franchise
6 relationship to be able to use Energy One and get
7 other products and services.

8 Q. Would that work like -- let's say Duke Power
9 wanted to use that brand name. Would you just
10 franchise them to use the brand name, they would
11 provide the power that they sold under the brand name,
12 and then give you some type of reward for using the
13 brand name? How would that work?

14 A. That's certainly a way it can work. There
15 is a number of variations depending on what the
16 utility wants. For example, Pico, our partner in
17 Pennsylvania who's involved in a large pilot right
18 now, is using the brand name for their energy. They
19 also will begin selling AT&T Telephone and ADT
20 Security through the Energy One brand name.

21 It's a menu that a utility can decide that
22 they want other products and services, that they'd
23 like to sell electricity or natural gas. Some
24 electric companies ask the partnership to put them in
25 the gas business, all in what they think is

1 appropriate for their regulated territory.

2 Q. Now, ultimately some revenues will flow back
3 from that Energy One relationship into UtiliCorp?

4 A. That's correct.

5 Q. And if the ratepayers just happen to develop
6 some of the systems that you will use in marketing
7 this Energy One, would Energy One or would UtiliCorp
8 then reward the ratepayers for developing these
9 systems by giving them some type of franchise fee or
10 anything of that nature?

11 A. Right now our distribution properties,
12 including Missouri Public Service Company, are that
13 franchisee with the partnership right now. That's a
14 fee we're paying.

15 Q. When you say we?

16 A. Meaning UtiliCorp or Missouri Public --
17 well, it's not -- Missouri Public Service as far as a
18 rate sense is not paying it. But I -- we do not
19 believe in subsidization.

20 So as we start a partnership, or Aquila or
21 whatever, we make it very clear that we're not going
22 to use ratepayers' money to develop that business.
23 That's on the -- that's the shareholders' risk.

24 Q. And you have a fail-safe system for
25 identifying these flows and making sure that the MoPub

1 customers are not subsidizing these other issues?

2 A. Yes.

3 Q. Okay. I'm intrigued by your response on
4 page 10 of your direct testimony, and I guess it's
5 covering a question on line 14 where you make the
6 statement eventually that savings to customers from a
7 restructured 200 billion electricity market would be
8 substantial.

9 Then you go on and say that a recent study
10 by Clemson, for example, found that gains to customers
11 could be as much as 108 billion per year.

12 How does that work? Is that -- does that
13 mean their bill would be slashed by 108 billion or --

14 A. What a lot of these studies do is they do
15 start to extrapolate what would happen in a regulated
16 market and make assumptions like a 5 percent,
17 10 percent decrease, again to give indications.

18 And I think it's important that we all
19 understand whether they're surveys or whether they're
20 studies, that whatever it is we need to walk through
21 that ourselves and, again back to the partnership,
22 decide what we want to do or don't want to do.

23 Q. Would that be sort of a ripple effect of
24 5 or 10 percent savings throughout the economy, would
25 have a \$108 billion benefit?

1 A. I think that this deals with just the
2 customers, the energy customers in the country.

3 Q. Okay.

4 A. The aggregate benefit that would go to that
5 population.

6 Q. Okay. On page 11, you discuss the study and
7 the five policy findings. I'm impressed that worker
8 safety was not a concern. Is safety important to the
9 public in this area?

10 A. Very much so. It's where everything starts.
11 I think as we move to a competitive market, it often
12 is made as too easily assumption. But whether it is
13 the environment, whether it is safety, whether it is
14 the low income, all of those things have to be a part
15 of the picture going forward. They cannot be ignored
16 or left out.

17 Q. They're part of the partnership, so they
18 should --

19 A. Certainly.

20 Q. -- workers at least should be kept in mind.

21 Is public safety one of your core beliefs?
22 Over on page 12 of your direct, you talk about perhaps
23 14 core beliefs, and I don't see safety as being --
24 public safety, neither public safety nor worker safety
25 being a core belief. Am I missing something?

1 A. Well, I think here it is our basic belief
2 that even before you even think about competition or
3 customer choice, it is the basic way you approach the
4 business.

5 It's not meant to imply they're left out.
6 It's to communicate that they're a very core belief
7 whether we're in a competitive market or out of a
8 competitive market.

9 Q. But public safety is a core belief?

10 A. Very much so.

11 Q. I want to thank you for your vision. I have
12 a couple of other questions, just one in your
13 rebuttal. On page 7 of your rebuttal testimony, I
14 have a -- from line 7, the question on line 7 down to
15 about line 15, I have a question written.

16 How much of an increase is reasonable, and
17 can you help me understand how much of a marketing or
18 promotional cost is reasonable to your ratepayers?

19 A. Well, right now what we have decided to move
20 forward with is about \$1.7 million. Now, that shows a
21 high in '95 of about 6 1/2, 7 million. '96 it dropped
22 to around 4 1/2 and trending down.

23 I think what we found in those years, the
24 start-up year in '95, that the additional costs in
25 marketing and sales in a competitive market is higher,

1 and what we've been working on is how we can get that
2 down. And the reason it's down to the 1.7 is because
3 of the partnership and the sharing of that.

4 I think going forward that that number could
5 go up. It could be back up in maybe the 5 or
6 6 million range. But let me emphasize, that really is
7 a guesstimate because we're really at the beginning of
8 what kind of costs need to go in there and what's
9 appropriate for rates and what's not.

10 Those are recorded in there, but certainly
11 it's not an automatic decision that they should go in
12 rates at this time.

13 Q. Okay. So we could be looking at a little
14 less than 1.7 million?

15 A. Or more.

16 Q. Okay. It was your testimony earlier that
17 Staff is a partner in this process, and on page 8 of
18 your rebuttal testimony, you state that Staff's
19 position on this point -- and this is line 17 -- leads
20 me to a continued realization that the Staff is simply
21 not ready to embrace change.

22 Are you ready to -- are you willing to
23 concede that they are willing to accept change?

24 A. I want to work with them so that we all can
25 accept change.

1 Q. In the cross-examination from Mr. Woodsmall,
2 he went through a series of items that you agreed the
3 Staff was supporting; is that right?

4 A. He did.

5 Q. Okay. Would that indicate that they are
6 willing to embrace change, because these are the
7 changes you requested?

8 A. I think it's definitely some change, but
9 obviously --

10 Q. There's more?

11 A. -- not to the degree that we would like to
12 create the partnership to explore other areas.

13 Q. So it's your testimony they need to do a
14 little more heavy lifting on this partnership?

15 A. Well, we all need to do heavy lifting. This
16 is not an easy situation to tackle. It's going to
17 take time.

18 Q. Okay. Now, I started out by asking you
19 about these transition costs. I need you to help me a
20 little more. You need to convince me that this is the
21 docket to consider transition costs for your company.
22 Help me understand that this is it. Is that your
23 position?

24 A. Yes, it is, because it is important, I
25 think, that we begin to prepare. We're seeing

1 competition start to move rather quickly, and that
2 preparation doesn't happen overnight.

3 As we start to discuss these transition
4 issues and we talk about amortizations that go out 20
5 years and to get to competition they've got to come
6 back to four or five or whatever, it would be nice to
7 have the amount of years to be able to make that
8 transition perhaps before competition as opposed to it
9 coming so close that it's more of an urgent or
10 emergency situation.

11 It gives us more time. It kind of takes the
12 first step. It certainly doesn't raise, nor do we
13 think it's prudent to raise, to some radical
14 restructure, but it takes the first step, and I think
15 that's what we're after.

16 Q. So you want us to make the first step? It
17 may not be as large as you are proposing, but as long
18 as we're moving in the right direction, you think that
19 would be --

20 A. I think that's important.

21 Q. I really appreciate your opening in your
22 direct testimony. It helped bring our minds to where
23 we are, historically speaking.

24 Mr. Russell Trippensee from the Office of
25 the Public Counsel, who you indicated is also a

1 partner in this, had some things to say in his direct
2 testimony, and I'd like to hear your response.

3 On page 14 of his direct, he attempts to
4 apparently explain to the Commission just what
5 UtiliCorp is trying to do. Are you familiar with his
6 testimony?

7 A. I am not.

8 COMMISSIONER CRUMPTON: Can someone provide
9 him with a copy? This is important here that I get
10 your response to this.

11 MS. EGBARTS: Is it direct?

12 COMMISSIONER CRUMPTON: The direct, page 14,
13 starting at line 4.

14 BY COMMISSIONER CRUMPTON:

15 Q. He's basically discussing a number of
16 different regulatory regimens. And beginning at line
17 4, do you have it?

18 A. I do.

19 Q. The other method, he begins, a regulated
20 utility could use to reduce expected costs at the
21 advent of competition is to get the regulator --
22 that's one of your partners -- to require current
23 captive customers to pay a portion or all of the
24 capital costs that would be applicable to the
25 production of services in a post-monopoly environment,

1 and he goes on to give some examples.

2 How do you feel about that? Is he telling
3 us what is really happening here?

4 A. I think what he talks about is certainly an
5 option, and that's why I think it's so important that
6 we address the issue.

7 I do not believe that this is something that
8 we just push off onto the customer. Again, back to
9 the partnership, the Company has to take steps to
10 mitigate their costs, and they have to be able to show
11 that kind of evidence. I think the shareholder has to
12 take a piece of it, and I think the customer needs to
13 share in that, too.

14 And it's how you work that trio there that's
15 important, and it certainly shouldn't be shoved, you
16 know, just one way or the other with additional
17 charges.

18 Q. Now, he goes on on line 8 to say
19 subsequently the capital asset is still able to
20 provide production capacity. However, the financial
21 records and public financial reports would not include
22 any associated costs.

23 In other words, if all the depreciation is
24 gone, now all of a sudden you have a different capital
25 structure, you have a different expense per kilowatt

1 hour that may be even new competitors would not. In
2 other words, they would not have the benefit of zero
3 depreciation expense.

4 A. Again, I think this is one, and I think we
5 need to discuss these and decide what the best way to
6 go here in Missouri is.

7 Q. Because there's really nothing wrong with
8 you moving an asset of your books as long as you
9 reward the -- your customers for having paid for those
10 assets.

11 A. And that gets into the valuation of it and
12 all of that process.

13 Q. So in the long-term, you would not even have
14 the asset on your books. The asset would be somewhere
15 else. You would just have the cost of producing it
16 long-term, producing the energy per kilowatt hour
17 long-term as that cost is paced to you from the
18 producers; is that right?

19 A. I'm not totally sure on that.

20 Q. Well, if the asset's no longer on your
21 books, would not competitors have an opportunity to
22 buy power from that EWG also?

23 A. Well, the way we're viewing it is the
24 primary buyer is the contract back to Missouri Public
25 Service Company.

1 Q. Let me ask you this. Does Missouri Public
2 Service Company have excess production capacity?

3 A. Out of our plants, no.

4 Q. Okay. What percent of your power is
5 purchased?

6 A. I can't give you that.

7 Q. Okay. Would it be 30 percent?

8 A. I'd say --

9 Q. I'm talking about Missouri.

10 A. -- 25 to 30 percent.

11 Q. 25 to 30 percent.

12 COMMISSIONER CRUMPTON: Okay. I think that
13 ends my testimony -- I mean my questions. I did enjoy
14 my testimony, but thank you very much.

15 JUDGE DERQUE: Commissioner Murray?

16 COMMISSIONER MURRAY: Thank you.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Mr. Green, can you see the transition to
19 competition resulting in a rate decrease to
20 ratepayers?

21 A. I guess the transition, what we're seeing is
22 two ways, that you can look at transition as being a,
23 I guess a rate decrease because you didn't change any
24 of the transitions, you just kept them. It could be
25 something that's revenue neutral, for example, in the

1 sense that they go to offset going forward, or it
2 could be an increase to the customer.

3 The point of all that is to get past the
4 transition into a market that can allow benefits to
5 customers.

6 Q. All right. I have not carefully looked at
7 this survey that you've talked about in terms of
8 finding that ratepayers were in favor of competition,
9 but I would like to know if you think that ratepayers
10 believe that competition will result in them actually
11 paying lower rates for their electricity?

12 A. I believe -- and again, this is out there in
13 that world of studies and surveys that a number of
14 people are doing.

15 I believe that when a customer says I'm
16 interested in having choice, what they believe is that
17 choice will allow them to, one, have some control over
18 their energy more than they do now; and secondly,
19 could provide them some discount, and what we see a
20 lot of people talking about is the questions that say
21 if you could save 5 percent or 10 percent, would you
22 switch, to try to determine what level of savings they
23 could -- what level of savings could be achieved by a
24 customer.

25 Q. But you are here to promote a rate increase

1 at this time?

2 A. Yes.

3 Q. And a large portion of the rate increase is
4 due to your wanting to transition and be ready for the
5 competitive market; is that correct?

6 A. That is correct. It's -- many utilities and
7 transitions or stranded costs across the country are
8 tackling the same issue of what do we do, how do we
9 get through these costs to get to the competitive
10 market?

11 Q. I'd like to refer you to a document. I
12 don't know if you have it, but if you don't, perhaps
13 your counsel could provide you with it.

14 It's Schedule 1 in Steve Traxler's
15 surrebuttal testimony, and that's a -- that testimony
16 is labeled highly confidential, and I'm assuming that
17 the Schedule 1 is at least partially confidential, and
18 I would ask for guidance if I ask question that should
19 be considered confidential.

20 MR. WOODSMALL: Your Honor --

21 JUDGE DERQUE: We'll just go in-camera.

22 MR. WOODSMALL: -- I would note that that is
23 the officers' conference transcription from 1988, and
24 I believe that we haven't denoted that as highly
25 confidential, have we? I don't believe that is highly

1 confidential.

2 MR. SWEARENGEN: I believe it is. It should
3 be.

4 JUDGE DERQUE: I think the whole thing is
5 highly confidential.

6 COMMISSIONER CRUMPTON: Yeah, the whole
7 thing.

8 (REPORTER'S NOTE: At this time, an
9 in-camera session was held, which is contained in
10 Volume No. 3, Pages 189 through 210 of the
11 transcript.)
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1 JUDGE DERQUE: We're on the record.
2 Recross, Mr. Keevil?
3 MR. KEEVIL: Very, very briefly.
4 JUDGE DERQUE: We're no longer in-camera.
5 Excuse me.
6 RECROSS-EXAMINATION BY MR. KEEVIL:
7 Q. Mr. Green, do you have a copy of
8 Schedule JWM-1? It's the schedule No. 1 to
9 Mr. McKinney's surrebuttal, I believe.
10 A. I do not have that with me.
11 Q. Okay. Let me ask you, make sure I
12 understood something, one of your responses in
13 response to a question Vice Chair Drainer asked.
14 She asked you a question regarding in this
15 competitive environment that you foresee coming,
16 whether Missouri Public Service would be the provider
17 of last resort, and I believe you stated that Missouri
18 Public Service wanted to be the provider of last
19 resort; is that correct?
20 A. That is correct.
21 Q. If I could direct your attention to page 2
22 of Schedule JWM-1, which I believe you now have a copy
23 of, would you take a look at the bottom of that
24 page 2. It's IBEW-9007, a Data Request I sent you
25 where the DR asked, in your view of a competitive

1 energy market, what would be a mandatory provider of
2 last resort? Will that provider of last resort be the
3 incumbent energy utility company? Do you see that
4 question, sir?

5 A. I do see that.

6 Q. And then would you on the top of the next
7 page, page 3, would you -- do you see the response of
8 your company? Would you read that response, please,
9 sir, into the record.

10 A. Starting with implicit?

11 Q. Yes.

12 A. Implicit in the first question is the
13 assumption that there will be markets containing
14 customers that no one wants to serve, therefore
15 creating a situation where certain customers have no
16 choice of supplier.

17 This, of course, has yet to be confirmed.
18 If it is true, then mechanisms will be developed to
19 address the problem. For example, one solution would
20 be for commissions to place conditions on market
21 entrants requiring them to provide service options to
22 all customers in the market under that Commission's
23 authority.

24 Other solutions will most likely surface.
25 These solutions may or may not require the incumbent

1 utility to be a provider of service. If the basic
2 assumption is false, then providers of last resort
3 will not be necessary. Pricing of the service will
4 depend on the solution adopted if, in fact, that
5 condition exists.

6 Q. Okay. Thank you, sir. Now, that response
7 does not sound to me like the response of a company
8 which wants to be the provider of last resort.

9 I suppose my question to you is, do you
10 disagree with that response based on your earlier
11 response to Vice Chair Drainer?

12 A. Yeah. Obviously my response stands, and
13 here the question is the view of the energy markets,
14 and again I think it's the caution we've talked about
15 is that there are different views and different
16 approaches, and that doesn't necessarily dictate
17 exactly what we do here. But clearly I think we need
18 that last resort situation.

19 Q. Okay. But this -- I mean, this is -- I did
20 correctly identify this as the response of your
21 company to the Data Response -- the Data Request I
22 read, correct, sir?

23 A. That's right. And what I was pointing out
24 is that the Data Request said in your view of the
25 competitive energy market, talking about the whole

1 market as opposed to what Missouri Public Service
2 Company would do in the state of Missouri. So that --
3 so it's slightly two different things, and nothing
4 changes from my response to the Commission.

5 Q. Okay. I believe in response to a question
6 from Vice Chair Drainer regarding the surveys, you
7 stated that you read and look at a lot of survey
8 material; is that correct, sir?

9 A. That is correct.

10 Q. And also in response to a question from
11 Chair Lumpe, you stated that UtiliCorp has done
12 surveys in each of your jurisdictions; is that
13 correct?

14 A. Yes.

15 Q. Customer choice surveys in each
16 jurisdiction.

17 A. I believe it was the Gallup one that was
18 referred to.

19 Q. But the Gallup one only was the -- was
20 Missouri Public Service specific, was it not?

21 A. I think so.

22 Q. Okay. But you're saying that you have done
23 those surveys in each of your other jurisdictions
24 also?

25 A. Yes.

1 Q. Okay. While you still have Mr. McKinney's
2 schedule there in front of you, if you'd look at, I
3 believe it's on page 1, right in the middle of the
4 page, IBEW-9003, please provide copies of all surveys
5 in the possession, custody or control of UtiliCorp
6 United, d/b/a Missouri public Service, related to
7 customers' desire to have choice in their energy
8 provider. Do you see that request, sir?

9 A. I do see it.

10 Q. Are you aware of what surveys were or were
11 not provided to me in response to that request?

12 A. No, I'm not.

13 Q. So you wouldn't know why I did not receive
14 surveys from any other jurisdiction of UtiliCorp other
15 than Missouri in response to that question?

16 A. I wouldn't be familiar with that whole issue
17 or the question, no.

18 MR. KEEVIL: Nothing further.

19 JUDGE DERQUE: Jackson County has been
20 excused. Mr. Mills?

21 MR. MILLS: Thank you. I've got a few
22 questions.

23 RECROSS-EXAMINATION BY MR. MILLS:

24 Q. While we're on the topic of surveys, Vice
25 Chair Drainer asked you for the three surveys referred

1 to in your direct testimony; is that correct?

2 A. Yes, she did.

3 Q. And you promised to get those right to her?

4 A. That's correct.

5 Q. Are you aware that Public Counsel asked for
6 those surveys on June 4th, sent two follow-up letters,
7 had a number follow-up phone calls, and has yet to
8 receive all of those surveys?

9 A. No, I'm not aware of that, nor of the
10 reasons that we didn't provide them. I want to be
11 careful that I believe there's two sides of the story
12 when the question's being asked here, but I'm not
13 fully aware of UtiliCorp's side of that.

14 Q. But you're fairly confident that you can get
15 them to Vice Chair Drainer pretty quickly, I assume?

16 A. I'm certainly going to look into that, yes.

17 Q. Okay. Now, I think in response to some
18 other questions you said that, from Vice Chair
19 Drainer, that you see a lot of surveys and studies; is
20 that correct?

21 A. That's correct.

22 Q. Are you aware that Public Counsel asked for
23 any other surveys possessed by UtiliCorp except for
24 the three that we just talked about that contain
25 information about customer attitudes and was informed

1 that UtiliCorp has no other surveys?

2 A. My reference to surveys were what I do in my
3 general reading. They're not necessarily possessed or
4 commissioned by UtiliCorp. There's a lot in industry
5 literature and other places that talk about surveys in
6 general, and that was my reference point to the
7 Commissioner.

8 Q. Okay. So you've read these surveys, but
9 UtiliCorp doesn't necessarily possess them?

10 A. Not that I'm aware of.

11 Q. At the time that you read them, did you
12 possess them?

13 A. I'm sure I did.

14 Q. You did, but UtiliCorp doesn't, is that
15 the -- what I'm trying to get at is, we asked for all
16 these surveys that form the basis of some of your
17 testimony and that you referred to in response to Vice
18 Chair Drainer, and we were unable to get any of them.

19 I'm trying to find out if UtiliCorp never
20 had any or what the story is.

21 A. Well, in my reference is simply in daily
22 reading, whether it's newspapers or trade journals or
23 whatever, one will read about surveys, and you don't
24 necessarily, at least I don't maintain that material.

25 Q. In response, I believe, to a question from

1 Vice Chair Drainer, you said that the -- your direct
2 testimony was written for you but not by you; is that
3 correct?

4 A. Written for me.

5 Q. Did you write your direct testimony in this
6 case?

7 A. Those are my thoughts. You know, somebody,
8 much like you dictate to a secretary or something or
9 give somebody your thoughts and they formalize it and
10 check the grammar, put it in the right form.

11 Q. So you dictated your direct testimony?

12 A. The thoughts in there, yeah.

13 Q. Okay.

14 A. Developing testimony, in my opinion, is not
15 an individual event. It's one where I sit down with
16 my management team and start -- decide the right way
17 to address issues, and so I did not come up with my
18 testimony in a vacuum or in isolation.

19 Q. So the testimony that's filed under your
20 name, who all was involved in writing that?

21 A. You know, maybe less than a half a dozen
22 people that I would talk to and discuss the issues and
23 subjects.

24 Q. And who are those people?

25 A. Well, I didn't, you know, keep track of it

1 as I talked to them.

2 Q. So the testimony that you filed with the
3 Commission, you can't even tell us who wrote it all?

4 A. Well, sure. It's my testimony, and that's
5 what's behind it.

6 Q. Is the same kind of exchange that we're
7 having here, would that hold true for your rebuttal
8 and surrebuttal as well?

9 A. Yes.

10 Q. Okay. Now, I believe in response to a
11 question from Commissioner Crumpton you indicated that
12 the responsibility for transition costs needed to be
13 shared among shareholders and ratepayers; is that
14 correct?

15 A. That's correct.

16 Q. Is there anywhere in any of the testimony
17 that UtiliCorp filed in this case that talks about
18 sharing transition or shared -- or stranded costs with
19 ratepayers?

20 A. Well, I think I can't answer that. I mean,
21 maybe there is; maybe there isn't.

22 Q. You don't know if UtiliCorp has proposed in
23 this case to share transition costs?

24 A. Well, essentially UtiliCorp has gone way
25 beyond many other companies in mitigating our costs,

1 and the way we run the business, that was instituted
2 back in 1994. So I think it's real clear that
3 UtiliCorp has gone above and beyond to put in their
4 piece of this, of this sharing.

5 Q. Okay. So you think it's appropriate in this
6 case that shareholders share in some of the transition
7 costs; is that correct?

8 A. In a way, I think they already have.

9 Q. Of the transition costs that have been
10 calculated and referred to as transition costs in this
11 case, do you believe that it's appropriate that
12 shareholders share a portion of that particular dollar
13 amount?

14 A. I think that has to be in context with what
15 already has gone on. The sharing among the parties is
16 not something that's just isolated to this case.

17 Q. So you think that the amount that UtiliCorp
18 has identified as transition costs in this case should
19 all be borne by ratepayers?

20 A. Yeah. This is the ratepayer piece of that,
21 yes.

22 Q. And would the same be true of stranded
23 costs?

24 A. Yes.

25 Q. Okay. So if at some future proceeding,

1 according to whatever method the Missouri Commission
2 or Legislature uses to calculate stranded costs, if,
3 for example, UtiliCorp's stranded costs in Missouri
4 calculated out to be \$100 million, you would say that
5 all of that \$100 million should be borne by
6 ratepayers?

7 A. Right now what we're saying is that that is
8 going to be taken care of through EWG, and again I
9 think it's important that we don't leap to
10 conclusions. This is something that -- that's why
11 it's of issue here and we're discussing it. There is
12 no particular scenario that I think today we can leap
13 to and make conclusions on.

14 Q. Hypothetically, if UtiliCorp's either EWG
15 application is not approved and if UtiliCorp's
16 Missouri stranded costs are calculated to be
17 \$100 million, would you propose that shareholders bear
18 a certain percentage of that?

19 A. I'm not willing to step out into theory like
20 that.

21 Q. Okay. But you wouldn't foreclose the
22 possibility of shareholders sharing a certain portion
23 of those?

24 A. I think it's an issue we look at as we
25 address it in the future, and we've put a particular

1 scenario up for discussion now, and that's our opinion
2 at this point in time.

3 Q. Okay. So you're not going to say yes or no
4 on sharing in the future?

5 A. Well, I'm going to say yes on sharing
6 because that's what I talked to the Commissioner about
7 and I stand by my statement. As to how much, when it
8 happens of the groups, I'm not willing to theorize as
9 to how that might fall out in the future.

10 MR. MILLS: That's all the questions I have.
11 Thanks.

12 JUDGE DERQUE: Mr. Woodsmall?

13 MR. WOODSMALL: Yeah. A couple real quick
14 ones.

15 RECROSS-EXAMINATION BY MR. WOODSMALL:

16 Q. Commissioner Murray asked you about some
17 statements in your -- in the schedule of the officers'
18 conference, and it had to do -- I'm not going to get
19 into highly confidential information, but it had to do
20 with the pledge percent of corporate overhead.

21 And I recognize that MoPub doesn't exist for
22 financial purposes, but can you make a pledge
23 percent -- I don't believe you ever answered her
24 question. Can you make a pledge percent as to how
25 much UtiliCorp will allocate to MoPub for regulatory

1 purposes?

2 A. No. And that's not the point of that
3 percentage. The way we allocate is through
4 appropriate allocation methods, Massachusetts Formula,
5 and that's the way that's done. It's not relevant to
6 the percent.

7 Q. Okay. So even if an incentive plan was
8 adopted, those overhead allocations are susceptible to
9 go up or down to any extreme; is that correct?

10 A. Well, I'm sure that the incentive plan
11 that's adopted will speak to that.

12 Q. Okay. But you don't know how that is spoken
13 to in the incentive plan proposal of MoPub?

14 A. As far as corporate overhead costs?

15 Q. Right.

16 A. Well, it's not going to be a 2 percent thing
17 because that's irrelevant today in the way we're
18 structured.

19 Q. I agree with that, and that's what I'm
20 trying to understand. 2 percent isn't appropriate any
21 more ten years later given the new structure. What
22 would be appropriate, or in your mind how would you
23 deal with that in the incentive plan?

24 A. Massachusetts Formula.

25 Q. Okay. Commissioner Crumpton asked you some

1 questions about the proposal to accelerate the
2 amortization of regulatory assets, which he called
3 transition costs, and I believe there was some
4 discussion about the need to start that amortization
5 sooner than later. Do you recall that?

6 A. Yes, I do.

7 Q. Okay. In your mind, is there anything, any
8 financial statements, any type of dictate from anybody
9 which would preclude recovery of those costs even once
10 competition starts?

11 A. I think the -- well, I think the preclusion
12 is that it effectively disallows a competitive market.
13 If there is bundled in the utility, incumbent utility
14 charge a lot of what would be noncompetitive market
15 charges, you in essence get in a situation that
16 frustrates competitive markets and, therefore, it
17 would not be, you know, I think a good way to go. It
18 would be just a half step toward competition.

19 And what you get into is a duplication of
20 costs really with the fact that that's in the bundled
21 rates of the incumbent utility charging the customer.
22 If the customer chooses to go to some other marketing
23 company or some other provider, then they still pay in
24 those bundles fees and they pay again with the other
25 provider.

1 So it's getting at that kind of duplication
2 and really getting into what the costs are so that we
3 can take care of them and really have a competitive
4 market, not just make a half attempt.

5 Q. Maybe I don't understand exactly what you're
6 saying. It's my understanding from what you just said
7 that that assumes that any surcharge would be assessed
8 to the commodity portion of the bill following
9 competition. Is that an assumption built into your
10 answer?

11 A. No. There's no surcharge. It's just what
12 makes up the utility charges today.

13 Q. Okay. Could any discussion of transition
14 costs or stranded costs, could those items be
15 recovered following competition as a surcharge on the
16 use of the distribution system?

17 A. To the degree that it is done that way,
18 which again is one scenario of many out there, it
19 would serve as to postpone competition because it
20 doesn't allow, you know, the competitive pricing to
21 take place. You've got this piece that is
22 transitioning toward a competitive market. You're not
23 in a competitive market.

24 Q. But the distribution function -- in the
25 competitive market envisioned by UtiliCorp, the

1 distribution function isn't competitive; is that
2 correct? It would still continue to be a regulated
3 function; is that correct?

4 A. It is, but it is with all the costs
5 recognized what they are, that you identify these
6 transition costs, that you address how you can deal
7 with them, that you unbundle the other costs and the
8 subsidies going on in the rate structure so we
9 understand what we have so we can decide how we're
10 going to take care of low income, how we're going to
11 take care of the environment and the different pieces.

12 It is -- you know, keeping that bundled up
13 and not addressing it will frustrate competition. And
14 we need to get those out on the table and talk about
15 them.

16 Q. Commissioner Crumpton asked you some
17 questions about the basis for your, was it \$100
18 million, \$200 million estimate of stranded costs, and
19 I believe you said that that was based upon a 2 cent
20 figure; is that correct?

21 A. Roughly. And again, I'm -- this is a rough
22 guesstimate. It's not exact.

23 Q. And that was based upon the McDonald's
24 aggregation experiment, that's how you derived the
25 2 cents figure; is that correct?

1 A. No. The 2 cents figure is just a price out
2 there with a guesstimate of 100 million. The
3 McDonald's and the Associated Wholesale Grocers are
4 two examples of prices that are being paid out there,
5 the McDonald's one being a little bit above 2 cents
6 and the Associated Grocers being a little bit under
7 2 cents. It's showing what the market is paying.

8 Q. Okay. Is MoPub currently able to sell
9 electricity at the 2 cent level that McDonald's has
10 found through its aggregation experiment?

11 A. No. That's why we have stranded costs.

12 Q. And so certainly any increase that came out
13 of this case would just serve to increase the
14 differential between the market and what MoPub
15 charges; is that correct?

16 A. No, because it gets back into those other
17 charges, not the generation, stranded cost charges.

18 MR. WOODSMALL: I don't have -- oh, one
19 further thing, your Honor, and this isn't a question.
20 I asked some questions earlier about the FERC Form 1,
21 and at that time I intended to offer to do a
22 late-filed exhibit.

23 Just to clarify the record, I'd like put
24 into the record just the one page out of the FERC
25 Form 1 that Mr. Green was referring to. I believe it

1 clarifies the record and will clearly indicate what
2 his statement was.

3 JUDGE DERQUE: It will be marked as
4 Exhibit 7, FERC Form 1. Is there any objection to the
5 admission of this?

6 MR. SWEARENGEN: No objection.

7 JUDGE DERQUE: One page, is it?

8 MR. WOODSMALL: Yes, it's one page.

9 JUDGE DERQUE: Being no objection, it will
10 be admitted. We're off the record.

11 (EXHIBIT NO. 7 WAS MARKED AND RECEIVED INTO
12 EVIDENCE.)

13 JUDGE DERQUE: We're back on the record.

14 The requested surveys by Vice Chair Drainer,
15 who's going to furnish those and when will they be
16 here? Mr. Swearengen, your client is going to produce
17 those?

18 MR. SWEARENGEN: That's right.

19 JUDGE DERQUE: In a week?

20 MR. SWEARENGEN: Mid week, hopefully.

21 JUDGE DERQUE: When you get those, that will
22 be late-filed No. 8, and we will pause and see if
23 anyone wants to cross-examine on those. Will there be
24 a witness available that's familiar with them to
25 cross-examine?

1 MR. SWEARENGEN: We'll produce somebody.
2 JUDGE DERQUE: Is somebody okay with you,
3 Mr. Woodsmall?
4 MR. WOODSMALL: I won't have any questions
5 on them.
6 JUDGE DERQUE: Or do you want Mr. Green?
7 MR. WOODSMALL: I won't have any questions
8 on them, so anybody's fine.
9 MR. MILLS: I don't need Mr. Green to come
10 back.
11 JUDGE DERQUE: So someone is okay?
12 MR. MILLS: Someone is okay.
13 JUDGE DERQUE: Mr. Keevil?
14 MR. KEEVIL: Someone will be fine.
15 JUDGE DERQUE: Thank you. All right.
16 MR. KEEVIL: I assume those will be
17 provided, served on everybody?
18 JUDGE DERQUE: I think somebody's probably
19 going to walk in with a big handful of paper and pass
20 them out; is that accurate?
21 MR. SWEARENGEN: Probably right.
22 JUDGE DERQUE: Redirect?
23 MR. SWEARENGEN: Yes, your Honor, just a
24 couple of questions.
25 MR. SWEARENGEN: Mr. Woodsmall there at the

1 end had marked as an exhibit a FERC Form 1, I think
2 for the year 19 -- was it '96, David?

3 MR. WOODSMALL: Yes. It's at the top.

4 MR. SWEARENGEN: So we can complete the
5 package on this, I've got the one for '95. Can we go
6 ahead and have that marked?

7 MR. WOODSMALL: In fact, this has '95,
8 current year and previous years.

9 MR. SWEARENGEN: What would that number be,
10 exhibit number?

11 JUDGE DERQUE: You mean the next one? The
12 next one's No. 8 -- I'm sorry -- No. 9. That will be
13 No. 9. What do you have?

14 MR. SWEARENGEN: It is the FERC Form 1,
15 similar to the prior exhibit. Year of the report is
16 December 31, 1995.

17 JUDGE DERQUE: '95. Okay. That will be
18 FERC Form 1 '95, Exhibit No. 9. We're off the record.

19 (Discussion off the record.)

20 (EXHIBIT NO. 9 WAS MARKED FOR
21 IDENTIFICATION.)

22 JUDGE DERQUE: We're back on the record.
23 Mr. Swearengen.

24 MR. SWEARENGEN: Yes, your Honor.

25 REDIRECT EXAMINATION BY MR. SWEARENGEN:

1 Q. Just one question on redirect. I believe it
2 was Mr. Keevil in the first round of testimony,
3 Mr. Green, asked you about a statement on page 10 of
4 your rebuttal testimony where you referenced a letter
5 from the Commission's Energy Engineering Department,
6 and you quoted some material from that letter. And he
7 asked you who the author of that was and you couldn't
8 recall at the time.

9 I'm going to hand you a memorandum addressed
10 to Carl Zobrist, Chairman, from Jim Ketter,
11 Commission's Energy Engineering Department, subject
12 Kansas City area electric outage October 22, 1996, and
13 the date of the memorandum is December 6th, 1996. And
14 I believe on page 10 of that document is the material
15 that you referred to in your testimony.

16 Is that the letter that you were referring
17 to in your testimony on page 10?

18 A. Yes, it is.

19 MR. SWEARENGEN: That's all I have.

20 JUDGE DERQUE: Thank you, Mr. Swearengen.

21 Is there anything else for Mr. Green?

22 Thank you, Mr. Green. You may step down and
23 I believe be excused. Is there any objection to
24 excusing Mr. Green from the remainder of this hearing?

25 (No response.)

1 JUDGE DERQUE: Seeing none, thank you, sir.

2 (Witness excused.)

3 JUDGE DERQUE: Mr. Woodsmall, your first
4 witness?

5 MR. WOODSMALL: Your Honor, at this point
6 I'd like to make a request. As I mentioned earlier,
7 I'm going to be gone tomorrow for Commission business,
8 and if it's at all possible, I could take care of the
9 cross if we could finish Mr. Empson and Mr. McKinney
10 tonight. Otherwise, we may have to do something funny
11 later so I can do the cross of them. I don't know how
12 you want to handle that. I'll do it either way.

13 JUDGE DERQUE: What's your definition of
14 tonight?

15 MR. WOODSMALL: I don't know. I have no
16 idea. But I have to be gone on Commission business
17 tomorrow.

18 MR. MILLS: I don't think we can finish
19 Mr. McKinney and Mr. Empson tonight.

20 JUDGE DERQUE: Let's go off the record a
21 minute.

22 (A recess was taken.)

23 JUDGE DERQUE: We're on the record.

24 We're proceeding out of order by consent of
25 parties, and this is IBEW witness Jerry Harris.

1 (Witness sworn.)
2 JUDGE DERQUE: Thank you, sir. Mr. Keevil?
3 MR. KEEVIL: I need to premark three copies
4 of his testimony.
5 JUDGE DERQUE: I have one piece of
6 testimony, that's rebuttal; is that correct?
7 MR. KEEVIL: Yes.
8 JUDGE DERQUE: That will be No. 10, the
9 rebuttal of Mr. Jerry E. Harris.
10 We're off the record.
11 (Discussion off the record.)
12 (EXHIBIT NO. 10 WAS MARKED FOR
13 IDENTIFICATION.)
14 JUDGE DERQUE: We're back on the record.
15 Mr. Swaengen?
16 MR. SWEARENGEN: Yes. I would offer into
17 evidence at this time what was marked as Exhibit 9.
18 JUDGE DERQUE: That will be FERC Form 1 from
19 year 1995. Is there any objection?
20 (No response.)
21 JUDGE DERQUE: Seeing none, it will be
22 admitted.
23 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)
24 JUDGE DERQUE: Mr. Keevil?
25 MR. KEEVIL: Thank you.

1 JERRY HARRIS testified as follows:

2 DIRECT EXAMINATION BY MR. KEEVIL:

3 Q. Would you please state your name, sir.

4 A. Jerry Harris.

5 Q. By whom are you employed and in what
6 capacity?

7 A. By the International Brotherhood of
8 Electrical Workers, Local Union No. 814, in the
9 capacity of business manager/financial secretary.

10 Q. Are you the same Jerry Harris who has caused
11 to be filed in this proceeding the rebuttal testimony
12 of Jerry E. Harris?

13 A. Yes, I am.

14 Q. Do you have any additions or corrections you
15 wish to make to that testimony?

16 A. No, I do not.

17 Q. If I asked you the questions that are
18 contained in that testimony, would your answers today
19 be substantially similar as contained in the
20 testimony?

21 A. Yes, they would.

22 MR. KEEVIL: With that, Judge Derque, I
23 would offer Exhibit No. 10, which is the rebuttal
24 testimony of Jerry E. Harris, into the record and
25 tender the witness for cross-examination.

1 JUDGE DERQUE: Thank you. Is there any
2 objection?

3 (No response.)

4 JUDGE DERQUE: Seeing none, Exhibit No. 10
5 will be admitted.

6 (EXHIBIT NO. 10 WAS RECEIVED INTO EVIDENCE.)

7 JUDGE DERQUE: Mr. Woodsmall?

8 MR. WOODSMALL: No questions, thank you.

9 JUDGE DERQUE: Mr. Mills?

10 MR. MILLS: No questions.

11 JUDGE DERQUE: Jackson County is excused.

12 Sedalia Industrial is excused. Mr. Swearengen?

13 MR. SWEARENGEN: Just one question.

14 CROSS-EXAMINATION BY MR. SWEARENGEN:

15 Q. Mr. Harris, were you in the hearing room a
16 while ago when Mr. Green was on the stand and
17 testified about a letter or a memorandum from a Public
18 Service Commission staff member named James Ketter to
19 the Commission?

20 A. Yes. Yes, I was.

21 Q. Were you familiar -- prior to that time, had
22 you ever heard anything at all about that letter?

23 A. Yes. Yes, I have.

24 Q. Okay. And what had you heard? What had you
25 heard about that letter?

1 A. I believe it was partially published in the
2 UtiliCorp United newsletter, the Infonet, if I
3 recollect.

4 MR. SWEARENGEN: That's all I have.

5 JUDGE DERQUE: Thank you. Commission
6 questions for Mr. Harris? Thank you. Redirect,
7 Mr. Keevil?

8 MR. KEEVIL: I don't have anything.

9 JUDGE DERQUE: Thank you, Mr. Harris. You
10 may be excused.

11 (Witness excused.)

12 JUDGE DERQUE: Mr. Mills, does the Office of
13 the Public Counsel have any objection to putting
14 Mr. Trippensee on?

15 MR. MILLS: He's scheduled for today. No.
16 We have no problem with that. He's certainly out of
17 order, but -- let me put it this way. I have no
18 objection to that.

19 JUDGE DERQUE: Okay.

20 (Witness sworn.)

21 JUDGE DERQUE: Thank you, sir. Please be
22 seated. Mr. Mills?

23 MR. MILLS: Thank you. I've got two
24 exhibits for Mr. Trippensee. I have the direct
25 testimony of Mr. Trippensee and the rebuttal testimony

1 of Mr. Trippensee.

2 JUDGE DERQUE: Those will be No. 11 is the
3 direct, and No. 12 is the rebuttal.

4 Off the record.

5 (EXHIBIT NOS. 11 AND 12 WERE MARKED FOR
6 IDENTIFICATION.)

7 JUDGE DERQUE: We're back on the record.
8 Mr. Mills?

9 MR. MILLS: Is the witness sworn?

10 JUDGE DERQUE: Yes.

11 RUSSELL W. TRIPPENSEE testified as follows:

12 DIRECT EXAMINATION BY MR. MILLS:

13 Q. Could you state your name for the record,
14 please.

15 A. Russell W. Trippensee.

16 Q. And by whom are you employed and in what
17 capacity?

18 A. I'm the Chief Utility Accountant for the
19 Missouri Office of the Public Counsel.

20 Q. Are you the same Russ Trippensee that has
21 prepared and caused to be filed in this case direct
22 and rebuttal testimony?

23 A. Yes, I am.

24 Q. Are the answers that you offered in that
25 direct and rebuttal testimony true and correct?

1 A. Yes, they are.

2 Q. If I were to ask you the same questions that
3 are contained in them today, would your answers be the
4 same?

5 A. Yes, they would.

6 Q. Do you have any additions or corrections
7 you'd like to make?

8 A. Not to my knowledge.

9 MR. MILLS: Thank you. With that, I'll
10 offer Exhibits 11 and 12 and tender the witness for
11 cross-examination.

12 JUDGE DERQUE: Thank you. Is there any
13 objection to the admission into evidence of
14 Exhibits 11 or 12?

15 MR. SWEARENGEN: Your Honor, I think the
16 exhibits -- and Lewis can comment on this, of course.
17 I think they cover more than just the general policy
18 issue that we're talking about today, and perhaps if
19 you would reserve ruling on those exhibits until the
20 witness has finished with all the issues for which the
21 testimony covers, I would appreciate that.

22 JUDGE DERQUE: That's true, Mr. Swearengen.
23 What we normally do is admit them and then allow you
24 cross-examination. But if you want me to simply
25 reserve the admission into evidence, I will consider

1 that, too. Mr. Mills?

2 MR. MILLS: I don't believe there's anything
3 that is objectionable in his testimony, but I have no
4 problem with withholding admitting them until all the
5 issues on which he's going to testify are done.

6 JUDGE DERQUE: We'll show Exhibits No. 11
7 and 12 offered but not admitted until Mr. Trippensee
8 finishes his testimony in the entire case.

9 MR. SWEARENGEN: Thank you.

10 JUDGE DERQUE: The Staff, Mr. Woodsmall?

11 MR. WOODSMALL: No questions, thank you.

12 JUDGE DERQUE: Jackson County is excused.

13 Mr. Keevil, IBEW?

14 MR. KEEVIL: No questions.

15 JUDGE DERQUE: Mr. Brownlee is excused. And
16 UtiliCorp?

17 MR. SWEARENGEN: And I have no questions for
18 the witness on the regulatory policy issue that's
19 before the Commission this afternoon.

20 JUDGE DERQUE: That's fine. Commission
21 questions for Public Counsel witness?

22 CHAIR LUMPE: This is just on the policy
23 issue?

24 JUDGE DERQUE: Yes.

25 MR. WOODSMALL: Your Honor, I believe,

1 talking to Mr. Swearengen, that we'll be able to
2 finish Mr. Featherstone in a short period of time for
3 Staff.

4 MR. MILLS: Can Mr. Trippensee be excused?

5 JUDGE DERQUE: Let's see. Certainly. You
6 have no redirect, I assume?

7 MR. MILLS: No.

8 JUDGE DERQUE: Yes, he may.

9 (Witness excused.)

10 JUDGE DERQUE: Do you want to attempt to
11 call Mr. Featherstone?

12 MR. WOODSMALL: Yes. At this time Staff
13 calls Cary Featherstone to the stand. He has direct
14 testimony, rebuttal testimony and rebuttal HC.

15 JUDGE DERQUE: Okay. We have direct of
16 Featherstone is No. 13, rebuttal of Featherstone is
17 No. 14 and No. 14HC. Surrebuttal is No. 15 and
18 No. 15HC.

19 (EXHIBIT NOS. 13 THROUGH 15HC WERE MARKED
20 FOR IDENTIFICATION.)

21 JUDGE DERQUE: We're back on the record.
22 Mr. Woodsmall?

23 MR. WOODSMALL: Did you swear him in, your
24 Honor?

25 (Witness sworn.)

1 JUDGE DERQUE: Thank you, sir.

2 CARY G. FEATHERSTONE testified as follows:

3 DIRECT EXAMINATION BY MR. WOODSMALL:

4 Q. Thank you. Would you state your name for
5 the record, please.

6 A. Cary G. Featherstone.

7 Q. And by whom are you employed and in what
8 capacity?

9 A. I'm a Regulatory Auditor with the Missouri
10 Public Service Commission.

11 Q. And did you cause to be filed in this case
12 what has been marked Exhibits 13, direct testimony, 14
13 and 14HC, rebuttal testimony, 15 and 15HC, surrebuttal
14 testimony?

15 A. I did.

16 Q. And do you have any corrections to make to
17 that at this time?

18 A. Not to my knowledge.

19 Q. And are your answers contained therein true
20 and accurate to the best of your knowledge and belief?

21 A. They are.

22 MR. WOODSMALL: Your Honor, at this time I'd
23 offer Exhibits No. 13, 14, 14HC, 15 and 15HC into the
24 record and tender the witness for cross-examination.

25 I would note that his testimony dealt with

1 other issues other than policy. However, those issues
2 have been settled. So I don't believe there will be
3 cross-examination. So I'd offer them into evidence.

4 JUDGE DERQUE: Okay. Is there any objection
5 to entry into evidence for Mr. Featherstone's
6 testimony, Nos. 13 through 15?

7 MR. SWEARENGEN: I think if that is true
8 that those other issues have been settled, and I
9 believe they have been, we have no objection.

10 JUDGE DERQUE: Being no objection, they will
11 be admitted.

12 (EXHIBIT NOS. 13 THROUGH 15 WERE RECEIVED
13 INTO EVIDENCE.)

14 JUDGE DERQUE: Mr. Mills?

15 MR. MILLS: No questions.

16 JUDGE DERQUE: Mr. Keevil?

17 MR. KEEVIL: No questions.

18 JUDGE DERQUE: And Mr. Swearengen?

19 MR. SWEARENGEN: No questions.

20 JUDGE DERQUE: Commissioner Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. I guess I would just ask you briefly, and I
23 don't know if this can be answered briefly, but if you
24 can answer briefly, why you would feel that MPS has
25 engaged in a corporate strategy to manipulate reported

1 earnings?

2 A. Well, I think most of the testimony is in
3 Mr. Traxler's testimony that addresses that issue for
4 us. I would certainly concur with his testimony.

5 I think that in the past the Company has
6 identified, not necessarily using those terms, but in
7 essence resulting in that kind of managing earnings, I
8 think is the term, through the budget guidelines,
9 which we view as a document that would be identified
10 at the corporate level as an instruction, an
11 assumption that would go into the development of the
12 budget process. And certainly Mr. Traxler has
13 identified that document as a key document of
14 evidence.

15 I don't think that the 1988 officers'
16 conference in and of itself provides evidence of that
17 activity. I think it's the subsequent actions of the
18 Company. The 1988 officers' conference only really
19 set up a group discussion, if you will, of the
20 concept.

21 In 1990 there was no such evidence that we
22 saw of the managing earnings of that nature. It
23 really became subsequent to that in the '94 and '95
24 documents that we see the managing earnings, perhaps
25 as a better term than manipulation of earnings, but we

1 believe it to be the same thing.

2 Q. And to pursue in more depth the method in
3 which the earnings were managed would be appropriate
4 through Mr. Traxler?

5 A. He certainly has the bulk of the testimony
6 on that issue, yes.

7 COMMISSIONER MURRAY: Thank you.

8 JUDGE DERQUE: Recross based on Commission
9 questions, Mr. Mills?

10 MR. MILLS: No, thank you.

11 JUDGE DERQUE: Mr. Keevil?

12 MR. KEEVIL: None for me.

13 JUDGE DERQUE: Mr. Swearengen?

14 MR. SWEARENGEN: None.

15 JUDGE DERQUE: Redirect?

16 MR. WOODSMALL: One quick question.

17 REDIRECT EXAMINATION BY MR. WOODSMALL:

18 Q. You were asked a question about manipulation
19 of earnings. Can you tell me how long -- how many
20 years you've been auditing MoPub just as a basis for
21 your statement regarding managing of earnings?

22 A. Well, we're at the 1990 rate case. That
23 case was styled as ER-90-101, and so I was involved in
24 that case. I was also involved in a supervisory
25 capacity in the '88 gas case.

1 MR. WOODSMALL: That's all I wanted to know.

2 Thank you.

3 JUDGE DERQUE: Thank you, Mr. Featherstone.

4 (Witness excused.)

5 I do have one question on Exhibit No. 14HC,
6 for counsel, Exhibit No. 14HC, I show re-engineering
7 costs. Without rereading this, actually looking in
8 there and seeing what he means, that is not on the
9 Reconciliation?

10 MR. WOODSMALL: No, it is not. That issue
11 has been settled.

12 JUDGE DERQUE: Okay. It doesn't include the
13 new headquarters building?

14 MR. WOODSMALL: No.

15 JUDGE DERQUE: And those various issues
16 involving that stuff.

17 Okay. I assume there's substantial cross
18 for Mr. Traxler. Okay. We will recess until eight
19 o'clock tomorrow morning.

20 WHEREUPON, the hearing of this case was
21 adjourned until 8 a.m., Tuesday, December 9, 1997.

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