

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING
December 9, 1997
Jefferson City, Missouri
Volume 4

8 In the Matter of Missouri Public)
Service, a Division of UtiliCorp) Case
9 United, Inc.'s Tariff Designed to) No. ER-97-394
Increase Rates for Electric Service)
10 to Customers in the Missouri Service)
Area of the Company.)
11
and
12
In the Matter of the Filing of Tariff)
13 Sheets by Missouri Public Service, a) Case
Division of UtiliCorp United, Inc.,) No. ET-98-103
14 Relating to Real-Time Pricing,)
Flexible Rates/Special Contract, Line)
15 Extension Policy and Energy Audit)
Program.)
16
and
17
The Staff of the Missouri Public)
18 Service Commission,) Case
Complainant,) No. EC-98-126
19)
20 v.)
UtiliCorp United, Inc., d/b/a)
21 Missouri Public Service,)
22)
Respondent.)
23
24
25

1 BEFORE:

2 JOSEPH A. DERQUE, III, Presiding,
3 REGULATORY LAW JUDGE.
4 SHEILA LUMPE, Chair,
5 M. DIANNE DRAINER,
6 HAROLD CRUMPTON,
7 CONNIE MURRAY,
8 COMMISSIONERS.

9 REPORTED BY:

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

2 JUDGE DERQUE: Mr. Swearengen, you are
3 asking that --

4 MR. SWEARENGEN: Yes, your Honor. Mr. James
5 Brook is listed as a witness for Wednesday,
6 December 10, 1997 on the ESF Corporate Allocations
7 issue. The Public Counsel and Staff have both
8 indicated they have no cross-examination for him. I
9 have not asked the other parties or anyone else
10 whether or not they have any questions for him on that
11 issue. And if no one has questions, I would ask that
12 he be excused.

13 JUDGE DERQUE: Okay. Mr. Brownlee, would
14 you like to waive cross?

15 MR. BROWNLEE: Yes, I will, and also on all
16 further witnesses beyond today's proceedings.

17 JUDGE DERQUE: Thank you, Mr. Brownlee.

18 Mr. Dottheim.

19 MR. DOTTHEIM: It's my understanding that
20 the Staff does not have any cross for Mr. Brook on the
21 ESF Corporate Altercations issue.

22 JUDGE DERQUE: Thank you.

23 Mr. Mills?

24 MR. MILLS: That's correct. I have no cross
25 for Mr. Brook.

1 COMMISSIONER DRAINER: Before you decide to
2 dismiss it, I would appreciate if we would have a
3 chance to poll the two commissioners who are not here
4 and we can let you know this morning.

5 MR. SWEARENGEN: Sure. Absolutely. That
6 would be fine.

7 COMMISSIONER DRAINER: Okay. I'd appreciate
8 that.

9 JUDGE DERQUE: You are going to have to
10 contact the other counsel. I can't -- I can't let him
11 go without the interveners being contacted.

12 MR. SWEARENGEN: One other item.

13 JUDGE DERQUE: Yes, sir.

14 MR. SWEARENGEN: Mr. Robert Green is also
15 listed as a witness on that issue tomorrow. Tomorrow
16 is the only day that he's going to be available to be
17 here. He is also listed -- or, excuse me, he should
18 be listed as a witness on the MPS Economic Development
19 Group Issue, which is scheduled for Thursday,
20 December 13th. Maurice Arnall has erroneously been
21 listed as the witness on that issue. I mentioned this
22 to Mr. Woodsmall, and he said as far as he was
23 concerned, Mr. Green could undergo cross on that item
24 on Wednesday as well.

25 JUDGE DERQUE: Tomorrow, you mean?

1 MR. SWEARENGEN: Yes. I want to make sure
2 that's agreeable.
3 JUDGE DERQUE: Do you have any objection to
4 that, Mr. Mills?
5 MR. MILLS: No, that's fine.
6 JUDGE DERQUE: Mr. Dottheim, is that
7 accurate?
8 MR. DOTTHEIM: I don't know. I will trust
9 Mr. Swearngen that that is the situation. I will
10 check, though, also to verify that, just to be
11 certain.
12 JUDGE DERQUE: If there is some problem with
13 that, you need to let me know sometime today, I
14 assume?
15 MR. DOTTHEIM: Yes.
16 JUDGE DERQUE: Mr. Brownlee, do you have any
17 problems with that?
18 MR. BROWNLEE: No.
19 MR. DOTTHEIM: I expect there is no problem
20 with that.
21 MR. SWEARENGEN: That's all I have. Thank
22 you.
23 JUDGE DERQUE: So far that's -- if you are
24 going to contact the rest of -- counsel for the rest
25 of the interveners, you probably need to ask them

1 that, too --

2 MR. SWEARENGEN: I will. Thank you.

3 JUDGE DERQUE: -- just to make sure.

4 MR. MILLS: I believe that's in the hearing

5 memo on Green's availability, isn't it?

6 MR. SWEARENGEN: It's not.

7 MR. MILLS: It's not?

8 JUDGE DERQUE: Richard Green, but I don't

9 think Robert.

10 MR. SWEARENGEN: Right. Thank you.

11 JUDGE DERQUE: Thank you, Mr. Swearengen.

12 Are we ready to proceed, Mr. Dottheim?

13 MR. DOTTHEIM: Yes. I assume you want to

14 mark some exhibits first? Would it be Exhibit No. 16?

15 JUDGE DERQUE: Yeah. Wait a minute. Just a

16 second.

17 I have three; is that correct?

18 MR. DOTTHEIM: That is correct.

19 Ms. Pyatte's direct, rebuttal and surrebuttal. And --

20 yeah. None of them are either proprietary or highly

21 confidential.

22 JUDGE DERQUE: Sixteen is the direct of

23 Janice Pyatte. Seventeen is the rebuttal. Eighteen

24 is the surrebuttal.

25 We're off the record.

1 (EXHIBIT NOS. 16, 17 AND 18 WERE MARKED FOR
2 IDENTIFICATION.)

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

4 (Witness sworn.)

5 JUDGE DERQUE: Thank you.

6 Please be seated.

7 Mr. Dottheim?

8 MR. DOTTHEIM: The Staff's first witness on
9 Rate Design is Ms. Janice Pyatte.

10 JANICE PYATTE testified as follows:

11 DIRECT EXAMINATION BY MR. DOTTHEIM:

12 Q. Ms. Pyatte, would you please state your name
13 and business address for the record?

14 A. My name is Janice Pyatte. I work for the
15 Staff of the Missouri Public Service Commission. My
16 business address is P.O. Box 360, Jefferson City,
17 Missouri, 65102.

18 Q. Do you have a copy of what has been marked
19 as Exhibit No. 16 in this proceeding?

20 A. Yes, I do.

21 Q. Is that your direct testimony that was
22 prefiled?

23 A. Yes.

24 Q. Do you have any corrections to make to that
25 testimony at this time?

1 A. No, I do not.

2 Q. Is the information contained therein true
3 and correct to the best of your knowledge and belief?

4 A. Yes.

5 Q. And you adopt that testimony as your direct
6 testimony in this proceeding?

7 A. Yes, I do.

8 Q. Do you have what has been marked as Exhibit
9 No. 17?

10 A. Yes, I do.

11 Q. Is that your rebuttal testimony that has
12 been prefiled in this proceeding?

13 A. Yes.

14 Q. Is the information contained therein true
15 and correct to the best of your knowledge and belief?

16 A. Yes.

17 Q. If I were to ask you the same questions that
18 are contained therein, would your answers today be the
19 same?

20 A. Yes.

21 Q. Do you adopt Exhibit No. 17 as your rebuttal
22 testimony --

23 A. Yes, I do.

24 Q. -- in this proceeding?

25 And let me just state for the record, if I

1 can go back to your Exhibit No. 16, if I asked you the
2 same questions that are contained therein, would your
3 answers be the same?

4 A. Yes.

5 Q. And, finally, do you have what has been
6 marked as Exhibit No. 18?

7 A. Yes, I do.

8 Q. Is that what was filed as your surrebuttal
9 testimony in this proceeding?

10 A. Yes, it was.

11 Q. Do you have any corrections to make at this
12 time to it?

13 A. No, I do not.

14 Q. If I were to ask you the same questions that
15 are contained therein, would your answers be the same?

16 A. Yes.

17 Q. And the information contained therein is
18 true and correct to the best of your knowledge and
19 belief?

20 A. Yes.

21 Q. And do you adopt Exhibit No. 18 as your
22 surrebuttal testimony in this proceeding?

23 A. Yes, I do.

24 MR. DOTTHEIM: I offer into evidence
25 Exhibits No. 16 and 17 and 18, and tender Ms. Pyatte

1 for cross-examination.

2 JUDGE DERQUE: Thank you, Mr. Dottheim.

3 Is there any objection to the admission into
4 evidence of Exhibits 16, 17 and 18?

5 (No response.)

6 JUDGE DERQUE: Seeing none, they will be
7 admitted.

8 (EXHIBIT NOS. 16, 17 AND 18 WERE RECEIVED
9 INTO EVIDENCE.)

10 JUDGE DERQUE: Mr. Mills?

11 MR. MILLS: I have no cross-examination.
12 Thank you.

13 JUDGE DERQUE: Jackson County is excused.
14 Mr. Keevil is not here.

15 Mr. Brownlee?

16 CROSS-EXAMINATION BY MR. BROWNLEE:

17 Q. Ms. Pyatte, my name is Richard Brownlee. I
18 am representing the Sedalia Industrial Users
19 Association. Are you familiar with that group?

20 A. Yes.

21 Q. In your review of the testimony filed in
22 this case, did you examine the cost-of-service study
23 prepared by the Company?

24 A. I looked at it. I didn't do a thorough
25 examination of it, though.

1 Q. Did you find anything in the actual
2 cost-of-service study to be out of the ordinary or
3 inaccurate as it was presented, I believe, by
4 Mr. Arnall?

5 A. As I said, Mr. Brownlee, I did not do a
6 thorough analysis of that study because that study had
7 been stricken from the record in this case.

8 Q. But in the analysis that you did, however
9 thorough, did you find anything to be out of the
10 ordinary in terms of the cost-of-service study that
11 you might find filed in any particular case?

12 MR. MILLS: I object. I don't believe that
13 he's established that she did any analysis, much
14 less -- she certainly said she didn't do a thorough
15 one. I believe she hasn't stated that she did an
16 analysis at all, so I object to the form of the
17 question.

18 JUDGE DERQUE: I believe she's already
19 answered it, Mr. Brownlee.

20 MR. BROWNLEE: Okay.

21 BY MR. BROWNLEE:

22 Q. If the Commission finds in this case that
23 there is a wide variation of revenues collected from a
24 particular customer class and the costs of servicing
25 that class, would you recommend this discrepancy be

1 corrected?

2 A. I don't believe that that's the situation in
3 this particular case.

4 Q. Well, I asked you a hypothetical, ma'am. I
5 asked you if the Commission found that, would you
6 recommend that discrepancy be corrected?

7 A. I think I have difficulty with the question,
8 Mr. Brownlee, because what we're -- what we have at
9 issue here is the cost of service, which tends to be
10 done on customer classes. If you're talking about
11 discrepancies within a customer class, now you are in
12 the issue of rate design, which is a whole different
13 set of analysis than is -- than is done in a
14 cost-of-service study.

15 Q. Are you comfortable in answering a question
16 dealing with rate design based upon your experience
17 with the Public Service Commission?

18 A. Yes.

19 Q. Okay. Then you're comfortable in answering
20 that question, then. Would that not be correct?

21 A. The -- the issue as I see it is -- at least
22 as I understand your question is what you're asking me
23 is if I saw large disparities within a class in the
24 cost of serve, would we want the rate design to
25 account for that? And the answer to that is yes, and

1 I have put rebuttal testimony in this case that says
2 the Company's current tariffs account for
3 discrepancies -- what you would call discrepancies by
4 accounting for cost characteristics of customers in
5 the class that differ, and the tariffs already do
6 that.

7 Q. Did you perform a cost-of-service study that
8 analyzed the -- for example, the Sedalia Group within
9 that large power class?

10 A. No.

11 MR. BROWNLEE: Thank you.

12 That's all of the questions I have.

13 JUDGE DERQUE: Thank you, Mr. Brownlee.

14 Mr. Cooper?

15 MR. COOPER: No questions, your Honor.

16 JUDGE DERQUE: Okay. Mr. Cooper, have you
17 and Mr. Dottheim given -- is there written entry of
18 appearance.

19 MR. COOPER: There is for me, yes.

20 MR. DOTTHEIM: I'll check. I don't know if
21 Mr. Woodsmall put it down.

22 JUDGE DERQUE: Please do when we have a
23 break or something. Thanks.

24 Let's see. Chair Lumpe?

25 CHAIR LUMPE: I have no questions.

1 JUDGE DERQUE: Vice-chair Drainer?

2 QUESTIONS BY COMMISSIONER DRAINER:

3 Q. Good morning, Mr. Pyatte.

4 A. Good morning.

5 Q. I want you to clarify for me, and you made a
6 statement to Mr. Brownlee about this, in your direct
7 testimony you do talk about the differences between
8 doing a class cost-of-service study and a regular rate
9 case, the EO versus an ER?

10 A. Yes.

11 Q. And would you clarify for me, in '91 and '93
12 you had opportunity to do both, is that correct,
13 that -- with the EO-91-245 and the ER-93-37?

14 A. Yes. The -- the EO case was a case that we
15 had been working on -- had been established and the
16 parties had been working on prior to Missouri Public
17 Service filing the rate case, which is the ER case.
18 And what we did in that specific instance was we
19 simply, in my terminology, consolidated the cases
20 together and used the results that had -- had come out
21 of the EO case in the ER case so that we could
22 implement essentially a new rate design within the
23 rate case itself.

24 Q. Then in this case when you did rate design,
25 was that adopting the same class cost of service that

1 had been adopted to implement the 37 -- the 93-37
2 case?

3 A. The cost of service that I have done in this
4 case is one that uses all of the costs, all of the
5 revenues, all of the sales from this case.

6 Q. Right.

7 A. Okay. It uses the special distribution
8 studies, the special generation studies, the special
9 loss studies from the prior case, which, as far as I'm
10 aware, are still the most current that exist. And
11 what we have used in the cost-of-service study I have
12 filed in this case is we have simply updated the
13 allocation factors from the prior case to account for
14 changes in customers and changes in weather normalized
15 sales by class.

16 Q. Then could you tell me, with the class cost
17 of service, it allocates a certain percent of revenues
18 that are to be recovered to each class. What is
19 the -- on your Schedule 1 on your direct testimony,
20 can I from this somehow get -- what is the percent of
21 revenues overall that are to be recovered from each of
22 these classes of customers?

23 A. Commissioner Drainer, if you look at my
24 Schedule 1 --

25 Q. Yes, ma'am.

1 A. Okay. -- the -- if you want to know what
2 the current percentage is that's being recovered, you
3 would look at this line about two-thirds of the way
4 down that says "rate revenue."

5 Q. Right.

6 A. And -- and the way you would calculate
7 that -- and I happen to have a calculator here.

8 Q. I appreciate that.

9 A. -- is you would look, like, for example, for
10 residential.

11 Q. Right.

12 A. You would say residential is currently
13 paying 140 mil-- \$141,511,761 out of a total of
14 260,177,161, which is the number in the total column,
15 and that would tell you that residential is currently
16 paying 54.4 percent of -- 54.4 percent of the total
17 revenues are currently coming from the residential
18 class.

19 Q. I would appreciate it if you would go ahead
20 and go across the line and do the calculation for each
21 of these classes.

22 A. Small general service is 15.5 percent;
23 large general service is 12.5 percent; large power is
24 16.1 percent, and schools and churches are 1.6. Let's
25 see if that mostly adds up.

1 Right, to one decimal point. The numbers I
2 got -- residential is 54.4.

3 Q. Right.

4 A. SGS, or small general service, is 15.5;
5 large general service is 12.5; large power service is
6 16.1; schools and churches is 1.6.

7 Q. And if -- under your rate design proposal
8 this doesn't change, does it?

9 A. That's correct.

10 Q. And so let me also be clear: The class
11 cost-of-service calculation that you did for this case
12 was basically updating for information, additional
13 information you had, the previous class cost-of-
14 service study, and you were accepting some data from
15 the last cost-of-service study?

16 A. Yes.

17 Q. And at this time you think that that allows
18 us reasonable allocation of -- across the classes and
19 we don't need to move any other shifts to classes?

20 A. Yes.

21 Q. Okay. Then where does the acronym that none
22 of us can say, the Sedalia Group, fit in? Which group
23 are they under here, in your opinion?

24 A. The customers that are primarily in the
25 large power class.

1 Q. And they don't -- they do not makeup the
2 total large power class. Correct?

3 A. Oh, no. They -- no, they certainly do not.

4 Q. Would we need -- in order to address the
5 Sedalia Group and where they believe the revenue
6 changes should be implemented, would we need to make
7 that adjustment then for the entire large general
8 service class or the large power group class in order
9 not to discriminate unduly, in your opinion?

10 A. I'm sorry. Could you ask the question --

11 Q. Well, if they aren't the whole group, and if
12 we were to make an adjustment to that group, the
13 Sedalia Group, wouldn't we have to make it to the
14 whole as a large power class, as you say?

15 A. That would be one choice. The other choice
16 would be to go with Mr. Johnstone's recommendation,
17 which is all other customers, not just the remaining
18 large power customers, but the residential customers,
19 the small general service customers.

20 All other customers make up the difference.
21 You have those two choices. One is to keep it within
22 the class. The other is to spread it to everybody
23 else.

24 Q. Well, if you keep it in the class and lower
25 their requirement, then it does help to --

1 A. It has to come from someplace.

2 Q. That's where the rate design comes in.

3 Correct?

4 A. Yes.

5 Q. It has to come from someplace. Okay. Thank
6 you.

7 As you updated the class cost of service for
8 variables that you were able to update at this time,
9 is -- does class cost-of-service allocations change?
10 Do they change often? If you were to -- I mean, you
11 did some updates. And I guess my question was when I
12 looked at this is, does the Commission need to, with
13 the large companies, update -- have a total class
14 cost-of-service revisiting every five years or three
15 years, or once it's done, once there is a class
16 cost-of-service case, is that good for a decade or
17 forever or --

18 A. It really kind of depends, because what's
19 happening from case to case which is causing the
20 different results, even with the same methodologies is
21 the growth that occurs in different classes. And to
22 the extent that the growth is very uneven, then you
23 will find that you really need to look at it again.

24 The other has to do with what sort of cost
25 structure is changing. If the companies are coming in

1 for rate cases and essentially what's happening is all
2 of their costs are going up or going down, then it
3 doesn't tend to affect any particular class more than
4 others. But if you find that they're coming in
5 because production costs have gone up, or one specific
6 type of cost, then that can make a difference.

7 Q. In your opinion, having reviewed different
8 class cost-of-service studies and updating this
9 particular study with the variables you could, how
10 much of an impact did it have -- we're in 1997 --
11 compared to the 1991 case that -- where class cost of
12 service was analyzed thoroughly?

13 A. It's very difficult, Commissioner, to answer
14 that question because as a result of class cost of
15 service in the prior case, we made significant rate
16 design changes and we made significant revenue shares.

17 Q. Uh-huh.

18 A. Okay. So this is, in effect, looking at the
19 after rather than the before, but one of the things
20 that happened in the last case was that there was a
21 significant revenue shift towards the residential
22 customers.

23 Q. By "significant," what was --

24 A. I think it was 4 or 5 percent on a revenue-
25 neutral basis. It was fairly significant.

1 Q. Okay.

2 A. And as a result what we -- what we felt was
3 that the residential class for this particular company
4 was probably fairly close to in line after the last
5 case with costs.

6 What this study that I've done in this case,
7 which is shown on Schedule 1, tells me is that that's
8 exactly what happened, because what you see on this
9 study is that the residential class is now at about
10 where they should be in terms of costs because the way
11 I read this -- this analysis on Schedule 1, is I read
12 it fairly quantitatively -- or qualitatively rather
13 than quantitatively, and I look and say, well, the
14 residential class is basically where they should be.
15 Now that, in my mind, is probably a direct result of
16 what happened in the last case.

17 Okay. I also read this to say that the
18 small general service and the large general service
19 classes still are paying a little too much, and I read
20 it to say that the large power class is not paying
21 quite enough. But this is after the last case, after
22 the revenue shifts, and it's -- it's coming out the
23 way I would expect it to come out.

24 Q. Based on --

25 A. Based on --

1 Q. -- the growth --

2 A. -- what was stipulated in the last rate case
3 in terms of revenue shifts.

4 Q. Then my final question or questions will
5 relate to your rate design and with the 10 percent,
6 basically, reduction across the board.

7 Is there a special logic to just putting
8 a -- the 10 percent reduction on like the customer
9 charge and then the same 10 percent on the energy
10 charges and, say, not having maybe lowered the
11 customer charge a little more, or the energy charge a
12 little more? I mean, use the straight 10 percent.
13 You didn't say --

14 A. One of the reasons I proposed an across-the-
15 board decrease is because what that ensures is that
16 relationships between rates and within rates stay the
17 same as they currently are, which means I can say
18 without any hesitation and without any extra analysis
19 that I know that the impact on any particular customer
20 is exactly the same percentage.

21 And it also means that we don't have to do
22 the technical work that's required when the company
23 files tariffs in compliance to figure out, well, if
24 you change the rates by a different amount, now
25 customers switch rates, we have to account for the

1 revenues, you know, and there is a lot of technical
2 work you have to do otherwise.

3 So this is a way --

4 Q. If they change the class they would be in
5 because they go hunting for the best group?

6 A. Right. Right, because they never hunt for a
7 rate that's higher. And it seems to me that unless
8 you're doing a fairly extensive rate design and can
9 account for all of those -- those -- those effects,
10 you really would -- it's really much cleaner to just
11 do everything across the board.

12 Q. Is that what you meant by rate switching?
13 You had a term, I believe, in your rebuttal.

14 A. Rate switching to me means that we have
15 calculated the rates assuming specific customers are
16 on that tariff or in that customer class --

17 Q. Uh-huh.

18 A. -- but that when we change the rates by
19 unequal percents, then what it means is that customers
20 will decide where they want to go. And what we try to
21 do in that case is account for the revenue loss and
22 adjust the rates in and adhere to the process.

23 COMMISSIONER DRAINER: Thank you. I have no
24 more questions.

25 JUDGE DERQUE: Commissioner Murray?

1 COMMISSIONER MURRAY: I don't have any
2 questions. Thank you.

3 JUDGE DERQUE: Chair Lumpe?

4 CHAIR LUMPE: Yes.

5 QUESTIONS BY CHAIR LUMPE:

6 Q. Looking through your testimony and then
7 Mr. Johnstone's testimony and talking about the action
8 that was taken in the previous rate case,
9 Mr. Johnstone -- yes -- Johnstone says that that was
10 the first step, that there was an intended two-step
11 process, that in this case that we would have gone to
12 the second step. Do you agree with that? Is that
13 your testimony also, or do you disagree?

14 A. Well, I would say two things, Commissioner:
15 One is that the -- the notion of trying to make
16 movements towards cost of service is kind of an
17 ongoing process, that over time what we try to do is
18 an incremental -- incrementally get closer and closer.

19 But in the specific example of the last case
20 and the notion of a next step that was planned, my
21 understanding is -- from the hearing memorandum in the
22 last case is that the Company had specifically
23 requested a two-step procedure, and the second step
24 was to, I believe -- let me look here. I know I've
25 laid it out in my testimony here.

1 On my rebuttal testimony, Exhibit 17,
2 Page 5, on Lines 16 through the end of the page, the
3 Company's proposal in the last case was that there
4 would be a second step, and that what would happen
5 there is residential rates would increase by \$4
6 million, and nonresidential rates, which are the small
7 general service, large general service, large power
8 and schools and churches would decrease in total by
9 4 million.

10 So that was the Company's proposal as they
11 came into the last case, is reflected in the hearing
12 memoranda, but it was never part of the stipulation.
13 So I can only presume that that's what Mr. Johnstone
14 is referring to, which is, there would be a time when
15 residential rates would go way up and everybody else's
16 rates would go way down.

17 Q. But if I read your testimony correctly, you
18 feel that the current classes are fairly well within
19 the range of their costs?

20 A. Yes.

21 Q. Okay. And the second one is -- that I want
22 to clarify here, is Mr. Johnstone asking for a new
23 class instead of certain people within a class having
24 a rate, or is he asking for the establishment of a new
25 class called -- with a new name. I can't remember the

1 name. Is it your understanding he's asking for a new
2 class or that certain people within an old class get
3 different rates?

4 A. Well, I -- I think for the purposes of
5 cost-of-service studies he's asking for a new class.
6 For the purposes of the actual tariffs, I think what
7 he's saying is specific customers that are in the
8 existing large power class will have a different
9 tariff. So whether that's a class or a subclass,
10 that's hard for me to determine.

11 But, as I understand his proposal, there
12 would be a tariff sheet and it would specifically be
13 for certain customers, and that tariff sheet would
14 guarantee that at any load factor level a customer in
15 his class would be guaranteed that they would pay a
16 lower rate than some other customer who was not in
17 that group but was on the large power rate.

18 Q. If you had companies within a class having a
19 different kind of tariff, would that not be
20 discriminatory?

21 A. My testimony believes that it would be --

22 Q. Okay. Thank you.

23 A. -- if there is not significant cost of
24 services.

25 CHAIR LUMPE: Thank you.

1 JUDGE DERQUE: Recross, Mr. Mills?
2 MR. MILLS: No recross. Thank you.
3 JUDGE DERQUE: Mr. Brownlee?
4 MR. BROWNLEE: Nothing. Thank you.
5 JUDGE DERQUE: And Mr. Cooper?
6 MR. COOPER: No questions.
7 JUDGE DERQUE: Redirect, Mr. Dottheim?
8 MR. DOTTHEIM: Yes. Thank you.
9 JUDGE DERQUE: I was getting to you.
10 MR. DOTTHEIM: Just one question.
11 REDIRECT EXAMINATION BY MR. DOTTHEIM:
12 Q. I believe Commissioner Drainer asked you a
13 question respecting updating the class cost-of-service
14 study or performing a class cost-of-service study
15 every five years. Would it be the Staff's
16 recommendation that the companies should be taken
17 ad seriatim in the same progression as they had last
18 been reviewed or a class cost of service had been
19 performed by the individual companies?
20 A. I think that would be one criteria to use.
21 If I understand what you are saying, Mr. Dottheim, is
22 if you do Company A first and then you go through the
23 rest of them, wouldn't you start with Company A again?
24 That would be one way.
25 The other way would be to look to see how

1 much progress you made in any particular case and
2 choose the company next based on how -- how much out
3 of alignment you believe that they currently are.

4 Q. When you said progress you made in the last
5 case or progress made in the last case, could you
6 explain that?

7 A. Well, the way I look at -- at class
8 revenues, which are kind of the result of cost-of-
9 service studies is the intent is over time to correct
10 serious misalignments between the cost to serve and
11 the revenues and rates that are being paid. And,
12 historically, you will find that some companies are
13 further out of line than others and that you have more
14 or less opportunities to try to correct that over time
15 because you can only make incremental steps.

16 So if you have a company that, you know, we
17 haven't done a cost-of-service study in ten years, you
18 find that there is serious misalignments because of
19 impact problems, you can't fix that problem all at
20 once, so -- so what you see is over time you make
21 progress towards what I would call my goal, is trying
22 to get some reasonable alignment between costs and
23 revenues.

24 MR. DOTTHEIM: Thank you.

25 JUDGE DERQUE: Vice-chair Drainer?

1 COMMISSIONER DRAINER: Yes. I have a couple
2 more questions along that line.

3 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

4 Q. There has been a lot of discussion and
5 continues to be a lot of discussion about moving to
6 competition in the electric industry, and should that
7 happen, and for purposes of discussion here let's
8 assume that at some drop-dead date when that happens,
9 rates for all classes that are set at that time try to
10 learn from the telecommunications industry and some of
11 the things that have happened there.

12 Would it behoove the Commission to
13 pro-actively and very assertively try to have in place
14 now, as current as possible, class cost-of-service
15 studies on all electric companies before electric
16 restructuring happens?

17 A. I think the studies would be useful because
18 what I really think it would behoove the Commission to
19 do is try to have corrected serious misalignments
20 before competition happens.

21 Q. And should the Commission want to do
22 something on that order, from your experience in doing
23 these class cost-of-service studies, what does that do
24 to not only our resource base, but the resource base
25 of companies? Can these studies be done and -- I

1 remember from your testimony in not short periods of
2 time. Correct?

3 A. That's correct. They are -- they are a real
4 resource hog. I mean, they are. And part of the
5 rationale in this particular case for us not pushing
6 to go any further than the class cost of services that
7 we've done here is the results of the study are
8 indicating that we don't have serious problems with
9 this particular company with the class revenue
10 distributions. And our personal preference, given our
11 rye source constraints, would be that we would spend
12 our time on other things of higher importance.

13 COMMISSIONER DRAINER: All right. Thank
14 you.

15 No other questions.

16 JUDGE DERQUE: Is there any recross based on
17 Vice-chair Drainer's two or three questions?

18 (No response.)

19 JUDGE DERQUE: Seeing none, thank you,
20 Ms. Pyatte.

21 You may be excused.

22 Let's go off the record.

23 (A discussion off the record.)

24 JUDGE DERQUE: We are on the record.

25 Mr. Mills?

1 MR. MILLS: Yes, sir.

2 JUDGE DERQUE: Are you going to call

3 Mr. Kind?

4 MR. MILLS: Yes, sir. I'll call Mr. Kind to

5 the stand.

6 What would you like me to call him?

7 JUDGE DERQUE: I have one piece of

8 testimony, is that correct, for Mr. Kind?

9 MR. MILLS: He has three pieces of

10 testimony. I might as well offer them all at this

11 time.

12 JUDGE DERQUE: Well, wait just a second.

13 MR. MILLS: In fact, he has some highly

14 confidential testimony.

15 JUDGE DERQUE: Okay. Now, I wonder if you

16 don't have an extra set. Do you?

17 MR. MILLS: No, I don't, not with me.

18 JUDGE DERQUE: I'm afraid -- I'm afraid in

19 my -- I only got one piece. By "got," I mean

20 received.

21 Let's go off the record a minute.

22 (A discussion off the record.)

23 (EXHIBIT NOS. 19, 20, 21 AND 21HC WERE

24 MARKED FOR IDENTIFICATION.)

25 JUDGE DERQUE: Direct testimony of Ryan Kind

1 will be Exhibit 19. Rebuttal will be 20. Twenty-one
2 is surrebuttal of Ryan Kind and 21HC, the highly
3 confidential surrebuttal of Mr. Ryan.

4 Mr. Mills?

5 MR. MILLS: Thank you.

6 Would you state your name for the record,
7 please?

8 THE COURT REPORTER: He needs to be sworn.

9 (Witness sworn.)

10 JUDGE DERQUE: Thank you.

11 Please be seated.

12 RYAN KIND testified as follows:

13 DIRECT EXAMINATION BY MR. MILLS:

14 Q. Okay. Now that you're sworn, will you state
15 your name for the record?

16 A. Yes. My name is Ryan kind.

17 Q. And by whom are you employed and in what
18 capacity?

19 A. I am employed by the Missouri Office of the
20 Public Counsel as a Chief Public Utility Economists.

21 Q. Are you the same Ryan Kind that has caused
22 to be filed in this case direct, rebuttal and
23 surrebuttal testimony?

24 A. Yes, I am.

25 Q. If I were to ask you the questions that are

1 contained in those pieces of testimony here this
2 morning, would your answers the same as are contained
3 therein?

4 A. Yes, they would.

5 Q. Are those answers true and correct to the
6 best of your knowledge?

7 A. Yes, they are. Actually, I do have one
8 small correction, I think, that I just remembered, to
9 my rebuttal testimony, I believe it is.

10 Okay. I found it. It's on Page 14 of my
11 rebuttal testimony, Line 18. The line begins
12 ". . . offers that allow it to offer higher
13 prices . . .", and where I have the word "that," it
14 should be changed to "then."

15 Q. Do you have any other additional corrections
16 to make to your testimony?

17 A. No, I don't.

18 Q. And with the corrections you've just
19 offered, would your answers in all of your testimony
20 be the same as they are filed?

21 A. Yes, they would.

22 MR. MILLS: With that, I'll tender
23 Exhibits 19, 20, 21 and 21HC into the record, and
24 offer the witness for cross-examination.

25 JUDGE DERQUE: Thank you.

1 Is there any objection to Exhibits 19
2 through 21HC?

3 (No response.)

4 JUDGE DERQUE: Seeing none, they will be
5 admitted.

6 (EXHIBIT NOS. 19, 20, 21 AND 21HC WERE
7 RECEIVED INTO EVIDENCE.)

8 JUDGE DERQUE: Mr. Dottheim?

9 MR. DOTTHEIM: No questions.

10 JUDGE DERQUE: Mr. Brownlee?

11 CROSS-EXAMINATION BY MR. BROWNLEE:

12 Q. Mr. Kind, my name is Richard Brownlee. I
13 represent the Sedalia Industrial Energy Users
14 Association.

15 How are you this morning?

16 A. I'm fine. Thank you.

17 Q. If the residential class was paying
18 20 percent higher than the cost of serving the
19 customers in that class, and it was the only class
20 with such a large variation, would you recommend that
21 the Commission take action to remedy that variation?

22 A. It would depend on all of the circumstances
23 in the case, for instance, the overall level of
24 revenue requirement increase or decrease that might be
25 involved, and things like that.

1 Q. But you generally as an employee of Public
2 Counsel have a concern for the residential class as
3 opposed to, let's say, the large power class; is that
4 not correct?

5 A. I would say that that's the -- yeah, our
6 foremost concern is to look out for the interests of
7 the residential customers.

8 Q. But you are not able to -- just to answer
9 the hypothetical? If the residential class that you
10 generally represent were paying 20 percent higher than
11 the cost of serving that class, you wouldn't recommend
12 that the Commission take remedial action just on that
13 simple hypothetical?

14 A. It appears on the surface that I would just
15 give you a yes answer, but I have a feeling something
16 might come to mind later that might make me think, no,
17 I really -- here is an exception that I should have
18 noted at that time.

19 Q. What would be -- what would the exceptions
20 be to that hypothetical?

21 A. Well, as I just stated, it would be
22 something I'm not thinking of right now.

23 MR. BROWNLEE: Oh, okay. All right. Thank
24 you.

25 I have no further questions.

1 JUDGE DERQUE: Mr. Cooper?
2 MR. COOPER: No questions.
3 JUDGE DERQUE: Commission questions?
4 QUESTIONS BY CHAIR LUMPE:
5 Q. Mr. Kind, I think you -- from the hearing
6 memorandum, you essentially agree with the Staff's
7 position on this. Do you essentially agree also that
8 the current classes are close to their cost of
9 service?
10 A. Yes, I do. My review of the evidence in
11 this case seems to indicate that.
12 CHAIR LUMPE: Okay. Thank you.
13 JUDGE DERQUE: Vice-chair Drainer?
14 COMMISSIONER DRAINER: No questions.
15 JUDGE DERQUE: And Commissioner Murray?
16 COMMISSIONER MURRAY: No questions.
17 JUDGE DERQUE: Recross based on Commission
18 questions?
19 MR. DOTTHEIM: No questions.
20 JUDGE DERQUE: Mr. Brownlee?
21 MR. BROWNLEE: None. Thank you.
22 JUDGE DERQUE: And Mr. Cooper?
23 MR. COOPER: None.
24 JUDGE DERQUE: Thank you Mr. Kind. You may
25 step down.

1 I'm sorry. Redirect, Mr. Mills?
2 MR. MILLS: I have no redirect. Thank you.
3 JUDGE DERQUE: Mr. Brownlee?
4 MR. BROWNLEE: Yes. At this time we'll call
5 Mr. Don Johnstone, please.
6 JUDGE DERQUE: Have a seat a minute,
7 Mr. Johnstone.
8 We are off the record.
9 (EXHIBIT NOS. 22, 23 AND 24 WERE MARKED FOR
10 IDENTIFICATION.)
11 JUDGE DERQUE: On the record.
12 I have what is marked Exhibits 22, 23 and
13 24. That would be the direct, the rebuttal, and the
14 surrebuttal of Mr. Donald E. Johnstone.
15 (Witness sworn.)
16 JUDGE DERQUE: Thank you, sir.
17 Mr. Brownlee?
18 MR. BROWNLEE: Thank you.
19 DONALD E. JOHNSTONE testified as follows:
20 DIRECT EXAMINATION BY MR. BROWNLEE:
21 Q. Would you state your name for the record?
22 A. Donald Johnstone.
23 Q. Mr. Johnstone, by whom are you employed?
24 A. Brubaker & Associates, St. Louis, Missouri.
25 Q. Have you been retained by the Sedalia

1 Industrial Energy Users Association to prepare
2 testimony in this case?

3 A. Yes, I have.

4 Q. And previously we've asked the court
5 reporter to mark Exhibit No. 22, which is your direct
6 testimony, Exhibit 23, which is your rebuttal
7 testimony, and Exhibit 24, which is your surrebuttal
8 testimony. Do you have those before you?

9 A. Yes, I do.

10 Q. And did you cause that testimony to be
11 prepared?

12 A. Yes, I did.

13 Q. And are there any corrections that you would
14 like to make in either of those three exhibits?

15 A. No.

16 Q. If I asked you those same questions today on
17 the record, would your answers be the same?

18 A. Yes.

19 Q. And is the information you supplied true and
20 accurate to your best information and belief?

21 A. Yes, it is.

22 MR. BROWNLEE: At this time, your Honor, I'm
23 going to offer Exhibits 22, 23 and 24, and tender the
24 witness for cross.

25 JUDGE DERQUE: Is there any objection to the

1 admission into evidence of Exhibits 22, 23 and 24?

2 MR. MILLS: I have objections to portions of
3 Exhibit 24 --

4 JUDGE DERQUE: Twenty-four?

5 MR. MILLS: -- the surrebuttal testimony.

6 JUDGE DERQUE: That would be the surrebuttal
7 of Mr. Johnstone?

8 MR. MILLS: Yes. Mr. Johnstone has attached
9 to his surrebuttal testimony a copy of the class
10 cost-of-service study that was stricken when Missouri
11 Public Service offered it earlier in the case.
12 Mr. Johnstone did not prepare that study. It was
13 prepared by Missouri Public Service. It was stricken
14 from this case, at least in part, because it was filed
15 late in the case and really too late for the parties
16 to deal with it adequately.

17 By those -- by that same reasoning the
18 Commission used to strike it earlier, I think that
19 applies even more so when it's filed as a part of
20 surrebuttal testimony when no party has any
21 opportunity to address it in their testimony.

22 And there are also certain portions of
23 his -- of his testimony that refer to that schedule
24 that I would like to have stricken, and I can go
25 through those line and page numbers with you, if you

1 would like.

2 JUDGE DERQUE: Mr. Brownlee?

3 MR. BROWNLEE: Well, I think he could ask
4 Mr. Johnstone those questions as to what his knowledge
5 is of how it was prepared in terms of whether it's
6 accurate or not.

7 I think the fact that it was stricken under
8 another portion of the case doesn't necessarily mean
9 it's stricken in terms of Mr. Johnstone introducing
10 it. Plus, I think the issue was raised by other
11 parties in response, which allowed Mr. Johnstone to
12 sponsor it in his surrebuttal testimony.

13 JUDGE DERQUE: Well, let's go off the
14 record.

15 (A discussion off the record.)

16 JUDGE DERQUE: Schedule 1 of the surrebuttal
17 testimony, which is 38 pages?

18 MR. MILLS: That's correct.

19 JUDGE DERQUE: Okay.

20 MR. MILLS: And the -- a few references to
21 it in the text of his testimony, and I can give you
22 those pages and lines whenever you want me to.

23 JUDGE DERQUE: Why don't you give them to
24 me?

25 MR. MILLS: Okay. On Page 15 the sentence

1 beginning on Line 16 and the text that follows to the
2 end of the page on Line 22.

3 On Page 16, all of Line 3 and the first word
4 in Line 4.

5 Then also on Page 16 the sentence beginning
6 on Line 23 that continues on to Page 17 ending on
7 Line 2.

8 And those are all of the references in the
9 text that I wish to strike.

10 JUDGE DERQUE: Okay. After reading the
11 motion of 3rd, July, 1997, I -- it was the
12 Commission's intention to strike this from the case,
13 and that's fairly clearly stated. And so Schedule 1,
14 Pages 1 through 38 in the surrebuttal from Donald E.
15 Johnstone, together with the references you just gave
16 on the record, including reference to Page 15, 16 and
17 17 of that surrebuttal testimony is stricken.

18 Mr. Dottheim?

19 MR. DOTTHEIM: Okay.

20 JUDGE DERQUE: Absent the stricken portions
21 of Mr. Johnstone's testimony, is there any objection
22 to the admission of Exhibits 22, 23 and 24?

23 (No response.)

24 JUDGE DERQUE: Seeing none, they will be
25 admitted.

1 (EXHIBIT NOS. 22, 23 AND 24 WERE RECEIVED
2 INTO EVIDENCE.)

3 JUDGE DERQUE: Mr. Cooper?

4 MR. COOPER: No questions.

5 JUDGE DERQUE: Mr. Mills?

6 MR. MILLS: Yes. Actually, I have one
7 brief question.

8 CROSS-EXAMINATION BY MR. MILLS:

9 Q. Mr. Johnstone, can I get you to turn to
10 Page 4 of your surrebuttal testimony?

11 A. Okay.

12 Q. At the top of that page at Lines 3 through
13 10 you discuss some -- some language to substitute for
14 a recommendation of Mr. Watkins; is that right?

15 A. Yes.

16 Q. And the language that you recommend refers
17 to situations where contract rates under this rate
18 schedule are in response to viable competitive
19 alternatives; is that correct?

20 A. Yes.

21 Q. Isn't it possible that contract rates under
22 this rate schedule could be in response to several
23 different factors?

24 A. Yes.

25 Q. So, in other words, it's possible that in

1 addition to the customer having viable competitive
2 alternatives it may also have a need for higher
3 quality power than is normally provided to customers
4 in that class; is that correct?

5 A. Yes.

6 Q. And in that case, there would be legitimate
7 reasons for charging that customer rates higher than
8 otherwise applicable to that class; is that correct?

9 A. Yes.

10 I need to just clarify one point. I think
11 it's Mr. Watkins' recommendation that it apply to
12 things other than situations where there's viable
13 competitive alternatives, and if we go with that
14 recommendation, then all of these answers are correct.
15 I'm not sure that's what the Company had in mind, but
16 as long as we're talking about situations beyond those
17 where we're responding to competition, then the
18 appropriate basis for the contract would be the cost
19 of service.

20 MR. MILLS: That's all of the questions I
21 have. Thank you.

22 JUDGE DERQUE: Thank you, Mr. Mills.

23 Mr. Dottheim?

24 MR. DOTTHEIM: No questions.

25 JUDGE DERQUE: There is no Commission

1 questions.

2 Redirect, Mr. Brownlee?

3 MR. BROWNLEE: Nothing.

4 JUDGE DERQUE: Thank you, Mr. Johnstone.

5 THE WITNESS: You're welcome.

6 JUDGE DERQUE: Mr. Cooper?

7 MR. COOPER: The Company would call Maurice

8 Arnall.

9 JUDGE DERQUE: Mr. Arnall.

10 MR. COOPER: And, your Honor, we may need to

11 go off the record for a minute.

12 JUDGE DERQUE: I have three pieces of

13 testimony for Mr. Arnall; is that right?

14 MR. COOPER: That is correct, and then I

15 have a fourth item that I would like to mark at the

16 same time.

17 JUDGE DERQUE: Okay. We're off the record.

18 (A discussion off the record.)

19 JUDGE DERQUE: The original Commission order

20 dealt with striking portions of Mr. Arnall's

21 testimony. What Mr. Cooper intends to offer is a --

22 is the testimony and a list indicating those portions

23 of the testimony which are not stricken in the direct

24 and supplemental direct.

25 Does anyone have any objection to this

1 method?

2 MR. MILLS: No, I don't think so.

3 JUDGE DERQUE: Mr. Mills, either indicate --

4 MR. MILLS: I said no.

5 JUDGE DERQUE: I didn't know if that was
6 extreme confusion, or, no, I don't have any objection.

7 MR. MILLS: It was moderate confusion, and I
8 don't think I have any objection.

9 JUDGE DERQUE: Let's go off the record.

10 (A discussion off the record.)

11 JUDGE DERQUE: We are back on the record.

12 To begin with, does anybody have any
13 objection to Mr. Cooper's proposal?

14 (No response.)

15 JUDGE DERQUE: Okay. Seeing none, I have
16 direct and supplemental direct with the -- with
17 your -- your detailed sheet, Mr. Cooper --

18 MR. COOPER: All right.

19 JUDGE DERQUE: -- and those are going to be
20 all Exhibit No. 25.

21 MR. MILLS: Say that again. Direct and
22 supplemental direct are going to be Exhibit 25?

23 JUDGE DERQUE: Yeah. With the -- with the
24 notation sheet that Mr. Cooper has just passed to you.
25 That's all going to be No. 25.

1 MR. ARNALL: That's what's left.
2 MR. BROWNLEE: Lucky I figured that out.
3 JUDGE DERQUE: It ain't much.
4 And 26 will be the rebuttal.
5 We are off the record.
6 (EXHIBIT NOS. 25, 26 AND 27 WERE MARKED FOR
7 IDENTIFICATION.)
8 JUDGE DERQUE: We are back on the record.
9 At the request of the Staff, and with no
10 objection, I'm going to amend Page 40 of the hearing
11 memorandum, which is Exhibit No. 1, to read in
12 parentheses, "Arnall direct per Exhibit 25," and
13 delete the reference to Pages 1 through 36.
14 Mr. Cooper?
15 (Witness sworn.)
16 JUDGE DERQUE: Thank you, sir.
17 MAURICE L. ARNALL testified as follows:
18 DIRECT EXAMINATION BY MR. COOPER:
19 Q. Will you please state your name for the
20 record?
21 A. Maurice Arnall.
22 Q. And by whom are you employed and in what
23 capacity?
24 A. UtiliCorp United, Inc., as Vice President of
25 Regulatory Services.

1 Q. Have you caused to be prepared for the
2 purposes of this proceeding certain direct,
3 supplemental direct and rebuttal testimony in question
4 and answer form?

5 A. Yes, I have.

6 Q. Is it your understanding that that testimony
7 has been marked as Exhibits 25 and 26 for
8 identification?

9 A. Yes, that's my understanding.

10 Q. Do you have any changes that you would like
11 to make to that testimony at this time?

12 A. No, I do not.

13 Q. If I asked you the questions which are
14 contained in Exhibits 25 and 26 today, would your
15 answers be the same?

16 A. Yes, they would.

17 Q. Are those answers true and correct to the
18 best of your information, knowledge and belief?

19 A. Yes, they are.

20 Q. Now, I believe that certain tariff sheets
21 have been marked as Exhibit 27. Is that your
22 understanding as well?

23 A. That's my understanding.

24 Q. Okay. Are you familiar with those tariff
25 sheets?

1 A. To my understanding, it's the tariff sheets
2 that I caused to be filed in August in response to --
3 and I honestly don't remember whether it was one
4 Commission order or two Commission orders dealing with
5 my direct and supplemental direct testimony, the
6 issues that would and would not be allowed in this
7 case.

8 Q. Is it your understanding that those tariff
9 sheets were filed on August 18, 1997, in Case
10 No. ET-98-103?

11 A. That's my understanding.

12 MR. COOPER: Your Honor, at this time I
13 would offer Exhibit 25 to the extent that is outlined
14 in a sheet that's been attached thereto designating
15 certain portions of Maurice Arnall direct and Maurice
16 Arnall supplemental direct. I guess that sheet
17 itemizes the portions of those two particular items
18 that are being offered at this time.

19 I also would offer Exhibit 26 into evidence
20 and Exhibit 27 into evidence, and tender the witness
21 for cross-examination.

22 JUDGE DERQUE: Thank you, Mr. Cooper.

23 I have Exhibits 25, 26 and 27 offered for
24 admission into evidence. Is there any objection?

25 (No response.)

1 JUDGE DERQUE: Seeing none, they will be
2 admitted.

3 (EXHIBIT NOS. 25, 26 AND 27 WERE RECEIVED
4 INTO EVIDENCE.)

5 JUDGE DERQUE: Mr. Brownlee?

6 MR. BROWNLEE: I have no questions.

7 JUDGE DERQUE: Mr. Mills?

8 MR. MILLS: I have no questions for this
9 witness on this issue.

10 JUDGE DERQUE: And Mr. Dottheim?

11 MR. DOTTHEIM: Yes, I've got a few questions
12 for Mr. Arnall.

13 CROSS-EXAMINATION BY MR. DOTTHEIM:

14 Q. Mr. Arnall, did you have occasion to read
15 MPS's motion for reconsideration respecting the
16 Commission's July 3 order granting the Staff's motion
17 to strike in these proceedings?

18 A. I recall reading -- reading that. I don't
19 really recall the content at this point.

20 Q. Do you recall whether the Company's motion
21 for reconsideration indicated that it intended to make
22 a separate cost-of-service rate design filing with the
23 Commission as soon as possible?

24 A. Could you repeat that? I'm -- I know we've
25 made several statements, but I'm -- are you asking me

1 is that in the --

2 Q. Let me --

3 A. Yeah.

4 MR. DOTTHEIM: If I may approach the
5 witness?

6 JUDGE DERQUE: Certainly.

7 Let's go off a minute.

8 (A discussion off the record.)

9 JUDGE DERQUE: We are back on.

10 BY MR. DOTTHEIM:

11 Q. I'm going to hand to you a copy of the
12 Commission's -- excuse me -- a copy of Missouri Public
13 Service's motion for reconsideration. The copy that
14 I'm going to hand to you shows a Commission stamp
15 "Filed" on it of July 11th. And if I could, I'd like
16 to direct you to, in particular, Paragraph 5.

17 A. Okay.

18 Q. There is an indication in that paragraph by
19 Missouri Public Service that it intends to make a
20 separate cost-of-service rate design filing with the
21 Commission as soon as possible.

22 A. Yes, that's what it states there.

23 Q. Do you have any knowledge of those
24 statements that are contained therein?

25 A. "Knowledge" meaning what?

1 Q. Do you -- do you know --

2 A. I'm aware they are here.

3 Q. Yeah. Do you know whether it was at that
4 time, approximately July 11th, the intention of the
5 Company to make a separate cost-of-service rate design
6 filing as soon as possible?

7 A. Yes. Subsequent to the Commission's order
8 striking my testimony on July 11th, it was our
9 intention to make a rate design filing at some point
10 in time.

11 Q. That filing has not occurred as of yet, has
12 it?

13 A. That's correct.

14 Q. Do you know whether Missouri Public Service
15 still intends to make such a filing?

16 A. My -- my answer would be we are evaluating
17 that now at this point.

18 Q. Are you able to say when that filing might
19 occur?

20 A. If it occurs, I would expect it to occur in
21 calendar '98.

22 Q. Can you be any more specific than calendar
23 '98?

24 A. Not really, at this time.

25 Q. Are you aware of what cost-of-service

1 analysis the Company intended to file as soon as
2 possible when the Company -- excuse me -- Missouri
3 Public Service filed that pleading on July 11th?

4 A. You're asking me about the cost-of-service
5 study that we intend to file?

6 Q. That -- if you know, that was intended to
7 be filed that's referred to in that pleading of
8 July 11th of this year?

9 A. On July 11th, if you had asked me that
10 question, my response would have been the one that was
11 filed and stricken from this case with possible
12 modifications.

13 Q. Did the Company have a study, a cost-of-
14 service study, other than the cost-of-service study
15 that was stricken from the record on July 3?

16 A. There were multiple iterations of that one,
17 but my basic answer would be that was the only one we
18 had at that time.

19 Q. Was the Company working on a study to
20 replace that study that previously had been filed on
21 May 1?

22 A. I honestly don't recall whether we had
23 started making changes to that study on July 11th.

24 Q. Were there iterations in existence that were
25 subsequent to the study that was filed on May 1 of

1 this year?

2 A. Were there on July 11th?

3 Q. Yes.

4 A. I don't recall.

5 Q. Have there been iterations of that study

6 since July 11th?

7 A. Absolutely.

8 MR. DOTTHEIM: If you will just give me one

9 moment.

10 I have no further questions.

11 JUDGE DERQUE: Redirect, Mr. Cooper?

12 MR. COOPER: No, your Honor.

13 JUDGE DERQUE: Thank you, Mr. Arnall.

14 May we proceed to the next issue which is

15 real-time pricing, flex pricing and special contract

16 tariffs?

17 MR. DOTTHEIM: Yes.

18 JUDGE DERQUE: I don't see anybody saying

19 no.

20 Let's go off the record a moment.

21 (A discussion off the record.)

22 JUDGE DERQUE: We are on the record.

23 Go ahead.

24 MR. DOTTHEIM: Mr. Watkins has three pieces

25 of testimony, direct, rebuttal and surrebuttal, which

1 at this time I would like to have marked as Exhibits
2 28, 29 and 30.

3 JUDGE DERQUE: And 30. That's correct.

4 Go off the record.

5 (EXHIBIT NOS. 28, 29 AND 30 WERE MARKED FOR
6 IDENTIFICATION.)

7 JUDGE DERQUE: We are back on the record.

8 (Witness sworn.)

9 JUDGE DERQUE: I have what is marked
10 Exhibit 28, the direct of Mr. Watkins; Exhibit 29, the
11 rebuttal of Mr. Watkins, and Exhibit 30, the
12 surrebuttal of Mr. Watkins.

13 Mr. Dottheim?

14 JAMES C. WATKINS testified as follows:

15 DIRECT EXAMINATION BY MR. DOTTHEIM:

16 Q. Mr. Watkins, would you state your name and
17 business address for the record?

18 A. My name is James C. Watkins. My business
19 address is 301 West High Street, Jefferson City,
20 Missouri.

21 Q. Do you have what has been marked as
22 Exhibits 28, your direct testimony, 29, your rebuttal
23 testimony, and 30, your surrebuttal testimony that has
24 been prefiled in this proceeding?

25 A. Yes.

1 Q. If I were to ask you the same questions that
2 are contained in Exhibits 28, 29 and 30 today, would
3 your answers be the same?

4 A. Yes, they would.

5 Q. Is the information contained in each of
6 those exhibits your direct, rebuttal, surrebuttal
7 testimony, true and correct to the best of your
8 knowledge and belief?

9 A. Yes, it is.

10 Q. Do you have any corrections to make at this
11 time?

12 A. No.

13 MR. DOTTHEIM: At this time I would offer
14 into evidence Exhibits 28, 29 and 30, and tender
15 Mr. Watkins for cross-examination.

16 JUDGE DERQUE: Is there any objection to the
17 admission into evidence of Exhibits 28, 29 and 30?

18 (No response.)

19 JUDGE DERQUE: Seeing none, they will be
20 admitted.

21 (EXHIBIT NOS. 28, 29 AND 30 WERE RECEIVED
22 INTO EVIDENCE.)

23 JUDGE DERQUE: Mr. Mills?

24 MR. MILLS: Thank you.

25 I do have a few questions.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. Mr. Watkins, I'm going to be asking you
3 questions primarily about your surrebuttal testimony,
4 and if I could direct you first to the answer that
5 starts at the bottom on Page 3 and continues on to
6 Page 4 of your surrebuttal testimony.

7 A. I've found that location.

8 Q. Okay. Can you tell me which of the eight
9 conditions that you're discussing in that answer will
10 ensure that large customer-- large users are free to
11 enter the marketplace in the advent of electric
12 restructuring?

13 A. I'm not sure I understand your question.
14 The question -- the answer to the question has to do
15 with what the Commission ordered in that case and is
16 basically a quote from the order.

17 Q. Right. All right. Let me ask you this --

18 A. So I would be testifying as to what the
19 Commission believed to be the case.

20 Q. Okay. Did the Commission find that the
21 eight conditions proposed by Staff will ensure that
22 large users are free to enter the marketplace in the
23 advent of electric restructuring?

24 A. Yes.

25 Q. Is it your belief that the eight conditions

1 proposed by Staff will ensure that large users are
2 free to enter the marketplace in the advent of
3 electric restructuring?

4 A. I'm not sure that the eight conditions alone
5 are sufficient to ensure that, but I believe that the
6 powers of the Commission are sufficient to ensure
7 that.

8 Q. So is it your testimony that you believe the
9 Commission has the power to break a contract between a
10 utility and a large user?

11 MR. DOTTHEIM: I object on the grounds that
12 Mr. Mills, I think, is asking for a legal conclusion.

13 MR. MILLS: Well, if I may respond, I
14 believe Mr. Watkins just testified as to what he
15 believes the powers of the Commission are, and I'm
16 trying to get an understanding of what he believes the
17 powers of the Commission are. It may call for a legal
18 conclusion, but the last answer he offered, if you
19 follow that logic, offered his legal conclusion as to
20 what the powers of the Commission are.

21 JUDGE DERQUE: The objection is sustained.
22 It's calling for a legal conclusion.

23 MR. MILLS: I would like to --

24 JUDGE DERQUE: Yes, he did mention that in
25 his last answer, and, obviously, there will be little

1 weight given to Mr. Watkins' legal opinions.

2 MR. MILLS: Well, if there will be little
3 weight given to it, then I won't ask it be stricken.

4 BY MR. MILLS:

5 Q. Continuing on on Page 4 of your surrebuttal
6 testimony, are you aware either at Missouri Public
7 Service, or at KCP&L for that matter, the customer
8 approaching the utility asking for a contract to cover
9 its special needs?

10 A. Yes.

11 Q. At UtiliCorp or KCP&L?

12 A. KCP&L.

13 Q. Okay. Are you aware of any at Missouri
14 Public Service?

15 A. No.

16 Q. Okay. Now, in your answer you talk about --
17 your answer that I was just referring to at Lines 11
18 through 15 on Page 4 of your surrebuttal testimony,
19 you seem to imply that there will never be a need for
20 a special contract for customers that need a lower
21 level of service than that specified in the tariffs.
22 Is that a correct inference from your answer there?

23 A. I hate to venture that there would never be
24 such a case. I mean, I can think of examples for --
25 for Kansas City Power and Light over other utilities

1 where contractual arrangements have provided for a
2 lower level of firmness and special conditions for how
3 rapidly a customer can curtail load, so I suppose the
4 other is a possibility.

5 Q. Okay. Now, in the answer to the last
6 question on Page 4 of your surrebuttal testimony you
7 are discussing market out clauses, and you state that
8 this is one of the items that should be negotiated
9 between the Company and the customer and be subject to
10 Commission review; is that correct?

11 A. Yes.

12 Q. Is it your understanding that the Commission
13 reviews and approves each contract that will be
14 submitted under the special contract tariff?

15 A. It's my understanding that they are subject
16 to review.

17 Q. Does the Commission approve each contract
18 prior to it going into effect?

19 A. No.

20 Q. Now, the answer on the bottom of Page 4 that
21 continues on to the top of Page 5 discusses your
22 opposition to the -- Mr. Kind's proposal to make the
23 maximum length of contracts five years; is that
24 correct?

25 A. That's correct.

1 Q. And you discuss an example of a customer
2 that would only locate in a state where it could lock
3 in terms and conditions for ten years?

4 A. That's correct.

5 Q. Do you know of any large customers that are
6 seeking to lock in terms and conditions of electric
7 service for ten years currently?

8 A. I do not know of any.

9 Q. With what you know of what's going on in the
10 electric utility industry these days, would it
11 surprise you if an electric -- a large electric
12 customer was willing to lock into a -- the incumbent
13 electric utility for ten years?

14 A. I wouldn't be surprised either way. It
15 depends on what they need, what they want.

16 Q. There have been some special contracts
17 entered into with other utilities in this state; is
18 that correct?

19 A. Yes. Other than KCP&L?

20 Q. Other than -- other than Missouri Public
21 Service?

22 A. Oh, yes.

23 Q. Okay. Are you aware of any contracts that
24 are ten years or longer in length?

25 A. I frankly do not recall what the initial

1 term of those contracts might have been.

2 Q. Thank you.

3 Now, at Lines 11 through 12 of Page 5 of
4 your surrebuttal testimony you state that, "A customer
5 with competitive alternatives does not have to agree
6 to a contract duration of longer than five years"; is
7 that correct?

8 A. That's correct.

9 Q. Couldn't a customer be persuaded to lock
10 in -- lock into a contract of a duration longer than
11 five years by being offered a great deal by the -- by
12 Missouri Public Service?

13 A. I suppose they could, if the customer
14 thought it was a great deal.

15 Q. All right. And wouldn't it be possible that
16 Missouri Public Service could offer this great deal
17 for anti-competitive reasons?

18 A. You're speaking to their motivation?

19 Q. Right. And the effect -- the possible
20 effect of the contracts.

21 Let's deal with the motivation first. Isn't
22 it possible that they could offer a contract in order
23 to forestall competition?

24 A. It's possible that that could be their
25 motivation. I have no knowledge of that.

1 Q. Okay. Is it possible also that such a
2 contract could have that effect?

3 A. Of being anti-competitive?

4 Q. Yes.

5 A. I think there's two competitive situations
6 to consider. One is the competitive situation that
7 hypothetical customer is in today, a customer with
8 other alternatives. We're entering into a contract
9 where MoPub is a pro-competitive thing to do. Allowing
10 MoPub to enter into a special contract with that
11 customer broadens the customer's alternatives.

12 If you're looking at the restructured
13 electric industry at some point in the future, I -- my
14 personal view is that both the Legislature and the
15 Commission are going to have to establish the ground
16 rules for how competition will occur, and it isn't at
17 all clear to me that contracts entered into in the
18 past will stay in effect indefinitely into the future.

19 Q. Okay. So is it -- this may be asking for a
20 legal conclusion again, but is it a basic assumption
21 that goes into your answer that you just gave that the
22 Commission or the Legislature, or both, will have the
23 authority to break contracts that a utility has
24 entered into with its customers?

25 A. What I think is the -- both the Legislature

1 and the Commission have the authority to determine how
2 competition will occur. My concern in this issue is,
3 even if you believe that competition is coming
4 somewhere in the future, life has to go on today.
5 Competition may never come for the customer who would
6 enter into this contract. What we need to do is
7 provide an opportunity today for him to -- to organize
8 his electric purchases into the future as he expects
9 the future to be.

10 Q. Okay. But my question was, and the answer
11 you gave before that answer, was your assumption that
12 the Commission or the Legislature or both will have
13 authority to set aside pre-existing contracts when and
14 if competition arrives?

15 A. I -- since you're an attorney and I'm not, I
16 hesitate to answer a question about contracts or
17 breaking contracts, but it -- but it is my assumption
18 that the Commission has authority over the rates that
19 are charged to all customers, and which kind of piece
20 of paper those rates appear on, I don't think matters.

21 Q. You stated in one of your answers that
22 competition may never come, at least for a particular
23 hypothetical customer. Do you believe that
24 competition will come for retail customers in
25 Missouri?

1 A. I think it has a better than 50/50 chance.

2 Q. Do you want to be more specific?

3 A. No, because I really don't know.

4 Q. Now, at the -- the last answer on Page 5 of
5 your surrebuttal testimony you discuss the fact that
6 if customers are locked in, those customers would
7 initially be denied the benefits that may be achieved
8 from retail competition; is that correct?

9 A. In that answer I'm -- I'm attempting to
10 restate the argument that's made in Mr. Kind's
11 testimony, yes.

12 Q. Right. But you state at Lines 21 to 22
13 that, "Thus, those customers would initially be denied
14 the benefits that may be achieved from retail
15 competition." Is that correct? I understand that you
16 are paraphrasing Mr. Kind's testimony, but that's --
17 that's your statement that paraphrases his testimony;
18 is that correct?

19 A. That's correct.

20 Q. Okay. Is Mr. Kind's concern limited only to
21 the customers -- particular customers denied
22 competitive alternatives?

23 A. I'm not sure that I'm fully aware of all of
24 Mr. Kind's concerns.

25 Q. Okay.

1 A. But I believe that his testimony addressed a
2 concern for the customers who would be entering into
3 these contracts, not then later having an alternative
4 from retail competition to benefit from purchasing
5 energy from an alternative supplier.

6 Q. Is it your understanding also from his
7 testimony that his concern is broader than that in
8 that he is also concerned about the overall level of
9 competition and its impact on all customers?

10 A. Yes.

11 Q. Turning to Page 6 of your surrebuttal
12 testimony, the answer that you give at Lines 12
13 through 16, is it your point there that if a customer
14 enters into a five-year contract, five years from now
15 it won't terminate until ten years from now?

16 A. That's correct.

17 Q. Do you believe that five years from now
18 customers and utilities will have the same relative
19 bargaining strength that they have today?

20 A. I don't think I can give you an answer -- I
21 don't think I have a belief that's related to what the
22 world looks like five years from now. Whether the
23 utility and the customer have the same bargaining
24 power will depend -- five years from now will depend
25 on what changes are made in the electric industry

1 during that five years.

2 Q. But you believe that there is a 50/50 chance
3 that things may be different; is that correct?

4 A. I believe there is better than a 50/50
5 chance there will be some type of retail competition
6 eventually.

7 Q. If there is retail competition, would not a
8 utility customer have a better relative bargaining
9 position with its utility than it has today?

10 A. I think a lot of that will depend on the
11 customer.

12 Q. Today if a customer can't negotiate the
13 terms that it wants with its electric utility, what
14 are its alternatives?

15 A. I assume you mean in general?

16 Q. In general.

17 A. The customer can install their own
18 generation, close down their business and move
19 somewhere else.

20 Q. Is one of their alternatives today to
21 receive power from another provider?

22 A. I don't believe that the customer of a
23 utility -- of a regulated utility in Missouri is
24 allowed to physically receive electricity directly
25 from any other provider.

1 Q. Now, at Page 7 of your surrebuttal testimony
2 at the top of the page you discuss right of first
3 refusal clauses. Do you see that reference?

4 A. Yes.

5 Q. And you state that right of first refusal
6 clauses are tied to specific performance standards?

7 A. Yes.

8 Q. What is the basis for that statement?

9 A. The basis for that, I guess, is, you know,
10 just my general reading of the literature and in part
11 based on some informal discussions I had with
12 extremely large customers in another service
13 territory.

14 Q. Let me ask you this: How -- how as you use
15 the phrase "right of first refusal clause," how do you
16 envision that that clause would operate?

17 A. The way I envision a right of first refusal
18 clause working in conjunction with performance
19 standards is that an initial contract of some term
20 would be entered into by the buyer and seller and
21 would specify all of the -- all of the items that
22 needed to be performed, whether delivering a product
23 or whatever, and set up standards for -- minimum
24 standards for how those things would be done.

25 At the end of that initial term the -- the

1 buyer under the contract could solicit bids to provide
2 whatever is being provided under the contract under
3 the same minimum standards. And if it receives a
4 lower bid which guarantees performance of the
5 specified standards, it would have the option of
6 accepting the lower bid if the original seller were
7 not willing to match that price.

8 Q. So that the phrase "right of first refusal"
9 essentially refers to the right of the seller to match
10 that lowest bid after the expiration of the initial
11 contract?

12 A. Yes.

13 Q. Do you have any direct knowledge that the --
14 that this is the way that these clauses are used in
15 the electric utility industry?

16 A. I don't have any direct knowledge in terms
17 of any of Missouri's regulated utilities or -- and I
18 don't believe I've read anything in detail about other
19 jurisdictions. The only thing that -- the only
20 specific thing that I'm relying on, as I said before,
21 are some, I believe, discussions, informal
22 discussions, with the large customers somewhere else.

23 Q. Do you know if any of the special contracts
24 that have been entered into between customers and
25 Missouri utilities contain right of first refusal

1 clauses?

2 A. I don't believe they do.

3 Q. Are you the Staff member that's responsible
4 for reviewing these contracts when they are filed with
5 the -- when they are either filed with the Commission
6 or submitted to the Staff?

7 A. I believe I am now.

8 Q. From your answer I take it that you have not
9 always been the person so responsible; is that
10 correct?

11 A. I have always been a very responsible
12 person, but my -- my position with the Commission was
13 changed as of December 1.

14 Q. Okay.

15 A. Now I am a more responsible person than I
16 was.

17 Q. Have you specifically reviewed all special
18 contracts that all utilities in Missouri have entered
19 into with their customers?

20 A. Oh, no. Many of them predate my joining the
21 Commission over 15 years ago.

22 Q. So it's possible that this clause could be
23 in contracts in effect in Missouri -- this type of
24 clause could be in effect in contracts in Missouri and
25 you may not be aware of that?

1 A. It's possible, but I -- I would think it
2 would be highly unlikely.

3 Q. Now, isn't Mr. Kind's concern about the
4 right of first refusal clauses that if an MPS customer
5 enters into a contract with MoPub with a right of
6 first refusal clause, at the termination of the
7 initial period of that contract a competitor can quote
8 that customer its best price, and then MoPub can
9 undercut that best price by a mere fraction after it
10 already knows the competitor's best price?

11 A. I'm not sure I clearly recall your entire
12 question. I thought it started out with Mr. Kind's
13 understanding or point, and it kind of ended up with
14 what I thought.

15 As I understood your question, I think it
16 dealt with two features, one was does the -- if MoPub
17 were to enter into the contract at the end of the
18 initial term, would they be able to renew that
19 contract by slightly undercutting another competitive
20 bid, was one part of it. And I think the answer is
21 that -- partly is that a right of first refusal
22 clause does not require MoPub to -- to beat all
23 competitive bids. They only have to match the low
24 one.

25 The other part of it is -- is that while

1 the -- while the term of the contract would provide
2 Missouri Public Service that opportunity, okay, that
3 opportunity could only be undertaken subject to the
4 terms of the specific contract tariff. They would not
5 be able to, you know, for example, meet the low bid by
6 offering a price which was lower than the incremental
7 cost.

8 MR. MILLS: I think that's all of the
9 questions I have.

10 JUDGE DERQUE: Thank you, Mr. Mills.

11 Mr. Brownlee, do you have substantial cross-
12 examination?

13 MR. BROWNLEE: No.

14 JUDGE DERQUE: How about you, Mr. Cooper?

15 MR. COOPER: I have a couple of pages.

16 JUDGE DERQUE: I saw you looking at your
17 watch. I thought that must mean he doesn't have much
18 cross.

19 MR. COOPER: Sorry to be misleading.

20 JUDGE DERQUE: Let's take a ten-minute break
21 here. We'll resume at a quarter to 11:00.

22 We're off the record.

23 (A discussion off the record.)

24 JUDGE DERQUE: We're on the record.

25 Mr. Brownlee?

1 CROSS-EXAMINATION BY MR. BROWNLEE:

2 Q. Mr. Watkins, my name is Richard Brownlee.

3 I'm representing the Sedalia Industrial Group.

4 I'm going to ask you some questions about
5 your real-time pricing -- try to ask you some
6 questions. Okay?

7 Is it my understanding that the baseline
8 load is computed for each hour during the year?

9 A. Yes.

10 Q. So there would be, if I've done the math
11 correctly, 8,736 different computations which would be
12 one for each hour?

13 A. I'm thinking about the math.

14 Q. Well --

15 A. Ordinarily, we think about there being 8,7--

16 Q. I didn't have a computer, so I did it by
17 hand. But I came out with 8,736 hours?

18 A. Normally, there would be 8,760.

19 Q. That's why I didn't have a computer.

20 A. In terms of -- you used the term
21 "calculated." Generally, the baseline load is just
22 the metered load. It doesn't actually involve any
23 calculation.

24 Q. But there would be one for each hour during
25 the year, however many hours there are?

1 A. That's correct.

2 Q. And regarding the individual hourly running
3 cost of incremental generation, who computes that
4 figure? And I don't mean who like a name, but does
5 the company do that?

6 A. The company does that?

7 Q. And is your answer the same for the hourly
8 wholesale price? The company does that; is that
9 correct?

10 A. Yes.

11 Q. And provision for line loss, the company
12 does that?

13 A. Yes.

14 Q. And the same question for hourly outage
15 costs, the company does that?

16 A. That's correct.

17 Q. Now, regarding the question of this -- the
18 accuracy of this projection, the customer relies upon
19 the company's projections; is that not correct?

20 A. Yes.

21 Q. And are there provisions for auditing the
22 forecasting process under your proposal?

23 A. No, because the prices that the company
24 provides to the customer a day ahead are the prices.

25 Q. I understand that.

1 A. Okay.

2 Q. But my question, again, and I think you
3 answered it, are there provisions for auditing the
4 forecasting process?

5 A. No, there are not.

6 Q. And are there provisions for auditing the
7 actual costs under your plan?

8 A. There are no provisions in the tariff for
9 specifically doing that.

10 Q. Okay. Thank you. That's the question.

11 And doesn't it depend -- the accuracy of the
12 forecast of the baseline load depends on the company
13 assuming it will have a similar amount of sales as
14 related to its purchases? Isn't that part of the
15 component of this accuracy?

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

17 Q. Okay. Well, let -- if the company was going
18 to be a net seller, if it could -- if it could
19 determine it was going to be a net seller more than a
20 net purchaser, it would have an incentive to increase
21 the baseline load price, would it not, that is, the
22 margin above?

23 A. If the company --

24 Q. The real-time price?

25 A. If the utility company knew for sure that in

1 a particular hour the customers under real-time
2 pricing were all going to buy more electricity than
3 their baseline in that hour, then there would be an
4 incentive under those assumptions for the company to
5 charge a higher markup in that hour.

6 Q. And that would be for the real-time price.
7 Correct?

8 A. Yes.

9 MR. BROWNLEE: Thank you.

10 I have no further questions.

11 QUESTIONS BY JUDGE DERQUE:

12 Q. Let's see. For -- excuse me. Mr. Cooper,
13 for informational purposes, let me ask this question:
14 Has the Commission approved a real-time pricing tariff
15 similar to this one, or exactly like it, whichever, in
16 a previous case or cases?

17 A. Yes, the one that's in my testimony is the
18 exact tariff they approved.

19 Q. 97-113 --

20 A. Yes.

21 Q. -- KCP&L? Any others?

22 I understand. I have that case. I'm just
23 checking my memory.

24 A. That is the only case where a tariff that's
25 exactly or almost similar to that appears. The

1 Commission also approved the experimental program for
2 Kansas City Power and Light, which is there RTP and
3 RTP Plus tariffs, and there is an RTP tariff approved
4 for Empire District Electric.

5 Q. Okay. Do you remember the number on that
6 case?

7 A. I do not, but I can get it for you.

8 JUDGE DERQUE: It was the Empire case that I
9 didn't have a chance to look up, and it was in my -- I
10 couldn't find it. I didn't notice it in anybody's
11 testimony. That's fine.

12 Excuse me. Go right ahead, Mr. Cooper.

13 CROSS-EXAMINATION BY MR. COOPER:

14 Q. Mr. Watkins, I'm also going to be asking
15 some questions about the real-time pricing.

16 We just mentioned the tariff that KCP&L has
17 on file, and are there similarities between the MPS
18 real-time pricing tariff and the real-time pricing
19 tariff which is currently on file for KCP&L?

20 A. Yes, there are.

21 Q. Could you list for us some of those
22 similarities?

23 A. That's a more difficult question than
24 listing the differences. The two tar-- the two
25 tariffs were -- show the handiwork of Christensen &

1 Associates. They basically have the same form. They
2 are two-part tariffs.

3 Q. So let's -- let's stop there. So they are
4 both two-part real-time pricing tariffs with day-ahead
5 notice?

6 A. Yes.

7 Q. Would that be accurate?

8 Okay. Do they both compute a customer
9 baseline load based on historical load?

10 A. Yes.

11 Q. And are they both designed such that they
12 will be customer -- that it will offer customer-
13 specific, revenue-neutral service as a result of that
14 CBL?

15 A. Yes.

16 Q. And is it your understanding that that
17 provision would mean that in theory there would be no
18 revenue attrition that would be likely to result and
19 that no other customers would suffer due to increased
20 costs?

21 A. I'm not sure what you mean by revenue
22 attrition.

23 Q. Well, let's back up then. What's the
24 theory -- what's your understanding of the theory
25 behind starting in the two-part RTP with a customer

1 baseline load?

2 A. Well, my view is that the primary thing that
3 it does is recover the costs that would be otherwise
4 stranded in a one-part real-time pricing proposal.

5 Q. So by starting with the -- with the CBL
6 amount, the theory is to -- to recover -- I guess, as
7 a first part, to recover -- well, you say to recover
8 the costs that would otherwise be stranded, to recover
9 the costs that under a customer's current usage were
10 being received by the utility. Correct?

11 A. That's correct.

12 Q. Now, MPS's RTP tariff also has two forms.
13 Isn't that similar to the KCP&L format, meaning, I
14 guess, in the KCP&L case there is an RTP Plus, and in
15 MPS's case, what is it, premium -- premium RTP?
16 Aren't those -- those provisions similar?

17 A. My recollection of the proposal was that
18 there are -- there may be more or less an infinite
19 variety of proposals given that there is a -- there
20 are variables which are not specified in the tariff.
21 There are additive factors, multiplicative factors,
22 and those are not -- I mean, I'm not sure exactly what
23 Missouri Public Service is proposing at this time, but
24 I don't think there were only two.

25 Q. Was it your understanding that both the

1 KCP&L tariff and the MPS tariff have a base bill
2 premium?

3 A. In that version, yes --

4 Q. Okay.

5 A. -- of KCP&L.

6 Q. Now, I believe you recommended that MPS
7 offer real-time pricing to standby, back-up and
8 supplemental service customers; isn't that correct?

9 A. Yes, I do?

10 Q. Is it your -- let me see. Would you agree
11 that the Commission has not in the past made offering
12 real-time pricing to standby customers, back-up and
13 supplemental service customers a prerequisite to
14 offering real-time pricing?

15 A. That's correct.

16 Q. And, for example, wouldn't it be your
17 understanding that KCP&L developed such a tariff only
18 after it is pilot tariff was filed?

19 A. That's correct.

20 Q. I believe you also recommend that
21 curtailment customers be compelled to forfeit all of
22 their discounts if they convert to real-time pricing.
23 Isn't that the case?

24 A. I would characterize it as customers who are
25 no longer curtailable no longer get credits for being

1 curtailable.

2 Q. Okay. Do all other utilities require this?

3 A. As far as I know, all of the real-time
4 pricing schemes in Missouri, other than the most
5 recent for self-generation from KCP&L, prohibit
6 curtailable customers from participating in real-time
7 pricing, and I think that's pretty general across the
8 real-time pricing tariffs that I know of that were
9 filed prior to Empowers in other jurisdictions.

10 Q. Don't you think that forfeiture of this, I
11 guess, what I've called a discount would act as a
12 deterrent to a customer's participation in real-time
13 pricing?

14 A. I don't think so, I mean, not if the
15 real-time pricing tariff was properly designed. I
16 mean, the test year -- if the credits accurately
17 reflect the company's avoided costs in the first place
18 for the curtailable customers, okay, then those same
19 dollars, okay, should be in the hourly real-time
20 prices during what otherwise would be the curtailable
21 periods. That's -- that's the avoided cost of
22 capacity.

23 And so by a curtailable customer
24 volunteering to curtail during the same periods of
25 time without being required to provide the curtailment

1 rider, he could earn those same credits in the hourly
2 prices. So I don't see why there would be a
3 deterrent.

4 Q. Well, do you believe that real-time pricing
5 has benefits to a utility's system at times of high
6 prices and low reliability?

7 A. Yes.

8 Q. Okay. And some of those, or a couple of
9 those benefits, wouldn't you agree, that there is load
10 reduction that would increase with -- with the real-
11 time pricing price, that as the price increases, the
12 loads would decrease?

13 A. Yes.

14 Q. Okay. Do you know of any other benefits?
15 Do any other benefits come to your mind that are
16 derived from real-time pricing?

17 A. The customers should benefit by being able
18 to efficiently use electricity in those hours when the
19 prices are higher than they are willing to pay to use
20 the electricity they want and when they are lower than
21 they would be willing to pay, they will tend to use
22 more. So there should be benefits to both the company
23 and the customer.

24 Q. So in that case rather than a curtailment,
25 what you're talking about is a value decision to the

1 customer. Right?

2 A. That's correct.

3 Q. Wouldn't you agree that curtailable
4 customers would be more likely to offer benefits from
5 load reduction than other customers because in their
6 past because of their willingness to offer some of
7 their load as curtailable they have more flexibility
8 than other customers?

9 A. Is your question that I shall not look at
10 the benefits of -- and not both the benefits and the
11 costs?

12 Q. No. I think I'm trying to compare, I guess,
13 whether a customer that historically has been
14 curtailable, whether you believe that customer would
15 be better suited to react to the factors, I guess, or
16 the situation in real-time pricing than a customer
17 that in the past has not been in a curtailable
18 situation.

19 A. I think curtailable customers are ideally
20 suited to benefit and provide benefits under the RTP
21 program. But I have little information about whether
22 they would be able to do that more or less than other
23 customers.

24 I know that if I personally were faced with
25 real-time prices, you know, I could manage to dry my

1 clothes on Sunday afternoon in low-cost hours, so
2 although my load would be small, you know, on a
3 proportional basis, I'm not sure that residential
4 customers couldn't provide, you know, more benefits in
5 the aggregate than interruptible customers do.

6 Q. Well, if you say that curtailable customers
7 are, what, ideally suited, was that your language --

8 A. Yes.

9 Q. -- to take advantage of the features of
10 real-time pricing, wouldn't you agree that maintaining
11 their discount would maximize the probability that
12 they would actually enjoy those benefits, that they
13 would actually partake of real-time pricing and
14 participate in real-time pricing?

15 A. Well, I think the participation on the
16 curtailment rider captures most of those benefits that
17 you were talking about for the company, and that is of
18 reducing their loads at the time of peak. The
19 additional benefits of real-time pricing would occur
20 in other hours where they were not curtailable any
21 way, just like any other customer.

22 Q. But aren't the benefits that you're talking
23 about reducing the load in times of peak, now those
24 benefits go to more than just the participating
25 customer. Correct? I mean, they go to the entire

1 system?

2 A. Certainly.

3 Q. Okay. Now, let's talk about parameter
4 values a little bit. I believe you recommend that
5 pricing parameter values should be stated in the MPS's
6 tariff. Correct?

7 A. Yes.

8 Q. And this is to address your concern that not
9 doing so will create the opportunity for
10 discrimination?

11 A. Uh-huh. Yes.

12 Q. Now, it is true, isn't it, that the MPS
13 tariff locks in parameter values when a customer joins
14 the tariff for the period of that customer's contract?

15 A. That's my understanding.

16 Q. And you understand, don't you, that MPS is
17 willing to publicly announce the parameter values
18 applying to new customers on a quarterly basis?

19 A. I recall reading that in Mr. Chapman's
20 testimony.

21 Q. Now, if MPS were to limit the range of its
22 parameter values so that the overall markup on
23 electricity were held to modest levels, wouldn't this
24 help meet your concerns regarding discrimination?

25 A. My concerns about discrimination have to do

1 with treating customers who are similar for all
2 intents and purposes differently. We are treating
3 customers who are different in important ways the
4 same.

5 I believe it would be discriminatory to
6 charge the first guy in the door one hourly price and
7 the next guy in the door some other hourly price when
8 we're talking about the price for tomorrow which we
9 think represents the competitive market for
10 electricity. I mean, there can't be two values for
11 that price.

12 Q. Well, you -- let's ask it this way: Do you
13 believe that there has to be any flexibility in
14 parameter values in order to address market factors
15 such as competitive alternatives?

16 A. Are you speaking of -- what do you mean by
17 "competitive alternatives"? Do you mean a customer
18 with competitive alternatives?

19 Q. A customer who has other alternatives.

20 A. I think that's -- that's what I propose for
21 the specific contract tariff, is the customers that
22 have competitive alternatives, that the company be
23 allowed to enter into special contracts with those
24 under the terms of that special contract tariff.

25 No, I don't think an RTP tariff should have

1 individually negotiated terms in it.

2 Q. Okay. So you don't think there is any --
3 any room in an RTP tariff for reacting to competitive
4 influences?

5 A. Reacting to a customer with competitive
6 alternatives, no. Although, I think the real-time
7 pricing format is perfect for special contracts.

8 Q. What if -- what if the competitive
9 circumstances for all customers were to change over
10 time? Don't you believe that the company should have
11 the ability to change its parameters in that
12 situation?

13 A. Your question is too vague for me to
14 understand what the real question is here. Sorry.

15 Q. Well, isn't it possible that the market in
16 which a customer finds itself will change over a
17 period of time?

18 A. A particular customer?

19 Q. Yeah.

20 A. I suppose it could. I don't see that being
21 likely.

22 Q. Okay. So your view of the parameter values
23 would assume that the market in which the customer
24 finds itself is not going to change, that it is a
25 static environment?

1 A. I don't see the need for different parameter
2 values being applied at the same time to different
3 customers. Now, that's not to say that over time
4 those parameter values shouldn't change. And
5 certainly over time the underlying costs that are
6 going into the calculation are also going to change.

7 Q. Well, how about this: In the traditional
8 rate situation, don't traditional rates apply
9 different rates to different customers depending upon
10 their load situation?

11 A. Traditional rates apply -- a traditional
12 rate -- let me say it this way: Different rates apply
13 to different customers who are different in their
14 cost-causing characteristics or relationship to costs,
15 yes.

16 Q. Now, you recommend, I believe, that -- I
17 think this is a quote out of your testimony, out of
18 your rebuttal testimony. You recommend that embedded
19 cost transmission charges should be a component of the
20 hourly real-time price; is that correct? Do you
21 remember that?

22 A. Yes.

23 Q. Do all Missouri utilities charge for
24 transmission services on incremental load unreal time
25 price?

1 A. Could you repeat that? I'm sorry.

2 Q. Well, let's do it this way: Are you aware
3 that KCP&L's real-time pricing tariff does not include
4 transmission services in its energy costs and instead
5 imposes a lump sum facilities charge for costs
6 unrecoverable by their standard tariff are incurred?

7 A. Absolutely not. You're in error.

8 Q. I'm sorry?

9 A. You are in error.

10 Q. Okay. So you don't believe that to be the
11 case?

12 A. That is not the case.

13 Q. In your opinion is there an industry
14 standard in place for the pricing at retail of
15 transmission and distribution services in a
16 competitive environment or during the transition to
17 competition?

18 A. I think that's still in transition. I mean,
19 there -- there clearly are FERC-approved open access
20 tariffs, which are the standard, but I would agree
21 that they'd be likely to evolve into something more
22 applicable to smaller retail customers.

23 Q. And the standard you refer to are at the
24 wholesale level. Correct?

25 A. No.

1 Q. No?

2 A. The tariffs are open -- the FERC open access
3 tariffs are available at retail. The distinction
4 between retail and wholesale is sort of blurred. If a
5 customer has the capability of utilizing those tariffs
6 to purchase electricity, they can use them.

7 Q. By whom are those tariffs usually used?

8 A. They are used for -- they are usually used
9 by utilities and wholesale bulk power transactions,
10 but they are also available to customers who are
11 participating in retail access pilots or customers who
12 have already been granted retail access.

13 Q. Let me ask you this: Would it be possible
14 to offer retail-pricing with something other than
15 energy-only pricing of transmission?

16 A. I'm not sure I understand your question.
17 What I proposed is that the hourly price reflect
18 transmission congestion pricing basically, that in
19 those hours in which there is a -- during those hours
20 in which increases in the customer's load from their
21 customer baseline would cause the transmission lines
22 to overload unless some other transaction is
23 terminated, for example, that there should be a
24 component in the price for those customers who exceed
25 their customer baseline load in those hours to pay an

1 additional fee for transmission just in the way that
2 Mr. Chapman proposed that there be an additional piece
3 for operating reserves which have value in those
4 hours.

5 Q. Now, you've objected to -- to MPS's proposed
6 offering of price hedging service, haven't you?

7 A. Yes, I objected. Mostly, I'm not sure I
8 understood it.

9 MR. COOPER: Okay. That's all of the
10 questions I had.

11 JUDGE DERQUE: Thank you, Mr. Cooper.

12 Is there any recross based on the question I
13 asked involving prior Commission cases?

14 Mr. Brownlee?

15 MR. BROWNLEE: (Shook head.)

16 JUDGE DERQUE: Mr. Cooper?

17 MR. COOPER: No.

18 JUDGE DERQUE: Redirect, Mr. Dottheim?

19 MR. DOTTHEIM: No redirect.

20 JUDGE DERQUE: Thank you.

21 You may step down, Mr. Watkins.

22 Mr. Mills?

23 MR. MILLS: He was just here.

24 JUDGE DERQUE: Let's go off the record.

25 (A discussion off the record.)

1 JUDGE DERQUE: We are back on the record.
2 Mr. Kind, you are still sworn. Please have
3 a seat.
4 It's my understanding that his testimony is
5 already in; is that correct?
6 MR. MILLS: That's correct. Since he's
7 already been sworn and his testimony has already been
8 admitted, I'll offer him for cross-examination on the
9 issues of special contracts and real-time pricing.
10 Although, I'll note that he doesn't really have
11 testimony on real-time pricing.
12 JUDGE DERQUE: Okay. Mr. Dottheim?
13 MR. DOTTHEIM: No questions.
14 JUDGE DERQUE: Mr. Brownlee?
15 MR. BROWNLEE: No questions.
16 JUDGE DERQUE: And Mr. Cooper?
17 MR. COOPER: No questions.
18 JUDGE DERQUE: That's pretty easy, Mr. Kind.
19 THE WITNESS: Too easy.
20 JUDGE DERQUE: Thank you.
21 We'll think of something later.
22 THE WITNESS: I'd appreciate it.
23 MR. MILLS: Thanks for coming back.
24 MR. BROWNLEE: Good job, Ryan.
25 JUDGE DERQUE: Mr. Brownlee?

1 MR. BROWNLEE: Mr. Johnstone.
2 JUDGE DERQUE: Mr. Johnstone, you are still
3 sworn.
4 THE WITNESS: Yes, sir.
5 JUDGE DERQUE: And I believe his testimony
6 is all in, is it not?
7 MR. BROWNLEE: Yes, Exhibits 22, 23 and
8 24 and parts thereof.
9 MR. COOPER: Are we around to me?
10 JUDGE DERQUE: Cross -- you are first.
11 MR. COOPER: Yeah.
12 JUDGE DERQUE: On a Sedalia witness, you are
13 first.
14 MR. COOPER: Would you give me just a
15 moment? I'll go ahead and go first.
16 JUDGE DERQUE: Sure.
17 DONALD E. JOHNSTONE, being previously sworn, testified
18 as follows:
19 CROSS-EXAMINATION BY MR. COOPER:
20 Q. Mr. Johnstone, your preference for a
21 one-part RTP program like the TVAs is based on the
22 belief that prices will be close to marginal cost and
23 that there will be little to no revenue attrition;
24 isn't that true?
25 A. Certainly the first point is true, and the

1 second one would be true over time.

2 Q. So, initially, you recognize that there will
3 be revenue attrition. Correct?

4 A. There is a potential, I think. Certainly,
5 there is that potential.

6 Q. And in the case of TVA, isn't it true
7 that TVA suffers immediate revenue attrition on the
8 50 percent of load that its customer places on RTP?

9 A. No. If you look at the historical
10 relationship between sales and the offering of the
11 rate, there is a trio of when prices were increasing
12 and load was decreasing dramatically within the large
13 industrial class, and as soon as they began offering
14 this rate, that reversal in sales stopped and then
15 that turned the decrease into an increase.

16 And along with the direct effect of
17 additional sales to the industrial class, there were,
18 in fact, additional sales to other classes by virtue
19 of the multiplier effect of having retained some
20 export-based industries in the area.

21 Q. Now, regarding your views on -- on two-part
22 RTP, I believe you say in your testimony that this
23 structure creates favoritism for customers who grow
24 faster, don't you?

25 A. Yes.

1 Q. And you believe that this favoritism, or
2 what you call favoritism, is because the faster
3 growing customers have a lower average price even
4 though the marginal prices are the same. Correct?

5 A. That's correct. So you could end up with
6 two customers with identical loads with one paying a
7 substantially lower price just by virtue of when they
8 began the rate.

9 Q. Could you say that again? I'm sorry.

10 A. Sure. Let me try that again. If you have
11 two customers that might today be a somewhat different
12 size, let's say one is one-third smaller, and you
13 institute real-time pricing today, and then
14 a year from now the smaller customer grows by
15 50 percent, that would add another one-third, so he
16 would then be the same size as the other larger
17 customer, they would have identical loads at that
18 point in the future, yet the -- the one that had grown
19 would have fully one-third of his load being served
20 under the real-time pricing rate, so he would have a
21 substantially lower rate. Of course, that's favorable
22 to him, but it would be discriminatory vis-a-vis the
23 other customer that had been there all along, i.e.,
24 the existing customer with the existing load.

25 Q. And what you're talking about is this

1 average rate. Correct?

2 A. Sure.

3 Q. Now, I think you maintain that the two-part
4 contract is essentially take-or-pay for somebody who
5 reduces load; isn't that correct?

6 A. And I think to put that in context, I was
7 thinking of someone that had a significant reduction
8 other than one in response to the rate. In other
9 words, you would expect some people to reduce during
10 high-cost hours. That's part of the design of the
11 rate, but if there was a business downturn that
12 charged -- excuse me -- that caused a significant
13 reduction in load for a period of time, then you would
14 be faced with a situation where it looked more like a
15 take-or-pay.

16 Q. But in both cases, the customer's bill would
17 be -- would be reduced. Correct?

18 A. It wouldn't be reduced, but if he were on
19 the original rate, it would go down by the average
20 rate amount. If they were on RTP, you would have that
21 take-or-pay-type component. You would subtract from
22 that only the detrimental cost.

23 So, again, you would have a situation where
24 that customer -- you would have discrimination versus
25 another smaller load because they would be paying a

1 significantly higher average cost.

2 Q. When you talk about the reduction, what
3 you're talking about is the -- essentially, the
4 sell-back of amounts that do not exceed the CBL; is
5 that correct?

6 A. Well, that's the fiction that's created by
7 the rate, yes.

8 MR. COOPER: Give us just a minute, your
9 Honor.

10 JUDGE DERQUE: Sure.

11 Off the record.

12 (A discussion off the record.)

13 JUDGE DERQUE: Back on the record.

14 BY MR. COOPER:

15 Q. Mr. Johnstone, earlier we had a couple of
16 questions about revenue attrition in the TVA one-part
17 example. Do you remember that?

18 A. Yes.

19 Q. Okay. Let's -- let's take some assumptions.
20 With that one-part RTP program, if a customer commits
21 to RTP and its load does not change initially, which
22 to me means that its -- its rate will decrease, isn't
23 there going to be some initial revenue attrition for
24 the utility in that situation?

25 A. If you are talking about an existing

1 customer and you allow them to put a portion of their
2 load on a lower cost rate, that would certainly be the
3 effect in the short-term for that one customer.

4 Q. And it's only in the case that their load
5 then increases that that revenue shortfall is -- is
6 made up or recovered. Correct?

7 A. I think that's correct. And I would just
8 like to add that what I think we're looking at is the
9 effect on a company as a whole, and while it's
10 instructive to understand what happens to each
11 customer, when you look at the company as a whole, you
12 would have a stimulation effect to the lower price for
13 incremental use, and there is certainly the
14 possibility, I think even the likelihood, that there
15 would be increased sales.

16 Q. On -- or in the two-part RTP process now,
17 isn't it true that in that process it's designed to be
18 revenue-neutral on a customer-specific basis? I mean,
19 that's -- that's the major difference between the
20 two-part and the one-part, isn't it, that in two-part
21 you're trying to be revenue-neutral at the customer
22 level, and in the one-part you have to depend upon the
23 system as a whole to try to get that same revenue
24 neutrality?

25 A. I think the -- the fundamental point is to

1 send better pricing signals so that you will not be
2 revenue-neutral, but I think I understand your intent.
3 And to the extent that you've got a baseline load
4 priced at the existing rate and that customers don't
5 respond, then you do end up with the same revenue.

6 MR. COOPER: That's all of the questions we
7 have, your Honor.

8 JUDGE DERQUE: Mr. Mills?

9 MR. MILLS: I have no further questions for
10 this witness on special contracts, but I will note for
11 the record that the questions I earlier asked him when
12 he was on the stand for rate design had to do with
13 special contracts.

14 JUDGE DERQUE: Yes, sir.

15 Mr. Dottheim?

16 MR. DOTTHEIM: No questions.

17 JUDGE DERQUE: Redirect, Mr. Brownlee?

18 MR. BROWNLEE: None.

19 JUDGE DERQUE: You may step down.

20 How much cross is there for Mr. Arnall?

21 MR. BROWNLEE: I don't have any.

22 MR. DOTTHEIM: I have one or two questions.

23 MR. COOPER: MPS would call Mr. Arnall to
24 the stand.

25 JUDGE DERQUE: Mr. Arnall, you are still

1 sworn.

2 THE WITNESS: Yes, sir.

3 JUDGE DERQUE: And I believe all of his
4 testimony is in evidence, is it not?

5 MR. COOPER: That's correct, your Honor.

6 THE WITNESS: All that's left.

7 JUDGE DERQUE: Whatever is left, yeah.

8 Okay. Mr. Brownlee?

9 MR. BROWNLEE: No questions.

10 JUDGE DERQUE: Mr. Mills?

11 MR. MILLS: No questions.

12 JUDGE DERQUE: And Mr. Dottheim?

13 MR. DOTTHEIM: Thank you.

14 MAURICE L. ARNALL, being previously sworn, testified
15 as follows:

16 CROSS-EXAMINATION BY MR. DOTTHEIM:

17 Q. Just briefly, Mr. Arnall, I think in your
18 direct and rebuttal -- excuse me -- direct and
19 supplemental direct testimony you make references to
20 the offering of retail pricing and the development of
21 competition. Should Missouri Public Service offer
22 retail pricing regardless of whether retail
23 competition occurs in Missouri?

24 A. Could you help me understand what you mean
25 by "retail pricing?"

1 Q. Excuse me. I'm sorry. Real -- I misspoke.

2 I meant to say real-time pricing.

3 A. Now could you repeat the question?

4 Q. Yes. Should Missouri Public Service offer
5 real-time pricing regardless of whether retail
6 competition, retail weakening, occurs in Missouri?

7 A. Yes.

8 Q. And why is that?

9 A. I believe it benefits the customer and the
10 company.

11 Q. I think you also reference in your direct
12 and supplemental direct that Missouri Public Service
13 is not looking for a real-time pricing experiment.
14 Why is it appropriate to institute real-time pricing
15 as an experiment?

16 A. Well, I think the concept of real-time
17 pricing is getting to be a fairly mature rate
18 principle and I -- and it's already available to other
19 utilities in this state, and it's used in a lot of
20 states. I don't think it would be appropriate for us
21 to do it on a pilot experimental basis.

22 Q. When you refer to real-time pricing being
23 available to other utilities in the state, those are
24 experiments, are they not?

25 A. My understanding is Kansas City Power and

1 Light is. Quite honestly, I wasn't aware that Empire
2 had one until this morning.

3 Q. So you're not certain --

4 A. I am not certain whether it's an experiment
5 or not.

6 Q. Would you be willing to accept subject to
7 check that it is an experiment?

8 A. Certainly.

9 JUDGE DERQUE: I don't -- there is no need
10 to check, Mr. Arnall. We can take -- we can take
11 official notice of the fact that it is a pilot.

12 MR. DOTTHEIM: Thank you, Mr. Arnall. I
13 have no further questions.

14 JUDGE DERQUE: Let's see. Mr. Brownlee?

15 MR. BROWNLEE: No questions.

16 JUDGE DERQUE: Mr. Mills?

17 MR. MILLS: No questions.

18 JUDGE DERQUE: How did I get messed up.

19 MR. MILLS: They're next.

20 MR. COOPER: Redirect, there will be none.

21 JUDGE DERQUE: I was reading the wrong
22 chart.

23 Let's see. Redirect?

24 MR. COOPER: None, your Honor.

25 JUDGE DERQUE: Okay. Thank you.

1 Thank you, Mr. Arnall.

2 Is there -- is there extensive
3 cross-examination for Mr. Chapman?

4 MR. DOTTHEIM: I have some.

5 JUDGE DERQUE: I tell you what, why don't
6 we -- let's enter his testimony and I'll swear him,
7 and then we'll proceed with the cross-examination
8 after lunch.

9 (A discussion off the record.)

10 JUDGE DERQUE: I have three pieces of
11 testimony for Mr. Chapman, the direct, rebuttal and
12 surrebuttal; is that correct?

13 MR. COOPER: That's what I have.

14 JUDGE DERQUE: And none of it is privileged
15 or highly confidential.

16 Direct of Chapman will be 31. Rebuttal will
17 be 32. Surrebuttal will be 33.

18 We are off the record.

19 (EXHIBIT NOS. 31, 32 AND 33 WERE MARKED FOR
20 IDENTIFICATION.)

21 JUDGE DERQUE: We are on the record.

22 (Witness sworn.)

23 JUDGE DERQUE: Thank you, sir.

24 Let's go off the record.

25 (A recess was taken.)

1 JUDGE DERQUE: Could you state that again
2 Mr. Schwarz?

3 MR. SCHWARZ: I anticipate that I will have
4 some questions on cross-examination tomorrow for
5 Mr. Robert Green touching on the headquarters
6 building, and I just wanted to alert folks ahead of
7 time. He did not file, as I recall, direct or
8 rebuttal or surrebuttal directly on that issue.

9 JUDGE DERQUE: Is there any objection to
10 that?

11 MR. SCHWARZ: Well, I -- I mean, I am just
12 letting people know so that if I do ask the questions
13 they will be alerted.

14 JUDGE DERQUE: Okay. Well, you want to deal
15 with objections tomorrow if there are any?

16 MR. SCHWARZ: Yeah. Thank you.

17 JUDGE DERQUE: Yeah.

18 Okay. Let's see. We're to --

19 MR. COOPER: Mr. Chapman.

20 JUDGE DERQUE: -- Mr. Chapman.

21 Mr. Brownlee?

22 MR. BROWNLEE: Mr. Chapman, my name is
23 Richard Brownlee. I rep--

24 MR. COOPER: I hate to stop this, but I
25 think we need to do Mr. Chapman's direct to get his

1 testimony in.

2 MR. BROWNLEE: You did it?

3 MR. COOPER: I thought we stopped after he

4 was sworn in.

5 JUDGE DERQUE: I don't have it checked in.

6 Enter it again. Offer it again.

7 MR. BROWNLEE: You never --

8 MR. COOPER: My memory is I didn't do the

9 name or any of that.

10 MR. BROWNLEE: You didn't do the little

11 ritual speech that we all sleep and wake with.

12 JUDGE DERQUE: I just marked them and swore

13 him.

14 MR. COOPER: I think that's where we were.

15 BRUCE R. CHAPMAN testified as follows:

16 DIRECT EXAMINATION BY MR. COOPER:

17 Q. Will you please state your name for the

18 record?

19 A. My name is Bruce Chapman.

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

21 capacity?

22 A. Laurits R. Christensen Associates as a

23 senior economist.

24 Q. And upon whose behalf are you appearing in

25 this proceeding?

1 A. Missouri Public Service.

2 Q. Have you caused to be prepared for purposes
3 of this proceeding certain direct, rebuttal and
4 surrebuttal testimony in question and answer form?

5 A. I have.

6 Q. Is it your understanding that that testimony
7 has been marked as Exhibits 31, 32 and 33 for
8 identification?

9 A. It is.

10 Q. Do you have any changes that you would like
11 to make to that testimony at this time?

12 A. I do not.

13 Q. If I asked you the questions which are
14 contained in Exhibits 31, 32 and 33 today, would your
15 answers be the same?

16 A. Yes, they would.

17 Q. Are those answers true and correct to the
18 best of your information, knowledge and belief?

19 A. Yes.

20 MR. COOPER: At this time I would offer
21 Exhibits 31, 32 and 33 into evidence, and tender the
22 witness for cross-examination.

23 JUDGE DERQUE: Is there any objection to the
24 Exhibit Nos. 31, 32 and 33, the testimony of
25 Mr. Chapman?

1 (No response.)

2 JUDGE DERQUE: It will be entered.

3 (EXHIBIT NOS. 31, 32 AND 33 WERE RECEIVED
4 INTO EVIDENCE.)

5 JUDGE DERQUE: Now, Mr. Brownlee.

6 CROSS-EXAMINATION BY MR. BROWNLEE:

7 Q. Mr. Chapman, my name is Richard Brownlee.
8 I'm representing the Sedalia Industrial Users Group
9 which are customers in the large power group.

10 Do you know whether the Company made any
11 presentation to any customer class group regarding
12 your proposal dealing with real-time pricing?

13 A. I do not.

14 Q. And I guess if you do not know, then you
15 didn't make any proposal to any customer group?

16 A. I did not, correct.

17 Q. Well, in your testimony you make reference a
18 couple of times to the fact that the group was
19 uninformed because they hadn't apparently been
20 instructed regarding your proposal. Do you know how
21 the Sedalia Group was supposed to be informed if no
22 one with the Company explained your proposal?

23 A. Well, with regards to informing the
24 customers about upcoming product options, I think that
25 is the Company's responsibility, but I certainly, of

1 course, meant no disparagement of your group. It was
2 simply the case that what I observed and
3 Mr. Johnstone's testimony seemed to indicate that
4 perhaps he had not heard officially from the Company
5 or heard officially from anyone about the merits of
6 two-part real-time pricing.

7 Q. Well, since it's the Company's
8 responsibility that you've just testified to, do you
9 know whether the Company undertook that responsibility
10 to explain to the Sedalia Group or any other group
11 about your proposal dealing with real-time pricing?

12 A. I do not.

13 MR. BROWNLEE: That's all of the questions I
14 have. Thank you.

15 Judge, I would like to be excused, if I
16 could, please. I have to go to St. Louis.

17 JUDGE DERQUE: Is there any objection?

18 (No response.)

19 JUDGE DERQUE: Seeing none, you may be.

20 MR. BROWNLEE: Thank you very much.

21 JUDGE DERQUE: Let's see. IBEW?

22 MR. KEEVIL: No questions for this witness.

23 JUDGE DERQUE: Have you entered a written
24 appearance?

25 MR. KEEVIL: This morning, no.

1 JUDGE DERQUE: But yesterday you did?
2 MR. KEEVIL: Yesterday, I did.
3 JUDGE DERQUE: Okay. That's fine.
4 Mr. Mills?
5 MR. MILLS: No questions.
6 JUDGE DERQUE: And Mr. Dottheim?
7 MR. DOTTHEIM: Yes, I have several.
8 CROSS-EXAMINATION BY MR. DOTTHEIM:
9 Q. Good afternoon, Mr. Chapman.
10 A. Good afternoon.
11 Q. Mr. Chapman, do you have a copy of MPS's
12 propose RTP, real-time pricing tariff with you?
13 A. I believe I do. Let me check.
14 Q. If I could direct you, in particular, to
15 Sheet No. 66.
16 A. My copy doesn't have sheet numbers on it.
17 Perhaps -- it does have page numbers. Can you tell me
18 which page it is?
19 Q. Well, let me -- why don't I give you --
20 MR. COOPER: Do you want me to give him --
21 MR. DOTTHEIM: Yes, if you would.
22 MR. COOPER: Are you working off the ones
23 that were filed?
24 MR. DOTTHEIM: Yes, I'm working -- as just
25 suggested, I'm working off of the tariff sheets that

1 were filed on August 18th in Case No. ER-97-394.

2 BY MR. DOTTHEIM:

3 Q. Mr. Chapman, I would like to direct you to
4 Sheet No. 66, the real-time price program tariff and,
5 in particular, to the first paragraph on availability,
6 the second sentence which says, "Customers without
7 hourly recording devices will be required to pay the
8 installation cost."

9 In this sentence that I've just referred to,
10 does the term "installation cost" refer to only the
11 cost of installing the meter or to both the cost of
12 the meter and the cost of installing the meter?

13 A. Well, I hesitate to speak for MPS in this
14 regard since they are, of course, the experts, but my
15 understanding of this circumstance is that what is to
16 be paid is the costs that are associated with changing
17 out an existing meter, putting in a new meter that is
18 capable of recording on an hourly basis and hooking it
19 up. So I'm not sure if that speaks with clarity, but
20 that's my understanding.

21 Q. I think it does. I think you've indicated,
22 then, that it includes both the cost of -- well,
23 changing out the present meter and installing a new
24 meter and hooking up that meter.

25 A. Right. I believe there is some text in my

1 testimony that refers to that as well which includes,
2 I think, a rebate to the customer for the value of --
3 the market value of the meter taken away.

4 Q. If I could refer you to your surrebuttal
5 testimony, I think for the most part my questions
6 reference your surrebuttal testimony. I would like to
7 refer you to Page 2, Lines 20 to 22 where you state in
8 part ". . . the cost of installation can vary
9 substantially across sites due to variation in both
10 metering requirements and installation time."

11 What are the metering requirements that
12 would cause the cost of installation to vary
13 substantially across sites?

14 A. Again, I should say I don't speak with a
15 good deal of expertise on this, but it's my
16 understanding that there are many different types of
17 recording devices on the market, and that as you go
18 from facility to facility there may be different types
19 of recording devices that are appropriate for
20 different circumstances.

21 Now, if that's the case, then metering
22 requirements then might vary from place to place.

23 Q. And could you be any more specific as to
24 what would be the nature of those differing metering
25 requirements?

1 A. I cannot.

2 Q. The metering requirements then -- they
3 would -- well, do you know whether they would be
4 site-specific or are they actually related to the
5 customer class or the tariff class?

6 A. Again, I can't give you a definitive answer
7 in this regard.

8 Q. What -- if you can answer the question to
9 the best of your knowledge, would you please do so?

10 A. I -- well, if I were to speculate in this
11 regard, I would say there might be circumstances, for
12 example, with people with significant reactive power
13 costs who might then have separate metering for that
14 purpose, so if you're metering KBA on one side or KW
15 on the other, then you might have different types of
16 meters for that purpose.

17 I'm practicing engineering without a
18 license.

19 Q. What are the factors that would cause
20 installation time to vary substantially across the
21 sites?

22 A. Again, I don't know.

23 Q. And you wouldn't know then whether the
24 factors are site-specific or whether they are related
25 to customer class or a tariff class?

1 A. No.

2 Q. Okay. Do you know whether MPS's customers
3 served under standard tariffs are required to purchase
4 meters from MPS and pay for the installation up front?

5 A. I do not, but I believe that they are not,
6 that it's just part of electricity service.

7 Q. If I could refer you to Page 3 of your
8 surrebuttal, which is Exhibit No. 33, and if I could
9 direct you to Lines 11 and 12 where you state, "MPS
10 simply prefers to offer them RTP service under a
11 separate filing in the near future," do you know, when
12 is MPS intending to make this separate filing?

13 A. I do not, no.

14 Q. And if I could direct you to Lines 8 and 9
15 where you say "they," that is self-generators, "need
16 separate tariff treatment for RTP to achieve its
17 economic efficiency objectives in a competitive
18 market," how would the real-time pricing tariff for
19 self-generators differ from the real-time pricing
20 tariff proposed by MPS?

21 A. Well, I think if you look at the tariffs
22 that are in place for Kansas City Power and Light,
23 they have tariffs, and I think the tariffs were filed
24 with Mr. Watkins' original direct testimony, that show
25 you a separate tariff for standby service, and so

1 there are differences in there, including in terms of
2 the pricing and the way baseline loads, I believe, are
3 calculated. And perhaps in theory one could combine
4 all of those into one tariff, but I don't believe that
5 that's necessary.

6 Q. Would the differences you've identified
7 result in offering a less favorable rate to
8 self-generators than to customers without self-
9 generation?

10 A. I can't say in terms of how the details
11 would work out, but my expectation would be that you
12 would simply want to make sure that every customer
13 regardless, the standby customers as well as the
14 customers who are eligible for the RTP program now as
15 it's currently constructed, you would want to give
16 them as competitive a price as possible.

17 Q. Would the tariff in this instance regarding
18 those customers or self-generators be more in the
19 nature of a special contract?

20 A. This is a standby tariff, you mean?

21 Q. Yes.

22 A. I haven't thought of it as such; although, I
23 suppose you could construct it that way. But since
24 KCP&L hasn't, and Mr. Watkins has offered that as an
25 example, I presume it could be offered in such a way

1 as to appear to be a standard tariff.

2 Q. Has MPS filed tariffs to propose changes to
3 the curtailment rider which would make it available to
4 customers that are not served under the -- under
5 either the large general service or large power
6 service tariffs?

7 A. I'm afraid I don't understand the question
8 exactly. Can you rephrase it or break it up? It's
9 not clear to me what you're asking.

10 Q. MPS is proposing changes regarding those
11 customers who presently would take service under the
12 curtailment rider that might take service under
13 real-time pricing?

14 A. In other words, the curtailment language of
15 real-time pricing tariff as it stands?

16 Q. Yes.

17 A. Okay.

18 Q. And would that be available to what classes
19 of customers, if you know?

20 A. Well, since there is no language in the
21 tariff that imposes a restriction, I'm presuming that
22 anyone who's curtailable is eligible.

23 Q. Do you know if there are any customer class
24 limitations on which customers are curtailable?

25 A. I do not, under the current situation. My

1 understanding is that they are a subset of the full
2 range of customers who are eligible for the RTP
3 tariff.

4 Q. If I could direct you again to your
5 surrebuttal testimony, Line 20 --

6 A. Can you tell me which page?

7 Q. I'm sorry. Page 3.

8 A. Oh.

9 Q. Page 3, Line 20 through Page 4, Line 7, can
10 you identify what is the reason for distinguishing
11 between customers that began service under the
12 curtailment rider by May 1, 1997 and those customers
13 that began service under the curtailment rider after
14 May 1, 1997?

15 A. I believe for those who might begin the
16 curtailable service after May 1, knowledge of real-
17 time pricing would change the nature of the incentives
18 for joining the curtailable service. So if you could
19 join the curtailable service and then revert to RTP,
20 that might produce a favorable change in the bill for
21 you.

22 Q. Is it correct that under MPS's real-time
23 pricing proposal the formerly curtailable customer is
24 treated exactly like the firm power customer in terms
25 of revenue-neutrality?

1 A. That is partially true. The answer, I
2 believe, is they are treated the same in the sense
3 that they're billed as a curtailable customer,
4 calculated as they are a curtailable customer is
5 revenue-neutral in the same sense as a firm power
6 customer. The difference is as is contained in the
7 tariff, is that at times of curtailment their baseline
8 load is adjusted downward or adjusted to their firm
9 power level so that any attempt to go above the firm
10 power level is, of course, paid for at the real-time
11 pricing price of the hour.

12 Q. Is it correct that under MPS's real-time
13 pricing proposal the formerly curtailable customer is
14 treated exactly like the firm power customer in terms
15 of the hourly real-time prices that are charged?

16 A. That's true.

17 Q. Is it correct that under MPS's real-time
18 pricing proposal the formerly curtailable customer is
19 treated exactly like the firm power customer in terms
20 of the degree of firmness of a power supply to the
21 customer?

22 A. Yes.

23 Q. Is it correct that under MPS's real-time
24 pricing proposal the formerly curtailable customer is
25 treated differently than the firm power customer in

1 terms of the base bill in that formerly curtailable
2 customers receive a credit of \$4.78 each summer month
3 for each formerly curtailable kilowatts while the
4 credit is not available to firm customers?

5 A. That's correct, if the number is correct,
6 yes.

7 Q. Assuming, subject to check, the number \$4.78
8 for each summer month for each formerly curtailable
9 kilowatt?

10 A. Correct. And that is an exchange, then, of
11 course, for the utility's ability to reduce the
12 baseline load to the firm power level. They,
13 therefore, suffer an increase in exposure at times of
14 high real-time prices.

15 Q. Is it correct that under MPS's real-time
16 pricing proposal the formerly curtailable customer
17 served under the curtailment rider by May 1, 1997, is
18 treated differently than the formerly curtailable
19 customer that began taking service under the
20 curtailment rider after May 1, 1997, in terms of the
21 base bill in that the customer that took service under
22 the curtailment rider by May 1 received a credit of
23 \$4.78 for each summer month for each formerly
24 curtailable kilowatt?

25 A. I believe so.

1 Q. Okay. Would you like me to --

2 A. No. I think I have that. You are not --
3 the discount is not available to someone who applies
4 for curtailable service after May 1st, if that's the
5 substance of your question.

6 Q. Will firm power customers have the same
7 option as formerly curtailable customers of
8 establishing a baseline load which exposes more of
9 their load to real-time pricing during curtailment
10 calls that have the same option as formerly
11 curtailable customers of receiving a comparable
12 credit?

13 A. As I understand your question, it seems to
14 hint at the possibility of adjusting a baseline load
15 on the part of a firm power customer to move load into
16 and out of hours with some degree of flexibility. Is
17 that your question?

18 Q. Yes.

19 A. That is not the case.

20 Q. Will firm power customers be allowed under
21 the MPS proposal to establish a baseline load which
22 exposes more of their load to real-time pricing during
23 curtailment calls and do so without receiving a
24 credit?

25 A. My answer from the last time, I think, still

1 applies, that you are not allowed to move baseline
2 load around.

3 Q. If I could direct you again to your
4 surrebuttal testimony, Exhibit No. 33, Page 10, in
5 particular, Lines 12 through 14 --

6 A. Okay.

7 Q. -- in saying that the RTP price contains a
8 congestion or more properly a reliability component,
9 by "reliability component" are you referring to the
10 marginal cost of operating reserves?

11 A. Yes.

12 Q. Would these operating reserves be generating
13 reserves?

14 A. Yes.

15 Q. Would the term "congestion component" more
16 properly refer to transmission services?

17 A. Yes.

18 Q. Does the marginal cost of providing energy
19 to customers during curtailment calls include a
20 component for transmission service?

21 A. It does not at present, I believe, but I
22 should qualify that answer by saying that the
23 methodology for calculating the marginal costs at MPS
24 has not been specified. So I can't speak for the
25 Company and say, "Here is what exactly they will do,"

1 because I believe that is sometime in the future. So
2 if I had the choice, I would like to strike the first
3 part of my answer.

4 Q. Assuming the \$4.78 curtailment credit that I
5 previously referred to is equal to MPS's full avoided
6 cost, would a portion of the credit be for
7 transmission service?

8 A. I think one might have reason to question
9 that assumption. And I don't know whether it would be
10 for transmission service. I have never investigated
11 cost-of-service studies that relate to their
12 interrupt-- or their curtailability provisions.

13 MR. DOTTHEIM: Thank you, Mr. Chapman.

14 THE WITNESS: Thank you.

15 JUDGE DERQUE: Redirect, Mr. Cooper?

16 MR. COOPER: No, your Honor.

17 JUDGE DERQUE: Thank you, Mr. Chapman. You
18 may step down.

19 THE WITNESS: Thank you.

20 JUDGE DERQUE: Mr. Woodsmall?

21 MR. WOODSMALL: Yes, sir.

22 JUDGE DERQUE: Would you like to get
23 Mr. Traxler?

24 MR. WOODSMALL: We're ready to go.

25 MR. COOPER: I take it we're not moving on

1 to Off-systems Sales first.

2 JUDGE DERQUE: I'm sorry.

3 MR. MILLS: We're going back to Policy?

4 JUDGE DERQUE: Yeah. Mr. Woodsmall is back,
5 per our discussion of yesterday. Mr. Woodsmall is
6 back from his trip to the court of appeals, and we are
7 going to move back and do Steve Traxler right now, and
8 then do Mr. Empson and Mr. McKinney.

9 MR. COOPER: It may take a minute. I think
10 that Mr. Swearengen's understanding after this morning
11 was we were going to move through Off-system Sales
12 before we went back to those.

13 JUDGE DERQUE: That's not what I said, but
14 regardless --

15 MR. COOPER: Regardless.

16 JUDGE DERQUE: -- of what I said.

17 MR. COOPER: It will take me 15 minutes.

18 JUDGE DERQUE: I told you guys I didn't have
19 any idea what was going on this morning.

20 MR. COOPER: I do remember that.

21 JUDGE DERQUE: Do you want to call
22 Mr. Swearengen?

23 MR. COOPER: Yeah, if I could.

24 JUDGE DERQUE: That's fine. I'm going to
25 break and go get the Commission, and I'll -- you know,

1 how long does he need to get here?

2 MR. COOPER: At least 15 minutes, I would
3 say.

4 JUDGE DERQUE: We'll resume at 2:00.
5 Yes, sir.

6 MR. DOTTHEIM: A housekeeping matter, I
7 think from this morning. You inquired as to the case
8 number for the --

9 JUDGE DERQUE: Oh, yeah.

10 MR. DOTTHEIM: -- Empire District --

11 JUDGE DERQUE: From the Empire District
12 case. It's sitting in my office somewhere. I know it
13 is.

14 MR. DOTTHEIM: It is Case No. ER-95-409.

15 JUDGE DERQUE: 95-409. Okay. Thank you.

16 MR. DOTTHEIM: Thank you.

17 JUDGE DERQUE: Mr. Cooper, could we swear
18 Mr. Traxler and enter his testimony and then break, or
19 do you want to do it all while Mr. Swearengen is here?

20 MR. COOPER: It doesn't make any difference
21 if you want to go ahead and do that.

22 JUDGE DERQUE: But does it make him any
23 difference, or does it make UtiliCorp any difference?

24 MR. COOPER: I don't think it makes any of
25 us any difference. We can go ahead and do that.

1 JUDGE DERQUE: Let's do that, and then we'll
2 break.

3 Mr. Woodsmall, I have three pieces of
4 testimony; is that correct?

5 MR. WOODSMALL: That's correct.

6 JUDGE DERQUE: And there will be an HC for
7 all three of them?

8 MR. WOODSMALL: Yes, sir.

9 JUDGE DERQUE: That will be -- the direct is
10 34, 34HC, the rebuttal is 35 and 35HC, and the
11 surrebuttal is 36 and 36HC.

12 MR. WOODSMALL: Okay. Traxler direct NP and
13 Traxler direct HC.

14 JUDGE DERQUE: We are off the record.

15 (A discussion off the record.)

16 (EXHIBIT NOS. 34, 34HC, 35, 35HC, 36 and
17 36HC WERE MARKED FOR IDENTIFICATION.)

18 JUDGE DERQUE: We are on the record.

19 I have what's marked 34 and 34HC, the direct
20 of Mr. Steve Traxler, 35 and 35HC, the rebuttal of
21 Mr. Traxler, and 36 and 36HC is the surrebuttal of
22 Mr. Traxler. Thirty-six and 36HC include a schedule
23 that was not -- that was filed sometime after the
24 actual bound surrebuttal.

25 (Witness sworn.)

1 JUDGE DERQUE: Thank you, sir.

2 Please be seated.

3 Mr. Woodsmall?

4 STEVE M. TRAXLER testified as follows:

5 DIRECT EXAMINATION BY MR. WOODSMALL:

6 Q. Would you state your name for the record,
7 please?

8 A. Steve M. Traxler.

9 Q. And by whom are you employed and in what
10 capacity?

11 A. I am employed by the Missouri Public Service
12 Commission as a regulatory auditor.

13 Q. And did you cause to be filed in this case
14 what has been marked Exhibits 34, 34HC, 35, 35HC, 36
15 and 36HC?

16 A. Yes, I did.

17 Q. Do you have any corrections to make to those
18 pieces of testimony at this time?

19 A. I have one correction referencing my
20 rebuttal testimony. Schedule No. 2 is an analysis of
21 MPS's proposed incentive regulation plan as we
22 understood it based on the direct testimony of
23 Mr. McKinney. Since filing and reading his
24 surrebuttal testimony, it's our understanding that we
25 misunderstood the Company's position, so this document

1 as it stands right now is incorrect.

2 I don't have an update to this document;
3 however, when and if I do in terms of the -- when we
4 discuss the incentive regulation plan, I will
5 certainly provide that to all of the parties and well
6 in advance to any discussion on that subject.

7 Q. So if I understand you, the document and the
8 calculations contained within were not incorrect of
9 themselves. They were just based upon a faulty
10 assumption; is that correct?

11 A. That's correct.

12 Q. Okay. Other than those changes, do you have
13 any other corrections to make?

14 A. I don't think so.

15 Q. Okay. And are those answers contained in
16 Exhibits 34 through 36 correct to your knowledge,
17 belief and information?

18 A. Yes, they are.

19 MR. WOODSMALL: At this time I would offer
20 Exhibits 34, 34HC, 35, 35HC, 36 and 36HC into the
21 record, and tender the witness for cross-examination.

22 I would note that on the issue -- in his
23 rebuttal testimony there is an issue -- rebuttal and
24 surrebuttal testimony there is an issue called
25 "Re-engineering Costs" and those issues are contested

1 issues --

2 JUDGE DERQUE: Yes.

3 MR. WOODSMALL: -- to some extent so he will
4 be back.

5 JUDGE DERQUE: I understand. What we're
6 dealing with in this particular round of
7 cross-examination, Mr. Traxler, is strictly Policy
8 issues that were taken up originally yesterday.

9 Is there any objection to the admission of
10 34, 35 and 36?

11 MR. COOPER: Your Honor, I would rather
12 wait to either waive or not waive those objections
13 until Mr. Swearengen returns. I do not know what
14 he has planned on this issue for Mr. Traxler's
15 testimony.

16 JUDGE DERQUE: Oh, okay.

17 MR. COOPER: So if we could allow him -- it
18 may be that he walks --

19 JUDGE DERQUE: He is running down here at
20 speed?

21 MR. COOPER: Oh, you know it.

22 MR. WOODSMALL: I can't see Jim running at
23 any speed.

24 MR. COOPER: But if we would allow him to
25 waive or make whatever objections he might have, I

1 would appreciate that.

2 JUDGE DERQUE: Remind me where I am because
3 I'm going to go off the record, and we'll break to
4 2:00, or whenever Mr. Swearengen and the Commission
5 are ready.

6 Go off the record.

7 (A recess was taken.)

8 JUDGE DERQUE: We are back on the record.

9 The testimony of Mr. Traxler, Exhibit 34,
10 34HC, 35, 35HC, 36 and 36HC have been offered for
11 admission into evidence. Is there any objection?

12 MR. SWEARENGEN: I guess I would ask you to
13 reserve a ruling on that until we were sure that we
14 had covered all of the issues for which the testimony
15 is concerned.

16 JUDGE DERQUE: Yeah. Okay. That I will do.

17 MR. SWEARENGEN: Thank you.

18 JUDGE DERQUE: Mr. Woodsmall, did we
19 already -- okay. It's in.

20 Mr. Mills?

21 MR. MILLS: No questions.

22 JUDGE DERQUE: Mr. Keevil?

23 MR. KEEVIL: No questions.

24 JUDGE DERQUE: And Mr. Swearengen?

25 MR. SWEARENGEN: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. SWEARENGEN:

2 Q. Mr. Traxler, there was some testimony
3 yesterday from Mr. Green. I think you were in the
4 hearing room when he testified, were you not?

5 A. Yes, I was.

6 Q. There was some testimony about reports that
7 are filed with the Commission by electric utility
8 companies in general, and I believe Missouri Public
9 Service in particular, with respect to their financial
10 operations. Do you recall that testimony?

11 A. Yes, I do.

12 Q. Can you tell me and tell the Commission just
13 by way of general background what type of financial
14 reports that the electric companies in this state file
15 with the Missouri Public Service Commission on an
16 annual or whatever basis?

17 A. Well, certainly they file what's commonly
18 referred to as a FERC Form 1 which is a copy of the
19 report required by the federal jurisdiction which
20 includes financial and operating information. In
21 addition, all of the utilities in the state file
22 either monthly or annually surveillance reports which
23 are intended to report are reflect that company's
24 jurisdictional operations in Missouri in terms of
25 earnings and investment.

1 Q. Okay. Are there any other reports that
2 they -- that the companies file, just generally
3 speaking, on a regular basis?

4 A. Certainly your annual reports are provided
5 to the financial department. Any other reports I'm
6 not -- I'm not sure.

7 Q. Okay. Now, you mentioned the FERC Form 1,
8 and that's a copy of a report that's filed with the
9 Federal Energy Regulatory Commission; is that right?

10 A. That's correct.

11 Q. And when would a utility company such as
12 Missouri Public Service, for example, normally be
13 expected to file that report?

14 A. I'm fairly sure that everyone files
15 approximately April or May of the following year.

16 Q. Okay. So in April or May of 1996, for
17 example, MPS would have filed its 1995 FERC Form 1
18 with the Commission?

19 A. That's a fair statement.

20 Q. Generally speaking?

21 What -- and then you mention an annual
22 report. Is that something different than the FERC
23 Form 1?

24 A. No. That's what I meant, the FERC Form 1
25 annual report.

1 Q. Okay. That's the same thing. And then you
2 mentioned something called a surveillance report. Is
3 it your testimony that that is something that all of
4 the electric utilities file with the Commission?

5 A. Certainly all of the major electric
6 utilities have been doing it for quite some time, and
7 they are still doing it currently.

8 Q. Do any of the other utilities; water, sewer,
9 telephone?

10 A. It's generally done for all major electric,
11 gas and telephone utilities.

12 Q. And when are they file-- let's talk about
13 surveillance reports. When are they normally filed
14 for electric companies? Is there a regular time?

15 A. Well, again, approximately April or May of
16 the following year.

17 Q. Okay. So at least once a year?

18 A. That's correct.

19 Q. Okay.

20 A. Are you referring to the surveillance
21 report?

22 Q. Yes, sir.

23 A. I'm sorry. I was talking about the FERC
24 Form 1. The surveillance reports are -- for some
25 companies are filed monthly, and you would expect to

1 see one one month or two months after the month in
2 question.

3 Q. Okay.

4 A. And for an annual report for Kansas City
5 Power and Light, for example, we would expect to see
6 it probably two months after the end of the year.

7 Q. Okay. And what about Missouri Public
8 Service? When do they file theirs normally?

9 A. Generally, the -- in the past, they were
10 being filed on a monthly basis.

11 Q. Okay. Are they still being filed on a
12 monthly basis?

13 A. It's my understanding that the -- I think
14 the last one we received was 1995.

15 Q. Okay.

16 A. I don't know what happened, why we haven't
17 received one since then. I was provided one.

18 Q. For year-end 1995?

19 A. That's right. I was given one for 1996 for
20 the Company, but I don't think it was provided to the
21 Commission Staff prior to my request.

22 Q. So as far as you know, the last surveillance
23 report that the Company actually filed with the
24 Commission was for calendar year 1995?

25 A. That's right.

1 Q. But you have seen one for calendar year 1996
2 which the Company gave you?

3 A. That's right.

4 Q. Okay. Generally speaking with respect to
5 the FERC Form 1, what do they show? And I don't
6 expect you to go into great detail, but just describe
7 generally what the report shows?

8 A. They provide considerable detail with regard
9 to -- for example, on the income statement they
10 provide expenses and revenues by account, by FERC
11 account; they provide investment and reserve balances
12 by account; they provide numerous operating
13 certificates with regard to the Company's generation,
14 and a lot of miscellaneous information on specific
15 accounts.

16 Q. And that would be true for the FERC Form 1s
17 that Missouri Public Service has filed with the
18 Commission. Correct?

19 A. Yes. They are all standard.

20 Q. What do the surveillance reports show?

21 A. The surveillance reports are intended to
22 reflect the Company's jurisdictional operations in
23 terms of its earnings and its plant investment and/or
24 rate base. The intent is to give the Staff some
25 indication of what the Company's current earnings are

1 in relationship to the authorized rate of return.
2 With regard specifically to MPS, they don't provide
3 any detail on an account-by-account basis. All of the
4 operating expenses, for example, are lumped into one
5 category.

6 Q. Okay. I was going to ask you, the FERC
7 Form 1s, I take it, are -- the way those are filled
8 out are prescribed by the FERC; is that right?

9 A. That's correct.

10 Q. Is that true with the surveillance reports,
11 or is it different for the different companies?

12 A. They are fairly standard, but, I mean, there
13 is no set -- specific set of rules for that -- that
14 type of document.

15 Q. Okay. And I'm trying to go back with you a
16 little bit. And if you know, that's fine, and if you
17 don't, that's okay. The history of the surveillance
18 reports with respect to the various companies, was
19 that something that just sort of evolved over the
20 years with respect to discussions between the Staffs
21 and the companies, or was there some other origin, or
22 do you know?

23 A. I'm not sure what the origin of that was.

24 Q. Uh-huh. Do you ever recall a situation when
25 a surveillance report perhaps was filed by an electric

1 utility and for some reason or another the Staff said,
2 "Well, we would like it in a different format," or,
3 "We would like a little bit different information or
4 whatever," and you talked to the Company about that,
5 and they do that, they make those changes?

6 A. That may -- the reports are generally filed
7 initially with the finance department.

8 Q. Okay.

9 A. Now, whether or not Mr. Moore was in a
10 habit, Jay Moore, for example, was in the habit of
11 making those kind of requests, I really couldn't
12 answer.

13 Q. You don't know. Do you know whether the
14 format of the reports that you have seen have changed
15 over the years any?

16 A. I'm not aware of any major changes.

17 Q. Let me ask you this question: You said they
18 were normally filed with -- you mentioned Jay Moore,
19 who was a former employee of the Commission?

20 A. Yes, sir.

21 Q. And what was his position?

22 A. Manager of the Finance Department.

23 Q. Okay. And, historically, would they have
24 been filed with the Manager of the Finance Department?

25 A. Yes, that's my understanding.

1 Q. And would it have been the job of that
2 individual or that Department then to initially review
3 those reports?

4 A. He would initially review them and also make
5 them available to any other Staff member like when an
6 accounting person like myself would want to see them.

7 Q. Okay. Was there any -- is there a standard
8 or routine distribution of those surveillance reports
9 through the Commission?

10 A. How those and if those things were
11 distributed to the management of the Commission I
12 really couldn't speak.

13 Q. Okay.

14 A. I don't think there was -- but they were
15 certainly available to anyone who wanted to see them.

16 Q. Okay. So if you wanted one, you could go
17 request it?

18 A. And certainly if a Commissioner wanted to
19 see one, if they requested one, it would be provided.

20 Q. Were you -- in the exercise of your duties
21 and responsibilities at the Commission were you in the
22 habit of looking at those and requesting those with
23 respect to the companies that you were auditing or
24 were concerned with?

25 A. Yes.

1 Q. Okay. And would that be true for Missouri
2 Public Service?

3 A. Yes.

4 Q. Let me ask you this question, Mr. Traxler:
5 Based on the surveillance reports, to your knowledge
6 has the Staff ever contacted an electric utility
7 company and suggested that perhaps they are
8 overearning and they ought to do something about it?
9 I'm not asking you for any specific example.

10 A. Well, clearly -- clearly when -- as soon as
11 we become aware that we think we've had -- that the
12 information from a surveillance report or any other
13 source which suggests that rates might be excessive
14 based upon the authorized rate of return, they would
15 certainly be contacted by somebody if we made a
16 choice, a decision was made, to do a more thorough
17 investigation.

18 Q. Okay. Now, who would make that initial
19 decision that the company ought to be contacted?

20 A. Make the decision?

21 Q. Yes.

22 A. Well, at a minimum I would think that -- if
23 I were the one reviewing the report, we would discuss
24 this with the accounting manager and the Division
25 Director in the Accounting Department who would

1 probably talk to the Executive Secretary at a minimum.

2 Q. So it would at least go that high to the
3 Executive Secretary?

4 A. I would certainly think so.

5 Q. Is there anybody any higher than that in the
6 structure of the Commission that it could go to, or is
7 the Executive Secretary the highest Staff person?

8 A. The -- a full-scale investigation, an
9 earnings investigation, is never done without the
10 knowledge of the Commission.

11 Q. Okay. Well, let me ask this question -- and
12 I'm not talking about a full-scale earnings
13 investigation. What I'm trying to get at is -- is you
14 or someone else looks at the report and says, "Hey, I
15 think this company is overearning. We need to contact
16 them." I'm just trying to figure out how that process
17 works. Who makes that decision to go contact a
18 company and either call them up or send them a letter
19 or say, "Come down and talk to us?" I'm just trying
20 to find that out. How does that work?

21 A. Well, I think I've just described that you
22 would have a number of people involved in the
23 discussion and a final decision made as to whether or
24 not we should proceed.

25 Q. Okay. Without -- with the present staffing

1 over here, for example, who would likely be involved
2 in those discussions, for example?

3 A. Joan Wandel, the manager of the Accounting
4 Department. Bob Schallenberg is the Division
5 Director.

6 Q. Okay.

7 A. Those two at a minimum would be involved.
8 The other Division Directors at the Commission would
9 be involved eventually, and I would think that we
10 would certainly -- Cecil Wright, the Executive
11 Secretary of the Commission.

12 Q. Okay. And then if it was decided to contact
13 a company, who would make that contact normally? Do
14 you know?

15 A. Well, I -- I don't think there is a set
16 procedure on that.

17 Q. Okay. Could it be the Executive Secretary?

18 A. Certainly.

19 Q. Or the General Counsel's Office?

20 A. Yes. It could be any number of people
21 representing the Commission.

22 Q. Okay. And in the past has that ever
23 happened, you've contacted a company and you have --
24 through discussions or negotiations, or whatever, the
25 company has reduced rates?

1 A. Yes. I've been directly involved in two
2 rate reductions, recent rate reductions, with Kansas
3 City Power and Light Company in the last five years.
4 In addition, Union Electric Company has undergone a
5 settle-- an agreement to reduce its rates.

6 Q. And those were brought about simply by
7 review of surveillance reports and contacting the
8 Company, or were formal dockets set up in those cases
9 and more elaborate procedures followed? I guess my
10 question -- go ahead and answer that if you --

11 A. It never got to that point with regard to
12 any complaint proceeding against Kansas City Power and
13 Light Company.

14 Q. I guess my question is, have you ever just
15 called them up and said, "Hey, we think you're
16 overearning," and they say, "You're right," and they
17 send in some new tariffs and lower their rates. Has
18 that ever happened?

19 A. Well, clearly, the fact that you have a
20 negotiated settlement without filing any type of
21 complaint proceeding is, in fact, what you just
22 stated.

23 Q. Okay.

24 A. You have an agreement between the parties
25 that rates are excessive.

1 Q. Okay. Without opening any kind of a formal
2 docket or anything of that sort?

3 A. Right.

4 Q. And that's happened in the past?

5 A. Yes, it has. That was the case with Kansas
6 City Power and Light.

7 Q. When did that occur?

8 A. Let's see. We had just agreed upon a rate
9 reduction just prior to my involvement in this case,
10 which was in the first quarter of 1996, I believe.

11 Q. Okay. And it's your belief that that was
12 not the result of any kind of an ongoing docket or
13 formal docket or anything of that sort?

14 A. No.

15 Q. Okay. Based on what the Staff has seen in
16 surveillance reports or in FERC Form 1 reports filed
17 with the Commission, has the Staff ever filed any
18 complaint against a utility company seeking to lower
19 its rates?

20 A. Strictly based on that information?

21 Q. Yeah.

22 A. Certainly not.

23 Q. Okay. To your knowledge has a -- you
24 mentioned earlier that -- I think you said that a
25 complaint wouldn't be filed unless you'd gone to the

1 Commission first. To your knowledge has a complaint
2 ever been filed by the Staff against an electric
3 utility company seeking to lower rates without the
4 Commission first authorizing it?

5 A. I don't think I can speak absolutely, you
6 know --

7 Q. All right.

8 A. -- but I think that's generally the case?

9 Q. That what is the case?

10 A. That the Commission is aware of a complaint
11 being filed in advance.

12 Q. Okay. And authorizes it?

13 A. Well, yes.

14 Q. Okay. Does the Public Counsel have access
15 to these FERC Form 1 reports and the surveillance
16 reports that you've been talking about?

17 A. I can't speak for the surveillance reports.
18 They certainly have access to the FERC Form 1 reports.

19 Q. Okay. Do you know whether any of the
20 utility companies file surveillance reports with the
21 Public Counsel?

22 A. I can't answer that question.

23 Q. Okay. Do you have your direct testimony up
24 there in front of you?

25 A. Yes, I do.

1 Q. If you turn to Page 37, and then I think
2 also on Page 3 of your surrebuttal testimony, you
3 discuss statements made by Richard C. Green, Jr. at a
4 1988 UtiliCorp Officers Conference. Do you recall
5 that?

6 A. Yes, I do.

7 Q. And I think it's in your surrebuttal
8 testimony on Page 4, Lines 17 and 18, you say the --
9 in reference to those remarks you say they illustrate
10 the nature of managing earnings; is that correct?

11 A. That's correct.

12 Q. And then you go on to say beginning on
13 Page 4, Line 25, that, "UtiliCorp's decision in 1995
14 and 1996 to allocate 10 million in marketing expense
15 to MPS demonstrates how UtiliCorp carried out its
16 objective to manage the earnings of its regulated
17 operations in an effort to avoid show cause audits and
18 rate reductions." Is that your testimony?

19 A. Yes, it is.

20 Q. Would you agree that the Commission Staff
21 has -- had been aware or has been aware of Mr. Green's
22 remarks that were made at the 1988 Officers Conference
23 for at least seven or eight years?

24 A. Yes, they have. Those comments have
25 appeared in Staff testimony in numerous other cases.

1 Q. Okay. I was going to ask you about that.
2 My recollection is the Staff brought these remarks to
3 the attention of the Commission through some highly
4 confidential testimony which the Staff filed in the
5 Company's 1990 rate case, which was ER-90-101?

6 A. That's correct.

7 Q. Okay. Now, Mr. Traxler, since the Staff
8 became aware of those remarks that Mr. Green made
9 seven or eight years ago, have you or, to your
10 knowledge, has anybody on the Commission Staff during
11 that period of time discussed the possibility of an
12 audit or an investigation of Missouri Public Service
13 to determine whether or not the Company had been
14 managing its earnings or manipulating the earnings
15 reported to regulators?

16 A. The allegation of earnings manipulation
17 included in my testimony is certainly not based on
18 statements made by Mr. Green.

19 Q. Okay.

20 A. They provide the initial indication of the
21 corporate philosophy to avoid show cause audits and
22 resulting rate reductions to retain excessive
23 earnings, if you will. However, the evidence
24 discovered in this case is the real groundwork for
25 making such a serious allegation.

1 Q. Okay. I appreciate that. Thank you.

2 Getting back to my question, though --

3 A. I thought I answered your question.

4 Q. Well, let me -- let me ask you this: Are
5 you telling me then that during that period of time
6 since you first became aware of those remarks there
7 was -- there were never any Staff discussions about
8 auditing MPS or doing anything to determine if MPS
9 was, in fact, managing its earnings or manipulating
10 the earnings reported to regulators?

11 A. In other words, was there a case initiated
12 by the Staff strictly based on those statements. Is
13 that your question?

14 Q. No. I'm just asking whether or not you ever
15 talked about it. Did you ever say, "Holy cow. Look
16 at this. This is what Mr. Green said in 1988. We
17 better go out and do an audit. We better look around
18 and see if they're managing earnings or if they're
19 manipulating the earnings that they're reporting to
20 regulators."

21 A. I think my answer to your question would be
22 that the Company filed two rate increase cases, the
23 two you referred to.

24 Q. Right.

25 A. And in the context of those cases, the Staff

1 members that presented that evidence felt that it was
2 relevant in those proceedings, and it's certainly
3 relevant in this proceeding.

4 Q. Okay. I understand that, and I appreciate
5 that. But my question is, have you or anyone on the
6 Staff to your knowledge talked about going out and
7 doing an audit or an investigation to determine
8 whether or not the Company was managing its earnings
9 or manipulating the earnings that it reported to the
10 regulators of the Missouri Public Service Commission?

11 A. Based strictly on those comments, no.

12 Q. Okay. And then you said -- you talked about
13 two rate cases, the first one being ER-90-101; is that
14 right?

15 A. That's correct.

16 Q. And would you agree with me that there was
17 no evidence of any of these events happening in the
18 context of that case? And when I say "events," I
19 meaning managing earnings or manipulating the earnings
20 reported to regulators? No evidence of that happening
21 in the context of ER-90-101, which was a contested
22 rate case in which the Staff did a thorough and
23 complete audit?

24 A. I don't think a specific allegation was made
25 to that effect.

1 Q. Okay. So your answer would be there was no
2 evidence of that?

3 A. No, I'm not -- I'm not agreeing with that.
4 I'm not sure -- I don't recall exactly -- I wasn't the
5 witness exactly on how that information was used in
6 those cases. It's the additional evidence supplied in
7 this case that makes it relevant in this proceeding.

8 Q. Well, let me ask you this question: To the
9 best of your knowledge was there any evidence in the
10 context of that case 90-101 of managing earnings or
11 manipulating earnings reported to regulators?

12 A. My knowledge?

13 Q. Yes.

14 A. I don't know.

15 Q. You don't know the answer to that?

16 A. Right.

17 Q. What about the next case, ER-90-337?

18 A. Yes.

19 Q. Were you involved in that case?

20 A. Yes, I was.

21 Q. Would you agree that the Staff found no
22 evidence in that case of UtiliCorp managing earnings
23 or manipulating earnings reported to regulators?

24 A. That specific allegation was not part of
25 that proceeding.

1 Q. Okay. And so I take it from that that you
2 would have made that allegation if you had found that
3 evidence?

4 A. We certainly would have.

5 Q. Okay. In both of those cases, 90-101 and
6 90-337, resulted in rate increases for Missouri Public
7 Service, did they not?

8 A. Yes, they did.

9 Q. So do I understand from your testimony,
10 Mr. Traxler, that not until -- the earliest would be
11 1995, that Mr. Green's directive, if you will, that
12 was contained in that 1988 Officers Conference was
13 carried out?

14 A. Well, there is no doubt in our minds based
15 on statements made by Mr. Green that there has been
16 concern ever since those comments were made that there
17 may be a corporate objective to avoid rate reductions
18 and -- resulting from excessive earnings. However,
19 the evidence which we believe to be strong evidence
20 supporting a corporate decision to carry out that
21 objective by manipulating earnings reported to the
22 Missouri jurisdiction was not -- the evidence was
23 supplied in this proceeding.

24 Q. Okay. So as far as you know prior to what
25 was supplied in this proceeding, to use your words,

1 you don't have any evidence of it occurring prior to
2 that time?

3 A. We didn't have the evidence we have in this
4 case, no.

5 Q. Or any other evidence that would support
6 that charge?

7 A. I can't -- I can't speak for -- and
8 especially the 90-101 case, whether or not there was
9 anything that somebody might suggest.

10 Q. Okay. But in the 90-337 case you said there
11 wasn't any such evidence because if there had been you
12 would have brought the charges.

13 A. If there would have been sufficient evidence
14 in that regard, we would have made the allegation
15 then.

16 Q. And the fact of the matter, both of those
17 cases resulted in rate increases?

18 A. Yes, they did.

19 Q. Okay. Now, with respect to the most recent
20 audit that the Staff has conducted at Missouri Public
21 Service, am I correct in understanding that that began
22 in March of 1996 in connection with the proposed
23 UtiliCorp/Kansas City Power and Light Company merger?

24 A. Yes, sir, that's correct.

25 Q. Mr. Traxler, let me ask you this question:

1 Could the term "excess earnings" as used in a budget
2 document mean earnings in excess of what was budgeted?

3 A. I don't -- I don't believe that the document
4 used in my testimony in support of the allegation -- I
5 think it's specifically related to earnings,
6 regulatory earnings.

7 Q. Okay. That's your opinion?

8 A. Yes, it is.

9 Q. Okay. Let me ask you, with respect to a
10 budget document in general, could the term "excess
11 earnings" mean earnings in excess of what was
12 budgeted?

13 A. It might be.

14 Q. Okay. I'm now looking at Page 2 of your
15 surrebuttal testimony, Mr. Traxler, on Line 12, and I
16 think you have alluded to this earlier today. Do I
17 understand -- interpret your statement there to --
18 correctly that your allocation of earnings
19 manipulation in your mind is not relevant unless
20 earnings manipulation actually takes place?

21 A. Excuse me. Yes. As we talked, the
22 statements by Mr. Green don't in and of themselves
23 justify any -- any allegation of earnings. It's when
24 you act on a corporate objective to avoid rate
25 reductions from excessive earnings that it becomes a

1 concern to the Staff.

2 Q. And the thrust of your testimony in this
3 case is that you believe that earnings manipulation
4 took place in 1995 and in 1996 when UtiliCorp
5 allocated Energy One marketing costs to MPS; is that a
6 fair statement?

7 A. Yes, it is.

8 Q. Okay. At Page 12 of your surrebuttal
9 testimony, on Lines 21 and 22, you state that
10 UtiliCorp's decision to allocate 10 million in
11 marketing costs to MPS in 1995 and 1996 was not based
12 upon any anticipated rate recovery; is that correct?

13 A. That's correct.

14 Q. And would you agree with me, Mr. Traxler,
15 that in this case Missouri Public Service is not
16 seeking rate recovery of any of these marketing costs?

17 A. That's an example of what I was referring
18 to.

19 Q. Okay. And would you agree with me that no
20 such marketing costs are included in the rates which
21 were established in Case ER-90-337, which are the
22 current rates?

23 A. Your question was no marketing cost?

24 Q. The marketing costs that you are talking
25 about here, the Energy One marketing cost?

1 A. No, they were not.

2 Q. Okay. So -- and, again, I think this is
3 your testimony, but I want to make sure: Your real
4 concern here in this case is that UtiliCorp allocated
5 these marketing costs to MPS to hide excess earnings?

6 A. That's correct.

7 Q. Now, you reference \$10 million at the bottom
8 of Page 12 of your surrebuttal testimony. Are you
9 saying that that's the amount that was allocated to
10 Missouri Public Service in 1995?

11 A. That is the amount that was allocated in
12 total from 1995 to 1996, Missouri jurisdictional of
13 electric operations.

14 Q. Okay. I think you touched on this in your
15 direct testimony, and correct me if I'm wrong, I seem
16 to recall the number that you felt was allocated in
17 1995 was \$6 million. Does that sound right?

18 A. Missouri jurisdictional was approximately
19 \$6.2 million.

20 Q. Okay. And in 1996 it would be about \$4
21 million?

22 A. \$3.8 million.

23 Q. Okay. Now, I assume you're aware of the
24 fact, Mr. Traxler, that the Staff of the Commission on
25 September 23, 1996 filed a motion with the Commission

1 seeking the establishment of a docket to investigate
2 Missouri Public Service Company's earnings. I think
3 you refer to that at Page 11 of your direct testimony.

4 A. Yes. That docket was EO-97-144.

5 MR. SWEARENGEN: I'd like to have an exhibit
6 marked, your Honor.

7 JUDGE DERQUE: What -- let's see it. We
8 will mark this Exhibit No. 37. It is the response to
9 motion to dismiss and motion to establish docket in
10 Case No. EM-96-248.

11 We're off the record.

12 (A discussion off the record.)

13 (EXHIBIT NO. 37 WAS MARKED FOR
14 IDENTIFICATION.)

15 JUDGE DERQUE: We are on the record.

16 BY MR. SWEARENGEN:

17 Q. Mr. Traxler, I've just handed you a copy
18 filed by the Commission Staff on September 23, 1997
19 in Case No. EM-96-248, which has been marked as
20 Exhibit 37. Is that a copy of the motion that you
21 refer to whereby the Staff requested the creation of
22 an investigative docket?

23 A. That's correct.

24 MR. SWEARENGEN: I would like to have
25 another exhibit marked, your Honor.

1 JUDGE DERQUE: This is an order dismissing
2 application and establishing investigative docket,
3 Cases No. EM-96-248 and EO-97-144. It will be No. 38.

4 We're off the record.

5 (A discussion off the record.)

6 (EXHIBIT NO. 38 WAS MARKED FOR
7 IDENTIFICATION.)

8 JUDGE DERQUE: We are on the record.

9 BY MR. SWEARENGEN:

10 Q. Mr. Traxler, you have in front of you
11 what's been marked for purposes of identification as
12 Exhibit 38 which is a Commission order dismissing
13 application and establishing investigative docket, and
14 it's in two cases, EM-96-248 and EO-97-144. Are you
15 familiar with this as the order which established an
16 investigative docket which authorizes the Staff to
17 conduct an earnings investigation for Missouri Public
18 Service?

19 A. Yes, I am.

20 Q. Okay. Thank you.

21 Now, thereafter in March of 1997, am I
22 correct in understanding that the Staff did, in fact,
23 file a complaint against Missouri Public Service
24 claiming that the Company was overearning in the
25 amount of approximately \$23 million?

1 A. That's correct.

2 MR. SWEARENGEN: I would like to have a
3 third exhibit marked, your Honor.

4 MR. WOODSMALL: Your Honor, I was going to
5 ask this later. Since it's very pertinent and
6 relevant here, I would just ask the Commission to take
7 official notice of the entire EO-97-144 docket. It
8 just consists of a couple of pleadings on discovery
9 and establishing the docket. There is no testimony in
10 that docket. I believe it's very pertinent and
11 relevant and will complete the record he's
12 establishing here.

13 JUDGE DERQUE: Mr. Swearengen?

14 MR. SWEARENGEN: Well, I would like to have
15 this exhibit marked for identification and offered
16 into evidence, and if Mr. Woodsmall wants to try his
17 case, he can try it.

18 MR. WOODSMALL: Am I to understand we're not
19 ruling on that now then?

20 JUDGE DERQUE: Well, are you objecting to
21 something?

22 MR. WOODSMALL: No. I was just attempting
23 to complete the record, but I'll bring it up later.

24 JUDGE DERQUE: Okay. You can certainly.
25 Mr. Traxler will be back and probably the numbers

1 involved in this issue will be back.

2 MR. WOODSMALL: Okay.

3 JUDGE DERQUE: If you want to enter 97--

4 whichever it was --144, you can.

5 MR. WOODSMALL: I will do that later.

6 JUDGE DERQUE: You can go ahead.

7 This will be No. 39, complaint EC-97-362.

8 We're off the record.

9 (EXHIBIT NO. 39 WAS MARKED FOR

10 IDENTIFICATION.)

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

12 Mr. Swearengen?

13 MR. SWEARENGEN: Thank you.

14 BY MR. SWEARENGEN:

15 Q. Mr. Traxler, you now have in front of you

16 what has been marked for purposes of identification as

17 Exhibit 39, a complaint filed by the Staff of the

18 Missouri Public Service Commission on March 3, 1997

19 which was docketed as Case No. EC-97-362. Are you

20 familiar with this complaint?

21 A. I don't have a copy of that in front of me.

22 Q. Okay. I'll sure take care of that.

23 A. Yes, I have that document now.

24 Q. And in Paragraph 9 of that complaint, that's

25 where the allegation of the \$23 million excess earning

1 situation is made; is that true?

2 A. That's correct.

3 Q. Okay. Now, Mr. Traxler, of that \$23 million
4 can you tell the Commission how much in your mind
5 represents the marketing costs, the Energy One
6 marketing costs?

7 A. \$6.2 million.

8 Q. Okay. So if I subtract out of the
9 23 million the \$6.2 million, what do I get? Can you
10 do that math for me?

11 A. 16.8.

12 Q. So if I take those Energy One marketing
13 costs out of that complaint, back them out of there,
14 would I be correct in understanding that in your
15 opinion the Company would still be overearning by
16 \$16.8 million?

17 A. That's correct.

18 Q. Now, let me ask you this question: If a
19 company set out to manipulate or hide earnings to fend
20 off a complaint, wouldn't the company try to make it
21 appear that it had no excess earnings or, in fact, it
22 had an earnings deficiency?

23 A. Well, clearly the \$23 million has no
24 relevance to the surveillance reports supplied to
25 that Commission for the years 1995 to 1996. The

1 \$23 million includes a change in capital structure
2 that wouldn't be reflected in the surveillance report,
3 the -- it includes numerous disallowances for
4 corporate overhead costs in addition to market not
5 included in surveillance reports.

6 There is numerous issues justifying
7 23 million which would not have been included in any
8 information on a historical basis provided in the
9 surveillance reports. The two aren't comparable.

10 Q. I understand that. Let me ask you this
11 question now: With respect to all of those other
12 issues that you just mentioned, capital structure,
13 return on equity, maintenance --

14 A. Uh-huh.

15 Q. -- all of the other issues that we have in
16 this case, is it your testimony that the Company, by
17 raising those issues, is attempting to hide earnings
18 or manipulate earnings?

19 A. No. The earnings manipulation plan for the
20 Company is intended to avoid this proceeding. In
21 other words, that plan is in place hopefully so that
22 earnings are reflected to the regulatory jurisdiction
23 in the surveillance reports so that we don't become
24 alarmed at your excess earnings and don't initiate
25 this kind of proceeding.

1 After this proceeding -- after that happens,
2 the plan of the Company as reflected in the internal
3 documentation is to request recovery of stranded
4 costs, for example, as a use for excess earnings, but
5 the earnings manipulation is really to be done outside
6 of a rate case to avoid proceedings like this.

7 Q. Now, the Staff began its audit of this
8 company in March of 1996, I think you indicated?

9 A. That's correct.

10 Q. And am I fair to say that the result of
11 that was a year later the filing of the complaint,
12 the \$23 million complaint?

13 A. Unfortunately, it took that long because of
14 some discovery problems. Yes. It should have been
15 filed before that time.

16 Q. Okay. Let me ask you this question: Do you
17 sometimes find a company that's in an overearnings
18 situation, but you don't pursue a rate reduction
19 against that company because you have concluded that
20 the overearnings situation may not last very long?

21 A. Clearly, any time the Staff files a
22 complaint against a company it's based on a thorough
23 investigation and a determination that the excess
24 earnings situation is an ongoing situation that can
25 only be alleviated by a reduction in rates.

1 Q. Okay. And when you say "an ongoing
2 situation," what period of time are you looking at? I
3 mean, I guess my question is, how long can a company
4 in your mind overearn before you think something ought
5 to be done about it?

6 A. Could you restate your question?

7 Q. How long do you think a company should be
8 allowed to overearn in your words before you think the
9 Staff should proceed and try to do something about
10 that?

11 A. Well, ideally, a company should not be
12 allowed to overearn, but from a practical standpoint,
13 because of regulatory lag, it's an unavoidable event.
14 And this company, for example, by the time rates go
15 into effect in March, it's going to pocket
16 approximately \$45 million in excess earnings since
17 1995.

18 Q. Would you say that given the fact that the
19 Company got a rate increase in 1990 and another one in
20 1993 that it probably experienced the reverse of that
21 in periods prior to that time? In other words,
22 regulatory lag was working against the Company and it
23 was not earning its authorized rate of return?

24 A. It works in both directions.

25 Q. Now, back to my original question: To your

1 knowledge, have you ever been in a situation where you
2 looked at the earnings of an electric company and they
3 were up, but you weren't -- subsequent events brought
4 those earnings back down and nobody did anything and
5 the earnings sort of took care of themselves? Have
6 you ever been in a situation like that, or in your
7 experience, once they're going up, they're always
8 going up?

9 A. No. I think that the surveillance report
10 clearly -- you know, if you have one report -- for
11 example, the companies that file monthly, and usually
12 when I say monthly, it's a 12-month rolling average.

13

14 Q. Right.

15 A. It's a 12-month period, but it's a rolling
16 average. And you see for, you know, the 12 months
17 ending November, for example, that earnings are high.
18 Clearly, you are not going to jump the gun on that one
19 report. You're going to wait to see if this is a
20 continual --

21 Q. Okay.

22 A. -- process before you initiate any further
23 investigation.

24 Q. Okay. And that's what I'm getting at. And
25 how long would you wait to see if it was a -- that was

1 going to continue?

2 A. I think -- I think that would certainly be
3 based on the level of excess earnings, number one.
4 That's certainly the most material question to be
5 asked. And, secondly, you know, you would examine it
6 for some reasonable period of time to --

7 Q. Give me an example. I'm a reasonable guy.
8 Give me a reasonable period of time.

9 A. Well, there is no set -- there is no set
10 time frame. Clearly, if, you know, for a three-,
11 four-month time frame we continually see an excess
12 earnings position on a 12-month rolling average, I
13 think that that could certainly dictate a need for
14 further investigation. And, again, it depends on the
15 magnitude.

16 Q. You spent a little time on Pages 5 and 6 of
17 your surrebuttal testimony, Mr. Traxler. Do you have
18 that handy?

19 A. Yes.

20 Q. I think that's where you talk about what a
21 normalized test year is. And I think your testimony
22 is that, from your view, it's not necessary from a
23 regulatory standpoint to levelize earnings, as
24 Mr. Green said was his intent, because that is what a
25 test year is intended to do. Is that a fair

1 characterization of your testimony?

2 A. Can you point me specifically --

3 Q. Well, I cannot point specifically. Just
4 take a look at Pages 5 and 6. Perhaps lines --
5 beginning on Line 16 through Line 19.

6 A. Okay. The discussion -- the discussion is
7 in response to Mr. Green's rebuttal testimony which
8 attempts to explain his comments in the 1988
9 officers' -- officers' meeting by attempting to state
10 that all of those comments, in addition to the ones
11 applicable to the rate reduction comments that
12 happened in Jeff City, were related to his indication
13 to officers at that time that short-term actions
14 should be avoided for purposes of increasing earnings
15 on a temporary basis to rating agencies, security
16 analysts.

17 And my testimony here takes exception to
18 that. I don't disagree at all in the first paragraph
19 that that's, in fact, what he was talking to, but
20 short-term actions have nothing to do with the rate
21 reduction, and that's why I -- I don't think that his
22 comments regarding the rate reduction were applicable
23 to this discussion on short-term actions.

24 Q. Okay. Well, let me ask you this question:
25 Would you agree with me that he -- that Mr. Green has

1 testified that from an analyst's perspective it would
2 be beneficial to levelize earnings, and -- but you're
3 talking about a regulatory perspective?

4 A. He was -- what he was suggesting was that
5 it would be inappropriate and it should be avoided to
6 temporarily increase earnings for providing
7 information to a rating agency that would quickly turn
8 around.

9 Q. Right.

10 A. That's what he meant by "short-term."

11 And what I'm stating is that short-term
12 actions have no impact on whether or not a complaint
13 is filed or whether or not excessive earnings are, in
14 effect, from a regulatory standpoint.

15 Q. Right. And I think I understand what you're
16 saying. And you're looking at it from a regulatory
17 perspective, and he was talking about the perspective
18 of a financial analyst.

19 A. If the first paragraph that's what he was
20 talking about. In the second paragraph regarding the
21 painful experience of having his rate reduced in
22 Jefferson City, I'm saying that these short-term
23 comments he was making don't apply to that discussion.

24 Q. Let me ask you this question: At the top of
25 Page 6 of your surrebuttal testimony you list some

1 items, reduce maintenance expenditures, eliminate tree
2 trimming, postpone filling job vacancies.

3 Do I understand your testimony that you
4 really don't have a problem with those examples, and
5 you wouldn't -- you're not saying or you do not
6 believe that reducing maintenance expenditures or
7 eliminating tree-trimming maintenance or not filling
8 job vacancies are improper activities that would
9 justify a complaint, do you?

10 A. No. I'm saying, in fact, that they would
11 not justify a complaint.

12 Q. Okay. What is your understanding of the
13 Energy One brand concept?

14 A. The -- well, I guess I need to refer to a
15 description of that. I would like to refer to a
16 description of that in my testimony made by the Chief
17 Operating Officer, Mr. Robert Green, to the board of
18 directors in 1994, if I can.

19 MR. SWEARENGEN: Okay. Sure. Go ahead.

20 JUDGE DERQUE: While he's doing that, let me
21 clarify one point with counsel. There is no -- it was
22 my understanding from reading the testimony -- it was
23 not very clear, or maybe my mind is not very clear,
24 whichever -- that there is no Energy One money in this
25 case?

1 MR. SWEARENGEN: That's right.

2 JUDGE DERQUE: Is that correct,

3 Mr. Swearengen?

4 Mr. Woodsmall?

5 MR. WOODSMALL: I think we found it all.

6 JUDGE DERQUE: That's why I wasn't very

7 clear.

8 MR. WOODSMALL: Well, there is no further

9 issues with that.

10 JUDGE DERQUE: Okay. Okay. On this

11 reconciliation there is no Energy One brand money?

12 MR. WOODSMALL: Yeah. I can't tell you we

13 found every dollar, but there are no further issues

14 with that.

15 JUDGE DERQUE: That you know of?

16 MR. WOODSMALL: Right.

17 JUDGE DERQUE: Thank you.

18 THE WITNESS: If I could refer to Page 8 of

19 my surrebuttal testimony.

20 BY MR. SWEARENGEN:

21 Q. Okay.

22 A. In the summer of 1994 the board of

23 directors --

24 Q. Excuse me just a second. Are you going to

25 read -- there is some highly confidential testimony

1 there.

2 A. That's what I was --

3 Q. Okay. Can I just -- let me -- I don't want
4 to really get you into that. Can I just say that your
5 understanding of it would be found there in the Energy
6 One brand concept? It would be as set out on Page 8
7 of your highly confidential testimony?

8 A. That's a fairly good description.

9 JUDGE DERQUE: Where are we?

10 MR. SWEARENGEN: He was on Page 8.

11 MR. WOODSMALL: Pages 8 and 9?

12 MR. SWEARENGEN: Right. Pages 8 and 9.

13 JUDGE DERQUE: Of surrebuttal?

14 MR. SWEARENGEN: Yes, sir.

15 THE WITNESS: Right.

16 JUDGE DERQUE: Thank you.

17 BY MR. SWEARENGEN:

18 Q. Let me turn -- turn to Page 11 of your
19 surrebuttal, if you would, Mr. Traxler. And there
20 down beginning on Line 10, I think, is some
21 information that you quote that's been taken from The
22 Wall Street Journal?

23 A. That's correct.

24 Q. Is that right?

25 And is that based on -- I believe you say

1 it's based on the characterization that Mr. Green
2 is -- is given to this concept?

3 A. It's a word-for-word quote from that
4 article.

5 Q. Okay. So that quote describes Rick Green's
6 concept of Energy One brand; is that right?

7 A. That's what that discussion has to do with,
8 yes.

9 Q. Okay. And doesn't that quote, particularly
10 Lines 11 and 12, talk about branded electricity?

11 A. Well, that's certainly one of the
12 extrications.

13 Q. Okay.

14 A. And that's one of the branding -- one of the
15 needs for the branding concept.

16 Q. Is there anything in that quoted material
17 about non-regulated products?

18 A. Well, the entire idea -- complete idea
19 behind the Energy One concept was to introduce and
20 establish a national brand which would be used for
21 offering UtiliCorp's current non-regulated service
22 which would include appliance repair and security
23 services, for example, and, in addition, to position
24 UtiliCorp to provide future non-regulated services
25 which would include the deregulation of the electric

1 market.

2 Q. Okay. Let me ask you this then: So let
3 me -- at a minimum would you agree that Energy One
4 branding is intended for both regulated and
5 non-regulated products?

6 A. No.

7 Q. You wouldn't?

8 A. No. I think that the -- the -- the purpose
9 of Energy One is basically to offer -- to establish
10 national branding to position this company to function
11 in a competitive market. Certainly, it's a totally
12 unnecessary concept with regard to a regulated
13 operation.

14 Q. Okay. The quoted material you refer to on
15 Page 11 talks about branded electricity.

16 A. And we're talking about the future of
17 deregulation in the electric industry. That's what we
18 were talking about. That's what he's talking about.

19 Q. Okay. So you think that that means when --
20 it's not really applicable until the industry is
21 deregulated?

22 A. That is really the purpose for the
23 significant expenditure here. The benefits derived
24 from the Energy One concept are expected to occur with
25 the deregulation of the electric utility industry.

1 Q. Let me ask you this question: Did the
2 Public Service Commission Staff believe that Missouri
3 Public Service was going to file for a rate increase
4 in the first quarter of 1997 back prior to that time?
5 Back prior to the first quarter of 1997, back prior to
6 March of 1997, did the Staff believe the Company was
7 going to file what has been referred to as a
8 competitive filing, which has a rate --

9 A. We certainly weren't surprised --

10 Q. Okay.

11 A. -- at all.

12 Q. So would you agree with me that since you
13 weren't surprised that they did, in fact, file one
14 that you had some notion prior to March of 1997 that
15 they would file a case?

16 A. I guess our position was that all
17 indications were that it was very unlikely at that
18 point that we would successfully negotiate a
19 reasonable settlement with this company and that a
20 likely position to be taken by the Company to delay
21 any rate reduction would be to file a rate case.

22 Q. So it would be your opinion that the rate
23 case was filed in response to the complaint that you
24 filed in March?

25 A. Yes, I believe that to be the case.

1 Q. Okay. And you said that the Staff began
2 auditing the Company in March of 1996. Were you on
3 site at that time, that early, working on the audit?
4 I mean, this was the audit that began in connection
5 with the KCP&L UtiliCorp merger.

6 A. I believe --

7 Q. Okay.

8 A. I believe I started approximately around
9 that time.

10 Q. Okay. And that merger, proposed merger,
11 fell apart, let's say, in August or September of 1996,
12 in that time frame; is that right?

13 A. September of 1996.

14 Q. Okay. After that time, did you observe --
15 did you continue with your audit of Missouri Public
16 Service?

17 A. We -- we still had not received sufficient
18 information to finish our investigation.

19 Q. Okay. And, in fact, asked that a docket be
20 opened so you could continue to do that; isn't that
21 right?

22 A. That's correct.

23 Q. During that time, during the late summer and
24 the fall of 1996, did you observe any activities at
25 the Company or talk to any MPS personnel or have any

1 information of any sort that would have led you to
2 conclude that the Company was, in fact, preparing to
3 file its competitive filing?

4 A. I believe that the -- the discussion -- the
5 Company approached the Commission with the -- with
6 this intent, I think, around October of 1996, and we
7 certainly would have had knowledge of it around that
8 point in time.

9 Q. Let me ask you this question, Mr. Traxler:
10 Would you agree that sometimes there are honest
11 differences of opinions between Company, the Staff and
12 the Public Counsel as to appropriate revenue
13 requirements for a particular utility?

14 A. Certainly.

15 Q. Okay. And that is why from time to time we
16 have litigated rate cases over here; isn't that true?

17 A. That's correct.

18 Q. Are you familiar with the recent Missouri
19 Gas Energy rate case, the one that was concluded last
20 year?

21 A. I was involved in that case.

22 Q. And do you recall that the Public Counsel in
23 that case argued that no increase at all should be
24 granted because the Company had failed to meet certain
25 financial criteria that would allow a rate increase?

1 A. I'm not -- I don't recall that specific.
2 Q. You don't remember that issue in the case?
3 A. Oh, with regard to a capital structure
4 requirement?
5 Q. That's correct.
6 A. Yes, I'm familiar with that argument.
7 Q. And the Commission ruled in favor of the
8 Company on that; is that correct?
9 A. That's correct.
10 Q. And the Company was awarded a rate increase?
11 A. That's correct.
12 Q. Okay. Just a few more questions.
13 In your role as a Staff auditor, do you ever
14 receive continuing education?
15 A. Yes, I do.
16 Q. Okay. Do you attend seminars?
17 A. Time permitting.
18 Q. What type of seminars do you go to?
19 A. Generally, NARUC seminars on a variety of
20 topics.
21 Q. Do you ever go to any to hear about
22 competition in the electric utility industry?
23 A. A few.
24 Q. Does the Commission encourage Staff members,
25 in general, to go to these seminars?

1 A. Time permitting, yes.

2 Q. Okay. Have there been years in the past in
3 which the Commission has limited the number of
4 seminars that you can attend for budget reasons? Have
5 they ever said, "We don't have enough money to send
6 you to the NARUC meeting this year, so you can't go,"
7 or have they told anybody that to your knowledge?

8 A. Well, there is certainly a limit for that
9 very reason to the number of people that can go to any
10 given conference.

11 Q. So would you agree that this Commission
12 practices cost constraints in order to meet budget
13 targets?

14 A. Yes, I would agree with that.

15 Q. Okay. And there is nothing wrong with that,
16 is there?

17 A. No.

18 Q. On Page 10 of your surrebuttal testimony, I
19 think at Line 17, you make reference to IBM and
20 General Motors. Do those companies have name
21 recognition?

22 A. Yes, they do.

23 Q. And would you agree that some of their name
24 recognition has come through marketing and the
25 branding of their products?

1 A. I would agree with that. I would also state
2 that the initial attempt to do that is born -- is
3 provided by shareholder investment.

4 Q. Okay. Would you say that the cost of those
5 marketing and branding activities are included in the
6 price of the products?

7 A. The initial cost, if it has to do with the
8 marketing of a product currently being sold, I would
9 agree. However, with marketing costs associated with
10 a completely new venture unrelated to products
11 currently being served, I would suggest that, no,
12 that's start-up costs that in a competitive situation
13 would have to be provided by shareholders.

14 Q. What about General Motors and IBM? Are
15 their marketing and branding costs included in the
16 price of products they sell?

17 A. Let me answer the question again: Clearly,
18 if you are selling cars, for example, and you are --
19 every car -- several of the cars in a competitive
20 market are going to have marketing costs associated
21 with that product; therefore, all competitors have
22 that cost. That cost is going to be allowed to be
23 recovered in the cost of the car. However, if General
24 Motors or IBM wants to get involved in drilling for
25 oil in Texas, for example, the start-up costs with

1 that activity would not be included in the activity of
2 the car.

3 And that comparison I'm making is the fact
4 that UtiliCorp's attempted to become a national
5 provider of non-regulated service to the Energy One
6 branding is a new line of business unrelated to the
7 regulated side of business and should not be allocated
8 in the regulated jurisdiction.

9 Q. Okay. And that's -- that's your distinction
10 because they are --

11 A. That's correct.

12 Q. They are not regular?

13 A. That's correct.

14 Q. One last question: Yesterday there was some
15 questions about Mr. Green and about the assistance
16 that he may have had in the preparation of his
17 testimony by other people. Did anybody review any of
18 the testimony that you have filed in this case before
19 you filed it?

20 A. Someone reviewed my testimony, and I can --
21 I can certainly state for you all of the people that
22 was in the review process.

23 Q. Okay. And let me just ask you this: Who
24 looks at the testimony? Your testimony, for example,
25 who would have reviewed it?

1 A. Mr. Oligschlaeger, Mr. Woodsmall,
2 Mr. Featherstone, Ms. Wandel.

3 Q. And is that common practice for witnesses
4 and non-witnesses to review each other's testimony and
5 perhaps offer comments and suggestions about how to
6 approach issues?

7 A. Yes, that's common to discuss the approach
8 being taken.

9 Q. And with respect to your testimony that you
10 filed in this case, did some people perhaps make
11 comments and offer suggestions about maybe how you
12 ought to say something or a way you ought to approach
13 an issue?

14 A. To some degree, yes.

15 MR. SWEARENGEN: Okay. Thanks.

16 That's all I have.

17 Thank you very much.

18 JUDGE DERQUE: Redirect, Mr. Woodsmall?

19 MR. WOODSMALL: Yes.

20 REDIRECT EXAMINATION BY MR. WOODSMALL:

21 Q. Mr. Swearengen started off talking about a
22 number of financial-type reports that are filed or
23 submitted with Commission or Staff. Do you recall
24 that line of questions?

25 A. Yes, I do.

1 Q. And, in fact, there was reference regarding
2 an annual report filed with the Commission. Do you
3 recall that?

4 A. Yes, I do.

5 Q. Can you tell me if the annual report that's
6 filed with the Commission is the same or different
7 than the FERC Form 1 that you were talking about?

8 A. I was using that in -- my reference was the
9 annual report and the FERC Form 1 report were the
10 same.

11 Q. Okay. And that is filed with the
12 Commission; is that correct?

13 A. Yes, it is.

14 Q. And, similarly, the surveillance reports
15 that were talked about, they are, at least, submitted
16 with the Financial Analysis Department; is that
17 correct?

18 A. That's correct.

19 Q. Do you know if the -- if a company's
20 shareholder annual report is in any way filed or
21 submitted to the Commission or Staff?

22 A. Excuse me. Evidently they are provided on
23 request, because our Financial Department has that
24 information.

25 Q. And you would agree that the shareholder's

1 annual report is something different than the annual
2 report that is the FERC Form 1; is that correct?

3 A. That's correct.

4 Q. Okay. I believe I got that cleared up.

5 There was some talk about marketing costs
6 and the FERC Form 1, and, in fact, you mentioned
7 something about that the FERC Form 1 is structured
8 based upon the Uniform System of Accounts; is that
9 correct?

10 A. That's correct.

11 Q. And can you tell me what account marketing
12 costs would be booked to?

13 A. Generally, it would be booked to
14 Account 916, sales expense.

15 Q. Okay. And can you tell me if that account
16 consists entirely of marketing costs, or are there
17 other cost items booked to that account?

18 A. Well, generally, that account would
19 include -- the nature of that account is to include
20 advertising promotional costs which would include
21 labor and advertising costs to an outside agency, for
22 example.

23 Q. So there are -- in your mind, speaking for
24 Staff, there are legitimate costs that do flow into
25 the account that's different than the allocated

1 marketing cost that we've disallowed; is that correct?

2 A. Certainly. Any costs in a regard included
3 in that account associated with safety, safety
4 advertising and/or informational advertising, would
5 certainly be allowed and have been consistently
6 allowed by the Staff.

7 Q. Okay. And what is the nature of the costs
8 that we have disallowed in the FERC 9-- FERC
9 Account 916?

10 A. We have traditionally disallowed marketing
11 costs of any nature associated with promotion of
12 specific products of services even on the regulated
13 side and institutional building, for example,
14 promoting the Company's name in absence of a study
15 that would show that the benefits from that activity
16 are equal to or exceed the cost.

17 The marketing costs clearly from UtiliCorp
18 United are clearly promotional advertising associated
19 with marketing costs which were not even related to
20 the Missouri -- the state of Missouri having to do
21 with an attempt -- a failed attempt, I might add, to
22 establish a national brand name for the purpose of
23 offering currently non-regulated services and future
24 non-regulated services, which would include
25 electricity after restructuring.

1 Q. Based upon the testimony initially filed by
2 the Company, their direct testimony, is it your belief
3 or understanding that the Company initially attempted
4 to seek recovery of those costs?

5 A. Their case certainly included 100 percent of
6 the \$3.8 million in marketing costs allocated to
7 Missouri in 1996.

8 Q. Okay. You were asked some questions by
9 Mr. Swearngen regarding your experience with the '90
10 and '93 case. Do you have any other experience with
11 this Company besides those two cases?

12 A. I've been involved in approximately six or
13 seven rate cases involving this company over my
14 career.

15 Q. Going back how far?

16 A. 1978.

17 Q. Okay. You would say, then, that you have a
18 fair degree of experience with this company?

19 A. Yes, I do.

20 Q. Okay. You were asked some questions
21 regarding the process -- the Staff's process for
22 contacting the Company or initiating an investigative
23 docket or an audit of a company's overearnings. Do
24 you recall those questions?

25 A. Yes.

1 Q. Okay. And Mr. Swearengen, I believe -- I
2 don't have the exact quote -- but said something to
3 the effect, do you know if Staff has ever contacted a
4 company and said, "Hey, you guys are overearning.
5 Reduce your rates."

6 My question is, do you know if Staff's ever
7 contacted a company and ask for a rate reduction based
8 solely upon surveillance, or would there be other
9 factors considered by Staff before it made that
10 contact?

11 A. Well, certainly the surveillance report is
12 very key in making the initial determination that
13 excess earnings might exist, and that's why it's so
14 relevant to this discussion, the fact that we think
15 that the surveillance reports provided by this company
16 for 1995 and 1996 were significantly understated
17 because of the allocation of costs unrelated to the
18 Missouri jurisdiction.

19 Q. Would Staff request a rate reduction based
20 solely on what surveillance, or would Staff conduct an
21 audit to make sure the surveillance was correct --

22 A. Yes.

23 Q. -- and the overearnings were on --

24 A. Yes, and I think I've stated that in a
25 previous answer.

1 Q. You were asked some questions specifically
2 with regard to Kansas City Power and Light's recent
3 rate reduction, I believe you said, the first part of
4 1996. Do you recall those questions?

5 A. That's correct.

6 Q. Okay. Can you tell me if that rate
7 reduction was based solely upon surveillance, or was
8 there an audit conducted in that case?

9 A. There was certainly an audit conducted to
10 determine the overall level.

11 Q. And was there some factors that may have
12 gone into Staff's decision to audit KCP&L at that
13 time, for instance, end of Wolf Creek credits or an
14 end of a moratorium?

15 A. Well, one of the -- one of the areas that we
16 were aware of in addition to surveillance was the
17 expiration of an expense amortization allowed in the
18 Wolf Creek proceeding which would automatically result
19 in additional earnings, financial earnings, for the
20 Company.

21 Q. Was that amortization -- in that
22 amortization, would you classify -- characterize that
23 as material?

24 A. Yes, it was.

25 Q. Okay. And, for instance -- my second

1 question was, was there a moratorium in any way
2 involved in that case and the timing of our audit in
3 that case?

4 A. Oh, yes, there was. I had forgotten that
5 point. Yes, there was an audit -- a moratorium in
6 place.

7 Q. Okay. Do you know if Staff began its
8 investigation even prior to the end of that
9 moratorium?

10 A. Yes, we did.

11 Q. Okay. Can you tell me -- in the KCP&L case
12 I believe you stated that there was no formal docket
13 created in order to look at those earnings; is that
14 correct?

15 A. No. Given the fact that the Company was
16 willing to come to a reasonable settlement, there was
17 no need to file a complaint.

18 Q. Can you tell me why in Staff's mind was
19 there a need to create Docket EO-97-144?

20 A. The biggest reason for that was the -- the
21 discovery problems were so severe up to that point
22 that we were unable to complete our investigation and
23 we were -- we were un-- it was unfinished at that
24 point in time. We were not able to make a
25 recommendation. And so it was certainly necessary to

1 have a docket in place where we could continue and
2 finish our investigation.

3 Q. When you say the discovery problems were
4 severe, could you be more specific?

5 A. In my experience, 20 years, without
6 exception this is the worst example of cooperation
7 from a regulated utility that I have ever experienced.
8 I've never been in a position of having to wait four
9 and a half months, for example, for numerous requests
10 which are routinely asked of this company in prior
11 cases and any other company that we would be
12 investigating, and that was a common situation in the
13 earnings investigation. And the problem did not -- it
14 continued into this current docket.

15 Q. And you say that that was not just a
16 specific instance, but that was an ongoing problem
17 with data requests; is that correct?

18 A. The discovery problems in this proceeding
19 were -- were more related to specific high-dollar
20 issues, if you will, issues that are still at issue in
21 this proceeding. It was more concentrated with regard
22 to the corporate allocation issue, the Company's
23 request for re-engineering cost, injury and damage
24 claims, which is normally a routine issue, was a
25 significant problem, and the maintenance issues.

1 As one example, the Company's request for
2 re-engineering costs involved a request for a recovery
3 of a \$117 million capital project which included
4 budgeted cost all of the way out through 1999.

5 Now, the support I've got for recovery of
6 \$117 million project provided in work papers to the
7 Staff is included on this one-page document. This is
8 what we got in support of \$117 million request. It
9 took us until July of 1997, and let me add that there
10 is no reference on this document as to what support
11 these numbers.

12 It took us until July of 1997 in an
13 interview with Company Witness Kris Paper to determine
14 that this Business Case, August 26, 1996, was a
15 summary document, a summary document, if you will,
16 which provided at least at a minimum of summary of the
17 individual projects and the costs and the benefits
18 involved. However, the assumptions used for this were
19 not provided. Even though we had issued four data
20 requests during the month of April of 1997 requesting
21 this company to provide all relevant analyses,
22 documents, work papers supporting this request for
23 recovery of \$117 million project.

24 In August of 1995 we finally received this
25 document, 200 -- two-and-a-quarter-inches thick which

1 provides the real assumptions and guts of the
2 Company's proposal three weeks prior to the Staff's
3 filing. And as I've stated in testimony, there is
4 simply -- in my experience I've never had discovery
5 problems of this nature.

6 Q. And just -- since we're not going to mark
7 those as exhibits, just to give some clarification to
8 the record, the initial document you showed consisted
9 of one page; is that correct?

10 A. It was a two-page document, one of which was
11 just a calculation of the adjustment, but the other
12 page was the only thing we got in support of this
13 \$117 million project.

14 Q. And when was that provided to you?

15 A. With the Company's filed exhibits
16 approximately March.

17 Q. Okay. And then following several data
18 requests, when were you provided the second document?

19 A. This was provided accidentally, if you will.
20 We issued data requests -- four data requests in the
21 month of April requesting all -- you know, "Please
22 give us all the support. You know, what is this thing
23 based on?"

24 And we were provided something like this
25 prior to July, but it was the wrong document. We

1 didn't find out until July in the interview that this
2 was the correct document, and we received this
3 approximately July 21st of 1997.

4 Q. Okay. How many pages approximately is that?

5 A. I'm guessing at least 100.

6 And then we find out this is a summary
7 (indicated). In an attempt to get the support for
8 this, we were told that you've already been provided
9 all of the documentation.

10 This was found again accidentally
11 (indicated).

12 Q. "This" referring to what?

13 A. This document is -- the Company's capital
14 projections were based on the use of a model called
15 the "Project Evaluation Tool." That's what the
16 Company uses internally to evaluate capital projects.
17 That model which is -- this is a summary document of
18 the results of the model, but all of the documentation
19 which provides all of the inputs into the model we
20 discovered accidentally in reviewing some other
21 information, that this was in existence, and so I knew
22 to ask for this specific information supporting the
23 PET model. And at that point in time I was finally
24 provided this, three weeks before our filing.

25 And this is the guts of the information

1 supporting a \$117 million request, which it took six
2 months to get.

3 Q. And just to clarify, when you say you
4 discovered it accidentally, that is it was not left
5 for you and you had misplaced it. You -- how did you
6 discover it?

7 A. The -- some of the information we were
8 reviewing referred to the PET model, and at that point
9 in time that's when we became aware that the PET model
10 was the one that was used by the Company in -- in
11 evaluating this capital project, and at that point
12 that's when we knew that there was some further
13 documentation, that the model was used, number one,
14 and there was a substantial amount of information that
15 goes into the model.

16 Q. Without going into any more detail, was the
17 discovery problem solely related to re-engineering
18 costs, or were there other areas?

19 A. No. Another -- another very good example
20 related to what is normally a very routine situation
21 is in any case the damage claims paid by the Company
22 for injuries or damages recorded in Account 925 is
23 normally accrued. In other words, it's an estimate,
24 which approximates or should approximate actual claims
25 paid by the Company.

1 Now, the procedure used by the Staff, the
2 interest the Staff has in this area is the fact of
3 well, how close is this accrual in terms of actual
4 claims paid? If there is a significant difference,
5 then we make an adjustment to reflect the actual
6 claims paid by the company. This information has been
7 routinely asked by this company in every case that
8 I've been involved in the, in addition, any other
9 case, major case, that I've been involved in.

10 We tried for two months to get this
11 information unsuccessfully. We were finally granted
12 an interview with a person by the name of Mr. Dennis
13 Teague at UtiliCorp who has overall responsibility for
14 managing this information. In the interview he was
15 asked specifically whether or not this information was
16 available. His exact response to that question was,
17 "I have it here in front of me."

18 I asked him, "Well, sir, did you -- do you
19 understand that the Staff has repeatedly tried to get
20 this information?"

21 His response to me was, "I thought you
22 already had it. I provided this information to our
23 regulatory people." We've been trying for two months
24 to get it.

25 At that point another representative of the

1 company, Mr. Ken Jones, indicated, "We will following
2 up on -- follow up on this immediately and provide
3 this information."

4 I instructed Mr. O'Keefe that day, as soon
5 as we got out of the meeting, to write a memo to the
6 Company indicating that the information Mr. Teague
7 (ph. sp.) referred to will answer the following
8 requests which we consider outstanding, and, of
9 course, based on his comment, we expected to get that
10 information immediately. It took another 25 days
11 after that commitment to get the information. That's
12 the kind of cooperation we've had throughout this
13 proceeding.

14 Q. And just to clarify, who is Mr. O'Keefe?

15 A. Mr. O'Keefe is a former Staff accountant
16 assigned to the case who's no longer with the
17 Commission. We were working together on the issue.

18 Q. Okay. You were asked some questions
19 regarding the '90 and '93 case. You mentioned that --
20 I believe first you mentioned something to the effect
21 that the Company -- by the time the rates are changed
22 in the March report and order expected from the
23 Commission, the Company will have retained 48 million
24 of excess earnings; is that correct?

25 A. Based on the calculations I did today, which

1 were based upon a review of the surveillance reports
2 provided by the Staff, and the rate of return in
3 capital structure allowed by the Commission in its
4 remand order in ER-90-337, a conservative -- a very
5 conservative estimate is that this company will
6 collect in excess of \$45 million by the time rates and
7 proceedings -- rates are changed in this proceeding as
8 a result of the order in this case. And I consider
9 that a very conservative number.

10 Q. Mr. Swearingen mentioned something to the
11 effect that -- he mentioned that that \$45 million of
12 excess earnings that was retained by the Company is in
13 some way related to the effects of regulatory lag. Do
14 you recall that?

15 A. Yes.

16 Q. Okay. And Mr. Swearingen attempted to
17 demonstrate that regulatory lag worked against the
18 Company in regard to the '90 and '93 cases. Do you
19 recall those questions?

20 A. It can if they don't file a rate case on
21 a -- yeah, there is certainly some regulatory lag in
22 terms of when you file for a rate increase and when
23 it's granted, yes.

24 Q. Would you agree that an AAO would eliminate
25 the effects of regulatory lag?

1 A. For those costs.

2 Q. And did the Company have AAOs in place prior
3 to 19-- the 1990 case and prior to the 1993 case?

4 A. For some of the very material costs
5 associated with the rebuild of its Sibly generating
6 unit, which was the primary reason or primary reason
7 for the filing in both of those years, yes, they were
8 granted AAO treatment.

9 Q. So would you agree that the negative effects
10 of regulatory lag was in large way eliminated by an
11 AAO before the 1990 and '93 cases?

12 A. For those significant costs, they were.

13 Q. Okay. Do you know if there are any -- any
14 tools or any instruments similar to an AAO that is
15 used to capture overearnings on behalf of the rate
16 payer?

17 A. No, but there certainly should be.

18 Q. You were mention-- there was some discussion
19 regarding the need to normalize costs so that a rate
20 reduction is not immediately followed by a rate
21 increase. Do you recall that?

22 A. Yes, I do.

23 Q. Okay. And it's my understanding that Staff
24 attempts to normalize costs in its audit?

25 A. Absolutely.

1 Q. Okay. Have you ever seen -- in your
2 experience has there been in your -- in your
3 experience, again, a rate reduction followed by a rate
4 increase?

5 A. You mean a rate increase filed right after a
6 Commission order?

7 Q. Rate -- reducing rates.

8 A. I'm not aware of any.

9 Q. Okay. And why would you expect that to be
10 true?

11 A. Well, I mean, if the Staff -- if the Staff
12 has done a proper calculation and truly reflected the
13 Company's ongoing operations, then, in fact, one would
14 expect that a rate reduction would -- that the rates
15 established in that proceeding would -- would be
16 stable.

17 Q. And even given Staff's \$26 million rate
18 reduction request here, would you expect that to be
19 true?

20 A. Certainly, we've requested the Company to
21 identify for us any -- any events outside of this test
22 year which may have a negative impact in terms of or
23 may increase the revenue requirement, and we were
24 provided with no examples.

25 Q. And I don't know if you know this, but can

1 you tell me what type of earnings or overearnings the
2 '95 surveillance report may have indicated? Do you
3 know?

4 A. Could you repeat that question?

5 Q. Can you tell me if the '95 surveillance
6 report filed by the Company with the Staff indicates
7 any level of overearnings?

8 A. You mean as filed --

9 Q. Yes.

10 A. -- with the Staff?

11 Yes, I can. When you adjust the 1995
12 surveillance report to eliminate marketing costs, for
13 example, which is the issue for earnings manipulation,
14 you show excess earnings of \$11.8 million, again based
15 on the capital structure and rate of return allowed by
16 the Commission in the last case.

17 Q. And how much -- excuse me. How much were
18 the marketing costs in that?

19 A. \$6.2 million.

20 Q. Okay. And Staff had no knowledge of the
21 marketing cost prior to this case; is that correct?

22 A. No, we didn't.

23 Q. Okay. So if I do my math right, without the
24 knowledge of marketing costs, the surveillance report
25 would have only indicated 4.8 million of overearnings;

1 is that correct?

2 A. Actually, less than that. There was another
3 problem in the surveillance report. In both years the
4 Company overstated its rate base. There was no
5 attempt made to reflect any reduction for cash working
6 capital, which for purposes of this -- this
7 calculation I took the Company's reduction for cash
8 working capital of \$17 million used in the last
9 proceeding included in their testimony which is
10 conservative because the number now is 20 million, so
11 that's a conservative number. I also had to reduce
12 rate base.

13 The total impact of those two changes, their
14 surveillance report would have showed approximately
15 about \$2.8 million, certainly not something we're
16 going to get excited about. 11.8, absolutely. We're
17 excited.

18 Q. 2.8, what is that on a percentage basis? Do
19 you know? One percent?

20 A. Two percent maybe.

21 Q. Okay.

22 A. The 11.8 would have definitely been a reason
23 for concern.

24 Q. You were asked some questions regarding your
25 statements in your, I believe, direct and surrebuttal

1 testimony regarding manipulation of earnings. Do you
2 recall those questions?

3 A. Yes, I do.

4 Q. Is manipulation of earnings a topic that
5 would usually even come up in a rate case of any type?

6 A. No. This was the first time in my 20 years
7 in this business where I've come across sufficient
8 evidence where a company has a stated policy in effect
9 as identified in strategic planning documents, budget
10 guidelines, and clearly provides evidence that such a
11 policy is in place. We would not have made such a
12 serious allegation absent sufficient knowledge.

13 Q. And why does a manipulation of earnings not
14 typically come up in a rate case? Is it even relevant
15 to the revenue requirement?

16 A. Well, it's not -- it has no impact on the
17 revenue requirement in this case, to clear that up.
18 The relevancy of this -- of the earnings manipulation
19 problem and the discovery problems which we've devoted
20 pages and pages of testimony on in this proceeding
21 have to do with the Company's request with -- for an
22 incentive regulation plan. Any utility which is this
23 uncooperative in providing accurate and timely
24 responses to Staff's discovery and has a plan in place
25 to manipulate its earnings and to avoid rate

1 reductions at all costs should not be considered for
2 an incentive regulation plan.

3 Q. You were asked some questions regarding your
4 knowledge or Staff's knowledge of the imminent
5 competitive filing by the Company. Do you recall
6 those questions?

7 A. Yes, I do.

8 Q. First off, did you know or did Staff know
9 that the Company meant a rate increase when they said
10 competitive filing?

11 A. No. I -- I was really surprised by that
12 fact. I fully expected a rate reduction, something
13 less than what we were recommending. I was surprised
14 by that fact.

15 Q. And why do you think their competitive
16 filing became something more and became a rate
17 increase in your mind?

18 A. Well, I mean, if you look at the hearing
19 memorandum, for example, if you eliminate the issues
20 in this proceeding associated with the need to prepare
21 for competition, stranded cost recovery for transition
22 assets, and its 50 percent increase in depreciation,
23 this company would be recommending a \$6 million rate
24 reduction right now, if you just eliminate those two
25 issues, even based on a 12 1/2 percent return on

1 equity. They would still be recommending a \$6 million
2 rate reduction. Those are the issues that are -- the
3 only issues that are causing a need as reflected in
4 their filing for a rate increase.

5 Q. You were asked some questions regarding
6 statements made in your surrebuttal concerning IBM and
7 General Motors. Do you recall those questions?

8 A. Yes, I do.

9 Q. Do you know if IBM or General Motors have,
10 I'll use the term, "captive customers"?

11 A. They certainly don't.

12 Q. Okay. Would you say that therefore
13 shareholders of those two companies are at risk for
14 marketing costs?

15 A. 100 percent.

16 Q. And I believe you stated earlier that MPS
17 initially attempted to request recovery of those
18 marketing costs from its captive customers; is that
19 correct?

20 A. They have done that in this proceeding and
21 they've certainly suggested by allocating those costs
22 in surveillance reports that regulated rate payers
23 should be paying those costs.

24 Q. You were asked some questions regarding
25 statements in your surrebuttal, and I believe these

1 were highly confidential statements regarding your
2 understanding of Energy One, so be careful with your
3 answers.

4 Your statements were whether you associated
5 the word "branded" electricity with Energy One. Do
6 you recall -- and subsequently associated that with
7 non-reg operations. Do you recall that?

8 A. Yes, I do.

9 Q. I'm going to show you two pieces or two
10 pages out of Jim Dittmer's direct testimony, Pages 82
11 and 83 of his direct, and I believe this is not highly
12 confidential. The bolded statement in Page 82 right
13 there, could you read that for us?

14 A. "The ability of consumers to choose keeps
15 growing as electricity begins to fall in the
16 deregulation footsteps of natural gas. That is why in
17 1995 UtiliCorp introduced Energy One."

18 Q. Okay. And would you believe that that
19 statement serves to -- serves as support for your
20 belief that Energy One branded electricity is a
21 non-regulated service in UtiliCorp's mind?

22 A. It certainly is. That's consistent with
23 what I've said.

24 Q. Okay. You were asked some statements
25 regarding Staff's process, your procedure in writing

1 testimony. Did you write your testimony?

2 A. Yes, I did.

3 Q. And in your mind, do most, if not all, Staff
4 members write their testimony?

5 A. Every one.

6 Q. Okay. And you feel completely comfortable
7 answering any questions that are contained in your
8 testimony?

9 A. That's right. Generally, the changes that
10 occur in the review process are grammatical in nature
11 and/or minor changes to content. The real -- the
12 issues being taken and the presentation are completely
13 generated by the witness.

14 Q. You were here yesterday when Mr. Green took
15 the stand; is that correct?

16 A. Yes, I was.

17 Q. And you heard him defer several issues to
18 other company witnesses. Do you recall that?

19 A. Yes, I do.

20 Q. Would you have to do that in regard to any
21 issue contained in any part of your testimony?

22 A. Certainly not with any specific comments. I
23 mean, there are issues that overlap. For example,
24 there may be another witness.

25 And, for example, with regard to the

1 incentive regulation plan, what I say in my testimony
2 I stand on and I'm prepared to answer, but in terms of
3 the issue itself, I would -- I would defer to
4 Mr. Oligschlaeger, for example, for some specific
5 questions in that regard.

6 Q. But if you didn't feel comfortable with an
7 issue, you wouldn't put it in your testimony?

8 A. Absolutely not.

9 MR. WOODSMALL: I don't have any further
10 questions.

11 JUDGE DERQUE: Thank you, Mr. Woodsmall.
12 Thank you, Mr. Traxler.

13 We're going to go off the record and take a
14 recess until 4:00.

15 (A recess was taken.)

16 JUDGE DERQUE: We're on the record.

17 Okay. I have two pieces of testimony for
18 Mr. Empson; is that correct?

19 MR. SWEARENGEN: That's correct, your Honor,
20 direct testimony and rebuttal testimony.

21 JUDGE DERQUE: That will be -- the direct of
22 Mr. Empson will be No. 40, rebuttal will be No. 41.

23 We're off the record.

24 (EXHIBIT NOS. 40 AND 41 WERE MARKED FOR
25 IDENTIFICATION.)

1 JUDGE DERQUE: We're back on the record.
2 MR. SWEARENGEN: Your Honor, at this time I
3 would move into evidence Exhibits 37, 38 and 39.
4 JUDGE DERQUE: Is there any objection?
5 (No response.)
6 JUDGE DERQUE: They will be admitted.
7 (EXHIBIT NOS. 37, 38 AND 39 WERE RECEIVED
8 INTO EVIDENCE.)
9 JUDGE DERQUE: I have also what is marked
10 Exhibit Nos. 40 and 41, the direct testimony and
11 rebuttal testimony of Mr. Jon R. Empson.
12 (Witness sworn.)
13 JUDGE DERQUE: Thank you, sir.
14 Mr. Swearengen?
15 MR. SWEARENGEN: Thank you, Judge.
16 JON R. EMPSON testified as follows:
17 DIRECT EXAMINATION BY MR. SWEARENGEN:
18 Q. Would you state your name for the record,
19 please?
20 A. My name is Jon R. Empson.
21 Q. Mr. Empson, by whom are you employed and in
22 what capacity?
23 A. I am employed by UtiliCorp United in the
24 capacity of Senior Vice President responsible for
25 Regulatory, Legislative and Environmental Services.

1 Q. Are you the same Jon R. Empson who has
2 caused to be prepared and filed in this proceeding
3 certain direct and rebuttal testimony?

4 A. Yes, I am.

5 Q. And your direct testimony has been marked as
6 Exhibit 40 and your rebuttal testimony as Exhibit 41.
7 Is that your understanding?

8 A. That's my understanding.

9 Q. Do you have any changes that need to be made
10 with respect to your direct testimony, Exhibit 40?

11 A. There is just one minor change. On Page 2
12 of my direct testimony, since the time I wrote this
13 testimony the bottom part of that, Lines 16 through 22
14 references that we were functionally separated into
15 three business segments. We have now consolidated the
16 two non-regulated business segments into one under
17 common management of the UtiliCorp Energy Group, so
18 now UtiliCorp Energy Solutions is part of UtiliCorp
19 Energy Group.

20 Q. Okay. Thank you.

21 Do you have any changes that need to be made
22 with respect to your rebuttal testimony, Exhibit 41?

23 A. No, I do not.

24 Q. If I asked you the questions that are
25 contained in Exhibits 40 and 41, would your answers

1 today as you have corrected them be the same?

2 A. Yes, they would.

3 MR. SWEARENGEN: At this time, your Honor, I
4 would offer into evidence Exhibit 40 and Exhibit 41,
5 and tender the witness for cross-examination.

6 JUDGE DERQUE: Thank you.

7 Is there any objection to either Exhibit 40
8 or 41?

9 MR. WOODSMALL: No objection on Exhibit 40,
10 his direct. I believe that's all policy. However,
11 there are some issues regarding the allocation of
12 corporate costs in Exhibit 41, and I would reserve
13 that until that issue has been put up.

14 JUDGE DERQUE: That will be fine.

15 Any other objection?

16 (No response.)

17 JUDGE DERQUE: Exhibit No. 40 will be
18 admitted. Exhibit 41 is reserved for the
19 cross-examination on the remainder of the issues --
20 excuse me -- contained in it.

21 (EXHIBIT NO. 40 WAS RECEIVED INTO EVIDENCE.)

22 JUDGE DERQUE: Mr. Keevil?

23 CROSS-EXAMINATION BY MR. KEEVIL:

24 Q. Very briefly, Mr. Empson, would you just
25 very briefly explain again the correction that you

1 just made to your direct testimony?

2 A. Sure. On Page 2 the question is, "What do
3 you mean by internal restructure and growth?" And I
4 gave the answer that talked about what we were doing
5 internally and the last part of that on -- starting on
6 Line 16 says, "UtiliCorp has also functionally
7 separated its integrated businesses into three
8 business segments." We talk about UtiliCorp Energy
9 Delivery, then UtiliCorp Energy Group, and then
10 UtiliCorp Energy Solutions. That last segment is now
11 part of UtiliCorp Energy Group, so we only have two
12 integrated or two business segments within the
13 corporation.

14 Q. When did that change occur, sir?

15 A. It was probably around June of this year.

16 Q. June of '97?

17 A. June of 1997.

18 Q. When did UtiliCorp functionally separate its
19 business into the three that you have in your direct
20 testimony?

21 A. That effort started in 1994 after we went
22 through a strategic planning process. We identified
23 the functional business units that we were going to
24 operate in. We tried to start functionally aligning
25 them. We've gone through modifications ever since '94

1 to achieve where we are today. There has been some
2 gradual changes over time.

3 Q. Do you know when the -- I don't want to say
4 final because it changed in June of this year, but
5 when was the next-to-final decision that -- or action
6 taken to separate into the three that are shown in
7 your direct testimony to finalize it?

8 A. I would say prior to this one it was
9 sometime in the 1996 time frame because we had a
10 UtiliCorp marketing services that was a broader one
11 that was then -- we separated it out into the sales
12 element which was UES, and the market component was
13 moved over then into the Energy One partnership.

14 Q. And what was it in 1994 when you first --
15 I believe you indicated you first began this
16 process?

17 A. Well, prior to this functional alignment we
18 merely operated with a divisional structure with
19 stand-alone utilities operating in various
20 jurisdictions.

21 MR. KEEVIL: Okay. Thank you.

22 I have no further questions.

23 JUDGE DERQUE: Mr. Mills?

24 MR. MILLS: Thank you. I have just a few
25 questions.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. Mr. Empson, were you in the hearing room
3 yesterday when I introduced an exhibit and had it
4 marked as Exhibit 6HC?

5 A. I was here yesterday.

6 Q. Okay.

7 A. I'm not sure of the exhibit number.

8 Q. Let me hand you a copy of that. This is
9 a --

10 A. Sure. Okay.

11 Q. Mr. Empson, I've just handed you a copy of
12 what's been previously marked as Exhibit 6HC, and if
13 you can, would you briefly identify that for the
14 record, bearing in mind that it is -- has been
15 designated by UtiliCorp as highly confidential.

16 A. It's a response to a data request for our
17 Retail Access Position Notebook, and the attachment is
18 the electric portion of our Retail Access Notebook.

19 Q. Okay. Thank you.

20 MR. MILLS: Judge Derque, can we go off the
21 record for a minute so I can discuss some highly
22 confidential stuff and whether -- we may be able to
23 avoid going in camera.

24 JUDGE DERQUE: Okay. Off the record.

25 (A discussion off the record.)

1 JUDGE DERQUE: We're on the record.

2 MR. MILLS: Thank you.

3 BY MR. MILLS:

4 Q. While we were off the record we discussed a
5 couple of segments from this document, and I believe
6 you indicated that the ones I'm going to talk about
7 are not highly confidential; is that correct?

8 A. That is correct.

9 Q. Let me ask you to keep Exhibit 6HC open to
10 Page 1-19, and then also turn to Page 8 of your direct
11 testimony.

12 A. Page 8, direct?

13 Q. Yes.

14 JUDGE DERQUE: One dash which?

15 MR. MILLS: 1-19 of Exhibit 6HC. I'm going
16 to be referencing that as well as Pages 8 through
17 about 10 of his direct testimony.

18 JUDGE DERQUE: Okay. And this is not
19 confidential?

20 MR. MILLS: It should not be confidential,
21 no.

22 BY MR. MILLS:

23 Q. Mr. Empson, I guess I should start by asking
24 you this: Did you write your direct testimony?

25 A. Yes, I did.

1 Q. Okay. When you did write that testimony you
2 had reference, I take it, to Exhibit 6HC, and, in
3 particular, the portion from 1-19 through 1-21; is
4 that correct?

5 A. Did I access it or reference it? I'm not
6 sure I understand your question.

7 Q. Either access or reference it?

8 A. Yes. I'm aware of what the content is in
9 the position papers.

10 Q. And your testimony is virtually word for
11 word the same as those few pages of Exhibit 6HC; is
12 that not correct?

13 A. That is correct.

14 Q. Now, I could go through with you your
15 testimony and Exhibit 6HC and point out the portions
16 that are the same, but I think it would be much more
17 efficient to point out the two brief sections that are
18 different. And if I could, I'll turn your attention
19 to the phrase on the bottom of 1-19, about three lines
20 into the UCU position. And if I could ask you to read
21 that line that begins with "However," and then the
22 full sentence on the following line as well?

23 A. This is following the semi colon?

24 Q. Correct.

25 A. It says, "However, this legitimate concern

1 must be balanced with other considerations as well."

2 Q. And then the following sentence?

3 A. "In many cases stocks of utilities are held
4 by their consumers."

5 Q. Okay. Now, the phrase before that is -- the
6 phrase before that, is that exactly the same as the
7 text on Lines 19 through 20 of Page 8 of your direct
8 testimony?

9 A. Yes, it is.

10 Q. Okay. And then following the portion that I
11 just had you read that reads, "However, this
12 legitimate concern must be balanced with other
13 considerations as well. In many cases stocks of
14 utilities are held by their consumers," is followed by
15 text -- it's followed in Exhibit 6HC by text which is
16 identical to the answer on the top of Page 9 of your
17 testimony; is that not correct?

18 A. Starting with the word "part"?

19 Q. Right.

20 A. Okay. Yes, it is.

21 Q. Okay. So out of that discussion on
22 Page 1-19 -- and just to put it in context, that is
23 discussion under the heading of transition costs in
24 your position notebook; is that not correct?

25 A. That is correct.

1 Q. Out of that entire discussion, the only
2 thing that you left out of your testimony is the
3 brief portion that seems to indicate that other
4 considerations may enter into play; is that correct?

5 A. That is correct.

6 Q. Okay. Now, if we continue on to the next
7 page, 1-20, it appears to me that the only portion of
8 that page and, in fact, 1-21 as well, that you've left
9 out of your direct testimony are the first two
10 sentences at the top of Page 1-20; is that correct?

11 A. Where do you want me to match them up?

12 Q. Well, we could -- we could go through the
13 whole thing. If you skip --

14 A. Just where is the start point?

15 Q. Okay. If you skip the first two sentences
16 on the top of Page 1-20 of Exhibit 6HC and picking up
17 with "UtiliCorp advocates a balanced approach" --

18 A. Uh-huh.

19 Q. -- that is the beginning of the answer at
20 Line 10 on Page 9?

21 A. Correct.

22 Q. And then it follows through with a certain
23 amount of formatting difference, but it follows
24 through -- your direct testimony follows exactly the
25 portion of Exhibit 6HC that concludes the transition

1 cost?

2 A. Yes, it does.

3 Q. Okay. So could you read for the record the
4 portion of Exhibit 6HC that you left out of your
5 direct testimony?

6 A. At the top of Page 1-20?

7 Q. At the top of Page 1-20.

8 A. "At the same time UtiliCorp recognizes that
9 customers generally have no say in the creation of
10 costs which will become stranded. Reasonable
11 arguments can be made that companies in competitive
12 industries have no opportunity to recover stranded
13 investments."

14 Q. So, again, the language that you left out is
15 language that seems to indicate that rate payers may
16 not necessarily be required to fund 100 percent of the
17 stranded or transition costs; is that not correct?

18 A. Well, the intent was not to reference that.
19 The intent on this statement is that generally they
20 will look at the regulatory process and customers will
21 claim that they didn't have a direct say in the
22 development of regulated assets and so, therefore --
23 what we're trying to present in this position paper
24 are the kind of reactions that various people will
25 have on stranded cost recovery. And so that was only

1 meant to say that the customers will react that way.
2 They didn't have a direct voice in determining the
3 recoverability of costs.

4 Q. Does it not say that UtiliCorp recognizes
5 that?

6 A. We recognize that the customers generally --
7 all we're saying is that we recognize that that's
8 their position. That was the intent of the statement.

9 MR. MILLS: That's all of the questions I
10 have. Thank you.

11 JUDGE DERQUE: Thank you, Mr. Mills.

12 Let's see. Mr. Woodsmall?

13 MR. WOODSMALL: Yes.

14 CROSS-EXAMINATION BY MR. WOODSMALL:

15 Q. Very quickly, I have -- it hasn't been
16 marked as an exhibit. In fact, I may want to mark it
17 as an exhibit, and I don't have copies of it. Do you
18 recognize that document, that piece of paper?

19 A. It looks like an organizational chart put
20 out about UtiliCorp in May of 1997.

21 Q. Okay. And can you tell me if that is
22 consistent with your previous version of your
23 testimony where you said three segments, or is that
24 consistent with the current organizational structure?

25 A. It's with the current organizational

1 structure.

2 Q. Okay. Is there -- besides just the mere
3 structure, is there anything else that's changed on
4 there that you know of? You don't need to go through
5 descriptions or anything, just where things are placed
6 in structure wise.

7 A. It looks to be -- without going through
8 every line and reading everything, it looks generally
9 to be representative of how we are structured today.

10 Q. I believe at the bottom there, toward the
11 left side, there are four notes; is that correct? Do
12 you see that?

13 A. Yes.

14 Q. Can you read the first one for me?

15 A. The first one says, "UtiliCorp's
16 organizational structure will never be done. It
17 continually will evolve to respond to industry
18 changes."

19 Q. Okay. Can you tell me if there are any
20 plans -- I'm finished with that.

21 Do you know of any plans at UtiliCorp
22 currently to modify this organizational structure?

23 A. I'm not aware of any current plans. We are
24 continually monitoring the environment to see how we
25 should be structured -- how we should be structured to

1 respond to that environment, but I'm not aware of any
2 new plans to restructure at this time.

3 Q. But given the uncertainty of the competitive
4 environment, this organizational structure is
5 certainly subject to change and subject to change
6 radically possibly; is that correct?

7 A. I don't know if I can accept the last part
8 of that. It's always subject to change --

9 Q. Okay.

10 A. -- because you're trying to align yourself,
11 but the statement of radically, I think, be
12 inappropriate.

13 Q. I'm finished with that.

14 Okay. Were you here yesterday when
15 Mr. Green was on the stand?

16 A. Yes, I was.

17 Q. I asked -- first off, can you tell us what
18 your title is?

19 A. Senior Vice President responsible for
20 Regulatory, Legislative and Environmental Service?

21 Q. And I understand you report directly to
22 Mr. Richard Green; is that correct?

23 A. I report directly to Richard and Bob Green.

24 Q. Okay. Can you tell me what your
25 responsibility was in regard to the -- the issues,

1 the positions taken by Missouri Public Service in this
2 case?

3 A. I have overall responsibility for the
4 regulatory function, so I -- my primary responsibility
5 when we started looking at the changes occurring in
6 the environment as we had in every jurisdiction was
7 try to determine what we needed to do from a
8 regulatory perspective to address those changes. And
9 in this case I was responsible in working with my --
10 what we assigned as two kind of co-leaders for this
11 Missouri case to develop the regulatory plan.

12 Q. Okay. So you would be knowledgeable
13 regarding the competitive positions taken in this
14 case; is that correct?

15 A. In a very general way because what we did
16 was we sat down and said, "As we move into
17 competition, what issues do we feel we need to address
18 in a competitive filing?" We've done this in our last
19 three gas cases that we have filed. We've tried two
20 in the state of Kansas, for example. We filed a rate
21 case to address transportation concerns. We did that
22 in our last Michigan case, and we've recommended a
23 pilot program up there to move into a competitive
24 environment, and we voluntarily did some of these
25 things in Nebraska when we created a competitive

1 environment in 1994.

2 So what my responsibility would be would be
3 to meet with the members of the leadership team, talk
4 about what issues we think are important to go into
5 the competitive environment, and then put together a
6 team of people and have them address those issues in
7 much more detail than I would be capable of doing
8 myself.

9 Q. Okay. Do you have Mr. Green's direct
10 testimony?

11 A. No, I do not.

12 Q. I'll show you a page out of that. It's
13 Page 14. On Page 13 Mr. Green starts talking about
14 the eight competitive changes that MoPub is proposing
15 in this case. And on Page 14, No. 7 there, can you
16 read the highlighted portion or the entire part of
17 No. 7?

18 A. We are proposing to accelerate the write-off
19 of certain assets in order to align the remaining book
20 value of those assets with anticipated market value.
21 A witness from DeLoitte & Touche, Donald Roff, will
22 explain this proposal.

23 Q. Do you have any knowledge regarding --
24 Mr. Green couldn't answer my questions on that.

25 Do you have any knowledge regarding what

1 Mr. Green meant by that proposal?

2 A. Well, what -- as I indicated what we did was
3 we sat down and determined what we wanted to do with
4 all of the competitive issues. One of those was to
5 look at our assets, and we talked about how would you
6 want to posture those assets as you move into a
7 competitive environment? We had seen some activities
8 going on in other states where they had addressed that
9 on generating assets.

10 We had a discussion internally and decided
11 we would hire this Donald Roff to come in and consult
12 with us on the concept of how would you position
13 regulated assets to move into a competitive
14 environment? And so he prepared his testimony, and
15 then looking at his testimony we tried to summarize
16 what the issues were going to be, and that
17 summarization was then included in Mr. Green's
18 testimony.

19 Q. Okay. It talks about aligning remaining
20 book value with anticipated market value. Can you
21 tell me who was responsible for evaluating those
22 assets -- evaluating what the market value of those
23 assets is?

24 A. Well, in the context of what we were doing
25 in depreciation, it was more in the context that we

1 are trying to transition from a regulated environment
2 into a competitive marketplace. And so when we were
3 meeting with Mr. Roff we asked him to determine how we
4 would do that, and within the context of his
5 depreciation proposal, that's how it was addressed.

6 Q. Okay. So is it your understanding that
7 as -- if the Commission adopts MoPub's depreciation
8 proposals in this case that the remaining book value
9 of those assets will be in alignment with anticipated
10 market value?

11 A. I think that's a little too broad of a
12 statement. The context was, and I will go back and
13 even reference some of the statements that we have in
14 Mr. Roff's testimony. And he talks about in his -- in
15 his statement what he was trying to achieve, and then
16 in his deposition specifically he references the point
17 that we were trying to make there. And I would say
18 that it is probably being more broadly interpreted by
19 you than what the intent was when that was -- was
20 phrased.

21 But I believe the -- when we were involved
22 with the deposition of Mr. Roff they asked -- you
23 asked him the question about market value. And his
24 response was, "Yes, my first reaction to that question
25 is that market value may be inherent in salvage

1 receipts that have occurred over time, which would be
2 one component of the analysis of the depreciation
3 study."

4 So, if anything, I think we have probably in
5 that phrase, when we tried to be short and simple,
6 that maybe you have misinterpreted what the intent
7 was, and it was more trying to position ourselves as
8 we move into a competitive environment and then as
9 Mr. Roff tried to indicate, there is some element of
10 market value that's taken into consideration.

11 Q. So you would agree that as written this
12 proposal is too broad? It is not specifically what
13 MoPub proposed?

14 A. The way that is written it would imply that
15 we have done some type of a detailed analysis of all
16 of our assets, whether transmission, distribution or
17 generation, to determine 10, 15 years from now what
18 those values would be, and we have not done that, and
19 we did not intend to imply that that's what had
20 occurred.

21 Q. You just said 10 or 15 years from now. Why
22 did you use that time period?

23 A. Just picked it out. There was no -- no
24 basis for it. I was just saying as we move into a
25 competitive environment, our point is that we are

1 looking that that is coming. We are seeing now
2 15 states that already have a date certain by now for
3 the year 2003. The federal legislation is calling for
4 it by the end of the year 2000 so our planning horizon
5 really is much more short-term than that. I could
6 have more appropriately said five years, but I just
7 made a statement.

8 Q. Have you made competitive filings in the
9 other states in which UtiliCorp serves electric
10 customers?

11 A. At this time we have not. Our plan was --
12 especially with the EWD concept that we were talking
13 about in this case, that we would -- once the -- when
14 the original plan, anyway, once they would have been
15 approved, our next step was to take it to other
16 jurisdictions and to the FERC for approval. At that
17 time we would be making competitive filing.

18 Q. Do you anticipate those competitive filings
19 in other states will include rate increases?

20 A. They very well could. Once we go through
21 the analysis of all of the issues that we think are
22 critical to address in a competitive filing. It just
23 depends on those jurisdictions and what the
24 requirements are.

25 Q. I believe you mentioned earlier something to

1 the effect that you have made competitive filings
2 regarding gas services in Kansas, Nebraska and
3 Michigan. Did you --

4 A. We have addressed competitive issues in gas
5 rate case filings in Kansas and in Michigan. In the
6 state of Nebraska we introduced ourselves in 1993, '94
7 to the concept of opening all of our commercial
8 customers to transportation and gas choice. And our
9 intent then, very similar to what we did here on the
10 McDonald's tariff was to gain some learning experience
11 to what a competitive environment might be.

12 So we were able to do, and it's been very
13 successful. We're expanding it now to further
14 properties in Lincoln. As I mentioned we have a pilot
15 program proposed in the state of Michigan for gas.

16 Q. Those competitive issues, were they
17 presented in the context of a rate increase case?

18 A. In both Kansas and Michigan, yes, they were.

19 Q. What about Nebraska?

20 A. Nebraska, we were not involved in rate case
21 in '94. We had come out of a rate case in 1992, and
22 then we filed again in 19-- I believe it was 1995 in
23 three of our jurisdictions in Nebraska. Nebraska is a
24 little different. They do not have a regulatory
25 Commission, so you are regulated by each city council

1 there, and they aggregate their towns to form a
2 regulatory jurisdiction.

3 JUDGE DERQUE: I bet that's fun.

4 MR. WOODSMALL: Job security.

5 THE WITNESS: It's a little different
6 environment.

7 BY MR. WOODSMALL:

8 Q. Finally, I asked a question yesterday that
9 Mr. Green didn't know. Can you tell me what Staff's
10 position was in regard to MoPub's electric aggregation
11 experiment?

12 A. I think eventually it was supportive. I
13 think the only frustration that I recall was that
14 there was numerous changes that we had to make, and I
15 think that our only concern at that point in time was
16 that we didn't seem to have a very coordinated
17 approach. My recollection was we made three changes
18 in the tariff within 11 days' period of time because
19 three different individuals wanted changes. And then
20 once we got those put together, and we got it
21 presented, we had to make one other change.

22 So, eventually, we got it to the customer a
23 little belatedly because of some of the processes we
24 had to go through, and then we finally did get it
25 implemented. But I think overall it was supportive

1 and I think our only suggestion for improvement would
2 be if we could get a little better coordinated so it
3 would be a little more efficient.

4 Q. Okay. Do you recall if any of those changes
5 you mentioned were perhaps the result of MoPub and
6 McDonald's desire to keep certain information highly
7 confidential?

8 A. I could not respond to that.

9 Q. Okay. So those changes may not have been as
10 a result of Staff's needs, but as a result of MoPub's
11 or its customers needs; is that correct?

12 A. Those changes could -- their concern was
13 more the three entities from what I understand that
14 were involved, and I think when we presented that to
15 the Commission in October, we also came over and had a
16 joint meeting with the Staff to try to sit down and
17 explain it, get a lot of input and redraft it. I
18 think the process itself was very good.

19 I just said we could always try to improve
20 on processes. In this case if we could have had
21 another sit-down maybe and got everybody's input at
22 one time, it might have made it a little faster
23 because McDonald's was a little frustrated, and maybe
24 it was because of the confidential nature of their
25 information. But they were a little frustrated that

1 we didn't move quite as quickly as they would have
2 liked, and it delayed their implementation.

3 Q. Do you know when that tariff was filed, the
4 initial tariff that started that?

5 A. It was during the last quarter of 1996, and
6 I can't give you the exact date.

7 Q. I believe it was November 1.

8 Do you know when the tariff was actually
9 approved by the Commission?

10 A. I could not tell you that.

11 Q. January 20th?

12 Would you believe that that would be
13 significantly less than the suspension powers of the
14 Commission? Do you know how long the Commission can
15 suspend a tariff?

16 A. I'm not sure of the total time they could
17 suspend it. As I say, the whole process in itself we
18 were pleased that the state of Missouri was willing to
19 work with us as a customer, and I think the comments
20 that we received back from the chairman at that time
21 were very positive that we were willing to come
22 forward, and I think we were probably the only utility
23 that has voluntarily come forward with a competitive
24 concept like that and be willing to discuss it, and we
25 were pleased that we did get it approved.

1 And I think Mr. Green mentioned we have a
2 second customer that has now gone through the process
3 and should be -- we should be filing, hopefully, the
4 contract within the next 30 days to show how that one
5 is going to work.

6 Q. Would you agree that that McDonald's tariff
7 embodies a complex transaction, that is, it has a
8 number of -- from a regulatory concern, a number of
9 legal and regulatory ramifications?

10 A. I'm sure it does. We'd hoped it wouldn't,
11 but I'm sure as lawyers would look at it, that's what
12 they would conclude. We were trying to come forward
13 with a fairly simple concept of trying to introduce
14 competition on an experimental basis, and we felt that
15 he had postured it in a way that it wouldn't raise a
16 lot of legal concerns. And I think the reaction was
17 that maybe it wasn't postured that way in the minds of
18 some of the Staff or maybe even the Commission.

19 Q. So you would agree that MoPub accepts
20 perhaps some responsibility for the amount of time
21 that that took, two and a half months?

22 A. We accept the responsibility. When you're
23 trying to change, maybe it doesn't occur as fast as
24 you would like or the customers would like, and we
25 have to be able to work within that process to

1 continually improve it so we can move quicker.

2 MR. WOODSMALL: I have no further questions.

3 JUDGE DERQUE: Can you give me a case number
4 on that?

5 MR. WOODSMALL: I can give it to you when we
6 go back on the record. I don't have it off the top of
7 my head.

8 JUDGE DERQUE: We are all familiar with --

9 MR. WOODSMALL: ET-97-209.

10 JUDGE DERQUE: 97-209?

11 MR. WOODSMALL: Correct.

12 I have no further questions.

13 JUDGE DERQUE: Redirect, Mr. Swearengen?

14 MR. SWEARENGEN: No redirect.

15 JUDGE DERQUE: Thank you.

16 MR. WOODSMALL: Your Honor, I would note
17 we're going to have very limited cross for McKinney,
18 so I assume you want to go ahead with him.

19 MoPub has indicated that they have a witness
20 on Off-Systems Sales that they have to get through,
21 and we're only going to have 10 or 15 minutes on her,
22 if we can go right into that after McKinney?

23 JUDGE DERQUE: Who has a witness that needs
24 to get done?

25 MR. COOPER: It would be Ruth Sotak who's

1 one of the witnesses for Off-System Sales.

2 JUDGE DERQUE: You mean today?

3 MR. COOPER: We would like to, yes. We
4 talked to -- of course, we can't speak to what the
5 Commission might have in mind, but I believe we've
6 talked to both Staff and OPC, and their questions are
7 such that they believe we can do that.

8 MR. KEEVIL: Well, let's go ahead and do
9 McKinney.

10 JUDGE DERQUE: I'm obliged, Mr. Cooper, it
11 will take me -- I'm obliged to quit at 5:00. And it
12 will take me till 5:00 to go find the Commissioners so
13 that they can determine whether they have any
14 questions for Ms. Sotak or not, so I'm afraid there is
15 nothing I can do about it but offer her another
16 evening in fun-filled Jefferson City. I'm sorry for
17 that. Unless you want to move -- when is her
18 testimony?

19 MR. COOPER: What's that, your Honor?

20 JUDGE DERQUE: When is her scheduled
21 testimony?

22 MR. COOPER: It would follow -- yeah, today
23 would have been --

24 JUDGE DERQUE: Oh, is it Off-System Sales?

25 MR. COOPER: Yeah.

1 JUDGE DERQUE: I don't know what to do about
2 it. Do you have an alternative solution?

3 MR. SWEARENGEN: Do you have any cross for
4 her?

5 MR. WOODSMALL: We have ten minutes. Can we
6 take her up now? I have very limited stuff on
7 McKinney. In fact --

8 JUDGE DERQUE: It's going to take me ten
9 minutes to go find the Commissioner and see if they
10 have any.

11 MR. MILLS: Mr. Browning also testified on
12 this issue; is that correct?

13 MR. SWEARENGEN: That's correct.

14 MR. MILLS: Make him variable for the
15 Commission if they have questions on this issue.

16 MR. COOPER: The other alternative is that I
17 believe the Staff's witness, Mr. Brosch, is coming
18 back late in the week on -- next week, the 19th. She
19 could come back and testify at the same time as
20 Mr. Brosch.

21 MR. WOODSMALL: Staff would have no problem
22 with that.

23 MR. COOPER: Because this issue is already
24 split, I guess.

25 JUDGE DERQUE: Does anybody object to that?

1 MR. MILLS: I would -- actually, I would
2 prefer that. Why don't we just do all of the
3 Off-System Sales witnesses on the 19th?

4 MR. WOODSMALL: Browning wasn't available.

5 JUDGE DERQUE: On the 19th? Well, that
6 means I can move --

7 MR. WOODSMALL: Do you want all of this on
8 the record still?

9 JUDGE DERQUE: I'm sorry. Am I on the
10 record?

11 MR. WOODSMALL: She's still going.

12 JUDGE DERQUE: That's fine with me.

13 MR. WOODSMALL: Okay.

14 JUDGE DERQUE: They do it on the record in
15 real court.

16 That means we could move to Mr. Dittmer; is
17 that correct?

18 MR. WOODSMALL: No. Mr. McKinney on Policy.

19 JUDGE DERQUE: I mean tomorrow morning at
20 8:00.

21 MR. WOODSMALL: Mr. Browning is supposed to
22 go up first tomorrow on just the singular issue of
23 what he said on depreciate. There is a footnote. And
24 we'll be on Dittmer by 8:30 or within a half-hour.

25 JUDGE DERQUE: Okay. Does anyone object to

1 that?

2 (No response.)

3 JUDGE DERQUE: Mr. Swearengen apparently
4 does not.

5 Is that a satisfactory arrangement for your
6 witness, Mr. Cooper?

7 MR. COOPER: For my witness, yes. My only
8 concern would be whether we are going to overload the
9 19th, I guess. And others might be a better judge of
10 that.

11 JUDGE DERQUE: Hopefully not. We'll see.
12 We'll see how the process goes. You're talking about
13 the way distant future.

14 MR. COOPER: As was mentioned -- let me move
15 up.

16 As was mentioned by Mr. Woodsmall,
17 Mr. Browning would still need to testify tomorrow
18 morning.

19 JUDGE DERQUE: I understand that.

20 MR. COOPER: Both on Off-System Sales and
21 the Depreciation.

22 JUDGE DERQUE: I understand. We just made
23 that agreement.

24 MR. COOPER: Yeah.

25 MR. WOODSMALL: That shouldn't take long.

1 JUDGE DERQUE: Okay. I have three pieces of
2 testimony for Mr. McKinney?

3 MR. SWEARENGEN: That's correct, your
4 Honor.

5 JUDGE DERQUE: That will be 42, 43 and 44.
6 The direct of McKinney will be 42, the rebuttal will
7 be 43, surrebuttal will be 44.

8 MR. SWEARENGEN: Judge, apparently one
9 of the schedules to his surrebuttal testimony didn't
10 get in the copies, or all of the copies. If
11 you-all --

12 JUDGE DERQUE: We are off the record.

13 (A discussion off the record.)

14 (EXHIBIT NOS. 42, 43 and 44 WERE MARKED FOR
15 IDENTIFICATION.)

16 JUDGE DERQUE: On the record.

17 I have what is marked as Exhibits 42, 43 and
18 44.

19 Mr. Swearengen?

20 MR. SWEARENGEN: Thank you.

21 (Witness sworn.)

22 JUDGE DERQUE: Thank you, sir.

23 Mr. Swearengen?

24 MR. SWEARENGEN: Yes. Thank you, your
25 Honor.

1 JOHN W. McKINNEY testified as follows:

2 DIRECT EXAMINATION BY MR. SWEARENGEN:

3 Q. Would you state your name for the record,
4 please?

5 A. John W. McKinney.

6 Q. By whom are you employed and in what
7 capacity?

8 A. UtiliCorp United, Inc. as Vice President,
9 Federal Regulation.

10 Q. Have you caused to be prepared for purposes
11 of this proceeding three pieces of testimony which
12 have been marked as Exhibits 42, 43 and 44.

13 A. Yes, I have.

14 Q. And Exhibit 42 is your direct testimony,
15 Exhibit 43 your rebuttal testimony, and Exhibit 44
16 your surrebuttal testimony?

17 A. That's correct.

18 Q. Are there any changes that need to be made
19 with respect to Exhibit 42, your direct testimony?

20 A. Yes, unfortunately, there are three minor
21 corrections I would like to make.

22 Q. Okay.

23 A. On Page 8, Line 11 --

24 MR. WOODSMALL: This is your direct?

25 THE WITNESS: On my direct.

1 MR. WOODSMALL: Sorry.

2 THE WITNESS: I will take these very slow
3 because I did leave out seven words, unfortunately, in
4 my typing of this, which I did type myself even, not
5 only wrote.

6 BY MR. SWEARENGEN:

7 Q. Let me make sure I understand you. You
8 wrote this testimony and you typed it yourself?

9 A. I typed it myself. That's why there are
10 errors.

11 Q. Page 8, Line 11 of your direct.

12 A. The sentence starts off reading, "Such
13 failure to establish" -- that should read, "Such
14 failure to establish an," it should read, "a new model
15 will delay the development of," then continue
16 "efficient operation or markets." So the words I'm
17 inserting are "new model will delay the development
18 of."

19 Also on Page 17, Line 18 -- I apologize for
20 the confusion it's obvious I have caused. I labeled
21 the figure that is shown on that page, Line 18,
22 Figure 7. That should read Figure 6.

23 Q. Are there any other changes with respect to
24 your direct testimony?

25 A. Yes. On Page 24, Line 15, it reads,

1 ". . . three-year" -- the last four words there read,
2 ". . . three-year period after." It should read
3 "four-year period."

4 MR. KEEVIL: Could you repeat that one? I
5 missed it. What page?

6 THE WITNESS: Yes, I'm sorry. It's at
7 Page 24, Line 15.

8 MR. KEEVIL: Okay.

9 THE WITNESS: The last four words read
10 ". . .three-year." It should read "four-year."

11 BY MR. SWEARENGEN:

12 Q. Mr. McKinney, are there any changes that you
13 need to make with respect to Exhibit 43, your rebuttal
14 testimony?

15 A. No, not that I'm aware of.

16 Q. Okay. And is the same true with
17 respect to --

18 JUDGE DERQUE: Your typing improved when you
19 got to that?

20 THE WITNESS: Somewhat.

21 BY MR. SWEARENGEN:

22 Q. Any changes on Exhibit 44?

23 A. Only the insertion of the one schedule page
24 that was left out as Schedule 1.

25 Q. Which we've taken care of, I believe?

1 A. Yes.

2 Q. Mr. McKinney, if I asked --

3 JUDGE DERQUE: That insertion would be
4 identified as -- it's styled, "Data request by topic,"
5 and it will be identified as part of Exhibit No. 44.

6 MR. SWEARENGEN: Thank you, Judge.

7 BY MR. SWEARENGEN:

8 Q. Mr. McKinney, with that, if I asked you the
9 questions in Exhibits 42, 43 and 44 as you have
10 corrected them today, would your answers be the same?

11 A. Yes, they would.

12 MR. SWEARENGEN: With that, your Honor, I
13 would offer into evidence Exhibits 42, 43 and 44, and
14 tender the witness for cross-examination.

15 JUDGE DERQUE: Is there any objection to the
16 admission into evidence of Exhibits 42, 43 or 44?

17 MR. WOODSMALL: I believe under each piece
18 of testimony there are issues included which have not
19 yet -- which Mr. McKinney has not yet been crossed on,
20 so I would reserve that.

21 JUDGE DERQUE: That's fine.

22 Is there any other objection?

23 (No response.)

24 JUDGE DERQUE: Exhibits 42, 43 and 44 will
25 be reserved until the completion of the testimony

1 that's contained in them.

2 Let's see. Mr. Keevil?

3 MR. KEEVIL: Yes, very briefly. I'm going
4 to need to have this marked, this data response as a
5 copy. You want one or you want five?

6 JUDGE DERQUE: I want five.

7 You want to mark this?

8 MR. KEEVIL: Yeah, let's mark this. It's
9 just a data response.

10 JUDGE DERQUE: This will be marked as
11 Exhibit No. 45, styled "Data request IBEW 9018."

12 JUDGE DERQUE: We are off the record.

13 (A discussion off the record.)

14 (EXHIBIT NO. 45 WAS MARKED FOR
15 IDENTIFICATION.)

16 JUDGE DERQUE: We are back on the record.

17 CROSS-EXAMINATION BY MR. KEEVIL:

18 Q. Mr. McKinney, you have in front of you now,
19 I believe, a copy of what's been marked as Exhibit 45,
20 which is the data request that I sent your company,
21 and your response to that request. I believe up at
22 the top it's referred to as Data Request no.
23 IBEW-9018. Have I correctly identified that document,
24 sir?

25 A. Yes, you have, sir.

1 Q. Down there on the -- in the response portion
2 you will see first there what's called "Response," and
3 that says "answered by Maurice L. Arnall." And then
4 beneath that is their supplemental response answered
5 by John -- it states it was answered by John McKinney.
6 Do you see that?

7 A. Yes, I do.

8 Q. Is that supplemental response there your
9 response to this data request?

10 A. Yes, it is.

11 Q. Okay. And you -- strike that.

12 MR. KEEVIL: Mr. Derque, I would offer
13 Exhibit 45 into the record.

14 JUDGE DERQUE: Is there any objection to the
15 admission into the record of Exhibit 45?

16 MR. SWEARENGEN: No objection.

17 JUDGE DERQUE: Seeing none, it will be
18 admitted.

19 (EXHIBIT NO. 45 WAS RECEIVED INTO
20 EVIDENCE.)

21 MR. KEEVIL: That's all I've got.

22 JUDGE DERQUE: Mr. Mills?

23 MR. MILLS: Thank you. I've just got a very
24 few questions for this witness on the Policy issue
25 that he's testifying on.

1 CROSS-EXAMINATION BY MR. MILLS:

2 Q. Mr. McKinney, let me ask you this --

3 A. It's been a long day.

4 Q. -- are we in a period of radical change in
5 the electric regulatory environment?

6 A. Yes, I think we are.

7 Q. Okay. Let me ask you a couple of questions
8 about where you fit into the UtiliCorp hierarchy.

9 Are you -- are you -- well, is Mr. Empson
10 your supervisor or are you on Mr. Empson's level?

11 A. No. Mr. Empson is my direct supervisor.

12 Q. Okay. Your office is in UtiliCorp
13 headquarters is Kansas City; is that correct?

14 A. I have facilities there. I also have
15 facilities in Raytown, Missouri.

16 Q. Does Mr. Empson have facilities in the
17 Kansas City or the Raytown offices?

18 A. He has facilities in Kansas City and Omaha.

19 Q. Is he primarily in Kansas City or in Omaha?

20 A. It depends on the week. He's back and forth
21 just like I am.

22 Q. So he spends a fair amount of time in Omaha?

23 A. He would have to ask him how much time in
24 each location.

25 Q. Okay.

1 A. I visit with him quite often in Kansas City.

2 Q. Okay. In general, how do you communicate
3 Mr. Empson when he is in Omaha?

4 A. I'm in Omaha myself or by telephone or by
5 E-mail or various ways.

6 Q. Do you use E-mail a lot or a little bit?

7 A. I use it occasionally. I normally like to
8 talk face-to-face or verbally.

9 Q. There's -- UtiliCorp has operations
10 nationwide and worldwide; is that correct?

11 A. That's correct.

12 Q. Is E-mail a tool that's used very much among
13 UtiliCorp personnel?

14 A. I really couldn't respond. Different people
15 use different office tools, different business tools.

16 Q. Do you receive communications from
17 Mr. Empson by E-mail very often?

18 A. Some.

19 Q. Did you in response to any of Public
20 Counsel's data requests furnish any E-mail messages?

21 A. To who?

22 Q. To any of the Public Counsel data requests,
23 any E-mails from anyone to anyone within UtiliCorp.

24 A. The E-mail system was used to transfer our
25 data request system -- we have a system called askSam,

1 and we linked our askSam system, which is our data
2 request tracking system, through our E-mail system so
3 we could move the data requests electronically
4 throughout the company.

5 Q. I'm sorry. I may not have been clear.

6 Are you aware that in response to requests
7 from Public Counsel for documents on various topics
8 that you responded with absolutely no E-mails in terms
9 of documents on certain subjects or other subjects?

10 A. I'm not specifically aware of that. I
11 wasn't aware that the -- you know, the E-mail
12 documents might have been the document that answered a
13 specific request.

14 Q. Are you aware that when Public Counsel
15 requested documents on a certain topic that E-mails
16 that covered that topic would have been included in
17 the response that you needed to give?

18 A. To be honest with you, I didn't pay a lot of
19 attention. Again, the documents, I think, Public
20 Counsel requested, I think, were supplied, and I don't
21 believe any of those documents were necessarily E-mail
22 documents. I don't recall one.

23 If there is one that you could call my
24 attention to, I would be happy to respond to it.

25 Q. Did you ever review any E-mails that you had

1 sent or received from other UtiliCorp personnel to see
2 if those E-mails might have been within the scope of
3 documents requested by Public Counsel?

4 A. I don't retain E-mails. When I receive
5 them, my system is not that large and I don't want to
6 overload it, so I delete them.

7 Q. Do you ever print them?

8 A. Very rarely. If I do, I don't keep them.
9 In our space, if you've been to any of our offices,
10 we're in a cubicle situation, and I have limited file
11 space. And I do not keep that much stuff unless it is
12 very material to the operation of the company.

13 MR. MILLS: Nothing further. Thank you.

14 JUDGE DERQUE: Thank you, Mr. Mills.

15 Mr. Woodsmall?

16 MR. WOODSMALL: Yes.

17 JUDGE DERQUE: You have five minutes.

18 MR. WOODSMALL: Okay. I can finish it in
19 that.

20 JUDGE DERQUE: You have five minutes unless
21 you would like to afford Mr. McKinney a fun-filled
22 evening in Jeff City.

23 MR. WOODSMALL: I'm not going to be
24 responsible for that.

25 THE WITNESS: I'll be here until the 19th.

1 MR. WOODSMALL: I've been here five years,
2 and I can't find a fun-filled evening in Jeff City.

3 THE WITNESS: It's a wonderful location. I
4 love it.

5 CROSS-EXAMINATION BY MR. WOODSMALL:

6 Q. Just because I've been presented it today,
7 can you tell me, this is -- this Schedule JWM-1 that
8 was provided today, this is designed to represent --
9 let me see -- the areas covered by the Staff in this
10 docket; is that correct?

11 A. Yes. Our askSam system has an area we put
12 in by topic that helps us locate certain information,
13 and all that is is a printout by the topics as
14 recorded in our askSam system.

15 Q. Who assigns the topic to the data request as
16 it comes in?

17 A. That would be, I believe, Maurice Arnall --

18 Q. Okay.

19 A. -- or his administrative assistant, or
20 myself, or my administrative assistant.

21 Q. The only thing I have a question about is
22 down at the bottom it says, "UCU corporate cost, 10."
23 Do you believe that's accurate?

24 A. I would have to go back and look. It
25 depends on what you would call -- I think there is

1 another cost where we have subdivided those costs up
2 above on some of them, and that may be -- excuse me
3 while I duck down here.

4 Q. Well, my quick question is, it's not your
5 testimony that Mr. Dittmer, Staff's consultant, only
6 issued ten data requests, is it?

7 A. No. Those would be data requests on the
8 general concept of UCU. As you can see up above, we
9 have on international 36, legislative 24.

10 Q. Okay.

11 A. So those are just what would be more of a
12 general nature that wouldn't fit one of the other
13 categories, and we generalize them in that category.

14 Q. Okay. A quick question, you used to be with
15 Staff; is that correct?

16 A. At one time, yes.

17 Q. Can you tell me when you were with Staff?

18 A. 1974 through 1977.

19 Q. Okay. Can you tell me some of the companies
20 you audited while with Staff?

21 A. I audited Empire District, St. Joe Light and
22 Power, Southwestern Bell, Missouri Public Service,
23 Kansas City Power and Light, United Telephone.

24 Q. Okay.

25 A. A number of sewer companies that it took me

1 longer to get there and back than to do the audit.

2 MR. WOODSMALL: I don't have anything
3 further.

4 THE WITNESS: Thank you.

5 JUDGE DERQUE: Tomorrow morning -- we're off
6 the record.

7 MR. SWEARENGEN: Do I get redirect?

8 JUDGE DERQUE: Oh, I'm sorry.

9 Redirect, Mr. Swearengen?

10 MR. SWEARENGEN: I was thinking I was going
11 to ask him about those sewer companies, but I think
12 I'll pass.

13 No redirect. Thank you.

14 JUDGE DERQUE: Okay. Now we are off the
15 record.

16 WHEREUPON, the hearing of this case was
17 continued to 8:00 a.m., Wednesday, December 10, 1997.

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I N D E X

RATE DESIGN:

STAFF'S EVIDENCE:

JANICE PYATTE:

Direct Examination by Mr. Dottheim	256
Cross-Examination by Mr. Brownlee	259
Questions by Commissioner Drainer	263
Questions by Chair Lumpe	273
Redirect Examination by Mr. Dottheim	276
Further Questions by Commissioner Drainer	278

OPC'S EVIDENCE:

RYAN KIND:

Direct Examination by Mr. Mills	281
Cross-Examination by Mr. Brownlee	283
Questions by Chair Lumpe	285

SIEUA'S EVIDENCE:

DONALD E. JOHNSTONE:

Direct Examination by Mr. Brownlee	286
Cross-Examination by Mr. Mills	291

MPS'S EVIDENCE:

MAURICE L. ARNALL:

Direct Examination by Mr. Cooper	295
Cross-Examination by Mr. Dottheim	298

1	REAL-TIME PRICING TARIFF & FLEXIBLE PRICING/SPECIAL CONTRACT TARIFF:	
2	STAFF'S EVIDENCE:	
3	JAMES C. WATKINS:	
	Direct Examination by Mr. Dottheim	303
4	Cross-Examination by Mr. Mills	305
	Cross-Examination by Mr. Brownlee	321
5	Questions by Judge Derque	324
	Cross-Examination by Mr. Cooper	325
6	OPC'S EVIDENCE:	
7	RYAN KIND:	
	(No questions.)	340
8	SIEUA'S EVIDENCE:	
9	DONALD E. JOHNSTONE:	
	Cross-Examination by Mr. Cooper	341
10	MPS'S EVIDENCE:	
11	MAURICE L. ARNALL:	
	Cross-Examination by Mr. Dottheim	348
12	BRUCE R. CHAPMAN:	
13	Direct Examination by Mr. Cooper	353
	Cross-Examination by Mr. Brownlee	355
14	Cross-Examination by Mr. Dottheim	357
15		
16	POLICY:	
17	STAFF'S EVIDENCE:	
	STEVE M. TRAXLER:	
18	Direct Examination by Mr. Woodsmall	373
	Cross-Examination by Mr. Swearengen	377
19	Redirect Examination by Mr. Woodsmall	425
20	MPS'S EVIDENCE:	
	JON R. EMPSON:	
21	Direct Examination by Mr. Swearengen	451
	Cross-Examination by Mr. Keevil	453
22	Cross-Examination by Mr. Mills	456
23	JOHN W. MCKINNEY:	
	Direct Examination by Mr. Swearengen	482
24	Cross-Examination by Mr. Keevil	486
	Cross-Examination by Mr. Mills	488
25	Cross-Examination by Mr. Woodsmall	492

1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 16	256	259
	Direct Testimony of Janice Pyatte		
4	Exhibit No. 17	256	259
5	Rebuttal Testimony of Janice Pyatte		
6	Exhibit No. 18	256	259
7	Surrebuttal Testimony of Janice Pyatte		
8	Exhibit No. 19	280	283
	Direct Testimony of Ryan Kind		
9	Exhibit No. 20	280	283
10	Rebuttal Testimony of Ryan Kind		
11	Exhibit No. 21	280	283
	Surrebuttal Testimony of Ryan Kind		
12	Exhibit No. 21HC	280	283
13	Surrebuttal Testimony of Ryan Kind, Highly confidential		
14	Exhibit No. 22	286	291
15	Direct Testimony of Donald E. Johnstone		
16	Exhibit No. 23	286	291
17	Rebuttal Testimony of Donald E. Johnstone		
18	Exhibit No. 24	286	291
19	Surrebuttal Testimony of Donald E. Johnstone		
20	Exhibit No. 25	295	298
21	Direct Testimony of Maurice L. Arnall		
22	Exhibit No. 26	295	298
23	Rebuttal Testimony of Maurice L. Arnall		
24	Exhibit No. 27	295	298
25	Tariff sheets		

1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 28	303	304
	Direct Testimony of James C. Watkins		
4	Exhibit No. 29	303	304
5	Rebuttal Testimony of James C. Watkins		
6	Exhibit No. 30	303	304
	Surrebuttal Testimony of James C.		
7	Watkins		
8	Exhibit No. 31	351	355
	Direct Testimony of Bruce R. Chapman		
9	Exhibit No. 32	351	355
10	Rebuttal Testimony of Bruce R. Chapman		
11	Exhibit No. 33	351	355
	Surrebuttal Testimony of Bruce R.		
12	Chapman		
13	Exhibit No. 34	372	*
	Direct Testimony of Steve M. Traxler		
14	Exhibit No. 34HC	372	*
15	Direct Testimony of Steve M. Traxler,		
	Highly confidential		
16	Exhibit No. 35	372	*
17	Rebuttal Testimony of Steve M. Traxler		
18	Exhibit No. 35HC	372	*
	Rebuttal Testimony of Steve M. Traxler,		
19	Highly Confidential		
20	Exhibit No. 36	372	*
	Surrebuttal Testimony of Steve M.		
21	Traxler		
22	Exhibit No. 36HC	372	*
	Surrebuttal Testimony of Steve M.		
23	Traxler, Highly confidential		
24	Exhibit No. 37	401	451
	Response to Motion to Dismiss and		
25	Motion to Establish Docket		

1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 38	402	451
4	Order dismissing application and establishing investigative docket		
5	Exhibit No. 39	404	451
6	Complaint		
7	Exhibit No. 40	450	453
8	Direct Testimony of Jon R. Empson		
9	Exhibit No. 41	450	*
10	Rebuttal Testimony of Jon R. Empson		
11	Exhibit No. 42	481	*
12	Direct Testimony of John W. McKinney		
13	Exhibit No. 43	481	*
14	Rebuttal Testimony of John W. McKinney		
15	Exhibit No. 44	481	*
16	Surrebuttal Testimony of John W. McKinney		
17	Exhibit No. 45	486	487
18	Data Request No. IBEW-9018		
19			
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23			
24	* Ruling Reserved		
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