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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
October 21, 2003
Jefferson City, Missouri
Volume 6

In the Matter of the Application by)
Aquila, Inc. for Authority to Assign,) Case No. EF-2003-0465
Transfer, Mortgage or Encumber Its)
Franchise, Works or System)

RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.

CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
ROBERT M. CLAYTON, III,
COMMISSIONERS.

REPORTED BY:
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P R O C E E D I N G S

JUDGE PRIDGIN: On the record, please.

Good morning. We are resuming the Aquila hearing, Case No. EF-2003-0465. Again, I'm Ron Pridgin, the Regulatory Law Judge assigned by the Commission to preside over this hearing. We're resuming on Tuesday, October 21st, 2003. The time is about 8:35 in the morning.

And we're picking back up with Office of the Public Counsel's office cross-examination of Mr. Rick Dobson. Mr. Micheel, are you ready to proceed?

MR. MICHEEL: I am, your Honor.

JUDGE PRIDGIN: All right. Whenever you're ready, sir.

RICK DOBSON testified as follows:

CROSS-EXAMINATION (RESUMED) BY MR. MICHEEL:

Q. Mr. Dobson, when we left last night we were talking about the concept of fairness. Do you recall that, sir?

A. I do.

Q. And is it your position that the Missouri Public Service Commission owes some duty of fairness to ratepayers in Iowa, Minnesota, Kansas, Nebraska and Michigan?

MR. BOUDREAU: I object. It calls for a legal conclusion.

1 JUDGE PRIDGIN: Could you ask the question
2 again, please.

3 MR. MICHEEL: Sure.

4 BY MR. MICHEEL:

5 Q. Is it your view that the Missouri Public
6 Service Commission owes some sort of duty of fairness to the
7 ratepayers in Minnesota, Iowa, Michigan, Nebraska and Kansas
8 and Colorado?

9 MR. BOUDREAU: Same objection; calls for a
10 legal conclusion.

11 JUDGE PRIDGIN: I'll overrule.

12 THE WITNESS: I believe it's fair from a
13 collateral standpoint, in that all of the states have their
14 different peaks, Missouri's probably being more in the
15 summertime than the winter. That's what I believe.

16 BY MR. MICHEEL:

17 Q. Do you believe that the Missouri Public
18 Service Commission should be concerned about the ratepayers
19 in any other state but Missouri?

20 A. That the Missouri ratepayers should be
21 concerned about the other ratepayers?

22 Q. No. The Missouri Commission should be
23 concerned about ratepayers in any other state but Missouri?

24 A. I don't know from a legal aspect if they
25 should or shouldn't.

1 Q. I'm not asking you from a legal aspect,
2 Mr. Dobson.

3 A. I don't know from a fiduciary duty standpoint
4 if they should or shouldn't. I guess I don't know the
5 answer to that question.

6 Q. That's a perfectly acceptable answer.

7 The final reason that you give in your direct
8 testimony for the Commission to approve this is that the
9 borrowing rate under the facility dropped 75 basis points if
10 Aquila adds additional utility operations as collateral; is
11 that correct?

12 A. Yes.

13 Q. Would you agree with me, Mr. Dobson, that the
14 lower interest rate costs will not be passed on to
15 customers?

16 A. I would agree with you. But the lower
17 interest rate cost will stabilize, be a stabilizing factor
18 in the company as it moves forward with the three
19 positioning plan.

20 Q. Is it correct that Aquila only needs 60 more
21 million dollars of regulated assets to be placed in the pool
22 to achieve the interest rate reduction?

23 A. Yes.

24 Q. Would you agree with me that regulated
25 customers did not get any direct -- do not get any direct

1 benefit from the interest rate reduction?

2 A. Except from a stabilization standpoint, they
3 do not get any direct benefit, but they do get the
4 stabilization of the company.

5 Q. Let's unpack this stabilization of the
6 company. Is it correct that by getting the \$430 million
7 three-year term loan, the company got a stable financial
8 position?

9 A. Yes, a stabler financial condition.

10 Q. And isn't that what Aquila told its investors?

11 A. Yes.

12 Q. And isn't that what Aquila told the rating
13 agencies?

14 A. I believe so. The interest rate, Mr. Micheel,
15 does also add to our stabilization by saving us future cash
16 flows from our operations.

17 Q. And so it's your position that regulated
18 assets should be used to stabilize the Aquila company cash
19 flow; is that correct?

20 A. No. It's my position that the rate reduction
21 would stabilize the company, and that's important.

22 Q. Is the company currently unstable, Mr. Dobson?

23 A. The company currently has adequate liquidity
24 to function.

25 Q. So is the company unstable or is it stable,

1 Mr. Dobson?

2 A. That's very difficult for me to answer,
3 because I don't understand. I don't understand what you
4 mean by the word stable, how you define stable in this
5 instance.

6 Q. Well, let me ask you this. How do you define
7 stable, Mr. Dobson?

8 A. I define stable as a company that has a
9 long-term future that is investment grade.

10 Q. Does this company have a long-term future that
11 is investment grade, Mr. Dobson?

12 A. I don't know at this standpoint.

13 Q. Without the Commission's approval of putting
14 the collateral into the pool, does this company have a
15 long-term future with a investment grade?

16 A. It may.

17 Q. And if the Commission denies Aquila's ability
18 to place the Missouri assets in the pool, that denial is not
19 fatal, isn't that correct, Mr. Dobson?

20 A. I don't know at this point. I would suspect
21 it's not.

22 Q. Well, let me ask you this, Mr. Dobson. When
23 the company did its financial planning, did the company plan
24 for the fact that there was -- there was a possibility that
25 public service commissions in Minnesota, Iowa, Kansas,

1 Missouri and Colorado would deny this application?

2 A. Yes, we did.

3 Q. And what were those plans, Mr. Dobson?

4 A. Those plans were that we would potentially,
5 from a contingency perspective, receive no other state
6 approval.

7 Q. And the company has a financial plan to keep
8 going forward as a going concern even if it doesn't receive
9 approval; isn't that correct, Mr. Dobson?

10 A. It would only be prudent to have a plan like
11 that.

12 Q. And what is that plan, Mr. Dobson?

13 A. I think you just said, that plan -- you said
14 it would -- we had a plan that contemplated not having all
15 the states in. We developed a plan that had that ability to
16 survive. It would be imprudent not to.

17 Q. And so this \$430 million term loan for which
18 the company already has the proceeds, that -- the company
19 can survive whether or not another utility asset is thrown
20 into the pool; isn't that correct, Mr. Dobson?

21 A. For a period of time, yes.

22 Q. Well, this term loan's only for three years;
23 isn't that correct, Mr. Dobson?

24 A. That is correct.

25 Q. So is it your testimony today that

1 irrespective of whether or not any more utility collateral
2 gets thrown into that pool, for at least the next three
3 years Aquila can survive?

4 A. Nobody can say that absolutely, but it's my
5 opinion that we can, yes.

6 Q. And you're the chief financial officer; isn't
7 that correct, Mr. Dobson?

8 A. Yes, I am, Mr. Micheel.

9 Q. And so you would have a pretty good idea about
10 the chances of Aquila's survival, would you not,
11 Mr. Dobson?

12 A. Yes.

13 Q. You would agree with me, would you not,
14 Mr. Dobson, that the term loan does not require approval
15 from the Missouri Public Service Commission?

16 A. Yes.

17 Q. And is it your testimony, Mr. Dobson, that
18 Aquila has no specific plan, no specific financial plan in
19 the event that the Commission or commissions reject Aquila's
20 request?

21 A. Could you clarify that question a little bit?
22 When you say no specific plan should they reject it, what do
23 you mean by that?

24 Q. Well, what I'm trying to understand,
25 Mr. Dobson, is, you've told me a little bit earlier that,

1 well, maybe our liquidity will be affected, our flexibility
2 will be affected if all the assets aren't thrown into the
3 pool from the various states.

4 And my question is, do you have a plan, I
5 mean, other than the fact that you've got \$430 million term
6 loan, if those assets aren't thrown into the pool? Does
7 Aquila have a plan?

8 A. We have contingency plans for that eventuality
9 if that occurs.

10 Q. And what are those contingency plans?

11 MR. BOUDREAU: I'm not sure this is in the
12 form of an objection, but if we're -- I just want to remind
13 the witness that we're in public session. So if any of this
14 is highly confidential, signal me somehow so we can take
15 care of that.

16 THE WITNESS: Yeah. I'm thinking of that as
17 he's asking the questions. Thank you.

18 It's actually very intuitive. What would
19 happen if -- if we were to suffer or we were to predict from
20 a contingency standpoint not to have enough collateral, we
21 would suffer a waterfall or a disposition, mandatory
22 prepayment, to use the words of the agreement. We would
23 then hold back some of our disposition proceeds so that we'd
24 have sufficient liquidity.

25 BY MR. MICHEEL:

1 Q. And is it correct, Mr. Dobson, that Aquila has
2 committed to keeping the 250 and \$180 million separation of
3 the term loan?

4 A. Yes.

5 Q. So is it correct that, in any event, Aquila,
6 if it does not have enough assets in the pool to support the
7 \$180 million nonregulated portion of the term loan, would
8 pay down that term loan?

9 A. Yes.

10 Q. Currently, isn't it correct that Aquila has
11 enough assets in the pool to support the \$250 million
12 portion for regulated utilities in the pool?

13 A. Yes, it's true.

14 Q. And so with respect to that, they would not
15 have to do any sort of mandatory pay down to that \$250 (sic)
16 level; isn't that correct?

17 A. Yes.

18 Q. And isn't it correct with the mandatory pay
19 down, there would be no make-whole premium; isn't that
20 correct?

21 A. That's correct.

22 Q. And if you have to do an optional prepayment,
23 there is a make-whole premium; isn't that correct?

24 A. Yes.

25 Q. And isn't it correct if you have that loan

1 over-collateralized, okay -- and I'm not going to get into
2 the specific numbers -- beyond the 1.67 or 2 times that the
3 company needs, and you only have utility property in there
4 in the pool, and you need to meet the pay down for the 180,
5 isn't it correct that that would be an optional pay down,
6 optional prepayment, Mr. Dobson?

7 A. Mr. Micheel, you've confused me a little bit
8 between what the agreement actually requires us to do and
9 what we've committed to do. Could you unpack that a little
10 for me?

11 Q. Sure. I'm talking about what you've committed
12 to do. Let's assume for the purposes of this question you
13 have \$1.3 billion of regulatory assets in the pool. Can you
14 make that assumption?

15 A. Yes, I can.

16 Q. And let's say you have zero, no unregulated
17 assets in the pool. Can you makes that assumption?

18 A. I can.

19 Q. And it's your testimony that Aquila has
20 committed in that instance to pay down the \$180 million and
21 \$430 million term loan related to nonregulated assets; isn't
22 that correct, Mr. Dobson?

23 A. Yes.

24 Q. And isn't it correct if there's \$1.3 billion
25 of regulatory assets in the pool and Aquila has to pay down

1 the \$180 million related to the nonregulated assets because
2 there are no nonregulated assets in the pool, Aquila would
3 be required to make an optional prepayment; isn't that
4 correct?

5 A. Not per the agreement, but per what we said we
6 would do, yes.

7 Q. And I'm not saying per the agreement,
8 Mr. Dobson, and that's why it would be called an optional
9 prepayment; isn't that right, Mr. Dobson?

10 A. Correct.

11 Q. And so if you are over-collateralized with
12 regulated utility assets in the pool and you have no
13 nonregulated assets in the pool, you will be required, you
14 being Aquila, to make an optional prepayment; is that
15 correct?

16 A. We would do that on our own volition, yes.

17 Q. And that optional prepayment has a make-whole
18 premium associated with that; isn't that correct,
19 Mr. Dobson?

20 A. If we were to do that, yes, it would.

21 Q. And what's that make-whole premium,
22 Mr. Dobson?

23 A. It's a calculation of the remaining interest
24 payments related to the term loan through its maturity date,
25 I believe, of May 15th, 2006, divided by the treasury rate

1 for the appropriate tenure plus 50 basis points.

2 Q. Right on. In other words, you have to make
3 the lender, Credit Suisse/First Boston, Cayman branch,
4 completely whole at that point; isn't that correct?

5 A. Yeah, assuming I didn't leave the cash
6 proceeds from the divestitures that you've hypothetically
7 assumed I made on my regulated property as collateral
8 against the pool.

9 Q. And you could do that, couldn't you,
10 Mr. Dobson?

11 A. I could.

12 Q. And that would reduce Aquila's financial
13 flexibility, wouldn't it, Mr. Dobson?

14 A. I don't know at this point in time.

15 Q. Well, if you have to leave that collateral in
16 the pool, you wouldn't be able to use that collateral to pay
17 down any other loans, would you, Mr. Dobson?

18 A. Potentially.

19 Q. And that would reduce your financial
20 flexibility, wouldn't it, Mr. Dobson?

21 A. It could.

22 Q. I've got a question for you, sir, about your
23 Schedule RD-4. And you've got a list of working capital
24 facilities there from a number of investor-owned utilities;
25 is that correct, sir?

1 A. Yes.

2 Q. Would you agree with me that none of those
3 utilities on that schedule are meeting their working capital
4 needs with a term loan?

5 A. Yes.

6 Q. Would you agree with me that all of those
7 utilities on that schedule are investment grade?

8 A. I believe they are.

9 Q. Would you agree with me that the issuance of
10 secured debt to support peak day working capital
11 requirements is an unusual event?

12 A. I don't know if I would agree with that.

13 Q. Okay. Do you have your direct testimony with
14 you, Mr. Dobson?

15 A. I do.

16 Q. Would you turn to page 14 of your direct
17 testimony, sir. And again, we don't have any line numbers,
18 so I'm looking at the third answer on there, your last
19 sentence there where you say, the issuance of secured debt
20 by utilities is not an unusual event.

21 A. It's not.

22 Q. But is it an unusual event for peak day
23 working capital, Mr. Dobson?

24 A. I don't know.

25 Q. Would you agree with me, Mr. Dobson, that this

1 is the first time in your knowledge that Aquila has had a
2 secured term loan to support its peak day working capital
3 requirements?

4 A. It's a difficult question to answer because
5 the markets evolve, and sometimes they evolve over long
6 periods of time. If, for instance, we were still investment
7 grade and we were to go out into the market and look for a
8 revolving credit agreement and we were to query the market
9 as to what our LIBOR plus rate would be if it was secured or
10 unsecured and the market would come back to me, as it does
11 from time to time, and say, well, Mr. Dobson, it's LIBOR
12 plus 150 unsecured, it's LIBOR plus 50 secured, I may make
13 the decision to secure at that point in time, obviously with
14 the Commission's approval, because it would save me 100
15 basis points of borrowing capacity.

16 Q. That wasn't my question, though, Mr. Dobson.
17 My question was, at any time in your tenure with Aquila,
18 have you or has Aquila secured its peak day working capital
19 with a term loan?

20 A. We have not. I believe during my tenure, even
21 though it's -- I hate to speculate on this -- that the
22 spreads between unsecured and secured have been pretty
23 tight. So that avenue probably wouldn't have been available
24 to us.

25 Q. Let's look at your Q and A there on page 14

1 where you say, but isn't Aquila securing debt because its
2 credit rating has been reduced to below investment grade?
3 Answer: At this point in Aquila's history, that's its only
4 option. Isn't that what you state on page 14?

5 A. Of my direct testimony?

6 Q. Yes, sir.

7 A. Yes.

8 Q. And so aren't you stating right there in your
9 direct testimony the only reason that you are securing the
10 debt, the peak day working capital needs with a three-year
11 \$430 million term loan is that was Aquila's only option?

12 A. At that point in time, it was.

13 Q. At this point in time, is it Aquila's only
14 option?

15 A. I haven't surveyed the market, but I would
16 believe it still is.

17 Q. Is that because Aquila's below investment
18 grade?

19 A. Yes.

20 Q. And is that because, because Aquila's below
21 investment grade, it has absolutely no access to the
22 commercial paper markets?

23 A. That's correct.

24 Q. And generally, it's the commercial paper
25 markets that Aquila has utilized to fund its peak day

1 working capital; isn't that correct, Mr. Dobson?

2 A. No. I believe we used our revolving lines of
3 credit to do that, and then for any surprises on a
4 short-term basis we would use the commercial paper markets.
5 Now we keep excess liquidity in the balance sheet to do
6 that.

7 Q. So a surprise like that you would access the
8 paper markets would be, say, an ice storm?

9 A. Right.

10 Q. But if that surprise has its eventually now,
11 you can't do that, you being Aquila; isn't that correct?

12 A. That's correct.

13 Q. And that's because Aquila's below investment
14 grade; isn't that correct?

15 A. Yes. That's why we rounded it out to 250 in
16 the working capital calculation.

17 Q. Mr. Dobson, is it ever possible for an
18 encumbrance case to affect a change in the company's rates,
19 if you know?

20 A. I don't know.

21 Q. Is it correct that Aquila has separated the
22 \$430 million term loan into two components, \$250 million for
23 regulated and \$150 million for nonregulated?

24 A. Yes.

25 Q. Is it correct that that term loan is attached

1 as Schedule RD-9 to your testimony?

2 A. Yes.

3 Q. Your direct testimony. I'm sorry.

4 A. Yes.

5 Q. Is it correct that the term loan requires a
6 1.67 to 1 coverage ratio for regulated assets?

7 A. Yes.

8 Q. Is it correct that the term loan requires a
9 2 to 1 coverage ratio for unregulated assets?

10 A. The term loan goes through a scenario whereby
11 you have to answer disposition questions to understand what
12 the collateral coverage ratios need to be, and so to answer
13 that question, I have to -- I have to know if we've disposed
14 of our Canadian properties first or our independent power
15 producing properties first.

16 Q. So you can't tell me sitting there today
17 whether it's 2 to 1 or 1.67 to 1?

18 A. I have to know whether -- as I previously
19 said, I have to know, Mr. Micheel, whether the Canadian
20 properties have been disposed of first as the agreement's
21 written or the IPPs have disposed of first. If you'll give
22 me a hypothetical, I will then tell you how the collateral
23 coverage works.

24 Q. All in due time, Mr. Dobson.

25 Let me ask you this, Mr. Dobson. Did I take

1 your deposition on October 7, 2003?

2 A. You did.

3 Q. And I did this wrong yesterday, so let me
4 approach the witness and show him his deposition.

5 I just want you to read that question and
6 answer, or you can read around it.

7 A. And what about other property, what ratio, for
8 example, the peakers, the IPPs? I believe that's also 2 to
9 1.

10 Q. And so when I took your deposition, did you
11 indicate to me that for the peakers and the IPPs, that the
12 coverage ratio was 2 to 1?

13 A. It may be.

14 Q. And then let me show you the next question
15 there, and you can read it on the record or read it to
16 yourself.

17 Now, Mr. Dobson, is it correct that I asked
18 you, so is it your understanding, is it fair to say that
19 under the term loan the collateral value to loan balance
20 ratio is 1.67 to 1 for utility-regulated assets and 2 to 1
21 for all other assets? And you answered, I think that's
22 correct, yes.

23 A. I may be correct in that instance.

24 Q. Is it correct, Mr. Dobson, that the interest
25 rate on the term loan is LIBOR plus 5.75 percent subject to

1 a 3 percent LIBOR floor?

2 A. Yes.

3 Q. So tell me what LIBOR is, Mr. Dobson.

4 A. In its basic terms, it's a commercial interest
5 rate that is widely traded, very liquid, and simulates --
6 this is the way I like to think about it -- it simulates a
7 AA credit.

8 Q. I just wanted to know whether LIBOR stood for
9 London InterBank Rate?

10 A. It does.

11 Q. So you have said in your testimony that the
12 interest rate is currently 8.75 percent; is that correct?

13 A. Yes.

14 Q. And isn't it correct, a more accurate
15 statement would be that that it's the LIBOR interest rate
16 plus 5 percent, plus 5.75 percent, plus a 3 percent LIBOR
17 floor?

18 A. I don't know if I'd say more accurate. It's
19 current 8.75, but the technical definition in the agreement
20 is a LIBOR plus 557 basis points with a LIBOR floor of 300
21 basis points.

22 Q. And that's a variable rate, is it not,
23 Mr. Dobson?

24 A. The LIBOR is a variable rate with a floor,
25 yes.

1 Q. And currently that variable rate is
2 8.75 percent; is that correct?

3 A. Yes.

4 Q. And would you agree with me that under the
5 terms of the agreement, the interest rate floor is
6 8 percent, Mr. Dobson?

7 A. Yes.

8 Q. So that's the lowest interest rate Aquila can
9 get over the life of the three-year term loan; isn't that
10 correct, Mr. Dobson?

11 A. That's correct.

12 Q. Never going lower?

13 A. Yes.

14 Q. Would you agree with me, Mr. Dobson, pursuant
15 to the term loan Section 2.7, that Aquila is required to
16 make a mandatory prepayment when collateral in the pool does
17 not meet the coverage ratios required by the lenders?

18 A. Yes.

19 Q. Is it correct that when Aquila is required to
20 make a mandatory prepayment, it does not have to pay the
21 make-whole premium?

22 A. Yes.

23 Q. Is it correct that pursuant to Section 2.7 of
24 the term loan, Aquila can make optional prepayments of the
25 loan?

1 A. Yes.

2 Q. Is it correct that when Aquila makes an
3 optional prepayment of the loan, it must pay the make-whole
4 premium?

5 A. Yes.

6 Q. Would you agree with me that the optional --
7 that an optional prepayment would occur if Aquila had
8 over-collateralized the term loan?

9 A. Would you repeat the question, please?

10 Q. Sure. Would you agree with me that an
11 optional prepayment would occur if Aquila had
12 over-collateralized the term loan?

13 A. When you say over-collateralized, you mean the
14 term loan had enough collateral that a mandatory prepayment
15 was not required?

16 Q. Yes, sir.

17 A. Then under the agreement, we wouldn't be
18 required to make an optional prepayment.

19 Q. But if you make an optional prepayment, you
20 have to pay the make-whole premium; isn't that correct?

21 A. That's correct.

22 Q. And at any time under the term loan, per your
23 commitment to this Commission, if the nonregulated assets in
24 that pool fall below \$180 million, Aquila's going to make an
25 optional prepayment if they're over-collateralized; isn't

1 that correct, Mr. Dobson?

2 A. That's what we said we'd do, and if they do,
3 we will.

4 Q. Would you agree with me, sir, to meet the
5 1.67 collateral ratio, per the term loan, Aquila must have
6 approximately \$718.5 million utility collateral in the pool
7 or more to meet the full \$430 million collateralization
8 requirements?

9 A. Yes.

10 Q. Would you agree with me for -- just to meet
11 the utility portion of the \$250 million, Aquila merely needs
12 \$417.5 million in the pool of utility collateral?

13 A. Yes.

14 Q. Let me go back to page 11, sir, of your direct
15 testimony where you made this change on the first question
16 and answer there, and I've got a bunch of questions about
17 that change.

18 Is it correct, sir, in making the change in
19 that answer about you may -- Aquila may be required to make
20 a mandatory prepayment there, that in answering that you're
21 making the assumption that Aquila sells its IPPs, sir?

22 A. Would you repeat the question?

23 Q. Sure. Where you say that if the Canadian
24 assets would be sold, the mandatory prepayment may be
25 required in accordance with Section 2.7 of the term loan,

1 the assumption you're making there is, sir, that the IPPs
2 have already been sold; isn't that correct?

3 A. That could be one instance.

4 Q. Or another assumption you're making there is
5 that the peakers are sold; isn't that correct, Mr. Dobson?

6 A. That could be.

7 Q. Because if either the IPPs or the peakers are
8 in the pool at the time Aquila sells its Canadian property,
9 there's no requirement for mandatory prepayment, is there,
10 Mr. Dobson?

11 A. As long as the collateral coverage ratios are
12 met in the agreement, that's correct.

13 Q. And if the peakers and the IPPs were in the
14 pool or just the IPPs or just the peakers were in the pool,
15 Aquila would be meeting that coverage ratio; isn't that
16 correct, Mr. Dobson?

17 A. That's potentially correct.

18 Q. And it's also correct, Mr. Dobson, is it not,
19 the other assumption that you're making there in answering
20 that question is that no other utility collateral has joined
21 that pool; isn't that correct, Mr. Dobson?

22 A. That's correct.

23 Q. Because if other utility collateral hops in
24 the pool, for example Missouri and its \$1 billion worth of
25 assets, and the IPPs are sold and the peakers are sold and

1 Canada's sold, Aquila may be required to make an optional
2 prepayment to meet its commitment to the Commission; isn't
3 that correct, Mr. Dobson?

4 A. Yeah. Effectively Missouri's only putting in
5 60 million the way the agreement's written because
6 everything above the 718 is available for first liens. But
7 if all that happened, Mr. Micheel, that would be correct.

8 Q. And that would be a more accurate way to state
9 that, wouldn't it, Mr. Dobson, because, I mean, there's no
10 where in your testimony where you talk about your
11 assumptions about the IPPs or the peakers or any of that, is
12 there, Mr. Dobson?

13 A. Not that I recall.

14 Q. And so it's a possibility when Aquila sells
15 its Canadian assets that it could be required to either make
16 a mandatory prepayment under the term loan requirement or an
17 optional prepayment under its commitment to this Commission;
18 isn't that correct, Mr. Dobson?

19 A. Well, there are a number of things that could
20 happen that will all be subject to future negotiations
21 potentially of the term loan agreement, and that I could add
22 other unregulated collateral like Everest. I could add
23 merchant receivables. I could add the merchant trade book.
24 I could leave cash in related to the disposition of those
25 projects. There's a lot of things could happen. So it's

1 difficult for me to answer specifically that question.

2 Q. Let's unpack that. Put the merchant trade
3 book in. Do you have counter-parties to those trades, sir?

4 A. I do.

5 Q. Would you have to get approval from those
6 counter-parties to throw those assets into the pool?

7 A. I don't know.

8 Q. Do you think you might?

9 A. We might, in some instances.

10 Q. Does Aquila have any plans to put any of those
11 items that you talked about into its asset pool to support
12 nonregulated assets?

13 A. We may at some point.

14 Q. Is that anywhere in the plan attached as RD-1?

15 A. Not in this plan, no.

16 Q. Is that going to be in the plan that you are
17 formulating, Mr. Dobson?

18 A. I don't know at this point.

19 Q. That's not something you've looked at in that
20 draft plan that you're going to present to the board on
21 November 5th?

22 MR. BOUDREAU: I believe the question's been
23 asked and answered.

24 JUDGE PRIDGIN: I don't know that it was a
25 question. Ask your question again.

1 MR. MICHEEL: My question was, that's not
2 something you're going to look at in the plan that you're
3 going to present to the board on November 5th?

4 JUDGE PRIDGIN: I'll overrule, let him answer.

5 THE WITNESS: It may be. We're in the throes
6 of that right now.

7 BY MR. MICHEEL:

8 Q. How far away is November 5th, Mr. Dobson?

9 A. A couple weeks.

10 MR. BOUDREAU: I think I'm going to object.
11 Is that a serious question? I mean, anybody can take out a
12 calendar and look at it. Is that a serious question? I'm
13 just going to object to it. It's just harassment of the
14 witness.

15 JUDGE PRIDGIN: I'll overrule.

16 BY MR. MICHEEL:

17 Q. Would you agree with me that for nonregulated
18 assets in the pool to support the 180 million Aquila needs
19 \$360 million worth of nonregulated collateral?

20 A. That depends. To add new collateral we'll
21 have to negotiate what the collateral coverage would be. If
22 I decide to leave cash, I would hope I could negotiate
23 something closer to one to one.

24 Q. But that would be subject to negotiations;
25 isn't that correct, Mr. Dobson?

1 A. Yes.

2 Q. And as the term loan is written today, that's
3 the requirement, isn't it, Mr. Dobson?

4 A. The term loan doesn't address those other
5 things I talked about. They'll be negotiated after the
6 fact.

7 Q. I have some examples that I want to take you
8 through. You indicated you wanted some examples,
9 Mr. Dobson, and your wish is my command on that.

10 MR. MICHEEL: Your Honor, this is going to be
11 all highly confidential because we're going to be talking
12 about specific asset pricing pursuant to the bearing point
13 appraisals, and those numbers are all HC. So at this point
14 we're going to need to go into highly confidential.

15 JUDGE PRIDGIN: All right. Let me go off the
16 record just long enough to go off the webcast and ask
17 anybody who is -- ask counsel to please see if there's
18 anybody who doesn't belong to anybody. I don't see anybody,
19 but just in case. So we're going to suspend the webcast
20 here for a moment.

21 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

22 (REPORTER'S NOTE: At this point, an in-camera
23 session was held, which is contained in Volume 7, pages 390
24 through 402 of the transcript.)

25

1 JUDGE PRIDGIN: We're back on the record.
2 Mr. Micheel.
3 BY MR. MICHEEL:
4 Q. Mr. Dobson, is it correct with respect to the
5 merchant contracts that Aquila's trying to sell those?
6 A. No, we're not.
7 Q. And is it Aquila's intention as a company to
8 keep those until their fruition?
9 A. At this point in time, it is.
10 Q. Does Aquila have any intention of selling
11 Everest Communication?
12 A. We do not at this point in time.
13 Q. What about the merchant contracts with
14 counter-parties?
15 A. We don't, but things evolve.
16 Q. So those plans could change?
17 A. Depending on the marketplace, they sure could.
18 Q. Would you agree with me that Aquila has
19 outstanding debt that is higher-cost debt than the term
20 loan?
21 A. Yes.
22 Q. Would you agree with me that Aquila has a
23 fiduciary duty to its shareholders?
24 A. Yes.
25 Q. Would you -- would Aquila be maintaining that

1 fiduciary duty if it kept its commitment to the Commission
2 and paid down its lower-cost debt as an optional prepay
3 because it has no regulated assets in the pool rather than
4 paying down higher-cost debt?

5 A. I don't know that we're going to do that.

6 Q. Well, let's assume you do that. Make that
7 assumption.

8 A. I don't know if I can make that assumption.
9 If it would be not in our fiduciary duty, we probably
10 wouldn't. We'd have to wait at the time we get there. It's
11 a little hard to speculate at this point in time.

12 Q. So if you had lower-cost debt outstanding and
13 higher-cost debt outstanding, you were trying to make the
14 choice, you just had one bundle of money to pay, you would
15 have to rethink which debt you were going to pay down, the
16 higher-cost debt or the lower-cost debt; isn't that correct,
17 Mr. Dobson?

18 A. We'd have to make an evaluation at that point
19 in time, yes.

20 MR. MICHEEL: I need to get another exhibit
21 marked, your Honor. It's going to be Exhibit 49.

22 (EXHIBIT NO. 49 WAS MARKED FOR IDENTIFICATION
23 BY THE REPORTER.)

24 BY MR. MICHEEL:

25 Q. Mr. Dobson, I've handed you what's been marked

1 for purposes of identification as Exhibit 49. It's Public
2 Counsel -- it's Aquila's response to Public Counsel Data
3 Request 520. Do you have that in front of you, sir?

4 A. I do.

5 Q. And have you read that answer, sir?

6 A. I'm reading it. I've read it.

7 Q. Okay. Do you agree with that answer,
8 Mr. Dobson?

9 A. Which part of it?

10 Q. All of it.

11 A. The last sentence could be interpreted
12 different ways.

13 Q. And how is that, Mr. Dobson?

14 A. The last sentence reads, to keep the loan
15 amount intact, we would be forced with either not selling
16 Canada or our IPP portfolio, both of which are key elements
17 to the successful implementation of our restructuring plan.

18 They are both key elements. And under the
19 strict reading of the loan agreement and the way it is,
20 without adding -- without renegotiating additional
21 collateral additions, that's a correct statement. If we
22 sell both those assets with only those three states in, then
23 we would -- we would have a mandatory prepayment event.

24 And to the spirit of that, that's correct.

25 But if you more broadly interpret what we have the ability

1 to do with the loan agreement, then we -- it may not occur.

2 MR. MICHEEL: I'd move the admission of
3 Exhibit 49, your Honor.

4 JUDGE PRIDGIN: Any objections?

5 MR. BOUDREAU: None.

6 JUDGE PRIDGIN: Hearing no objections, Exhibit
7 No. 49 is admitted into evidence.

8 (EXHIBIT NO. 49 WAS RECEIVED INTO EVIDENCE.)

9 BY MR. MICHEEL:

10 Q. Mr. Dobson, when I was discussing Exhibit 48
11 with you, you were looking at a matrix sheet, were you not,
12 sir?

13 A. Yeah, I was looking at a sheet that has a
14 couple of different paths that occur in accordance with the
15 loan agreement, yes.

16 Q. Could I see that sheet?

17 A. Sure (indicating).

18 Q. And what is this sheet, sir?

19 A. It's something that was prepared by the
20 company and -- in connection with how Section 2.7 and
21 various other interrelated sections work in the loan
22 agreement in the event that collateral is being disposed of
23 in the pool.

24 MR. MICHEEL: Your Honor, I'd like to make
25 this sheet an exhibit, if I may. And obviously I don't have

1 copies right now, but could I reserve an exhibit for that
2 and ask Mr. Dobson to allow me to copy this?

3 THE WITNESS: Yes.

4 JUDGE PRIDGIN: Certainly fine with me.

5 BY MR. MICHEEL:

6 Q. Okay. And, Mr. Dobson, is this sheet called
7 Aquila, Inc. Credit Facilities - Payment Analysis?

8 A. Yes.

9 Q. And are you familiar with this sheet?

10 A. I am.

11 Q. And was it created by the Office of General
12 Counsel on August 5th, 2003?

13 A. I believe it was. That's the date on the
14 sheet.

15 MR. MICHEEL: Your Honor, I would move for the
16 admission of Exhibit 50.

17 JUDGE PRIDGIN: Could you describe again that
18 exhibit, please?

19 MR. MICHEEL: Aquila, Inc. Credit Facilities -
20 Payment Analysis.

21 JUDGE PRIDGIN: Any objections?

22 (No response.)

23 JUDGE PRIDGIN: No objections. Hearing none,
24 Exhibit No. 50 is admitted.

25 (EXHIBIT NO. 50 WAS RECEIVED INTO EVIDENCE.)

1 JUDGE PRIDGIN: And, Mr. Micheel, at your
2 earliest convenience, if you could get --

3 MR. MICHEEL: At our first break I will go up
4 and make the copies, your Honor.

5 MR. BOUDREAU: I would like to have Mr. Dobson
6 have that document available to him should he need it to
7 answer any further questions.

8 MR. MICHEEL: Sure.

9 JUDGE PRIDGIN: Certainly.

10 THE WITNESS: I'm okay for now.

11 MR. MICHEEL: I'm not asking any more
12 questions about it.

13 BY MR. MICHEEL:

14 Q. Is it correct, Mr. Dobson, under the first
15 mortgage bond that Aquila cannot make any new first mortgage
16 bond mature during the tenure of the current four-year
17 300-- three-year \$430 million term loan?

18 A. I believe it's correct in connection with
19 Section 6 of the \$430 million loan agreement negative
20 covenant restricts us at this point in time from issuing any
21 new debt with a maturity that's inside six months of May 15,
22 2006. That's correct.

23 Q. At page 6, sir, of your surrebuttal testimony,
24 and I believe -- let's see. That is Exhibit 8. You state,
25 upon completion of the non-core asset sales, there may be

1 some level of excess liabilities. Do you see that, sir?

2 A. Yes.

3 Q. And my question to you is, what is that level?

4 And if it's HC, we'll have to unplug the microphones and do
5 all that.

6 A. It would be HC.

7 JUDGE PRIDGIN: Okay. We'll go off just long
8 enough to stop webcasting and turn off the microphones. Go
9 off the record, please.

10 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

11 (REPORTER'S NOTE: At this point, an in-camera
12 session was held, which is contained in Volume 7, pages 410
13 through 411 of the transcript.)

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1 JUDGE PRIDGIN: We're back on the record.
2 Mr. Micheel -- we just went off the record to get the
3 webcast going again. We went off the webcast briefly for
4 some highly confidential, and we're back in public forum
5 now.

6 Mr. Micheel?

7 BY MR. MICHEEL:

8 Q. Would you agree with me, Mr. Dobson, that
9 there will be no service reductions regarding Missouri's
10 regulated public utilities if the Commission doesn't approve
11 this application?

12 A. Yes.

13 Q. Are you aware, Mr. Dobson, that Aquila has to
14 receive certificates of necessity and convenience from the
15 Missouri Public Service Commission in order to operate in
16 Missouri?

17 A. I wasn't aware of that.

18 Q. Are you aware that in order to increase rates,
19 Aquila has to come to the Missouri Public Service Commission
20 and request a rate increase?

21 A. I was aware of that.

22 Q. Are you aware that Aquila needs to get
23 franchises from various cities and areas to operate in those
24 areas within the state of Missouri?

25 A. I had heard that, yes.

1 Q. Would you agree with me, sir, that since
2 Aquila received the three-year \$430 million term loan,
3 Aquila has resolved the uncertainty regarding its financial
4 position with or without the Missouri assets being placed
5 into the pool?

6 A. For the time being, yes.

7 Q. For the three-year term of that loan; isn't
8 that correct, Mr. Dobson?

9 A. That is my belief, yes.

10 Q. And is that indeed what -- well, let me just
11 make another exhibit. This would be Exhibit 51, and it's
12 going to be Public Counsel Data -- a portion of Public
13 Counsel Data Request 5012.

14 (EXHIBIT NO. 51 WAS MARKED FOR IDENTIFICATION
15 BY THE REPORTER.)

16 BY MR. MICHEEL:

17 Q. Mr. Dobson, I've handed you what's been marked
18 as Exhibit 51 for purposes of identification. That's OPC
19 Data Request 5012, and that is a portion of the response
20 there to that Data Request, and is that the Aquila annual
21 shareholders meeting presentation of June 4th, 2003?

22 A. It appears to be, yes.

23 Q. And could you turn to page 18 of that
24 document, sir?

25 A. I have.

1 Q. And does that document indicate refinancing
2 completed, uncertainty removed?

3 A. Yes.

4 Q. And is that referring to the three-year
5 \$430 million term loan?

6 A. I believe that's the core message, yes.

7 Q. And down at the bottom there it says,
8 refinancing was a key component of financial stability; is
9 that correct, Mr. Dobson?

10 A. Yes.

11 Q. And so when this presentation was done to the
12 shareholders on June 4th, 2003, Aquila was aware that the
13 public service commissions, all of them, could reject
14 placing utility assets into the pool; is that correct,
15 Mr. Dobson?

16 A. Yes.

17 Q. And yet Aquila management was telling its
18 shareholders financially stable, uncertainty resolved; isn't
19 that correct?

20 A. I think in the near term we were saying that,
21 yes.

22 MR. MICHEEL: I would move admission of
23 Exhibit 51.

24 JUDGE PRIDGIN: Any objections?

25 MR. BOUDREAU: None.

1 JUDGE PRIDGIN: Hearing none, Exhibit No. 51
2 is admitted.

3 (EXHIBIT NO. 51 WAS RECEIVED INTO EVIDENCE.)

4 BY MR. MICHEEL:

5 Q. Mr. Dobson, could you tell me who Richard
6 Green is?

7 A. Richard Green's the CEO of Aquila.

8 Q. Is he also the president?

9 A. I don't recall if he's the president. He may
10 be the president, CEO and chairman of the board, actually.
11 I know he's the CEO and chairman of the board.

12 Q. I think you got it right.

13 MR. MICHEEL: Thank you for your time,
14 Mr. Dobson. Really appreciate it.

15 JUDGE PRIDGIN: Mr. Micheel, thank you.

16 Mr. Williams?

17 MR. MICHEEL: If you could just give me a
18 minute.

19 JUDGE PRIDGIN: Certainly.

20 MR. MICHEEL: Sorry for the delay, your Honor.

21 JUDGE PRIDGIN: No problem.

22 CROSS-EXAMINATION BY MR. WILLIAMS:

23 Q. Good morning, Mr. Dobson.

24 A. Good morning.

25 Q. My name is Nathan Williams and I'm appearing

1 for the Staff. I believe we've met before.

2 A. We have.

3 Q. Earlier Mr. -- or yesterday Mr. Micheel asked
4 you regarding the plan that you had attached as a schedule
5 to your testimony as RD-1.

6 A. Yes.

7 Q. And it's my understanding that there have been
8 some events that have not occurred in accordance with the
9 projections in that plan and that, based on your responses
10 to Mr. Micheel yesterday, that you're in the process of
11 formulating or have formulated some modifications to that
12 plan that you intend to present to your board of directors?

13 A. Yes. We got more -- we sold our Australian
14 assets faster for more money than we thought, and we settled
15 the Acadia transaction for less of a price and faster than
16 we thought. Some of the other dates will probably move,
17 too, but we are in the process of forming another plan
18 around this core plan.

19 Q. And as I understood your response yesterday,
20 you indicated that you weren't going to divulge any
21 information about the change plan to this Commission because
22 you didn't want it to believe that if the board adopted a
23 different plan, that there was a vacillation of that plan
24 the company's proposing?

25 A. I did say that. I would like this Commission

1 to get the final plan so that it can evaluate in the most
2 efficient manner it possibly can what we're planning to do.
3 As Mr. Micheel represented, that will happen very quickly.

4 Q. Would Aquila then make that plan available
5 once its board of directors has approved it?

6 A. Yes.

7 MR. WILLIAMS: I'd ask that an exhibit be left
8 open for a late-filed exhibit, being that financial plan,
9 once the board of directors of Aquila has approved it.

10 JUDGE PRIDGIN: Mr. Boudreau?

11 MR. BOUDREAU: I have some concerns about -- I
12 guess my concern's more timing than the concept. Presumably
13 at the close of this record we'll commence with the briefing
14 schedule, aiming ultimately towards a decision. And what I
15 don't know is how long does that hold open the record
16 before.

17 MR. WILLIAMS: Maybe I could ask the question.

18 MR. MOLTENI: Your Honor, I'm going to object.
19 Not that I want to make my colleague's life difficult, but I
20 think Aquila has to live or die with this application with
21 what they filed.

22 JUDGE PRIDGIN: Mr. Williams, did you want to
23 inquire of the witness when and if this --

24 MR. WILLIAMS: When he anticipates the board
25 of directors may approve the plan?

1 JUDGE PRIDGIN: Right.

2 THE WITNESS: It has the possibility to be
3 very shortly after November 5th, but it could be a little
4 bit longer. They may want some time after the presentation
5 to approve it. But I would anticipate within a reasonable
6 time thereafter.

7 BY MR. WILLIAMS:

8 Q. When are you planning on making the
9 presentation?

10 A. November 5th.

11 JUDGE PRIDGIN: If I understood, Mr. Boudreau,
12 you're not necessarily going to object to the document
13 coming in?

14 MR. BOUDREAU: Well, I'm not sure that the --
15 that I have any problem with having the document presented
16 to the Commission in some fashion. Whether or not it should
17 be made an exhibit in this case is problematic, in the sense
18 that the company has prepared and filed the case that it's
19 prepared. And I'm concerned that by making it an exhibit it
20 will be taken as some sort of amendment of the company's
21 application, and it wouldn't be,

22 So I'm trying -- I think I'm troubled by the
23 concept of making -- at some point providing the plan to the
24 Staff or to the Commission in some sort of fashion, but
25 whether or not to make it an exhibit in this case, I think I

1 do have a problem with making it an exhibit in this case,
2 because it's just sort of coming in in the abstract, and I'm
3 not sure what meaning it has for the issue that's before the
4 Commission in this case.

5 JUDGE PRIDGIN: Mr. Boudreau, I guess could
6 you state your objection and give me a legal objection, or
7 do you have a legal objection?

8 MR. BOUDREAU: Can I confer for a moment?

9 JUDGE PRIDGIN: Certainly.

10 MR. MICHEEL: Your Honor, while we have a
11 break, I've had copies made of Exhibit 50. I'd like to
12 distribute those and provide Mr. Dobson his copy back.

13 JUDGE PRIDGIN: That's fine. Thank you.

14 MR. BOUDREAU: Let me state the objection in a
15 more formalistic, legalistic form. I would object to the
16 admission of the exhibit on the grounds it's really not
17 relevant to the case that's before the Commission.

18 That is, the application is for approval by
19 this Commission of the company's plan to encumber its
20 properties to support the first mortgage funds. It's not
21 for approval of a financial plan, and therefore, the
22 financial plan or the new revised updated financial plan
23 isn't relevant to this proceeding.

24 JUDGE PRIDGIN: Mr. Molteni, your legal
25 objection, if any?

1 MR. MOLTINI: My objection is that it exceeds
2 the scope of the application, and if Aquila wants to
3 incorporate that as the record, I think they ought to
4 withdraw their application and refile with their new
5 financial plan.

6 JUDGE PRIDGIN: I'll sustain Mr. Boudreau's
7 objection, and obviously that's something that Staff can get
8 to with a Data Request at a later time. I don't think that
9 there's any problem with the Commission getting that
10 information. As far as making it a part of this case and
11 leaving the record open --

12 MR. BOUDREAU: I don't want to suggest that
13 the company's opposing providing the information to the
14 Commission in some fashion, but I do object to it being made
15 an exhibit for the reasons I've stated.

16 JUDGE PRIDGIN: All right.

17 BY MR. WILLIAMS:

18 Q. Mr. Dobson, I'd like to turn your attention
19 back to Schedule RD-1. Was that plan approved by your board
20 of directors?

21 A. I believe it was.

22 Q. And did management request that the board of
23 directors approve that plan?

24 A. We reviewed the plan with the board and we --
25 if I recollect correctly, we did ask them to approve moving

1 forward with this type of plan, yes.

2 Q. Did you provide options to the board at the
3 time you presented RD-1?

4 A. We did not put any formal options out at that
5 point in time, but we did discuss the fact that the plan
6 would evolve, it's a changing marketplace, and that we would
7 come to them periodically, like in November, with updates to
8 the plan as the market changed and we made changes in the
9 course of the direction of the core plan.

10 Q. So is it my understanding that RD-1 was the
11 only plan that the management presented to the board and the
12 board accepted that plan?

13 A. That's correct.

14 Q. Does the board typically accept the
15 recommendations that its management makes to it?

16 A. To my recollection, with my short stay on the
17 senior management team, it has.

18 Q. Do you have any reason to believe that the
19 plan, the revisions to the plan that you anticipate
20 presenting to the board would be rejected by it?

21 A. I don't.

22 Q. And with the understanding that the board has
23 not approved those revisions, do you object to telling this
24 Commission what those revisions are?

25 A. They haven't been finalized at this point in

1 time.

2 Q. What happens if the Missouri Public Service
3 Commission grants Aquila's application and Aquila fails to
4 keep its commitments to the Commission that it's making in
5 that application?

6 A. We will keep our commitment.

7 Q. I'm asking what happens if you don't?

8 A. What happens from what perspective?

9 Q. Aquila's made a commitment to keep collateral
10 separated so that there's at least collateral coverage for
11 the 250 million in utility assets. What happens if Aquila
12 fails to keep the collateral separated?

13 A. With respect to the loan agreement or --

14 Q. I don't think it has anything -- impact on the
15 loan agreement, does it?

16 A. I don't think it does either. With respect to
17 our -- the fact that our word is --

18 Q. With respect to anything.

19 A. It's too broad for me to answer. I can answer
20 from this perspective. We said we would do that and we will
21 do it.

22 Q. Didn't you borrow money from Citicorp on a
23 revolver and make commitments to keep certain collateral
24 coverages?

25 A. I don't recall. I wasn't involved in the

1 consummation of that borrowing, only the refinancing of it.

2 Q. It was probably debt to equity ratio
3 coverages. Do you have any familiarity with that?

4 A. I am familiar with the fact that we had
5 certain covenants in that arrangement, yes.

6 Q. And was one of those covenants to maintain a
7 certain debt to equity ratio?

8 A. It may have been.

9 Q. Do you know why Aquila went into default on
10 that loan?

11 A. We were in the default -- we were in default
12 of certain covenants. I believe the debt to equity was one
13 of the covenants. To be perfectly sure, I'd have to kind of
14 refresh my memory on our 10K, but I believe that's correct.

15 Q. And didn't Aquila enter into that agreement
16 making a commitment to maintain a certain debt to equity
17 ratio?

18 A. We did.

19 Q. And you didn't do that, did you?

20 A. We did everything in our power to possibly do
21 it.

22 Q. Is the sole basis for Aquila's position that
23 its application should be granted that doing so would impact
24 neither the rates charged nor the service quality provided
25 to Missouri utility customers?

1 A. I believe that's correct.

2 Q. Would encumbering Aquila's Missouri assets
3 with a \$430 million three-year term loan entail no risk to
4 Aquila's Missouri utility customers?

5 A. I don't believe it would.

6 Q. Why not?

7 A. It won't have any impact on our liquidity. It
8 won't have any impact on the rates they're charged, and it
9 won't have any impact on the level of service and the
10 quality of service that we provide.

11 Q. If Aquila defaults on the three-year term
12 loan, what would happen?

13 A. That's difficult for me to say at this point
14 in time. If we would default -- and I'm not an attorney by
15 any stretch of the imagination -- I imagine we would
16 cross-default some other agreements. I'm not sure what
17 would happen after that.

18 Q. If Missouri utility assets are put into the
19 collateral pool, won't the lenders on the \$430 million term
20 loan have rights with respect to those assets?

21 A. I believe they would.

22 Q. And don't those rights with respect to those
23 assets create risk for Aquila's Missouri utility customers?

24 A. I don't think they do, but I'm not an
25 attorney, so it's very difficult for me to make that

1 positive assertive assessment.

2 Q. What is Aquila's total outstanding debt as of
3 this date, approximately?

4 A. About \$3 billion, I believe.

5 Q. And what was Aquila's total outstanding debt
6 on April 12, 2003, approximately?

7 A. I believe it was about the same amount.

8 Q. Why hasn't Aquila reduced its outstanding debt
9 since April 12, 2003?

10 A. Primary I have hesitated from entering into a
11 debt reduction program at this point in time until we clear
12 the winter.

13 Q. Why is that?

14 A. Even though we have a model that predicts
15 where our liquidity spike will be, we've never actually
16 completed a whole winter from a non-investment rate status.
17 And to make sure that we have the liquidity to provide safe
18 and reliable service and for the stability of the company,
19 it is my opinion, I think opinion of the company, that it's
20 prudent to keep that liquidity on our balance sheet through
21 the winter before we make any debt reductions.

22 Q. What is Aquila's debt rating?

23 A. It's a split rating between Moody's and S&P.

24 Q. What is it currently?

25 A. I believe Moody's has us rated at CCC and S&P

1 at B.

2 Q. Have you characterized that as a high yield
3 junk rating?

4 A. I think I've characterized it as a high yield,
5 and I may have characterized it as the slang term of junk,
6 yes.

7 Q. What was the external source of funds that
8 Aquila was using to support its working -- the working
9 capital needs of its U.S. domestic utility operations before
10 it executed the \$430 million three-year term loan?

11 A. It was relying on the \$650 million revolver.

12 Q. When was that \$650 million revolver executed?

13 A. I don't recall the exact date, but I believe
14 it was sometime in early 2002.

15 MR. WILLIAMS: Judge, may I approach the
16 witness?

17 JUDGE PRIDGIN: You may.

18 BY MR. WILLIAMS:

19 Q. I'm going to hand you what's been marked as
20 Exhibit 24 for identification. Would you please take a look
21 at that exhibit.

22 A. I have.

23 Q. Is that a Data Request response that was made
24 by Aquila, in particular by Mark Reed?

25 A. Yes.

1 Q. Are you familiar with Mr. Reed?

2 A. I do know Mark.

3 Q. Who is he?

4 A. He's an employee of Aquila that works in the
5 regulated side of our business.

6 Q. Do you have any reason to doubt the work that
7 he's done in response to this Data Request?

8 A. I do not.

9 Q. Are you familiar the information that's
10 contained in that Data Request?

11 A. I haven't seen this type of information
12 exactly in this format, but I have seen this type of
13 information before.

14 Q. Can you show where on -- it's my understanding
15 that this Data Requests lists the debt instruments that were
16 allocated to Aquila's regulated operations. Is that
17 correct?

18 A. I believe that's correct.

19 Q. And do you believe that all of Aquila's debt
20 is properly allocated in the responses provided?

21 A. I do.

22 Q. Could you show me where on this document, this
23 response, the \$650 million credit facility that you've been
24 referring to is?

25 A. I don't see the short-term revolving credit

1 facility on this long-term debt assigned matrix that you've
2 handed out.

3 Q. Are you telling me that not all of the debt
4 that was assigned to the utilities is reflected on this
5 document?

6 A. I don't believe I'm saying that.

7 Q. Well, you just told me you don't see the
8 short-term debt.

9 A. I don't see the revolving facility, no.

10 Q. And as of December 2002, that facility should
11 have been in place, should it not?

12 A. Yes.

13 Q. Do you see anything else on this sheet that's
14 not there?

15 A. I believe the assignment of debt to the
16 utilities for ratemaking purposes -- and I'm not an expert
17 on this. Jon Empson is -- is the format that this addresses
18 here, and that when it comes to ratemaking purposes and
19 long-term capital structure assignments, this is a complete
20 document, to the best of my knowledge.

21 What I'm not sure about and what Jon Empson
22 would be sure about is whether we even allocate from a
23 ratemaking perspective the short-term borrowing costs of
24 that facility, since in most likelihood they're fairly small
25 in the ratemaking process. But I'm not an expert in that

1 area.

2 MR. WILLIAMS: I'd like to offer Exhibit 24.

3 JUDGE PRIDGIN: I'm sorry, Mr. Williams. This
4 has already been premarked as Exhibit 24?

5 MR. WILLIAMS: Yes, premarked exhibit.

6 JUDGE PRIDGIN: Any objections?

7 MR. BOUDREAU: No objection.

8 JUDGE PRIDGIN: Hearing none, Exhibit No. 24
9 is admitted.

10 (EXHIBIT NO. 24 WAS RECEIVED INTO EVIDENCE.)

11 BY MR. WILLIAMS:

12 Q. Let's turn back to the Citicorp \$650 million
13 short-term facility. When did Aquila borrow all the funds
14 that it could from that facility?

15 A. I don't recall the exact date, but I believe
16 in the fall of 2002 we completely drew down the facility.

17 Q. Why?

18 A. I don't recall the decision at that point in
19 time. I wasn't in this capacity.

20 Q. When did Aquila go in default on that
21 facility?

22 A. I don't recall the exact date at this point in
23 time.

24 Q. To the best of your knowledge?

25 A. We -- I don't know if I would -- and this is

1 where I'm drawing on my memory. I don't know if I would use
2 the term default. We requested a waiver in November of 2002
3 with respect to some covenants that we were violating, and
4 we received that waiver, I believe, through April 12th of
5 2003 from the various institutions involved in that
6 facility.

7 Q. When did you violate those covenants that
8 required you to seek a waiver?

9 A. It would have been, if my recollection's
10 correct, in the third quarter of 2002, but I could be wrong
11 about that.

12 Q. Did Aquila voluntarily violate those
13 covenants?

14 A. No, it did not.

15 MR. WILLIAMS: May I approach the witness?

16 JUDGE PRIDGIN: You may.

17 BY MR. WILLIAMS:

18 Q. I'm handing you what's been premarked for
19 identification as Exhibit No. 25.

20 A. I've taken a review of this document.

21 Q. Was that document prepared by a Mr. Steve
22 Fischer?

23 A. It was.

24 Q. Is he an employee of Aquila?

25 A. He is.

1 Q. And as part of that response to a request that
2 was made by the Staff of Aquila, would you turn to page 3 of
3 that. And in the row that's labeled short-term debt, does
4 it show zeros across for the years 1998 through 2007?

5 A. I'm sorry.

6 Q. The last page of the exhibit, very last page,
7 there's a table.

8 A. Oh, yeah. I'm sorry. Yes, it does.

9 Q. Does that reflect target capitalization by
10 state jurisdiction?

11 A. I believe it does.

12 Q. And does it show short-term debt for the years
13 '98 through 2007 to be zero?

14 A. It does.

15 Q. And in particular does it show that the
16 short-term debt target for Missouri's utility operations to
17 be zero for that period of time?

18 A. It does.

19 Q. Is that correct?

20 A. In the context of ratemaking in this format,
21 that is correct.

22 Q. In what context would it not be correct?

23 MR. BOUDREAU: I guess I'm going to object to
24 the form of the question. It seems like he's been asked a
25 double negative.

1 JUDGE PRIDGIN: I'll overrule.

2 THE WITNESS: In this instance, on this
3 schedule, short-term debt is a zero percentage, and that was
4 the meaning of my answer.

5 MR. WILLIAMS: I'd like to offer Exhibit 25.

6 JUDGE PRIDGIN: Exhibit 25 has been offered.
7 Any objections?

8 MR. BOUDREAU: No objection.

9 JUDGE PRIDGIN: Hearing none, Exhibit 25 is
10 admitted.

11 (EXHIBIT NO. 25 WAS RECEIVED INTO EVIDENCE.)

12 BY MR. WILLIAMS:

13 Q. Mr. Dobson, is Aquila in default on a
14 construction loan that it entered into in connection with
15 the construction of an Aries plant in Missouri?

16 A. I believe it is.

17 Q. Do you know when Aquila went into default on
18 that loan?

19 A. I don't recall the exact dates, but I believe
20 it was around the end of July of 2003.

21 Q. Did Aquila voluntarily go into default on that
22 loan?

23 A. I don't recall.

24 Q. Do you know how much Aquila owes on that loan?

25 A. I don't recall the exact number, no, I don't.

1 Q. Do you know approximately?

2 A. It would be very difficult for me to
3 speculate. Maybe 100, 120 million, something like that.
4 Very fuzzy right now on that.

5 Q. I'm going to turn your attention to the
6 treasury account. What safeguards has Aquila proposed to
7 this Commission to ensure that the balance in the treasury
8 account where it's placed the proceeds for the \$430 million
9 three-year term loan will not drop below \$250 million?

10 A. What controls have we put in place to ensure
11 that the cash -- I'm rephrasing your question to make sure I
12 have it right -- the cash or the liquidity in the treasury
13 account does not drop below \$250 million?

14 Q. I think that accurately --

15 A. Is that an accurate depiction of your
16 question?

17 Q. Yes.

18 A. I don't -- I don't think we -- it's not my
19 intention to make sure that the cash balance in that account
20 stays at 250 or above. I believe the cash balance could
21 drop below that.

22 Q. How much will the balance in the treasury
23 account increase if this Commission grants Aquila's
24 application in this case?

25 A. It will not change.

1 Q. What is the current balance in that treasury
2 account?

3 A. Which treasury account? Can you be more
4 specific? We have a number of treasury accounts; domestic,
5 foreign, consolidated.

6 Q. The treasury account where you placed the
7 \$430 million. And could you identify what account that is?

8 A. The Northern Trust account.

9 Q. And what is the balance in that account now?

10 A. I don't recall what it is today. I know an
11 approximate number that's --

12 Q. Go ahead and give that approximate number.

13 A. -- from last Friday. 475 million, I believe.

14 Q. What interest rate is Aquila charging to its
15 U.S. domestic utility divisions for their borrowings from
16 that account?

17 A. When the U.S. utility needs working capital
18 funds on a short-term base, it's being charged the
19 short-term BBB investment grade rate. We derive that from
20 the Bloomberg system.

21 Q. Do you know approximately what that rate would
22 be today?

23 A. I would speculate, and I hate do it, but in
24 this case approximately 3 percent.

25 Q. Are Aquila's shareholders absorbing the

1 difference between that rate and the current 8.75 percent
2 rate of the \$430 million three-year term loan?

3 A. Yes.

4 Q. What are all the sources of the funds that are
5 in the -- make sure I get this right -- Northern Trust
6 account?

7 A. The sources of the funds that are in that
8 account?

9 Q. Yes.

10 A. It's a whole host of sources, but to the best
11 of my recollection it would be a combination of operating
12 cash flows from our various operations less capital
13 expenditures, primarily related to the -- almost solely
14 related now to the domestic utility, other operating
15 expenses such as interest cost and things like that we
16 deduct from our operating cash flow, plus proceeds from
17 asset divestitures, less any maturities that would be due on
18 a short-term basis.

19 Q. Is the Northern Trust account limited to
20 Aquila's utility operations or does it encompass funds from
21 other activities as well?

22 A. It does.

23 Q. Which?

24 A. It encompasses funds from our consolidated
25 operations in North America.

1 Q. Are you familiar with Aquila's working cash
2 study, its peak day working cash study that it's relying on
3 to support its claim that its U.S. domestic utility
4 operations have peak day working capital needs of
5 \$250 million?

6 A. I'm familiar.

7 Q. What was your role with respect to that study?

8 A. I supervised it, saw the output.

9 Q. Did you request that it be performed?

10 A. I was involved in discussion to have that
11 performed so we'd understand what our liquidity peaks are
12 from a management perspective, yes.

13 Q. When did Aquila begin work on that study?

14 A. I don't know the exact date, but we began that
15 type of process to understand our peak working capital needs
16 really in the winter of 2002 and 2003. Did I say that
17 right? I think I did.

18 Q. When did that study first produce any results?

19 A. I don't recall the date.

20 Q. Do you recall approximately when?

21 A. I don't.

22 Q. Do you know when the study was completed?

23 A. I don't recall the date right now. Sometime
24 early in 2003.

25 Q. Would it have been before April 30th of 2003?

1 A. I believe it would have been, yes.

2 Q. Would it have been before April 12th of 2003?

3 A. It may have been. I don't recall the exact
4 day.

5 Q. Would it have been before April 1st of 2003?

6 MR. BOUDREAU: This may be leading somewhere,
7 but I'm having trouble figuring out where it may be. I'm
8 going to object on the grounds that the question's been
9 asked and answered about a half dozen times now, that he
10 doesn't know precisely.

11 If there's something to refresh his memory,
12 I'd suggest that maybe it be offered, but otherwise I'm
13 going to object to continuing down this road.

14 MR. WILLIAMS: I'm just trying to narrow down
15 the date when this study was completed.

16 JUDGE PRIDGIN: I'll overrule, but if he
17 doesn't know, he doesn't know.

18 MR. WILLIAMS: I understand that.

19 JUDGE PRIDGIN: Okay.

20 BY MR. WILLIAMS:

21 Q. Do you know if the study was completed before
22 April 1 of 2003?

23 A. I don't. I'd have to go back to -- I have to
24 go back to my computer, which I think I've saved a version
25 of this study on, and look at the date that it was sent to

1 me. But I don't recall at this point in time.

2 Q. You said a version of the study. Then there
3 were different studies; there were modifications performed
4 to the study at different times?

5 A. I'm sorry. I misspoke. I meant the study. I
6 was e-mailed this study.

7 Q. Does the study include capital needed for
8 construction?

9 A. I don't believe it does.

10 Q. Where does Aquila's money for capital
11 construction come from?

12 A. It will come from a combination. Primarily
13 from operating cash flow, and in the shorter term from
14 divestiture proceeds of our unregulated assets and to some
15 extent from the \$430 million loan. It will be a combination
16 of those areas.

17 Q. And in particular, to narrow this down a
18 little bit, where would construction -- or where would
19 capital for construction that might take place for Aquila's
20 Missouri operations come from?

21 A. That same pool of cash.

22 Q. Did Aquila also do a study for its working
23 capital needs for its non-utility operations?

24 A. Not that I recall.

25 Q. Why not?

1 A. The -- the amount of volatility left in our
2 nonregulated operations is not nearly as significant as it
3 is related to our regulated operations.

4 Q. Did Aquila make a due diligence inquiry into
5 the creditworthiness of the lenders from whom it borrows
6 money, such as the \$430 million three-year term loan?

7 A. You mean the institutions that invested in the
8 \$430 million note? Like the various hedge funds of other
9 institutions, investigating them, is that what you're
10 referring to?

11 Q. Let's start with that.

12 A. The paper is basically what I would call a
13 fairly liquid paper that's traded in the marketplace, and
14 it's sold to -- counterparts are willing to lend us money,
15 and I don't believe we did investigate their
16 creditworthiness.

17 It would be very difficult for us to do that,
18 since that paper changes hands in the marketplace as we
19 speak. It's actually not a concern of ours, since they've
20 given us the money. It's more a concern of theirs about our
21 creditworthiness.

22 JUDGE PRIDGIN: I'm sorry, Mr. Williams. Do
23 you have an idea about how much longer your line of
24 questioning will go? I'm just trying to think of a natural
25 place to break, if possible, and if not --

1 MR. WILLIAMS: If you want to break now,
2 that's fine.

3 JUDGE PRIDGIN: Okay. Let's go ahead and take
4 a break. I show a little after 10:20 on the clock on the
5 wall. Let's try to come back around 10:30 or so.

6 We are off the record.

7 (A BREAK WAS TAKEN.)

8 JUDGE PRIDGIN: We're back on the record.
9 Mr. Williams, if you would continue your questioning,
10 please.

11 MR. WILLIAMS: Thank you.

12 BY MR. WILLIAMS:

13 Q. Mr. Dobson, what I'm asking is directed more
14 to the lenders and the assurances that you're going to
15 actually receive loan proceeds. So my question is, does
16 Aquila make a due diligence inquiry of creditors whenever
17 it's borrowing funds to assure that it's actually going to
18 receive those funds?

19 A. We do.

20 Q. And I'm going to go back to the \$650 million
21 revolving line of credit with Citicorp. Staff understands
22 that Aquila had a revolving line of credit with Citicorp
23 that was replaced with all or part of the \$430 million
24 three-year term loan; is that correct?

25 A. Yes. We used -- we used part of the 430 to

1 retire the 650, what was left of the \$650 million revolver.

2 Q. What was left of the \$650 million revolver?

3 A. Somewhere around approximately \$380 million, I
4 believe.

5 Q. That had been paid down in part with proceeds
6 from something else?

7 A. It had been paid down in part with proceeds
8 from Essingers (phonetic spelling).

9 Q. What was Citicorp's creditworthiness whenever
10 you entered into that \$650 million line of credit with them?

11 A. I don't recall the creditworthiness at the
12 time we did the deal, but at the time of my tenure, I
13 believe they're either A or AA rated.

14 Q. Is that investment grade?

15 A. Yes, it is.

16 Q. And what was the creditworthiness of the
17 lenders on the \$430 million three-year term loan when it was
18 initially executed? Were they also investment grade?

19 A. I don't know.

20 Q. Did anyone make an inquiry as to that on your
21 behalf, Aquila's behalf?

22 A. We didn't need to.

23 Q. Why not?

24 A. They were giving us the funds. We just needed
25 to have the -- we just needed to have the understanding that

1 our Credit Suisse/First Boston could place the placement. I
2 don't know the creditworthiness of all the people behind the
3 senior debt that we've issued over the years either. Some
4 of them are just individuals, but I have their money.

5 Q. Let me step back to the working capital study
6 that was done for the regulated operation -- or utility
7 operations peak day needs. Was that study used to determine
8 the amount of borrowing the \$430 million with the three-year
9 term loan?

10 A. I believe it was -- it was more driven towards
11 to give us an understanding of what our peak day wintertime
12 or our peak day working capital needs would be. It so
13 happens it ended up being in the wintertime.

14 Q. I understand why the study was performed to
15 determine what your peak day working capital needs were for
16 your utility operation. What I'm asking is whether or
17 not -- or how that study was used for determining to borrow
18 \$430 million?

19 A. That would have been a component in the
20 thinking, if I recall correctly.

21 Q. In what fashion?

22 A. To understand what the level of borrowing
23 should be.

24 Q. Did Aquila have any limitations from FERC on
25 what its borrowing should be?

1 A. It did.

2 Q. And what was that limitation?

3 A. I believe it was 430 million.

4 Q. Couldn't Aquila have sought additional
5 authority from FERC to borrow additional amounts?

6 A. We could have.

7 Q. But you didn't seek that authority, did you?

8 A. It could have -- it may have taken too much
9 time for us to get it done, relative to the maturity date of
10 the revolving line of credit.

11 Q. But you didn't seek that additional authority,
12 did you?

13 A. We did not.

14 Q. Do you know what your peak working capital
15 needs are of your non-utility operations?

16 A. I don't.

17 Q. When Aquila solicited the lenders for the
18 \$430 million three-year term loan and associated first
19 mortgage bonds, was that offering oversubscribed?

20 A. Yes.

21 Q. What was the total aggregate amount that the
22 lenders offered to Aquila?

23 A. I don't recall, but it was a multiple of the
24 times of the borrowing.

25 Q. How large of a multiple of the times of the

1 borrowing? Are we talking about a billion dollars?

2 A. Three or four times, I think oversubscribed.

3 Q. So a billion or in excess?

4 A. Yeah. I think it was in excess of a billion
5 dollars, if I recollect correctly.

6 Q. Why didn't Aquila seek to increase its
7 borrowing for \$430 million if lenders were willing to lend
8 Aquila roughly a billion on those terms?

9 A. I think the timing was such that we didn't
10 feel like we had the time to do that.

11 Q. What impediment was there that created a time
12 issue?

13 A. The maturity date of the \$650 million revolver
14 of 2003.

15 Q. We discussed earlier that you only had
16 existing FERC authority to borrow \$430 million. Did Aquila
17 have any reservations about its ability to increase that
18 limit?

19 A. We just felt we couldn't get it done in time.

20 Q. Could you identify each of Aquila's IPPs and
21 peakers?

22 A. I could not without some help from our --
23 either our 10K or some other information. I could do the
24 peakers, but the IPPs, they're too numerous for me to get
25 all right at one time.

1 Q. Go ahead and identify the peakers.
2 A. Peakers in the way I define them, there's
3 Racoon Creek, Goose Creek and Crossroads.
4 Q. Where's the Racoon Creek peaker located?
5 A. I believe that's in Illinois.
6 Q. Goose Creek?
7 A. Illinois.
8 Q. And I'm sorry. What was the third?
9 A. Crossroads.
10 Q. And where's that located?
11 A. I believe it's in Mississippi.
12 Q. And could you give its fair value for purposes
13 of collateral for the \$430 million three-year term loan?
14 And that could be based on your opinion if you don't have an
15 analysis from elsewhere, but I would like for you to
16 identify that it is your opinion.
17 A. I don't have an opinion at this point in time.
18 I don't have that level of expertise to make that assessment
19 of what the fair value is related to those assets. I know
20 that their cost basis is 500 million in aggregate,
21 approximately.
22 Q. What do you mean by cost basis?
23 A. Cost to construct those three facilities was,
24 in aggregate, approximately \$500 million.
25 Q. Do you know if the Iowa Staff or Commission

1 was aware of any of the changes to the plan that you have
2 set out in Schedule RD-1?

3 A. I don't.

4 Q. And in response to a question from
5 Mr. Micheel, I believe you used the word tenure in
6 connection with the three-year term loan. Could you define
7 what that term means in the sense that you used it?

8 A. It means the duration of time until the
9 maturity of the three-year term loan.

10 Q. Do you have Ms. Lownds' testimony available to
11 you?

12 A. I don't.

13 MR. WILLIAMS: May I approach?

14 JUDGE PRIDGIN: You may.

15 BY MR. WILLIAMS:

16 Q. I'm handing you what's been marked as
17 Surrebuttal Schedule CL-8, which is an attachment to the
18 testimony of Ms. Lownds that's been filed as -- I believe
19 it's Exhibit 3.

20 A. I've reviewed the document.

21 Q. Do you see a reference in there to a
22 \$190.3 million working capital facility?

23 A. I do.

24 Q. Was that working capital facility used to
25 support Aquila's working capital needs for both its utility

1 and non-utility operations?

2 A. I believe this document says it was.

3 Q. Were there other working -- were there other
4 facilities that Aquila also used to supply its working
5 capital needs at the time it had this \$190.3 million
6 facility?

7 A. I don't believe there were other facilities
8 like this, no.

9 Q. Well, you earlier referred to a \$650 million
10 line of credit from -- revolving line of credit from
11 Citicorp?

12 A. Uh-huh.

13 Q. Is this something different from that?

14 A. It's not. This is what's left of a two-piece
15 325 million three-year tranch and a 325 million one-year
16 tranch after the waterfalls of -- the waterfalls of the
17 various divestiture proceeds that we agreed to after the
18 default in November of 2002.

19 Q. Could you restate that answer in layman's
20 terms?

21 A. I will. The \$650 million revolving line of
22 credit that I referred to -- that I have referred to -- that
23 was before the time that I was in this role -- to the best
24 of my knowledge was composed of two pieces, a \$325 million
25 three-year facility and a \$325 million one-year facility.

1 This is based on my recollection.

2 When we received the waivers related to our
3 default in the fall of 2002, just during my transition time,
4 we agreed to give part of the proceeds related to asset
5 divestitures that we were in the process of doing at that
6 point in time to reduce the value of this loan, which was a
7 two-part loan.

8 The remaining pieces of that facility that
9 were left, the time we paid them off with some of the
10 proceeds from the \$430 million facility were the working
11 capital, what we referred to as the \$190.3 million working
12 capital in the portion of the \$165.5 million cash
13 collateralization of letters of credit.

14 Was that a little more clear?

15 Q. Yes. Are you saying that the -- and
16 forgive me if I don't recall the specific numbers -- but the
17 \$190 million and the \$165 million comprised the components
18 of the \$650 million facility that you'd referred to earlier?

19 A. Approximately, which means I was a little bit
20 off in my estimate of 380 million I said earlier. But I
21 think I did use the word "approximate."

22 Q. So those two funds that you've identified were
23 used to support the -- Aquila's working capital needs at
24 that time?

25 A. That's what was left of the facility, yes.

1 Q. What would that total number be?

2 A. If you add these two up, it would be
3 \$355.8 million, plus all the cash, excess cash related to
4 the waterfall proceeds that didn't come to us would still be
5 in the balance in all likelihood.

6 Q. Can you tell me what the status of the Aries
7 combined cycle unit is in terms of whether it's being sold
8 or acquired or --

9 A. I don't have the current status at this point
10 in time.

11 Q. Is it considered to be one of the peakers? It
12 is not one of the peakers that you've identified, is it?

13 A. No, it's not.

14 Q. Is it one of the IPPs?

15 A. It is not.

16 Q. Do you have an opinion as to what interest
17 rate Aquila would have been able to obtain had it been of
18 investment grade quality at the time it executed the
19 \$430 million credit facility?

20 A. Less than what we consummated the transaction
21 for, yes. Anything below that, it would be hard for me to
22 speculate at this point in time. I don't recall the markets
23 at that point in time related to that.

24 Q. Would 3 to 4 percent be out of line?

25 A. I wouldn't disagree with that. That would be

1 a reasonable range.

2 MR. WILLIAMS: No further questions at this
3 time.

4 JUDGE PRIDGIN: Mr. Williams, thank you.

5 Mr. Conrad?

6 CROSS-EXAMINATION BY MR. CONRAD:

7 Q. Just a couple things. Good morning,
8 Mr. Dobson.

9 A. Good morning.

10 Q. I don't have very many things to check out
11 with you. Just a couple of loose ends to tie up on my
12 notes.

13 Was there a note issued or series of notes
14 issued for this \$430 million?

15 A. I believe there was a note issued, yes.

16 Q. Single note, more than one?

17 A. I don't recall, Mr. Conrad.

18 Q. Has that note -- a copy of that been placed in
19 the record anywhere?

20 A. I don't recall. It may have been. I just
21 don't know.

22 Q. And the term, you want to use the word tenure,
23 but I would call it a term of the note is three years?

24 A. The note matures, I believe, on May 15th of
25 2006. So at the time we consummated, it was approximately

1 three years.

2 Q. And you'd agree with me that it's for a period
3 longer than 12 months?

4 A. I would.

5 Q. Before getting into that, did you or did the
6 company look at financing or collateralizing the individual
7 utilities state by state?

8 A. Not to my recollection, no.

9 Q. Do you know why that wasn't looked at?

10 A. I don't know why.

11 Q. We've mentioned before that the approximate
12 value of the Missouri assets was a billion dollars, plus or
13 minus small change?

14 A. Plus or minus.

15 Q. So there would be ample collateral on a
16 stand-alone basis to finance the Missouri operations, would
17 there not?

18 A. If we could, if our structure was such.

19 MR. CONRAD: I've lost the numbers, but I have
20 a Data Request.

21 JUDGE PRIDGIN: This is a new exhibit,
22 Mr. Conrad?

23 MR. CONRAD: Yes. I'm sorry. New exhibit.

24 JUDGE PRIDGIN: I believe I have it at No. 52.

25 (EXHIBIT NO. 52 WAS MARKED FOR IDENTIFICATION

1 BY THE REPORTER.)

2 MR. CONRAD: Forgive me, your Honor. It was
3 54?

4 JUDGE PRIDGIN: 52.

5 MR. CONRAD: Thank you.

6 BY MR. CONRAD:

7 Q. Mr. Dobson, we've distributed to you what's
8 been marked for identification as Exhibit 52. What does
9 that appear to be?

10 A. It's a Data Request.

11 Q. Do you know who Randy Miller is?

12 A. Treasurer of the company, of Aquila, Inc.

13 Q. Somebody that could speak authoritatively for
14 the company in these areas?

15 A. I believe so.

16 Q. Do you have any reason to believe that this
17 isn't his signature, since you-all don't choose to sign the
18 Data Request responses?

19 MR. BOUDREAU: I'm going to object to the
20 comment. That's not accurate, but --

21 BY MR. CONRAD:

22 Q. Do you see a manual signature on this
23 response?

24 A. I do.

25 Q. Where?

1 A. Oh, no. I'm sorry. I just see a typed
2 signature. Excuse me. At the very bottom, Randy Miller. I
3 don't see one at the bottom of this, a manual signature.

4 Q. But other than that, you recognize this as a
5 authoritative statement for your company?

6 A. I do.

7 MR. CONRAD: Offer Exhibit 52.

8 JUDGE PRIDGIN: Any objections?

9 MR. BOUDREAU: None.

10 JUDGE PRIDGIN: Hearing none, Exhibit 52 is
11 admitted.

12 (EXHIBIT NO. 52 WAS RECEIVED INTO EVIDENCE.)

13 BY MR. CONRAD:

14 Q. Mr. Dobson, you also mentioned something about
15 your structure a moment ago. Is that the divisional
16 structure that you're feeling limits you in your ability to
17 individually collateralize states?

18 A. To the best of my knowledge, that's correct.

19 MR. CONRAD: I have one more, your Honor. Bet
20 it's going to be 53.

21 (EXHIBIT NO. 53 WAS MARKED FOR IDENTIFICATION
22 BY THE REPORTER.)

23 BY MR. CONRAD:

24 Q. Mr. Dobson, I've shown you what has been
25 marked for identification as Exhibit 53. Do you recognize

1 that document?

2 A. I'm reading it --

3 Q. All right. Take a moment, please.

4 A. -- to refresh my memory.

5 I'm finished.

6 Q. Who is Mike Cole?

7 A. Mike Cole is a person that works for Aquila,
8 Inc. in the treasury department.

9 Q. Despite the fact that Mr. Cole has not
10 physically and manually signed this response, do you have
11 any reason to believe that this isn't an authoritative
12 position and response on behalf of your company?

13 A. I believe it is.

14 Q. You believe it is an authoritative response?

15 A. I do.

16 MR. CONRAD: Move the admission of 53.

17 JUDGE PRIDGIN: Any objections?

18 (No response.)

19 JUDGE PRIDGIN: Hearing none, Exhibit 53 is
20 admitted.

21 (EXHIBIT NO. 53 WAS RECEIVED INTO EVIDENCE.)

22 BY MR. CONRAD:

23 Q. The \$430 million that we've been talking about
24 here for the last day and a half, that was for general
25 corporate purposes?

1 A. I believe it was.
2 MR. CONRAD: Thank you. That's all, your
3 Honor.
4 JUDGE PRIDGIN: Mr. Conrad, thank you.
5 Mr. Molteni?
6 CROSS-EXAMINATION BY MR. MOLTENI:
7 Q. Good morning, Mr. Dobson.
8 A. Good morning.
9 Q. I don't have too many questions for you, but
10 I've just got a few cleanup areas, so I'll be jumping around
11 a little bit.
12 During Mr. Micheel's cross-examination of you,
13 he had Exhibit 50 marked, which was the mandatory prepayment
14 matrix. Do you know what I'm talking about?
15 A. I do.
16 Q. Do you have in your possession a matrix for
17 optional prepayments according to the term loan?
18 A. I don't.
19 Q. Has one been created?
20 A. It may have been. I don't have it, though, if
21 it is.
22 Q. Have you ever seen an optional prepayment
23 matrix that's akin to the one that's marked as Exhibit 50?
24 A. I have not seen one like that, no.
25 Q. If this Commission denies Aquila's application

1 in this case, is that going to increase Aquila's rates?

2 A. No.

3 Q. And will it reduce the quality of service that
4 Aquila provides its ratepayers?

5 A. It will not.

6 Q. If this Commission denies Aquila's
7 application, that won't put Aquila in default of its term
8 loan agreement, will it?

9 A. No, it won't.

10 Q. Do you recall on October 7th I took your
11 deposition?

12 A. I do.

13 Q. Do you recall we talked about a little bit
14 about the stock market?

15 A. We did.

16 Q. And I asked you whether the stock market
17 accurately reflects Aquila as valued as a company. Do you
18 remember that?

19 A. Vaguely.

20 Q. And your response was, over time it's a fair
21 representation?

22 A. I think over the long-term it is, yes.

23 Q. And Aquila's stock at its high was somewhere
24 around \$37 a share; is that right?

25 A. I believe that's correct.

1 Q. And that's back when it was UtiliCorp?
2 A. Yes.
3 Q. And as of the date of your deposition, which
4 was October 7th, it was trading around \$3.50 to \$3.60 a
5 share; is that right?
6 A. Yes. That's correct.
7 Q. And just to clarify, Aquila is not an
8 investment grade utility with respect to its credit rating
9 right now?
10 A. That's correct.
11 Q. And its credit rating has junk bond status?
12 A. It's CCC, a split-rated CCC slash B, which has
13 been defined as junk bond in the slang term.
14 Q. And do you recall that at your deposition I
15 asked you about the people who were interested in acquiring
16 Aquila's stock? Do you remember that?
17 A. I do.
18 Q. And you told me that the group of people
19 interested in Aquila's stock are the people that are
20 speculative in nature. Do you remember that?
21 A. Yes.
22 Q. Were you involved at all in discussing the
23 settlement of a price manipulation case that the FERC had
24 inquired of Aquila about?
25 A. I was not.

1 Q. Are you cognizant of it?

2 A. Vaguely aware of it, yes.

3 Q. Did Aquila pay a settlement to the FERC?

4 MR. BOUDREAU: I'm going to object to this
5 line of questioning on the grounds of relevance.

6 JUDGE PRIDGIN: Mr. Molteni, how's it
7 relevant?

8 MR. MOLTENI: It's relevant as to the nature
9 of Aquila's business that led to the point that they need a
10 \$430 million term loan at the interest rate that they're
11 paying.

12 MR. BOUDREAU: I'm still not sure I see what
13 the relevance this has to do with the question presented to
14 the Commission.

15 JUDGE PRIDGIN: I'll overrule.

16 THE WITNESS: My recollection is that we did
17 have a settlement with them, but it's a little fuzzy now. I
18 don't remember the number being very big. That's why it's
19 fuzzy.

20 BY MR. MOLTENI:

21 Q. But there was a settlement with the FERC?

22 A. I think there was. I could be wrong about
23 that, but I believe there was.

24 Q. And it relates to price manipulation?

25 A. I'm not sure what it related to.

1 Q. And were you involved in the decision-making
2 regarding that settlement?

3 A. I was not.

4 Q. So if Richard -- you testified earlier,
5 Richard Green is the CEO, the president and the Chairman of
6 Aquila?

7 A. Yes.

8 Q. Did you read his deposition?

9 A. I did read through it, yes.

10 Q. So if Mr. Green said that you were involved in
11 the decision-making regarding the settlement of the FERC,
12 could we assume he was mistaken?

13 A. I don't recall that part of his deposition
14 but, I mean, I may have participated in a meeting, but I
15 just don't recall.

16 Q. Do you know who Krull & Associates are?

17 A. I do.

18 Q. Who are they?

19 A. They are consultants that help companies
20 potentially restructure.

21 Q. You said you read Mr. Green's deposition.
22 Would he have referred to them in the deposition as forensic
23 accountants?

24 A. I believe they also have that line of
25 consulting in their firm, too.

1 Q. And have they been retained by Aquila as
2 forensic accountants?

3 A. I believe they have, yes.

4 Q. And they've been in that line to investigate
5 accusations that Aquila supplied false prices to natural gas
6 trade publications; is that correct?

7 A. I think they're working on that, yes.

8 Q. And are you reviewing any of the work in that
9 regard?

10 A. I'm not per se reviewing it. I have seen, a
11 long time ago, a little piece of outcome, but --

12 Q. What kind of outcome was that?

13 MR. BOUDREAU: I'm going to object again to
14 the relevance of this line of questioning to the proceeding
15 at hand. This doesn't have any bearing on the topic at hand
16 in this case. This is not just a fishing expedition.

17 JUDGE PRIDGIN: I'll show this as a standing
18 objection, Mr. Boudreau, on this line of questioning, and
19 I'll overrule.

20 THE WITNESS: Would you repeat the question?

21 MR. MOLTENI: Would the court reporter read
22 the question back please?

23 THE REPORTER: "Question: What kind of
24 outcome was that?"

25 THE WITNESS: It was a preliminary analysis of

1 the type of work they were doing, nothing -- nothing, no
2 outcomes, no conclusions, what they were looking at.

3 BY MR. MOLTENI:

4 Q. It was a written work product?

5 A. Some type of work product, yes.

6 Q. And have you received any subsequent reports
7 from Krull?

8 A. I have not.

9 Q. Are you aware that any exist within Aquila?

10 A. I'm not aware that any exist, but they could
11 be.

12 Q. You sign Aquila's public financial statements,
13 don't you?

14 A. Yes, I do.

15 Q. Has Aquila disclosed the retention of FERC in
16 any of its publicly filed financial statements?

17 A. Retention of?

18 Q. Of Krull, I'm sorry.

19 A. You know, I don't recall, but we may have. We
20 may have discussed that. I'm not sure. I don't recall any
21 longer. We're in the query process right now, but we may
22 have discussed the fact that there are ongoing
23 investigations. We may not have discussed the consultant
24 that we're using in connection with the investigations. I
25 just don't recall the details.

1 Q. So your financial statements do disclose an
2 investigation regarding providing false prices to trade
3 publications, correct?

4 A. I believe they -- they address the
5 investigations that we're under from a contingency
6 standpoint, yes.

7 Q. And these publicly filed securities
8 disclosures that you sign, have they -- have any of them
9 addressed the FERC settlement?

10 A. I don't recall. They may have.

11 Q. Do you read them before you sign them?

12 A. Absolutely.

13 Q. Have you signed any within the last two
14 months?

15 A. No, I have not.

16 Q. When was the last one that you signed?

17 A. I want to correct myself.

18 Q. Go ahead, please.

19 A. I would have signed one -- no, it would be
20 over two months now. I apologize. I did the math wrong. I
21 signed the last one, I believe, August 15th. It was a
22 little over two months ago.

23 Q. And at that time was Aquila in negotiations
24 with the FERC regarding the price manipulation charge?

25 A. I don't recall at this point.

1 MR. MOLTENI: I have one final question, but
2 it's highly confidential.

3 JUDGE PRIDGIN: All right. Let me take just a
4 second to suspend the web, and chances are we will take a
5 break after the highly confidential, so let's go off the
6 record for just a moment, please.

7 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

8 (REPORTER'S NOTE: At this point, an in-camera
9 session was held, which is contained in Volume 7, page 464
10 of the transcript.)

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1 JUDGE PRIDGIN: We're back on the record. The
2 highly confidential testimony is complete and we're back in
3 public forum.

4 Mr. Dobson, this is normally the time that the
5 Commission would ask questions. As you can see, they are in
6 agenda meeting. I will need to take a brief recess to go
7 poll the Commissioners to see where they are in agenda and
8 when they would be available to come down. So let's recess
9 for about ten minutes and try to resume about 11:20 or so.
10 We are off the record.

11 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

12 JUDGE PRIDGIN: We are back on the record. I
13 went upstairs to try to speak to Chairman Simmons while
14 they're in agenda, and he just indicated to me to go ahead,
15 but -- go forth and prosper. I do know that they will want
16 to ask questions of this witness, and I don't have a
17 terribly strong preference either way.

18 If the parties wish, this may be a convenient
19 time to break for lunch. It's a little early, but not
20 terribly. It's roughly 11:30. Or we can excuse Mr. Dobson
21 from the stand for now and have to recall him for the
22 Commission and move on to Mr. Empson.

23 I don't have a strong preference either way,
24 and I don't know how the counsel feel.

25 MR. MOLTENI: Can we get Mr. Empson sworn in

1 and do the preliminaries and then break for lunch?

2 JUDGE PRIDGIN: That's fine with me. It
3 doesn't matter to me.

4 MR. BOUDREAU: Let's try to accommodate the
5 Commissioners, obviously, and what we'll do is we'll make
6 Mr. Dobson available after lunch. I think maybe the idea of
7 putting Mr. Empson on the stand and maybe doing the
8 preliminaries, offering his testimony, making whatever
9 changes, let's go ahead and do that. And then we can go
10 ahead and take a break and hopefully that will work into
11 everybody's schedule.

12 JUDGE PRIDGIN: That's fine. And perhaps by
13 then I'll get some sort of signal from upstairs. But
14 failing that, once we're finished with the preliminaries of
15 Mr. Empson, I'll repoll counsel and see if they just want to
16 go on to lunch or something.

17 MR. BOUDREAU: Why don't we just -- let me
18 make this suggestion. Rather than put Mr. Empson on the
19 stand right now, let's just go ahead -- my request would be
20 that we just go ahead and break, wrap up with Mr. Dobson,
21 then we'll put Mr. Empson on the stand if you would
22 accommodate that.

23 JUDGE PRIDGIN: That's certainly fine with me
24 if I don't hear any objections.

25 (No response.)

1 JUDGE PRIDGIN: All right. Hearing none, this
2 seems to be a good time to break for lunch. Let's --
3 because I know the Commission's going to be running late,
4 there's no sense in setting an hour time limit just to come
5 back and sit and wait and have to go through this again. It
6 might be a little better to go ahead and break for lunch
7 until one o'clock or so, and hopefully if they're not ready,
8 they will -- they usually take late lunches on a day like
9 this and will be available at one o'clock or shortly
10 thereafter.

11 So let's go off the record, and we will
12 reconvene at one o'clock. We're off the record.

13 (A BREAK WAS TAKEN.)

14 JUDGE PRIDGIN: All right. We're back on the
15 record. We are resuming the Aquila hearing.

16 This is one o'clock, about five after one,
17 actually, October 21st, and I believe all the attorneys have
18 finished questioning Mr. Dobson, and we'll open the
19 questions up to the Commission.

20 Commissioner Murray, do you have any
21 questions?

22 COMMISSIONER MURRAY: Thank you. Yes, I have
23 a few.

24 QUESTIONS By COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Dobson.

1 A. Good afternoon.

2 Q. I apologize because these are probably going
3 to be fairly disjointed, since we've been coming and going
4 this morning, but I wanted to ask you just kind of a -- I
5 guess it's a philosophical question as much as anything.

6 If Missouri is a net provider of peak day
7 working capital -- just assume that it is -- would it be
8 appropriate to collateralize Missouri assets in this
9 fashion?

10 A. If it only was a -- if it only was a peak day
11 provider and never a -- and never a peak day borrower at
12 some point?

13 Q. Right. If it were a net provider.

14 A. That's a tough question. If it was -- if it
15 was a net provider, truly, the whole time, I don't really
16 have the answer to that question.

17 Q. Would that amount to subsidizing nonregulated
18 operations?

19 A. No, it would not, because we've aligned the
20 collateral to be split between regulated and unregulated.
21 It wouldn't amount to that.

22 Q. Would it amount to subsidizing the cash
23 working capital requirement of other jurisdictions'
24 utilities?

25 A. You know, I don't know if I would answer it

1 that way. And the reason I say it that way, just to be open
2 and honest about the whole thing, is when I look at that
3 list in some of my other exhibits that we've talked about of
4 other utilities in the state of Missouri that have working
5 lines of credit, and some of those may have -- they may -- I
6 don't know for sure -- may have the same profile as our
7 Missouri electric utilities also, in that their working
8 capital peaks are other times during the year, but they
9 still have those revolving lines of credit.

10 And so they have those for safety's sake
11 because of ice storms and tornadoes, and because it's just
12 embarrassing not to have access to it if something does
13 catch you by surprise, or if you do happen to have a peak
14 day need for whatever reason you didn't anticipate.

15 So it's hard to say with certainty that your
16 assumption, even if Missouri was the only state we owned and
17 I had done studies that proved to me that we -- that
18 electric utility only produced positive working capital, I
19 would still probably be advocating some type of facility for
20 the unintended consequence of something happening.

21 So it's hard for me to say that they would be
22 subsidizing other regulated states, because in my mind they
23 still need some type of safety net provision. That's a long
24 way to answer your question, but that's the way I feel about
25 it.

1 Q. And for those times in which you might need
2 something like for an ice storm, for example, where would
3 you go to get that, if you did not have this
4 collateralization?

5 A. I will go to the available cash in our balance
6 sheet that will keep -- in lieu of having a working capital
7 line right now, because we're not going to have one capital
8 line. We keep the cash in our balance sheet. Because we do
9 have a duty to our customers and a duty to a bunch of
10 stakeholders, we'll keep the liquidity in our balance sheet.

11 May be asset divestitures and things like that
12 to operate our company anyway, but that's what we would do.
13 We would keep asset divestiture and consolidate operating
14 cash flow on our balance sheet in the eventuality that we
15 would have an ice storm or a windstorm and we would need
16 that cash to fund capital expenditures and things like that.

17 Q. Is there any additional risk to Missouri
18 ratepayers if these assets are collateralized?

19 A. I don't believe there is.

20 Q. None whatsoever?

21 A. In my opinion, no.

22 Q. Is there any tangible benefit to Missouri
23 ratepayers?

24 A. Tangible is a -- I would answer the question
25 it's difficult to say tangible. There's the intangible

1 aspect of the fact that there's a marketplace signal if
2 we're turned down potentially about our relationship with
3 the Commission and the fact that they weren't willing to put
4 the assets in a pool.

5 But strictly speaking to your question of
6 tangible, it's very difficult to answer. Probably
7 specifically tangible in dollars and cents, no.

8 Q. On page 11 of your direct testimony, about a
9 little above the middle of the page, you're giving reasons
10 there in your answer. And the second reason that you give,
11 you say, it's only fair that since the working capital
12 facility is needed to support the day-to-day operations of
13 all Aquila's utility operations, then all of Aquila's
14 utility assets should be part of the pool. That's part of
15 your testimony, correct?

16 A. It is. Yes, it is.

17 Q. Wouldn't actual fairness, if we were trying to
18 measure fairness, result in Missouri utility assets being
19 pledged only to the approximate amount of about 36 million?

20 A. Yeah, which would -- when you say that, you
21 mean that 36 million to the loan value, which would be about
22 60 million in collateral, because you've got to divide by
23 1.67. From a strict technical sense, that's fairly sound
24 reasoning. I think from a logistics standpoint it's very
25 difficult to do.

1 From a -- from a timeline perspective now,
2 where we're at now with Michigan and Nebraska being in and
3 Colorado being in, Missouri going in, the way the agreement
4 works at this point in time, will actually only then use
5 up about \$60 million to get to 718 million.

6 Everything above that, what we refer to as the
7 billion dollars of collateral -- it's actually probably
8 closer to 900 million. That then is available for first
9 lien other debt at some point in time, if we desire and if
10 the Commission would approve it.

11 So effectively, with the way this is worked
12 chronologically with the states that have approved it so
13 far, with two that we didn't need to and the one that did,
14 Colorado, Missouri would effectively be, in my opinion, only
15 putting in 60, because the rest of that collateral is
16 available under Section 6.10(i) of the agreement to be used
17 at some other time, obviously with the Commission's
18 approval.

19 Q. With another approv-- Commission approval?

20 A. Well, we would anticipate that any financing
21 that we would do we would come back to the Commission with,
22 if we so needed it.

23 Q. I thought the -- I thought what you were
24 asking was that the full amount be committed and that you
25 not have to come back and --

1 A. That's what I'm saying, but it would be
2 available in the event -- some of the testimonies refer to
3 the fact that you don't have use of it once you put it in.
4 But if the full amount was committed, in effect, with the
5 chronological order of the way the collateral's gone in,
6 only about 60 million of that would be used up, and the full
7 amount would be sitting there available in the event that it
8 was needed, not saying that it is.

9 Q. Let's pursue that. It would be there
10 available in the event that it was needed by either
11 regulated or nonregulated needs; is that correct?

12 A. It would be -- we don't really have many
13 unregulated needs left, but it would be there in the event
14 the company felt that it was needed, and then obviously they
15 would come to the Commission for approval.

16 Q. Who would come to the Commission for approval?

17 A. If we were going to issue some more debt?

18 Q. Well, I'm not -- I guess I'm not understanding
19 what your request is, because I thought your request was to
20 collateralize the full amount.

21 A. It is.

22 Q. So at what point would you be coming back to
23 the Commission for approval of part of that amount?

24 A. Oh, and I'm sorry to mislead you. We're not
25 intending to. That's not a request. In the event it would

1 still -- the additional collateral would be available in the
2 event that it was to be used for collateralization. The
3 point I'm making is, it's not lost once it goes in.

4 Q. But you don't have to come back here? Under
5 your proposal, you would not have to come back here to seek
6 approval for any more beyond this -- the initial 60 million
7 you talked about, would you?

8 A. I don't think we would, no.

9 Q. So, in effect, it could be used for Missouri
10 needs or it could be used for another state's needs?

11 A. I guess it could. It wouldn't be prudent of
12 us to actually, if we needed to do that, to do that without
13 the permission of the Missouri Commission, though.

14 Q. But you're not under any obligation?

15 A. We're not under any obligation, I don't
16 believe.

17 Q. Will the rate -- will the Missouri ratepayers
18 see any reduction in rates as a result of the drop of the
19 75 basis points?

20 A. No, they will not.

21 Q. Somewhere, and I don't recall where, actually,
22 it was mentioned about the costs and effort involved in this
23 proceeding in terms of putting together data and just
24 preparing for this proceeding, and I'm sure there are
25 significant costs involved in going through this application

1 process.

2 Where are those costs being charged? Who's
3 paying for this proceeding?

4 A. Who's paying for those? Well, those costs are
5 incurred at our corporate offices. Well, let me restate
6 that. The costs are incurred by the company, and they would
7 then go through an allocation process that, I guess, if they
8 were incurred in a test period, they could end up in rates.

9 Q. Okay. That's what I was getting to. They
10 could -- the costs of this proceeding eventually could end
11 up in part of what you would request in rate recovery?

12 A. I suppose it's possible, yes.

13 Q. As a regulatory expense?

14 A. These type of costs that we're incurring now
15 are not that unusual for a regulated company, though, but it
16 does require manpower to do the work.

17 Q. So would that be a detriment to the
18 ratepayers, in that they might eventually have to pay for
19 the costs of what it took you, took the company to be able
20 to collateralize these assets?

21 A. The fact that we had to spend the money to
22 answer all the IDRs and things like that, to come forth
23 here?

24 Q. Yeah. In other words, the proposal is that
25 there's no -- it's not going to change the status quo of the

1 ratepayers. And I think there's been a lot of testimony or
2 at least allegations that the needs are not -- were not
3 created by the ratepayers, the need to do this
4 collateralization.

5 Therefore, we can approve it if there's really
6 no harm to the ratepayers, if there's no change in the
7 status quo either immediately or if it doesn't set something
8 in motion that will change the status quo of the ratepayer
9 detrimentally. But if the ratepayer has to pay the costs of
10 getting approval, that they don't see any other change, they
11 don't see any benefit, doesn't what -- isn't that a net
12 detriment?

13 A. Well, whether it's approved or not approved,
14 those costs have already been incurred, but I understand
15 your point.

16 Q. Just one second, Judge. Let me look in one
17 more place here. And I don't recall why I wanted to know
18 the answer to this, but on page 5 of your surrebuttal
19 testimony, about the top third of the page, you say -- this
20 may be highly confidential, although I don't see it marked
21 that way. Your surrebuttal was not marked highly
22 confidential; is that right?

23 A. I don't think it is.

24 Q. You mention Aquila's current level of secured
25 domestic debt?

1 A. Yes, I do.

2 Q. And the percentage there. How will that
3 change if you get approval here, or do you know?

4 A. I don't think it does. Let me just check one
5 of my exhibits to confirm that, without saying it just off
6 the top of my head. It doesn't change it.

7 COMMISSIONER MURRAY: I think that's all I
8 have. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank
10 you.

11 Commissioner Gaw?

12 COMMISSIONER GAW: I'm going to pass right
13 now.

14 JUDGE THOMPSON: Thank you, Commissioner.
15 Commissioner Forbis?

16 COMMISSIONER FORBIS: You want to go ahead and
17 go?

18 JUDGE PRIDGIN: Commissioner Clayton?

19 QUESTIONS BY COMMISSIONER CLAYTON:

20 Q. Good afternoon, Mr. Dobson. I just have a
21 couple of general questions, and I think you ought to be
22 able to get through these fairly quickly.

23 The loan proceeds have already been received
24 by Aquila; is that correct?

25 A. That's correct.

1 Q. And that amount is -- we've talked about
2 \$430 million, and that's the -- is that the amount of cash
3 that you-all receive? How much of -- cash do you actually
4 have left? Some went to go retire old debt; isn't that
5 correct?

6 A. That is correct. What happened is, and it
7 goes back to a point, we drew down the working capital
8 revolver that we had, so that cash was effectively on our
9 balance sheet. But then to take the banks out, that
10 revolver out, they said, well, we'd like our money back. So
11 effectively, there's different ways to look at it.

12 We drew the 430 back down from a new group of
13 investors and gave that cash on the balance sheet back to
14 the banks and said, okay, thank you very much. Now we have
15 this new set of cash, and they're effectively the same
16 amount, about 430 million.

17 Q. Yesterday I indicated my confusion on the
18 structure of Aquila with some of the language that's been
19 used, like dividends and divisions and different operations,
20 utilities. Basically Aquila is one company that operates in
21 divisions; is that correct?

22 A. That's correct.

23 Q. There's just one corporation that we're really
24 talking about here?

25 A. That's correct.

1 Q. Okay. And Aquila will hold these funds for
2 the peak working day capital needs. And I keep not saying
3 those words, but that's the way that you-all intend. The
4 corporation will hold it, and then money will be distributed
5 to the different divisions?

6 A. That's correct.

7 Q. Has Aquila earmarked the funds that are left,
8 the cash that is left from the loan for different states?

9 A. We have not. It's in a centralized cash
10 management account right now at the Northern Trust.

11 Q. What does that mean, the centralized?

12 A. It's in one account.

13 Q. It's in one account?

14 A. And as states need it, we clear it to the
15 various states. So if Missouri would need it in May or
16 June, we would clear to them. If Minnesota or Michigan
17 would need it in the wintertime, we would clear to them.

18 Q. You-all have not determined, I guess, as of
19 today or even at the time of filing which state is going to
20 need how much capital? You have an estimate but you haven't
21 earmarked an amount for a particular state or a different
22 division, have you?

23 A. That's exactly right. In fact, this will be
24 our first winter going through it completely as a
25 non-investment grade company. So we haven't, and I

1 previously testified, I plan to -- I will err on the
2 conservative side this winter to see what actually happens,
3 because models are only as good as models. And I'll
4 probably earmark -- err on the conservative side, see how
5 the winter goes, see who used it and how much we used, and
6 then that will be a better representation of what we really
7 need to have going forward.

8 So we have a model, we have a representation,
9 but without access to other markets, it would be imprudent
10 at this point in time just to assume that is the number. If
11 we're wrong for whatever reason, we have no other access.
12 So we'll err on the conservative side.

13 Q. Okay. Give me the best-case scenario. Let's
14 say that throughout all your jurisdictions -- or I say
15 jurisdictions. Excuse me -- each of your states, each of
16 your different divisions, best-case scenario, you've got a
17 warmer than normal winter, no ice storms, no problems. Is
18 the best-case scenario that you wouldn't need this working
19 capital in the absolute best-case scenario?

20 A. That we wouldn't need any of the 250 million?
21 Probably not at this point, now that we're not investment
22 grade.

23 Q. Having asked that question, you can anticipate
24 what the next question will be. What would the worst-case
25 scenario be with these funds?

1 A. We believe, because that's -- the 250 was
2 derived through stress testing. And I'm not a statistical
3 expert by any stretch of the imagination, but the stress
4 testing that arrived at the 241 number that we kind of
5 rounded up to with other events that could drive it up there
6 was based on, I think, two standard deviation type of
7 weather.

8 So it could be cold and we could have an
9 extra -- more flow on the pipes that could cause this peak.
10 So we stress tested to hope to get to that number that we
11 could be pushed to of 250. We think more normally -- and I
12 think it's filed here -- that it will be more like 170, but
13 it could be 250.

14 Now, like I said, the model could be wrong,
15 and two standard deviations, what if we have a three
16 standard deviation winter? I don't -- what that means is it
17 could be really, really cold. If that's the case, I have no
18 other access to funds. So the likelihood that we keep
19 \$350 million or \$400 million on our balance sheet which
20 would likely be funded by divestiture of its unregulated
21 assets, we'll do it anyway. It just makes prudent sense.

22 And we'll -- this winter will be a nice test
23 to go back and compare the model against what actually
24 happened. So if it's warmer than normal and there's low
25 flow, then we'll see what that meant, and if it's really

1 cold and there's high flow, we'll see what that meant.

2 That's really what I'm anticipating happening,
3 but we do have a model that tells us with a two standard
4 deviation type of stress test \$250 million is the type of
5 working capital we need on our peak.

6 COMMISSIONER CLAYTON: I haven't used the term
7 standard deviation since my sophomore year in college, but I
8 appreciate you using it here today.

9 I don't have any other questions at this time.

10 JUDGE PRIDGIN: Commissioner Clayton, thank
11 you.

12 Commissioner Forbis or Commissioner Gaw?

13 COMMISSIONER GAW: No.

14 COMMISSIONER FORBIS: He's waiting to wrap up.

15 COMMISSIONER GAW: I may not have any
16 questions.

17 QUESTIONS BY COMMISSIONER FORBIS:

18 Q. Good afternoon. I don't have very many. I'm
19 just trying to clarify a few things.

20 One, I'm still confused on the 75 basis point
21 reduction. Do you need the Missouri assets to be
22 collateralized in order to get the 75 percent -- 75 basis
23 point reduction?

24 A. What we need is another \$60 million of
25 collateral to come into the pool from some source, some

1 regulated source, some state is a better way to put it, for
2 us to get the reduction. It doesn't have to mean Missouri.
3 If the State of Iowa would come in, that would be enough to
4 cause the reduction to happen, hypothetically speaking.

5 Q. So you don't have enough now to get the
6 75 basis points, you need it from someplace?

7 A. That's correct, Commissioner.

8 Q. Doesn't have to be Missouri?

9 A. Does not have to be Missouri.

10 Q. And there are some other avenues out there?

11 A. We are waiting on a couple of other states,
12 that's correct.

13 Q. Okay. How many Missouri shareholders do you
14 have?

15 A. I don't know, Commissioner.

16 Q. Okay. Just curious. This is maybe along the
17 lines of Commissioner Clayton's question, and it's kind of a
18 crystal ball question, so if you don't feel comfortable, but
19 if your request was not granted here, what's the worst
20 possible outcome for ratepayers that could happen?

21 A. I don't think there is any real negative
22 effect to ratepayers if we have a negative outcome here.

23 Q. Okay. What's the best possible outcome for
24 ratepayers?

25 A. I don't think the ratepayers are generally

1 affected by this.

2 Q. At all, either way, up or down?

3 A. I don't believe they are, in my opinion.

4 Q. Can you summarize for me, then, why you guys
5 are -- why you're here? What do you need this for?

6 A. In my opinion, Commissioner, I'll give you
7 what I think. We're here for a couple of reasons. We said
8 we would make a good faith effort to make a total pool of
9 collateral, No. 1, and that would max out from a utility
10 perspective at \$718 million on a 1.67 coverage ratio.

11 And No. 2, we believe it's fair to have a pool
12 of collateral of all of our states, such that the different
13 states have different peaks of working capital. Missouri's
14 will be different than the gas states; there's no question
15 about that.

16 I shouldn't say there's no question. It's
17 highly unlikely that they would be the same. So their peaks
18 would be in different times of the year, like May and June
19 and things like that, possibly the summer.

20 And so the way I would look at it is the
21 collateral then, from a sharing perspective, the other
22 states would be sharing in their collateral with the State
23 of Missouri, and then on the flip side, the State of
24 Missouri would then be sharing in their collateral for the
25 winter peaks.

1 I tend -- this is just me now. I tend to
2 think of it as a pool, and since the pool only consumes at a
3 maximum \$718 million and the rest of the utility collateral
4 from all the states -- and we don't have appraisals from all
5 the states, but let's just say hypothetically it would be
6 like one and a half billion of access capital -- that would
7 still be available -- and I'm sorry, Commissioner, for
8 confusing the issue -- but that would still be available in
9 the event that we are going to do -- in the event that we
10 thought that we needed to do no secured financing.

11 We have no plans of that whatsoever, but the
12 point's been made before. I'm just trying to clarify that
13 if you put that in here, that collateral, you're wasting a
14 billion dollars worth of collateral for \$60 million. That's
15 not actually the case. We've used some of it up to get the
16 rate reduction, but the rest is available. Do we have plans
17 to use it? None at all. Not at this point in time.

18 That's my reason. My reasoning is to try to
19 be clear, we have -- we have a good faith effort. We've
20 done that now, and we think it's fair that there's a pool of
21 collateral supporting the working capital of seven state
22 domestic utilities.

23 Q. Those are the only two I came up with, too.
24 Thank you very much.

25 Explain to me a little bit again, you putting

1 all the assets in now, you're saying you wouldn't use them
2 all, and the rest -- help me understand that better. It
3 would still be available for future -- because arguments
4 have been that they would not be then in the future.

5 A. That's correct, Commissioner. The excess
6 collateral above what's 1.67 times the 430 million, that is
7 available, everything above that is available for future
8 financings if we desire. Like I said, our plan currently
9 doesn't desire that, but it's available for use if we needed
10 to. And that's the argument that's been made. It's not
11 available. If we put it in now, it's gone forever. It's
12 not gone forever.

13 I believe -- and like I said, I'm not an
14 attorney here, but I negotiated big portions of the
15 agreement and I've read the agreement, but Section 6.10(i)
16 allows us to do that. And you have to inter-reference some
17 other parts of the agreement, too, but that's the part of
18 the agreement that moves into allowing us to secure
19 additional -- to enter in additional secured debt if we --
20 if we need to. Like I said, there's no plans to currently
21 do that.

22 Q. Having come before the Commission and made the
23 good faith effort to request this, one outcome would be the
24 Commission does not approve the request.

25 A. That's correct.

1 Q. You already have the money. So there's no net
2 negative effect on Aquila from the loan perspective?

3 A. From a pure loan perspective, no, sir, there's
4 not. And I only speak to the intangible effect of the
5 marketplace looking to that as a relationship and trying to
6 peer into our relationship with the Missouri Commission and
7 say, well, I wonder if they have a good one or a bad one.
8 And the reason I say that, Commissioner, is I get that
9 question from investors, and I would say, well, I think we
10 have a good one. Well, why do you think that? Your
11 collateral was turned down. It's an intangible, but --

12 Q. Okay.

13 A. Just for informational purposes.

14 Q. I was going to make some witty comment about
15 the market and the Missouri Commission, and I can't come up
16 with one, so I won't even try. I'll leave that to
17 Commissioner Gaw. Give him time to prepare something.

18 Let me ask you if it's -- again, to the degree
19 you feel comfortable -- I believe your counsel maybe in the
20 first day of the hearing talked about some surprise perhaps
21 that there wasn't negotiations made between the company and
22 other parties as to how this request could be adjusted, some
23 give and take. What sort of give and take might be talked
24 about?

25 A. Boy, at this point in time, I would -- I could

1 only speculate. I have really no idea as far as how you
2 would maybe parse out a portion of the collateral or
3 something like that.

4 Q. Set aside, make sure enough of it is set aside
5 for Missouri. We've already talked about percentages and
6 that sort of thing. You wouldn't want to venture any other
7 guess or suggestions as to what might be on the table?

8 A. Not at this time, Commissioner. It would be
9 very difficult for me.

10 Q. Okay. Worst possible outcome to the company
11 if this does not happen is loss of face, or is there
12 anything else?

13 A. Realistically, yeah, potentially a loss of
14 stakeholder confidence a little bit, and maybe it's only
15 temporary, but that would be, in my opinion, the major
16 component of that.

17 Q. Okay. And the best possible outcome again for
18 the company?

19 A. Collateral to go into the pool to be used on
20 basically a pro rata basis.

21 COMMISSIONER FORBIS: Thanks. That's all my
22 questions.

23 JUDGE PRIDGIN: Thank you, Commissioner
24 Forbis. Commissioner Gaw?

25 QUESTIONS BY COMMISSIONER GAW:

1 Q. Mr. Dobson, I'm not sure if I should ask you
2 these questions or someone else, and so let me just ask in a
3 broad sense who you think I should ask.

4 If I were inquiring about the lenders not only
5 on this -- on the loan that's the subject of this request
6 for collateralization, but also on the other lenders to
7 Aquila, who would be the most familiar with them and the
8 amounts of those loans and the relationship between the
9 lenders and the company?

10 A. Commissioner, when you say the lenders, you
11 mean the people that actually bought the portion of the note
12 when we sold the note?

13 Q. I'm talking about -- I'm trying to, in a
14 general sense, understand all of the liabilities on any
15 notes that may be outstanding that Aquila may owe on, and I
16 don't know if you would be more familiar with them or
17 someone else.

18 A. I have -- I have a, what I would call a
19 reasonable familiarity with that. The treasurer of the
20 company would have more of a detailed familiarity with that,
21 but there are three big buckets, from an informational
22 standpoint. There are senior noteholders that are
23 unsecured --

24 Q. All right.

25 A. -- that we --

1 Q. Do you know -- and forgive me. If I ask a
2 question that should be in HC, please just tell me. But if
3 you could tell me how much is in that bucket currently?

4 A. I'll use approximate numbers because, like I
5 said, my familiarity is moderate, not high. But probably
6 about \$2 billion is in that bucket of senior noteholders.

7 Q. \$2 billion?

8 A. Yes.

9 Q. All right. And then the next bucket?

10 A. There would be a bucket like this loan of
11 \$430 million.

12 Q. All right. And that bucket you would describe
13 in what was --

14 A. Secured senior noteholders.

15 Q. Secured senior. Okay. All right. And is
16 there another bucket or is that basically it?

17 A. There's one other bucket. And the senior
18 noteholders that I talked about in roughly the \$2 billion
19 range would be related to our North American domestic
20 operations, and the other bucket would be debt primarily
21 centered up in our Canadian operations that will be divested
22 of later on early in 2004, more than likely. And that's
23 probably in the \$400 million range.

24 Q. What did you tell me the second bucket was?

25 A. Basically the \$430 million term note that's

1 secured.

2 Q. Is that the only thing in there, in that
3 second bucket?

4 A. It is now, yes.

5 Q. Okay. And I know it's in the material, but
6 the total assets of -- approximate value of the total assets
7 of Aquila currently?

8 A. The -- I would have to speculate on -- when
9 you're talking about what we would disclose in the 10Q,
10 which would include receivables and book property plant and
11 equipment, things like that?

12 Q. Yes.

13 A. I don't recall that number exactly, but that's
14 in our second quarter 10Q.

15 Q. All right. That's in the record somewhere?

16 A. It is in the --

17 Q. At least it's in some.

18 A. Probably in a Data Request somewhere.

19 Q. We don't know if it's in the record yet?
20 Maybe someone else can answer that later.

21 The total amount of -- and I know you've
22 testified to this, I think, today before. The total amount
23 of collateral that, at a maximum, could be subject to this
24 \$430 million loan, the value of that would be how much?

25 A. If we take a -- if we take a snapshot in time,

1 let's say now, the total amount of collateral -- and this is
2 my opinion again, because obviously we don't have appraisals
3 on all of it -- but the total amount of utility collateral
4 would probably be about around \$2.2 billion.

5 Q. 2.2 billion?

6 A. Yes.

7 Q. And that would be subject to the second
8 bucket's note?

9 A. That would be -- that would be the potential
10 amount of utility collateral that could go in if all the
11 states approved it.

12 Q. 2.2 billion?

13 A. That's my opinion, yes.

14 Q. You've got a \$430 million note, correct?

15 A. Right.

16 Q. On the second bucket?

17 A. Yes.

18 Q. And you have in the first bucket \$2 billion of
19 unsecured obligations to various creditors. Are they -- is
20 that a small -- well, let me ask -- let me ask the question,
21 I guess, again, because I'm putting two questions in one for
22 you, and I apologize for that.

23 There's a \$430 million secured note that
24 potentially uses, at a maximum, 2.2 billion of collateral?

25 A. And also, that was just the utility portion.

1 Q. Okay. Please continue.

2 A. I will, Commissioner. Thank you. Also it
3 could -- it could also hold -- at this point in time it does
4 hold, in fact -- excuse me. It holds the Canadian assets.

5 Q. Which are -- the value of that would be?

6 A. It's in -- it is in the record.

7 Q. Is it -- do you know what it is off the top of
8 your head?

9 A. The --

10 Q. Approximately?

11 A. Approximately \$500 million.

12 Q. That's fine.

13 A. The IPP assets would also have to be in.

14 Q. IPP, which would be approximately?

15 A. 200 million.

16 Q. Okay.

17 A. The peaking assets could be put into the
18 agreement.

19 Q. Okay.

20 A. We don't have an appraisal on them, but the
21 book cost is 500 million. Excuse me. We don't have
22 appraisal on all three of them. But the book cost is
23 500 million.

24 Q. Okay. And when you say they could be put in,
25 what does that mean?

1 A. We could petition the noteholders to add
2 collateral to the agreement and then put those in to shore
3 the agreement up, if we desired.

4 Q. And why would you want to do that again?

5 A. If we felt that we didn't have enough
6 unregulated collateral aligned with the unregulated
7 businesses, we would add that collateral in.

8 Q. Those are all possibilities, but when you're
9 looking at the -- at the \$430 million note itself, what is
10 the maximum -- under the agreement that you currently have
11 with the lender, what's the maximum amount of collateral
12 that could be put in for that 430 million?

13 A. I think you have it right there, which would
14 be 2.9 billion.

15 Q. Okay. Here's what I'm trying to understand.
16 Let me ask you this question first, though. Is the pool of
17 unsecured creditors a large number of entities, is it a
18 small number of entities, do you know?

19 A. The definition of large and small is tough.

20 Q. I mean, how many? Are there a lot of them?

21 A. I would think there's quite a few.

22 Q. Can you give me an estimate, approximately?
23 More than 10?

24 A. Over 100.

25 Q. Over 100. Okay. Are there -- are there

1 variations on -- I mean, within that group, are there some
2 that are owed a significant amount of money as opposed to a
3 smaller amount?

4 A. Absolutely.

5 Q. All right. Here's what I'm trying to
6 understand. Why are those creditors not concerned about
7 this collateralization of the potentially \$2.9 billion worth
8 of assets?

9 A. Why are they not concerned?

10 Q. And maybe they are, but if they're -- I
11 haven't heard anybody say that there's any problem with any
12 of this from the -- from any creditor's standpoint.

13 A. You know, I don't know if they are.

14 Q. Are they aware of it?

15 A. Oh, yeah, absolutely. I'm sure they are. I'm
16 sure they're watching it the whole time.

17 Q. The potential exists for, I mean, this is --
18 if this is just narrowly looked at from the creditors'
19 standpoint, you're giving one creditor priority over the
20 rest, as I think I understand this?

21 A. I think you're correct.

22 Q. And I'm -- in order to get this \$430 million,
23 true?

24 A. I think that's -- I'm not an attorney, but I
25 think you're right about that. That does give them

1 priority.

2 Q. Yes. And the rest of them are owed somewhere
3 around 2 billion?

4 A. That's correct. I can say this.

5 Q. Go ahead.

6 A. It's strictly a market-based indicator.

7 Q. Yes.

8 A. So it's somewhat factual. Before we did the
9 430 million secured loan, our bonds, which many of them
10 trade in the public, for instance, were trading
11 significantly below where they're trading now, and many of
12 them or all of them are trading up significantly. But that
13 is a function of the company's execution of the plan and the
14 fact that they're getting better clarity on the stability of
15 the company. So they're trading up that way.

16 So I would imagine the confidence in what's
17 happening to them ebbs and flows with their confidence flow
18 of what's happening within the company. And this would be
19 an event that's happening in the company. And my point is
20 that apparently it's not driving them too much, because
21 their bonds keep -- our bonds keep trading up every day.

22 Q. How much familiarity do you have with this
23 entity that's loaning you -- Aquila \$430 million?

24 A. The -- which entity is that?

25 Q. The one that has loaned you the 430 million

1 that you're asking to pledge assets on. I think that's the
2 one.

3 A. Effectively, like I said, I'm not a treasury
4 expert by any stretch, but effectively there are -- a number
5 of lenders have bought into this note issuance.

6 Q. So is the note -- is the note -- are the -- is
7 there more than one lender listed on the note?

8 A. There are -- there are a whole portfolio of
9 investors that buy into what they say in the marketplace,
10 this paper, invest in this paper, which is a three-year term
11 loan.

12 Q. On the note itself, though, who -- who is the
13 creditor or creditors on the note?

14 A. It would be a whole host of people that either
15 bought in initially and still hold the note or have
16 subsequently bought after the fact. For instance -- it's
17 much like this, Commissioner. If you bought in, you went to
18 the public market and bought a piece of a McDonald's note
19 maturing in 2007, you would now be a lender, and if
20 McDonald's was to go into receivership, you would get in
21 line with your note and say, how much am I going to get
22 back?

23 There are people in this -- those -- I'm not
24 saying it's individuals, but there are large institutions
25 just like that in the facility that own a piece of our note.

1 Some may own a lot and some may own smaller amounts.

2 Q. And I understand the concept. What I'm trying
3 to be specific about in this case is whether or not there is
4 some entity that is the actual creditor that they're
5 investing through or whether they individually as a number
6 of different entities or individuals or whoever is involved
7 with this are the actual lenders. It's a distinction from a
8 legal standpoint that I'm trying to understand, if you know.

9 A. Yeah. I don't really know. I think the
10 conduit is a vehicle set up by Credit Suisse/First Boston.

11 Q. Okay.

12 A. And they will act as our communicator in the
13 event we want to change something in the note, but they have
14 to contact all of the then noteholders if we were to request
15 such a change and say would you -- like, if you owned
16 McDonald's, they would contact you and say, are you willing
17 to make this change, and you would vote yes or no.

18 Q. Is the note itself in the record anywhere or
19 in any of the documents that the Commission has?

20 A. The term note itself, the term loan itself --
21 excuse me. I don't mean to use the wrong term. The term
22 note itself is in my testimony.

23 Q. Can you show me where it is?

24 A. It's in RD-9.

25 Q. On that document, Mr. Dobson, can you point me

1 to the page where it names the lenders?

2 A. This document here will not particularly name
3 the lenders. It will name all of the covenants and the
4 restrictions and the arrangements and the definitions around
5 the loan. The very first page kind of gives you an idea of
6 the structure of the loan, Aquila as the borrower with
7 several lenders and issuing banks, using Credit Suisse/First
8 Boston as kind of our conduit or our administrative agent.

9 And so I don't have a list of all the people.
10 I'm not sure that it's been filed, but we can get one,
11 though. We can get that, but it changes. Effectively it
12 could change every day.

13 Q. And I guess the answers to these questions may
14 lie within this document, so I apologize for asking them on
15 the record here. But those -- the names of the -- of the
16 lenders that are operating through this -- through this
17 agreement, are they known to Aquila?

18 A. Many of them. They can all be known, I
19 believe, through different access, through different
20 channels, and many of them are known because they will call
21 us from time to time and talk about the status of the
22 company.

23 Q. All right.

24 A. Many of them, Commissioner, may be just big
25 investment houses.

1 Q. Sure. And the role of the administrative
2 agent in this agreement, would all of their -- would all of
3 their rights pursuant to this agreement be contained in this
4 agreement or will there be or could there be side agreements
5 between Credit -- is it Swiss?

6 A. Credit Suisse.

7 Q. -- Suisse --

8 A. Yes.

9 Q. -- First Boston with the lenders that they act
10 on behalf of as administrative agent?

11 A. I don't believe there is.

12 Q. Do you think that all of the information that
13 would have to do with the relationship between the
14 administrative agent and the lenders would be contained in
15 this document that's RD-9, your Schedule RD-9?

16 A. I think, Commissioner, RD-9, RD-10 and
17 RD-11 --

18 Q. All right.

19 A. -- which are some additional documentation
20 that go with the note, that indenture of mortgage and deed
21 of trust.

22 Q. Yes.

23 A. And the supplemental indenture would also
24 be -- are also necessary to a complete reading of the
25 agreement, but I think that would be all-inclusive.

1 Q. Okay. Would it be true to say that as of now
2 the Commission is not being made aware of, maybe because of
3 practicalities, all of the entities who would have an
4 interest in the collateral, in the regulated assets that are
5 being used as collateral if we approved collateralization of
6 Missouri's regulated assets?

7 A. Do you mind if I paraphrase?

8 Q. If you want to answer that in your own words,
9 then I'll come back if I don't think you're answering my
10 question the way I intended it.

11 A. Thank you. I believe it is true that, at this
12 point in time, in reference to the individual holders of the
13 notes behind this agreement, that the Commission probably
14 doesn't have a complete list of who they are. It would --
15 it would also in all practicality be very difficult, because
16 as we sit here today there could be a new owner of a note
17 who just repurchased from another owner.

18 Q. That's going to be a fluid situation?

19 A. I believe it is.

20 Q. And so the interest in the regulated assets
21 themselves will also be a fluid situation?

22 A. That would be true. That would be somewhat
23 true for all the other senior debt we have also, because
24 there are many noteholders behind that unsecured senior
25 debt, too, who are very interested in the company as a

1 whole.

2 Q. But they don't have a direct interest in the
3 regulated asset itself, do they?

4 A. They do not. These institutional holders
5 actually, in my opinion, don't really have a direct interest
6 either. What they're hoping for and what they would like is
7 for us to pay the interest rate to the maturity of the loan
8 and get their money back. But you're right, they have a
9 priority over these unsecured noteholders.

10 Q. And they will be -- they have not only
11 priority in regard to ensuring that they get paid first,
12 they also have an interest from a legal standpoint that
13 attaches directly to those regulated assets if it is
14 approved, this request is approved?

15 A. Yeah. The way I think about it -- and maybe
16 it's incorrect because I'm not an attorney. But the way I
17 think about it is they have a -- they have a little better
18 place in line in the event something very bad would happen,
19 which I obviously do not anticipate.

20 Q. They not only have a better place in line,
21 they have a legal interest in this -- in the regulated
22 assets in Missouri if we approve this request; isn't that
23 true?

24 A. You know, I can't answer that for sure because
25 I'm not an attorney, so I won't speculate on that.

1 Q. Is there much difference in the whole scheme
2 of things as we look at a security interest if, Mr. Dobson,
3 if we were dealing with, you're going to the bank and buying
4 a house and getting a deed of trust from a lender or giving
5 a deed of trust to a lender so that they would have a
6 security interest in the real estate that you were
7 purchasing, if you know?

8 A. I would suspect it's not much different than
9 that.

10 Q. Have you -- have you ever done that in the
11 general sense? I'm not going to get into your personal
12 affairs, but do you have some familiarity with borrowing
13 money and getting a -- giving a security interest in the
14 asset that you have bought?

15 A. I just got my title back from my little house
16 in Liberty, so -- that I did pay off. But, yeah, I did have
17 some money on that at one time.

18 Q. Okay. And the lender that you borrowed the
19 money from, they got a document called a deed of trust, in
20 all likelihood, I would suspect. Do you recall?

21 A. They did, and they sold my loan around a
22 couple times, too.

23 Q. They did, didn't they? And that got recorded
24 in a local recorder's office, didn't it?

25 A. I'm pretty sure it did.

1 Q. And that showed that security interest of the
2 bank or whoever they sold the note to and the interest and
3 the deed of trust subsequently, did it not?

4 A. I'm sure it did.

5 Q. And that interest was tied directly to that
6 piece of real estate?

7 A. It was.

8 COMMISSIONER GAW: I think I'm going to stop
9 right now, Judge. Thank you, Mr. Dobson.

10 JUDGE PRIDGIN: Commissioner Gaw, thank you.
11 Commissioner Murray, did you have follow-ups?

12 COMMISSIONER MURRAY: Thank you, Judge. I
13 just had one brief follow-up.

14 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Commissioner Forbis was asking you about some
16 give and take between the parties, and he asked you what
17 might be a give and take situation, and you were unable to
18 come up with one. But if this Commission were able to
19 determine that there would be no detriment to the
20 ratepayers, would it be possible for this Commission to
21 approve a pledge of \$60 million in Missouri assets in this
22 proceeding?

23 A. I don't know. I honestly don't know the
24 answer to that question from a -- from a legal lien
25 perspective. It might be possible. I just don't know

1 logistically. I think anything's possible, Commissioner. I
2 just don't know logistically how it would work, and that's
3 why I was hesitant to answer the questions, because I don't
4 know for sure.

5 Q. And would that be certain assets that would be
6 designated, do you know?

7 A. I would suspect -- again, I'm not an expert,
8 but I would suspect if you were going to try to do something
9 like that, you would want to designate discrete assets so
10 that they could be -- in the event that somebody were to get
11 them, right, if you had two cars and you were -- and you
12 didn't want to pledge them both and you said, well, I'll
13 give you a half interest in both of them, the party might
14 go, well, I'll just take the '69 Camaro, because I can't use
15 half of two cars. So I would imagine that's the way you
16 would go down that road, if you were going to go down that
17 road.

18 COMMISSIONER MURRAY: All right. Thank you.

19 JUDGE PRIDGIN: Thank you, Commissioner
20 Murray. Commissioner Clayton?

21 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

22 Q. Commissioner Gaw's questions kind of raised a
23 few questions in my mind. I apologize for not bringing
24 these up the first time.

25 I was tending to think in a traditional sense,

1 you go to a bank, you borrow the money, you have one note or
2 a handful of notes that set out your rights and a deed of
3 trust or secured agreement. And I wasn't thinking in terms
4 of multiple parties, and I also wasn't thinking about
5 whether or not this would be considered a security or not,
6 this commercial paper or these notes. Would you consider it
7 a security?

8 A. I would consider this term note a security,
9 because the lender -- the investors is the better way to put
10 it -- the investors behind it do change.

11 Q. And it's a tradable document, it's something
12 that you can buy and sell on the market, on a market
13 somewhere?

14 A. It's not highly liquid, but I think from a
15 broad perspective, with big institutions, they can trade it
16 and they do. For you and I to go out and try to get a piece
17 of it, probably not.

18 Q. So Fannie Mae wouldn't be a part of this
19 operation, right?

20 A. Probably not, but hedge funds might be.

21 Q. Sure. And pension funds would possibly or --

22 A. Possibly.

23 Q. -- an institutional investor?

24 A. They might be. They're high yield aspect.

25 Q. And if investors come in and go, depending on

1 what their needs are, who directs the administrative agent,
2 who directs First Bos-- Credit Suisse/First Boston? Who
3 directs them? Is there a committee? Do they have votes?

4 A. I don't believe so. I'm not an expert in
5 this, but I don't believe so, Commissioner. What I think
6 happens is -- it's similar to you and I actually could buy a
7 very small note, and I have done that myself, obviously
8 generally investment grade stuff, but you buy a very small
9 note. You have the right of what that note entitles you to,
10 generally nothing but to receive interest payments and to
11 have potentially, if it's a secured note, an interest in the
12 property in the event something bad would happen.

13 Q. I understand, but if -- if, say, you wanted to
14 renegotiate a rate or a term or something, who decides --
15 obviously Aquila would be the borrower. Do you go to a
16 committee? Do they elect a group of people to dictate terms
17 or negotiate for them? How does that work in terms of
18 control on the lender's side?

19 A. I believe -- and I'm a little bit fuzzy on
20 this. But I believe what happens is our administrative
21 agent would go to a group, the biggest group, and I'm not
22 sure how much they have to get before they can actually
23 force the whole group to do what they want. Maybe it's all,
24 but I think it's a certain majority.

25 And they would go to the biggest holders,

1 because they'll know who they are, and say, we have this
2 proposal. The borrower would like to do this, and would you
3 like to do it, yes or no, check this box and send it back
4 in. Now, we may get that in the mail for a small holder,
5 but they may just send it back and say, the big holder's
6 already approved this, so by the way, here's your new terms
7 and covenants of this agreement.

8 Q. When you say big holders, you're probably
9 meaning a group of people that would hold more than a
10 50 percent interest? I mean, you're talking majority?

11 A. I believe so.

12 Q. And certainly if you're talking about several
13 large investors, and then you've got a handful of small
14 investors, I mean, the big entities are going to be running
15 the show, but there still is going to be an organization of
16 control, wouldn't there?

17 A. That's right. And as a point of reference,
18 even in our revolving line of credit that we had last year,
19 we had 19 banks in that, and we -- depending on what it was,
20 if it was a major change, we had to get all 19 banks'
21 approval. And this is all defined. If it was a certain
22 change, we might only have to get a majority approval or
23 two-thirds approval. So this is like that, only a little
24 bit more dispersed.

25 Q. So one year from now you could be dealing with

1 a completely different set of investors than you are right
2 now?

3 A. We could be.

4 Q. And Credit Suisse/First Boston would be
5 continuing supposedly to just be the agent who really has no
6 power?

7 A. Yes.

8 Q. Do you have -- this is a legal question. I
9 apologize for asking, but I can't resist. How does one
10 perfect a security interest in a utility? And if you don't
11 know --

12 A. I don't really know. I think I knew at one
13 time and now it escapes me.

14 Q. You buy your house, you've got the deed of
15 trust, and as soon as you record it in the recorder's
16 office, the lien is perfected.

17 But with assets of this size, I was wondering
18 what has to be done. Do you just go to the -- do you go to
19 the Jackson County Courthouse and drop off one sheet of
20 paper and you're protected?

21 A. There are attorneys in our company that could
22 help you with that, but there is a process. There's
23 actually two ways to do it, and I don't recall either --
24 which way there are. One way is better than the other. One
25 way is very labor intensive, where I think it is kind of the

1 concept of filing a lien on everything, versus another way,
2 which I think gives them more coverage.

3 Like I said, I'm not an attorney, so I don't
4 know. There's another way to do it that I don't recall any
5 longer.

6 Q. Well, we tend to talk in these large numbers
7 in bulk and we make reference to the Missouri assets, but
8 the Missouri assets would be made up of real estate, of
9 right to receive funds, of certificates of service of some
10 sort?

11 A. Absolutely. Big generating plants and coal
12 piles and transmission lines --

13 Q. Inventory?

14 A. Everything.

15 Q. Accounts receivable?

16 A. Yes.

17 Q. So to perfect this security interest, it may
18 take quite a bit of work?

19 A. Yeah. Generally it's not things like accounts
20 receivable and that, that's what the assets generate, but it
21 is the assets themselves, generally. I just don't know
22 exactly the logistics or the legalities of how that works.

23 Q. Are you familiar with, on your Schedule RD-9,
24 the terms of default under this agreement?

25 A. I do have an understanding of this.

1 Q. Could you describe some of these events of
2 default for me? I'm not asking for an exhaustive, but
3 obviously failing to pay when something is due, filing
4 bankruptcy, insolvency?

5 A. It is. Missing a covenant, the debt to cap --
6 if the debt to cap is out of -- out of align, meaning if we
7 get -- if we're more than 75 percent of debt, total cap is
8 defined by GAAP the end of the year --

9 Q. I'm sorry. Would you -- what is that? And I
10 apologize. You use a lot of terms that are so far over my
11 head. I'm not -- I didn't --

12 A. It's my fault, Commissioner. Sorry.

13 Q. No, it's not. It's my lack of paying
14 attention in school, but if you would explain what you just
15 said.

16 A. As an example, in Section 6.1 of the financial
17 covenants under the negative covenants in the agreement on
18 page 65, it talks about total capitalization. And what that
19 means is you take all the debts on our balance sheet and
20 divide it by all the debts plus our equity on our balance
21 sheet. If that ratio exceeds 75 percent, then we would be
22 in default on our agreement.

23 Q. Do you know what that percentage would be
24 today?

25 A. I think at the end of the -- not today, but at

1 the end of the second quarter was about 66 percent.

2 Q. Okay. So about nine percentage points. I
3 mean, that's lots closer than what I anticipated. Is that
4 considered close in the business?

5 A. That's actually -- that's actually not that
6 close. It seems close, but you have to understand, then,
7 how many more -- if you take the numbers, how many more
8 losses would I have to incur to knock my equity down or how
9 much more debt would I have to -- excuse me -- how much more
10 debt would I have to borrow to make that debt percentage go
11 up?

12 And as you can see by the financial plan, all
13 I intend to do going forward is to reduce debt.

14 Q. I understand.

15 A. And so the other thing to say, Commissioner,
16 never say never, but obviously one of the things I was
17 heavily involved with was the design of these covenants,
18 such that over the life of the strategic plan, which I know
19 does evolve, it's a core plan, we would not trip these.
20 Now, could we trip them? Sure, we could. There's always
21 things you don't anticipate. But did I negotiate these with
22 cushion in mind? Of course I did. That wouldn't be
23 prudent.

24 Q. Everything's relative?

25 A. Everything's relative.

1 Q. Kind of like when you said you had \$2 billion
2 in unsecured debt, I wanted to say how can you sleep at
3 night. That's a lot of debt.

4 The terms of default, I was looking at a few
5 of these; limitations on transactions with affiliates,
6 limitations on structure. I guess I was -- these documents
7 are very lengthy, and there are a lot of terms that -- the
8 lender is going to set up a lot of mechanisms that would
9 trigger default. Generally, would you agree with that?

10 A. They are. What they're really going to aim
11 at, though, when you boil down through this is -- and we
12 talked about the company and what's happened in the past.
13 Now, this thing is designed around preventing any really
14 significant investment in anything that's unregulated. It
15 will allow us to -- it will allow us to issue debt, but
16 only -- only after the maturity date of their -- six months
17 after the maturity date of their debt.

18 So they are going to write obviously covenants
19 that are going to protect them during the term of this loan.
20 And obviously, in a negotiation, we're going to fight back
21 in those as much as we can. But we needed this money at
22 that point in time, so that's kind of a negotiation thing,
23 like when you walk in and you need a car, it's going to be
24 hard to get the best deal.

25 Q. You're going to get the undercoating. I

1 understand. I understand.

2 The provisions of default I don't think are
3 that unusual. At least I haven't seen any yet that are that
4 unusual. My concern, though, is that there are a lot of
5 them. And my next round of questions, basically you would
6 agree that the Missouri assets would be the largest, if we
7 were to grant this or agree with you. Missouri would have
8 the largest, would be the largest single asset in the pool,
9 wouldn't it?

10 A. It would.

11 Q. It would. And if two years down the road
12 these notes are traded and perhaps a less desirable investor
13 gets ahold of it, like what the trend was in the '80s when
14 people were buying up companies or going after companies and
15 then carving them up, if someone that you had no idea comes
16 in that wants to trigger one of these terms of default,
17 they're going to go after Missouri first, wouldn't they?

18 A. Well, that's an interesting concept. We would
19 have to actually violate one of these, right.

20 Q. I understand.

21 A. But you're not incorrect in thinking that,
22 say, we did, heaven forbid, violate one of these. Generally
23 a lot of times, if your investor -- if your investor pool is
24 investors, let's say the other type that really want their
25 interest rate and want to be paid out at maturity, then what

1 they generally say is, oh, I see you violated your covenant,
2 would you pay me so many basis points and I'll waive it.
3 So it's not a freebie, but you go ahead and pay me so many
4 basis points and we'll waive that covenant.

5 And what they'll probably do in advance of
6 that is, let me look at your financial position of your
7 company, because I want to make sure that you really aren't
8 in trouble. They make the assertion, you pay them the fee
9 up front, and you would move on.

10 But what I'm -- this is just my opinion. An
11 investor that would want to trigger the default of the
12 company, what they would be doing -- and this is strictly my
13 opinion -- what they would be doing, then, is triggering
14 cross-defaults to all unsecured debt and actually forcing us
15 into a very bad situation and putting themselves in their
16 priority point place in line, for what reason I don't know.

17 Q. Well, there was discussion about that earlier
18 with Commissioner Gaw that this is just priority and that
19 your -- that these creditors would be in a better position.
20 And I disagree with that, because I'd think they'd be in the
21 best position, because the secured assets would be
22 completely dedicated to this group of people. And we don't
23 even know who they are, correct?

24 A. That's correct.

25 Q. And it's not really a question of priority

1 because there are more rights in this document and
2 responsibilities than any of the \$2 billion in unsecured
3 debt, which would just be -- and forgive -- it would be like
4 credit card debt or a personal note or --

5 A. Not as stringent, right.

6 Q. Not as stringent. But the concern that I have
7 is that if you were to get an undesirable investor in
8 circumstances like that that would take a -- a very
9 technical approach to these terms of default, a \$430 million
10 loan that is being secured by, what, over a billion in
11 assets, all of his collection costs would be paid for out of
12 a potential foreclosure or sale. Would you agree with that?

13 A. That would cause a -- that would call on me to
14 speculate a little bit. But with the sheer size of the
15 collateral above this loan, in the event when something bad
16 would happen, then there would be -- and like I said, I'm
17 not a bankruptcy expert -- but there would be a creditors
18 committee of which they would be a prominent part of it.
19 There would be a trustee and there would be all that stuff.
20 But they would be way up in line, so they would be pretty
21 comfortable that they're going to -- in whatever course they
22 take the company.

23 Q. Would you agree as a secured creditor they'd
24 be in their own line, they'd have their own separate line
25 and they wouldn't be in line with everybody else? Would you

1 agree with that statement?

2 A. Like I said, I'm not an expert. I would think
3 they would get their first bite, but since this bite is
4 pretty rich, that they would feel pretty good about it.

5 Q. I would hope they'd feel pretty good about it.

6 A. But when I say that, though, I mean,
7 hypothetically there was some bites in some dotcoms and some
8 telecoms where even the secured bite wasn't big enough to
9 get their money back. But in this case, probably so.
10 Probably so.

11 Q. And believe me, I understand. We're talking
12 worst-case scenario here.

13 A. Oh, absolutely.

14 Q. Do you know -- you may not know. Do you know
15 whether or not the current list of investors are familiar
16 with the utility industry?

17 A. I don't know, but I do talk with some of the
18 bigger ones on occasion. They actually will literally call
19 my office and want to talk to me, and I will talk to them.
20 Major stakeholders in the company. In general, these people
21 are what I would term just savvy stakeholders. So whether
22 they're utility experts or not, generally they're experts in
23 whatever they're investing in, so I would imagine they are,
24 even though I'm speculating on that.

25 Q. If they are savvy, why is this a good deal --

1 why is this a good deal for them? Explain -- is this a
2 savvy deal for the investors?

3 A. It's a -- it's a good deal in that, relative
4 to other returns for the risk -- and this is my opinion
5 again.

6 Q. I understand.

7 A. I think it's a pretty good deal, and the way
8 our debts trade lately, I think the market thinks it's a
9 good deal too, because our debt's all trading up.

10 Q. Is it purely based on the interest rate?

11 A. Probably. Best way to answer that, probably.

12 Q. Would it also be because it's going to be
13 heavily securitized, if that's even a word, if it's going to
14 have a lot of heavily secured?

15 A. They would have to be speculating on that,
16 right, but it already has a security level in it, and they
17 put provision in here to keep that security level at a
18 certain level. So I think they're already considering where
19 they're at when they make that decision. They're not
20 looking at Missouri coming in and then having all this
21 collateral over-collateralized because they gave up the
22 rights for additional deals to be done above that, beyond
23 their term. So they're not -- so --

24 Q. What do you mean additional deals over and
25 above that?

1 A. Hypothetically speaking, let's say you went
2 in -- and this is where I got in a little bit of a --
3 because it's purely hypothetical. Let's say then this
4 agreement does allow us to issue more secure debt. Not in
5 our plan, we don't want to do that, but let's say we did.
6 Let's say we came here and said, guys, we know it's two
7 years later and we want to issue some more secured debt
8 maturing in ten. And you guys go, you know, that makes
9 sense, let's do that. Well, these people would now be
10 secured creditors, to.

11 Q. Do you know -- I'm sorry.

12 A. I'll just finish. They would be secured
13 creditors, too. So they would have a nice bite, too, but
14 their bite would be the same. It's 1.67 times coverage.

15 Q. Okay. Credit Suisse/First Boston says on RD-9
16 that it's the Cayman branch, and I'm sure this has probably
17 been discussed. Is there a reason why the Cayman branch was
18 involved, as opposed to another branch?

19 A. You know, I actually don't know the answer to
20 that question.

21 Q. I'm not saying it's a dumb idea. You have --
22 I'm sure you have lots of meetings down there, but --

23 A. I actually haven't had any meetings down
24 there, and until that actually -- until the question was
25 asked on under some other venue, I didn't realize that.

1 I -- believe it or not, I just glossed over it. I'm sure
2 there's some banking structure reason why they wanted to do
3 that.

4 Q. When you say they, who is they?

5 A. Credit Suisse/First Boston. I'm sure there's
6 something behind that, otherwise they wouldn't do it.

7 Q. So there was no option of Aquila -- you know,
8 I have this idea of going to see a banker and you go down to
9 the corner and see the banker. Obviously there are lots of
10 contacts that have to be made.

11 Are you saying that Credit Suisse/First Boston
12 chose the Cayman branch for this deal?

13 A. The entity involved in this deal with that
14 Cayman branch nameplate on it, they did -- they did choose
15 that. We never -- myself and my staff never went to the
16 Caymans to negotiate the deal.

17 Q. Made a mistake.

18 A. I did make a mistake. I actually did most of
19 the negotiation from Kansas City, Missouri in a conference
20 room on the weekends, but some of my people did go to
21 New York where the deal was negotiated.

22 Q. To the best of your knowledge, are any of the
23 investors that were assembled at the Credit Suisse/First
24 Boston Cayman branch, are you aware of any of them being
25 non-domestic companies?

1 A. I don't know, Commissioner, but those -- those
2 companies on Wall Street and different companies on Wall
3 Street that invest in this, they will set up structures --
4 and this is my hypothetical statement again, or my belief.
5 They set up structures that are most tax advantageous, and I
6 think that's what drives a lot of this, but I could be
7 wrong.

8 Q. So you're assuming that it's based on taxes?

9 A. I guess I don't want to say that in the
10 record. I'm not assuming that, but some companies do set up
11 structures --

12 Q. You don't know?

13 A. I don't know.

14 COMMISSIONER CLAYTON: Okay. Thank you. I
15 have no further questions. Thank you, Mr. Dobson.

16 JUDGE PRIDGIN: Commissioner Clayton, thank
17 you.

18 I think I have just a few questions, and then
19 I'll see if the Commission has any other questions.

20 QUESTIONS BY JUDGE PRIDGIN:

21 Q. And I understand that you said you're not a
22 statistician, and I'm not either, and so I may stumble
23 through this, and I apologize.

24 Wasn't it your testimony that the model you
25 used to come up with the \$250 million working capital need

1 was based upon two standard deviations? In other words,
2 that you're confident within two standard deviations that
3 that \$250 million would be enough? Am I stating your
4 testimony correctly?

5 A. That is correct.

6 Q. Okay. If I remember correctly, is plus or
7 minus two standard deviations roughly a 95 percent
8 confidence level?

9 A. It is. And you are a statistician.

10 Q. I'm so scared that I remembered that.

11 Do you recall -- do you recall the bottom
12 figure? In other words, isn't the \$250 million -- strike
13 that.

14 Wasn't it more like \$241 million was the plus
15 two standard deviation?

16 A. That's correct. That's the tail.

17 Q. All right. Do you recall what the mean was,
18 if I'm using my terms correctly, what the zero point was?

19 A. I think you are using the term correctly. I
20 think what we filed was, I think the mean around that two
21 standard deviation 95 percent confidence was 107 million.

22 Q. You probably stated that. And do you recall
23 what the bottom, what the minus two was?

24 A. I don't recall that.

25 Q. All right. When Aquila borrowed this money,

1 did you ever see the actual physical promissory note or
2 notes?

3 A. I did not.

4 JUDGE PRIDGIN: Okay. And I don't think I
5 have any further questions. Anything else from the Bench?

6 (No response.)

7 JUDGE PRIDGIN: All right. Let me see what
8 kind of recross we're going to have and see if this might be
9 a better time to take a break.

10 Mr. Micheel, first of all, do you have
11 recross?

12 MR. MICHEEL: Yes, your Honor.

13 JUDGE PRIDGIN: Can you give me a ballpark if
14 it's going to be extensive or brief?

15 MR. MICHEEL: Seven, eight, ten questions.

16 JUDGE PRIDGIN: If you're ready, you can go
17 ahead.

18 MR. MICHEEL: I'm ready.

19 RE-CROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Dobson, do you remember the
21 questions Commissioner Clayton asked you regarding the
22 over-collateralization of the loan?

23 A. I believe I do.

24 Q. And whether or not that was something that
25 investors were looking at when they were considering whether

1 or not to buy a piece of the loan?

2 A. Yes.

3 MR. MICHEEL: May I approach the witness?

4 JUDGE PRIDGIN: You may.

5 BY MR. MICHEEL:

6 Q. I'm handing you a copy, Mr. Dobson, of OP-- a
7 portion of OPC-5014. And this is the investor presentation
8 that Aquila gave on March 2003 to investors.

9 MR. MICHEEL: And I guess -- I note it's
10 marked highly confidential, so unfortunately we'll have to
11 go into highly confidential.

12 JUDGE PRIDGIN: All right. Let me take just a
13 brief recess.

14 MR. MICHEEL: Sorry.

15 JUDGE PRIDGIN: It's not a problem. And we'll
16 suspend the webcast and go off the record very briefly.

17 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

18 (REPORTER'S NOTE: At this point, an in-camera
19 session was held, which is contained in Volume 7, pages 525
20 through 526 of the transcript.)

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1 JUDGE PRIDGIN: We're on the record, and we
2 went off the webcast temporarily for highly confidential.
3 We are now back in public forum.

4 Mr. Micheel?

5 BY MR. MICHEEL:

6 Q. Mr. Dobson, I believe you said in response to
7 one of Commissioner Clayton's questions that the investors
8 in this term loan are, quote, savvy investors; is that
9 correct?

10 A. I did.

11 Q. And I believe you said that those investors
12 believe that this investment was a good deal; is that
13 correct?

14 A. I did say that.

15 Q. Would you agree with me that those investors
16 knew at the time they were investing that there was a chance
17 that utility collateral would not be placed in the pool?

18 A. I don't know what they were thinking at the
19 time.

20 Q. Well, do you think savvy investors looked at
21 the agreement, Mr. Dobson?

22 A. I think they looked at what was in the pool
23 and made their evaluation based on that and the potential
24 for other stuff, other utility collateral to go in, but
25 weighed all those factors in making their decision.

1 Q. And at the time they made their initial
2 decision to invest, isn't it correct that there were only
3 Michigan and Nebraska utility collateral in the pool,
4 Mr. Dobson?

5 A. As well as the foreign utility collateral,
6 too.

7 Q. And the second lien on the IPP?

8 A. Correct.

9 Q. Commissioner Gaw asked you some questions
10 about, I think you termed it the three buckets of debt. Do
11 you recall those questions, sir?

12 A. I do.

13 MR. MICHEEL: I'd like to get an exhibit
14 marked, and I believe this is going to be No. 52.

15 JUDGE PRIDGIN: 54.

16 MR. MICHEEL: 54.

17 (EXHIBIT NO. 54 WAS MARKED FOR IDENTIFICATION
18 BY THE REPORTER.)

19 BY MR. MICHEEL:

20 Q. Mr. Dobson, I've handed you supplemental
21 response to OPC Data Request 5008, and that's marked for
22 purposes of identification as Exhibit 54. Do you have that
23 in front of you?

24 A. I do.

25 Q. And is that a response to a Public Counsel

1 Data Request?
2 A. Yes.
3 Q. And is that answered by Mark Reed?
4 A. Yes.
5 Q. And Mark Reed works for Aquila?
6 A. He does.
7 Q. Could you turn to a page that is entitled
8 estimated prepayment or open market purchase costs for
9 selected Aquila senior notes?
10 A. I have.
11 Q. Are those the notes that would fit in the
12 first bucket of unsecured senior notes that you were
13 discussing with Commissioner Gaw?
14 A. The first five are. The last one is the term
15 loan.
16 Q. And I guess that's on the fifth page of
17 Exhibit 54; is that correct, sir?
18 A. That is correct.
19 Q. So with the exception of the \$430 million
20 three-year term loan, are those the five major senior notes
21 that Aquila currently has outstanding?
22 A. Those are five of the senior notes that we
23 have outstanding.
24 Q. Are those the biggest senior notes you have
25 outstanding?

1 A. No, they're not. There are some other ones
2 bigger than the smaller ones on that page.

3 Q. And why weren't they put on this document, if
4 you know?

5 A. I believe this is -- this is notes that have
6 either make-whole or call provisions in them. So that's why
7 it was captured on this page.

8 MR. MICHEEL: I would move the admission of
9 Exhibit 54, your Honor.

10 JUDGE PRIDGIN: Any objections?

11 MR. BOUDREAU: Give me a moment, please.

12 I guess I have an objection as to relevance.
13 I'm still struggling to figure out what the relevance of
14 this exhibit is.

15 JUDGE PRIDGIN: Mr. Micheel?

16 MR. MICHEEL: Well, Commissioner Gaw asked
17 about the specifics of some of the unsecured senior notes.
18 And I recognize Mr. Dobson said it's not all of them, but
19 now we have in the record at least five or six of them and
20 what their terms are, how much is outstanding, what the
21 make-whole premium is, and it's relevant to a question the
22 Commissioner asked and it adds specificity to the record.

23 JUDGE PRIDGIN: I will overrule the objection
24 and Exhibit No. 54 is admitted into evidence.

25 (EXHIBIT NO. 54 WAS RECEIVED INTO EVIDENCE.)

1 BY MR. MICHEEL:

2 Q. Mr. Dobson, you had a conversation with
3 Commissioner Forbis, and you indicated that even if there's
4 \$1 billion of regulated assets in the pool, the company
5 could still issue first mortgage bonds; is that correct?

6 A. If there were \$1 billion of regulated assets
7 in the pool, I think I said the agreement would allow for us
8 to issue some first mortgage bonds outside of six month --
9 six months past the maturity date of the term loan.

10 Q. So Aquila can't issue any first mortgage bonds
11 that come due before the maturity date of the three-year
12 \$430 million term loan; is that correct?

13 A. I'm actually not sure we can issue any debt
14 that comes before that maturity debt, in accordance with the
15 negative covenants of the arrangement.

16 Q. Is it correct, though, that if Aquila is
17 over-collateralized and has a billion dollars of debt in the
18 pool -- I'm sorry -- a billion dollars of collateral in the
19 pool, Mr. Dobson, and it does not have enough collateral to
20 meet the requirements for the \$180 million nonregulated
21 portion, that a paydown would necessitate an optional
22 prepayment with the make-whole?

23 A. That is correct.

24 Q. Commissioner Forbis asked you to summarize why
25 Aquila is here for this proceeding. Do you remember that?

1 A. I do.

2 Q. And you offered two reasons. Do you recall
3 that?

4 A. I do.

5 Q. And the first reason is that you had -- the
6 company had to make a good faith effort; is that correct?

7 A. Yes.

8 Q. And is that good faith effort required by
9 Section 5.13 of the term loan which is attached to your
10 direct testimony as Schedule RD-9?

11 A. I believe it is.

12 Q. And so that's a contractual obligation that
13 Aquila has to the lenders; isn't that correct?

14 A. Yes.

15 MR. MICHEEL: Thank you, Mr. Dobson.

16 JUDGE PRIDGIN: Mr. Micheel, thank you.

17 Mr. Williams?

18 And after Mr. Williams I'll be likely to pause
19 for a break.

20 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. Hello again, Mr. Dobson. Just a few
22 questions.

23 A. Good afternoon.

24 Q. With regard to some responses you provided to
25 questions by Commissioner Forbis, I believe you indicated

1 there would still be something like 1.5 billion in utility
2 assets that would be available for security for loans, even
3 if this agreement were approved?

4 A. I believe what I was saying is that, in my
5 opinion, if all the states were in, the pool of collateral.

6 Q. Would that be 2.2 billion?

7 A. That would be 2.2 billion, which would leave
8 an excess of 1.5 billion, and that is my opinion, because we
9 have not received appraisals on all the states of the
10 utilities. So that is strictly my opinion. I'm not an
11 appraiser, but that is my estimate.

12 Q. You're not saying that the 718 million would
13 be available?

14 A. The 718 million would be used up. It would be
15 consuming the 430.

16 Q. And what would be the collateral ratio if you
17 had all of the utility assets in the collateral pool, and
18 assuming there weren't any non-utility assets, your
19 collateral-to-debt ratio?

20 A. 718 divided by 430 is 1.67.

21 Q. No. I'm saying if you have 2.2 billion in
22 assets as collateral for the loan, what would be your
23 collateral-to-debt ratio?

24 A. Well, the pure arithmetic without a calculator
25 would be approximately --

1 Q. Be something in excess of 4?
2 A. -- in excess of 4, approaching 5. Actually
3 might be 5, 2.15.
4 MR. WILLIAMS: No further questions.
5 JUDGE PRIDGIN: Mr. Williams, thank you.
6 Mr. Finnegan, do you have any recross?
7 MR. FINNEGAN: No, I don't.
8 JUDGE PRIDGIN: Mr. Molteni?
9 MR. MOLTENI: Just a couple.
10 RE-CROSS-EXAMINATION BY MR. MOLTENI:
11 Q. Mr. Dobson, do you recall Commissioner Forbis
12 questioning you about the 75 basis points?
13 A. I do.
14 Q. And you recall stating that you were still
15 waiting on some -- that Aquila was still waiting on some
16 other states weighing its applications there?
17 A. In addition to Missouri, yes.
18 Q. What other states is Aquila waiting on?
19 A. Iowa, Missouri, Kansas, and to my knowledge,
20 Minnesota.
21 Q. To your knowledge? What do you mean by to
22 your knowledge?
23 A. That's what I know today. I'm not following
24 it that closely personally.
25 Q. Have you been informed whether Minnesota's

1 already voted on Aquila's application or not?

2 A. I don't know. All I know is -- I don't know
3 if they made a final determination. I've heard some
4 preliminary stuff kind of around this room, but that's all
5 I've heard.

6 Q. Has anybody from your staff told you whether
7 Minnesota's voted on Aquila's application yet?

8 A. Nobody from my staff has told me, no.

9 Q. Has your counsel told you whether Aquila's --
10 whether Minnesota's voted on Aquila's application yet?

11 MR. BOUDREAU: Well, if counsel had, that
12 would be privileged communication.

13 MR. MOLTENI: I'll withdraw that question.

14 THE WITNESS: Yeah. I'm not aware if they
15 have or not, Mr. Molteni. I just don't -- I don't know.

16 BY MR. MOLTENI:

17 Q. No employee from Aquila has informed you as to
18 whether Minnesota has voted on Aquila's application yet; is
19 that your testimony today?

20 A. That's my understanding today, yes.

21 Q. And you haven't discussed Minnesota's vote
22 with any Aquila employee; is that correct?

23 A. I may have asked them how Minnesota's going,
24 and they didn't have an answer.

25 Q. And who may you have asked that of?

1 A. I'm not -- I don't even recall any longer.
2 MR. MOLTENI: Thanks a lot, Mr. Dobson.
3 JUDGE PRIDGIN: Mr. Molteni, thank you.
4 Mr. Boudreau, I think you're up for redirect.
5 I'll certainly leave it up to you, since your witness has
6 been up there for quite a while. I assume you'd like a
7 break, unless your redirect is going to be real brief.
8 MR. BOUDREAU: I would like to give my witness
9 a chance for a break.
10 JUDGE PRIDGIN: Why don't we take a break for
11 roughly ten minutes or so, and then try to resume at roughly
12 2:50. And we will go off the record.
13 (A BREAK WAS TAKEN.)
14 JUDGE PRIDGIN: We're back on the record.
15 Mr. Boudreau, some redirect for Mr. Dobson?
16 MR. BOUDREAU: Yes, I do. Thank you.
17 REDIRECT EXAMINATION BY MR. BOUDREAU:
18 Q. I'll be brief. Mr. Dobson, I'm not sure which
19 attorney to attribute this line of questioning to. I think
20 it was either Mr. Micheel or Mr. Williams asked whether you
21 believe that the company had a fiduciary duty or the officer
22 had a fiduciary duty to its shareholders?
23 A. Yes.
24 Q. Do you recall that?
25 A. Yes.

1 Q. And your answer was, I believe, yes. And my
2 question to you is, do you believe the company also has a
3 duty under the law to comply with orders issued by this
4 Commission that are applicable to the company?

5 A. Yes.

6 MR. MICHEEL: I'm going to object to the legal
7 nature, calls for a legal conclusion.

8 JUDGE PRIDGIN: I'll overrule.

9 THE WITNESS: I believe we do.

10 BY MR. BOUDREAU:

11 Q. Thank you. I believe also Mr. Micheel had
12 asked you a little bit about -- let me withdraw that.

13 Mr. Micheel, I believe, took you through a
14 number of scenarios dealing with the mechanics of the
15 optional prepay under the provisions of the term loan. Do
16 you recall that?

17 A. I do.

18 Q. And he handed you a work sheet with a number
19 of scenarios set forth.

20 A. Yes.

21 Q. Do you recall that? He walked you through
22 those?

23 A. He did.

24 Q. How would you characterize those scenarios
25 with which you were presented?

1 A. Highly speculative, very difficult to
2 ascertain where we'll be at that point in time, what
3 collateral will be left, due to the diverse scenarios that
4 we do have in front of us to collateralize the \$430 million
5 term loan with respect to its nonregulated and regulated
6 pieces.

7 Q. Thank you. So with respect to any particular
8 scenario through which you were talked, that occurrence may
9 or may not take place; isn't that correct?

10 A. It may or may not take place.

11 Q. Also with respect to the issue of the
12 make-whole premium, does the make-whole premium become a
13 lesser amount over the term of the term loan?

14 A. By design, the make-whole premium gets smaller
15 with time, as we move to the termination of the loan. We
16 kind of control our destiny that way. When we look at the
17 portfolio of nonregulated assets that we keep in there and
18 how long we keep them in, and that may drive your
19 decision-making process because it gets smaller and smaller
20 with time, ultimately terminating on the extinguishing of
21 the loan.

22 Q. You received questions from a number of
23 people, but I believe that Mr. Williams, among them, asked
24 you a little bit about the \$650 million revolver. I think
25 it was basically a two-part facility, about the \$650 million

1 revolver that was replaced by the term loan. Do you recall
2 that exchange?

3 A. I do.

4 Q. And you indicated that, in the transition, at
5 least some of the original amount was paid down?

6 A. Yes.

7 Q. And that the balance of it was, to
8 characterize your testimony, refunded or replaced with the
9 \$430 million term loan; is that correct?

10 A. That's correct.

11 Q. What was the purpose of the \$650 million
12 revolver that was ultimately paid down and replaced? What
13 was that in place for?

14 A. To service the working capital needs of the
15 regulated and unregulated operations.

16 Q. Okay. Is there any reason for anybody to
17 believe that those peak working capital needs and
18 requirements of the company somehow evaporated between the
19 time the \$650 million revolver was paid down in part and
20 replaced and the time the \$430 million term loan was put in
21 place?

22 A. They have not.

23 Q. I believe Mr. Williams asked you a question or
24 two about the lenders' right to foreclose under the terms of
25 the term loan. Do you recall that?

1 A. Yes.

2 Q. Would you agree with me that under any sort of
3 secured financing arrangement, that the lender typically has
4 a right to foreclose on the loan in the event of a default?

5 A. They do.

6 Q. And this wouldn't be any different than any
7 other sort of financing arrangement, would it?

8 A. This is no different than any other secured
9 financing arrangement.

10 Q. I believe there was a little bit of confusion
11 caused in an exchange of questions and answers with
12 Commissioner Murray about whether or not the amount by which
13 the term loan is over-collateralized would be available for
14 additional mortgaged back debt financing in the future. Do
15 you recall that exchange?

16 A. I do.

17 Q. I believe one of the questions that was asked
18 by Commissioner Murray dealt with whether or not the company
19 would, if it got approval of this application, whether it
20 would be required to come back and get additional approval
21 from the Commission in the event of the issuance of an
22 additional series of first mortgage bonds under the
23 indenture. Do you recall that?

24 A. I do.

25 Q. And I believe your answer suggested, or at

1 least in the exchange you suggested, no, you didn't think
2 the company would have to get approval. Do you recall that?

3 A. I did. I was incorrect. We do. As I stated
4 previously in parts of the earlier testimony, when I talked
5 about if we were to issue additional secured debt, we would
6 come back for the approval, but I did misspeak in that
7 instance.

8 Q. Also in response to some questions from
9 Commissioner Murray, you were asked about the extent to
10 which the costs that the companies incurred associated with
11 prosecuting this case might be included in rates in a
12 subsequent rate case. Do you recall that?

13 A. I do.

14 Q. Now, to the extent any costs associated with
15 this case would be passed along to Missouri customers, this
16 Commission would have to approve that in a subsequent rate
17 case, wouldn't they?

18 A. They would.

19 Q. If the company did not ask for rate recovery
20 of the costs associated with this case, would those costs be
21 passed on to customers in rates?

22 A. They would not.

23 Q. And if the company did ask for recovery of
24 those costs in whole or in part, wouldn't -- they wouldn't
25 be passed on unless the Commission approved it, would they?

1 A. That's correct.

2 Q. Now, as far as whether or not the costs of
3 this case are going to be included in any pending or current
4 rate case, would those questions better be addressed to Jon
5 Empson? Would he be in a position to answer how the
6 company's handling those things?

7 A. I believe he would.

8 MR. BOUDREAU: Just give me a moment. I
9 believe I may be about done, or done. I don't believe that
10 I have any more questions, Mr. Dobson.

11 One of the things I would like to do, I
12 believe that this is an error I'd like to blame on my
13 secretary, but I think it is my fault. Schedule RD-12 to
14 Mr. Dobson's direct testimony was a copy of some corporate
15 resolutions. It occurred to me that those were the
16 incorrect set of resolutions, that subsequently a substitute
17 schedule of resolutions were passed or were filed, let me
18 put it this way, and I neglected to have the correct set of
19 resolutions offered.

20 It's my understanding by agreement of counsel
21 that what we'd like -- what I'd propose to do is to reserve
22 an exhibit and to offer that later on. I don't -- I believe
23 with agreement of counsel, we can do that. I don't think
24 there's going to be an objection to offering what amounts to
25 a substitute set of resolutions.

1 And with that understanding, I'd ask that
2 Mr. Dobson be excused.

3 JUDGE PRIDGIN: That's certainly fine. I'm
4 hearing no objection to Mr. Dobson being excused; is that
5 correct?

6 (No response.)

7 JUDGE PRIDGIN: Mr. Dobson, thank you very,
8 very much for your time and your testimony.

9 MR. BOUDREAU: As a mechanical matter, would
10 you like to reserve an exhibit number now or would you like
11 to deal with that -- assigning an exhibit number for that
12 document later?

13 JUDGE PRIDGIN: I can go ahead and assign a
14 number. I mean, if it's something that you want to offer
15 and you understand that the other parties don't object, we
16 can take care of that now.

17 MR. BOUDREAU: I don't have a copy of the
18 document with me. I'll have to offer it in the next day or
19 so.

20 JUDGE PRIDGIN: That's fine. I'll just leave
21 it up to you, and you can offer that.

22 MR. BOUDREAU: We'll just take care of
23 identifying that at a later time.

24 JUDGE PRIDGIN: That's fine.

25 MR. BOUDREAU: Thank you very much.

1 JUDGE PRIDGIN: Thank you.
2 Do we have Jon Empson at the stand?
3 Mr. Empson, if you would please raise your
4 right hand to be sworn.
5 (Witness sworn.)
6 JUDGE PRIDGIN: Thank you very much. Please
7 be seated.
8 Mr. Boudreau, whenever you're ready.
9 MR. BOUDREAU: Thank you.
10 JON EMPSON, being sworn, testified as follows:
11 DIRECT EXAMINATION BY MR. BOUDREAU:
12 Q. Good afternoon.
13 A. Good afternoon.
14 Q. Would you state your name for the record, sir.
15 A. My name is Jon R. Empson.
16 Q. By whom are you employed and in what capacity,
17 sir?
18 A. I'm employed by Aquila, Inc. as senior vice
19 president responsible for regulatory, legislative and gas
20 supply services.
21 Q. Are you the same Jon Empson that has caused
22 to be filed what has been marked for identification as
23 Exhibit 9, which is your prepared direct testimony?
24 A. Yes, I am.
25 Q. Have you also filed what has been identified

1 or marked for identification as Exhibit 10, which is your
2 surrebuttal testimony nonproprietary version?

3 A. Yes, I have.

4 Q. And also Exhibit -- what has been identified
5 as Exhibit 11, which is the highly confidential version of
6 your surrebuttal testimony?

7 A. Yes.

8 Q. Was that testimony prepared by you or under
9 your direct supervision?

10 A. Yes, it was.

11 Q. With respect to your direct testimony, do you
12 have any corrections to make to it at this time?

13 A. Yes, I do.

14 Q. Please proceed.

15 A. If you would turn to page 5, line 18, there is
16 a sentence that starts, Aquila is also committed to work
17 with, and it has bracket State Commission. That should be
18 with the Missouri Public Service Commission, and then go on
19 to modify its current internal quality matrix.

20 Q. Do you have any other corrections to your
21 direct testimony?

22 A. I do not.

23 Q. Do you have any corrections to make to your
24 surrebuttal testimony?

25 A. Yes, I do. I have several corrections just to

1 get my testimony in sync with Staff Witness Wandell and a
2 few other minor corrections.

3 Q. If I can ask you for clarification for the
4 record, are you working off the nonproprietary or highly
5 confidential?

6 A. I am working off the highly confidential.

7 Q. Very good. Proceed, please.

8 A. At the bottom of page 1 on line 24, it says,
9 Carol Lownds, senior financial manager for Aquila Networks.
10 It should be senior financial manager for regulatory,
11 legislative and gas supply services. She was moved into a
12 different job after I wrote my testimony.

13 Q. Could you repeat that again, please.
14 Regulatory?

15 A. Regulatory, legislative, and gas supply
16 services.

17 On page 2, line 19, the lines 26 to 27
18 reference should be lines 6 to 7.

19 MR. FINNEGAN: I'm sorry. What page?

20 THE WITNESS: Page 2, line 19 on the highly
21 confidential, 26, 27 should be 6 and 7.

22 Page 3, line 16 where it says lines 19 through
23 20 should be lines 8 through 9, and on line 17 where it
24 talks about lines 12 through 14 should be lines 2 through 4.
25 And on line 25, where it talks about lines 20 through 22,

1 that should be 10 through 12. And then delete page 11,
2 lines 1 and 2.

3 On page 4, line 1, it should be -- instead of
4 page 11, lines 3 through 4, should be page 10, lines 15
5 through 17. On line 22, it should be -- instead of page 48,
6 it should be page 47. And on line 23, instead of lines 1
7 through 19, it should be lines 5 through 23.

8 On page 5, on line 10, instead of page 47, it
9 should be page 46. On line 11, instead of lines 3 through
10 9, it should be lines 9 through 15. At the bottom of that
11 page, line 25, it should be -- instead of page 47, lines 13
12 to 14, it should be page 46, line 19 through 20.

13 Then on page 7, line 18, instead of page 46,
14 lines 1 through 9, it should read page 45, lines 8 through
15 16.

16 Page 24, line 2, it should read, just on page
17 49, and strike 50 and take the rest off. And then a
18 correction in content on line 15 and 16. The sentence
19 starts on line 14. It says, the Colorado Staff and Office
20 of Consumer Counsel both intervened and the Staff issued the
21 seven data requests referred to. The sentence should read,
22 the Colorado Staff and Office of Consumer Counsel both
23 intervened and the Staff issued several, instead of the
24 seven, data requests. And cross out referred to in
25 Mr. Robinson's testimony, page 15, line 7.

1 That's it.

2 Q. Does that conclude your changes?

3 A. It does.

4 Q. Let me ask you this. As far as the changes
5 you've just indicated through the highly confidential
6 version of your testimony, would parallel changes be made
7 also to the nonproprietary document as well?

8 A. Yes, they would.

9 MR. BOUDREAU: If that's okay, rather than go
10 through the document the separately --

11 JUDGE PRIDGIN: That's certainly fine with me.

12 BY MR. BOUDREAU:

13 Q. All right. With those changes, sir, if I were
14 to ask you the same questions as appear in both your
15 prepared direct and prepared surrebuttal testimony today,
16 would your answers be substantially the same?

17 A. There's one area that would change.

18 Q. Would you please direct the Commission's
19 attention to the area that would change.

20 A. Yes, I will. On page 23, there's a question
21 on line 23 that talks about Staff Witness Wandell and OPC
22 Witness Robertson and their comments about the status in
23 Colorado, Iowa, Kansas and Minnesota, and asked the
24 question, do you have any reactions to their comments? The
25 statement that I made at the time was that Staff Witness

1 Wandell provided a good factual summary of the status of our
2 cases on page 49 of her testimony.

3 Since I have written that testimony, her --
4 her testimony no longer reflects the current status of what
5 is going on in several of our states. And I could provide
6 an update so that the Commissioners and the intervenors
7 would be well aware of what's going on.

8 Q. Would you please do so?

9 A. Yes. At the time the testimony was written,
10 we still had two pending transactions going on that were
11 imminent in Iowa and Minnesota. Since the time of the
12 filing, we had a meeting up in the state of Minnesota. The
13 commission -- I presented a position along with our counsel
14 to the State of Minnesota, the Commissioners.

15 And basically the regulatory process up in
16 Minnesota is a very informal process. We filed basically
17 the same testimony we did here, but they docket it and then
18 ask the Department of Commerce just to provide reply
19 comments based upon the information that we put into our
20 filing. And then you go through a series of responses. We
21 respond to their comments and then they respond and then we
22 finalize it, and then it goes before the Commission either
23 for a decision or to be sent to an Administrative Law Judge.

24 At the time that the Department of Commerce
25 filed their comments, they agreed with the company that we

1 needed \$250 million of working -- peak day working capital
2 to service the needs of the utility. They felt their
3 assumptions were valid and the dollar amount was
4 representative. So that became a nonissue in that
5 proceeding.

6 What we did then was deal with how the funds
7 were going to be used, and my surrebuttal testimony
8 addresses the disagreement we had. When it came before the
9 Commission, as we were presenting the information, it became
10 obvious that I had probably made a tactical mistake in the
11 proceeding in Minnesota, because the Commission -- the
12 comment that came from Commissioner Scott when I was talking
13 about the need for cash working capital in Minnesota was,
14 where will you show me in the record how much of that
15 \$250 million is needed in the State of Minnesota?

16 Since it was a noncontested issue as
17 far as the Department of Commerce, we never dissected that
18 \$250 million to show how much was going to be used in
19 Minnesota, so the record was incomplete. So his question
20 back was basically, how can we approve of an application if
21 you have not put into the record how much Minnesota needs?

22 After a lot of discussion, basically what they
23 did was issue an Order on a five-zero vote denying our
24 application, saying that we had made commercially reasonable
25 efforts to get their approval, that the loan was fully

1 collateralized. The verbiage they were using at the time of
2 the discussion was that we had not put into evidence how
3 much Minnesota needed and, therefore, they were denying the
4 application.

5 But also during the discussion they indicated
6 they would include in that denial our right to come back
7 either on reconsideration or refileing with the documentation
8 needed to demonstrate what Minnesota needed.

9 So while there's been a lot of discussion,
10 there was a five-zero vote, but it was not a total
11 rejection. What it was was, in my opinion anyway, more of a
12 deferral of the final decision until we could respond.

13 Q. Is it your understanding that the Minnesota
14 Commission will be issuing a written decision incorporating
15 those thoughts?

16 A. That is my understanding, and we are waiting
17 to get that order so we can determine then what steps we'll
18 take next.

19 Q. You mentioned there have also been some
20 changes in the regulatory status of the proceeding in Iowa?

21 A. Yes, there has. As indicated in the report,
22 we did have a hearing in the State of Iowa. The Order is
23 set to be issued late this month. We received a copy of the
24 Staff position in the State of Iowa late last week. I think
25 they actually issued it October 7th, but it was something

1 that we did not get served with.

2 Basically the Staff in Iowa is recommending to
3 the Commission that they approve the application that we
4 have submitted, and that we are allowed to put the Iowa
5 assets into the pool. Now, the board is meeting as we are
6 having this proceeding today. We would anticipate they will
7 have a deliberation and that our counsel will be calling me
8 later tonight or tomorrow with what the board actually does.

9 We do not have that final order, but we do
10 have the Staff recommendation, and then the formal order,
11 like in Minnesota, will follow after that vote is taken.

12 Q. Very good. Any other updates to your
13 testimony in regard to regulatory developments in other
14 states?

15 A. That's it.

16 Q. Now, with that update to your testimony with
17 respect to that topic, if I were to -- taking those into
18 account, if I were to ask you the same questions today,
19 would your answers be substantially the same?

20 A. Yes, they would.

21 MR. BOUDREAU: With that, I would offer into
22 the record Exhibits 9, 10 and 11, and tender Mr. Empson for
23 cross-examination.

24 JUDGE PRIDGIN: Mr. Boudreau, thank you. Any
25 objections to Exhibit 9, 10 and 11?

1 MR. FINNEGAN: Your Honor, I object to the
2 updates that were put on the stand. There's no way we can
3 check on these or -- he's not a lawyer. He's giving us
4 legal conclusions about what the Minnesota Commission did.
5 He's telling us what the Iowa Staff did. Doesn't mention
6 what the Iowa Consumer Counsel did or what the Iowa
7 Commission's done. I think that should be stricken.

8 JUDGE PRIDGIN: The objection will be
9 overruled. Exhibit 9, 10 and 11 will be admitted.
10 Mr. Finnegan, obviously, you're free to cross-examine the
11 witness on those issues.

12 (EXHIBIT NOS. 9, 10, AND 11 WERE RECEIVED INTO
13 EVIDENCE.)

14 JUDGE PRIDGIN: Mr. Micheel?

15 CROSS-EXAMINATION BY MR. MICHEEL:

16 Q. Mr. Empson, assume that Iowa, the Iowa
17 Utilities Board approves Aquila's application to put the
18 Iowa assets in the pool. Can you make that assumption?

19 A. Yes, I can.

20 Q. Is it correct, then, with the Iowa assets in
21 the pool, Aquila would meet the \$718 million requirement to
22 get the 75 basis point reduction?

23 A. I would have to speculate on what the actual
24 appraisal would be, Mr. Micheel. So I cannot say for sure
25 that that would be the case.

1 Q. If the appraisal is consistent with the
2 appraisal found in highly confidential Schedule RD-2
3 attached to Mr. Dobson's testimony, would it be your opinion
4 that it would meet the \$718 million number?

5 A. The information attached to Mr. Dobson's
6 testimony is not a formal appraisal. What it is is based
7 upon some multiples of even/odd to determine what the value
8 could be, and that value is in the record but is not a
9 formal appraisal. So I can't say what the formal appraisal
10 would be until we would receive the appraisal.

11 Q. So sitting there today, you have no clue?

12 A. All I can do is, you have the same exhibit I
13 have to say what the value was on the EBIDA and we can say
14 that that is a ballpark number for what might come out. But
15 I'm not an appraiser and I cannot give you what the actual
16 appraisal will be.

17 MR. MICHEEL: I need to get an exhibit marked.
18 Your Honor, I believe it's Exhibit 55.

19 JUDGE PRIDGIN: I believe 55.

20 (EXHIBIT NO. 55 WAS MARKED FOR IDENTIFICATION
21 BY THE REPORTER.)

22 BY MR. MICHEEL:

23 Q. Mr. Empson, do you have before you what's been
24 marked for purposes of identification as Exhibit 55?

25 A. Yes, I do.

1 Q. And is that the company's response to Public
2 Counsel Data Request 5087?
3 A. Yes, it is.
4 Q. And was that answered by you?
5 A. Yes, it was.
6 Q. And is your answer true and correct to the
7 best of your belief and knowledge?
8 A. Yes, it is.
9 MR. MICHEEL: I'd move the admission of
10 Exhibit 55, your Honor.
11 MR. BOUDREAU: No objection.
12 JUDGE PRIDGIN: Hearing no objection, Exhibit
13 No. 55 is admitted.
14 (EXHIBIT NO. 55 WAS RECEIVED INTO EVIDENCE.)
15 MR. MICHEEL: I need to get another exhibit
16 marked, your Honor. I believe this is Exhibit 56.
17 (EXHIBIT NO. 56 WAS MARKED FOR IDENTIFICATION
18 BY THE REPORTER.)
19 BY MR. MICHEEL:
20 Q. Mr. Empson, in your supplemental testimony
21 this afternoon, you indicated the actions of the Minnesota
22 PUC, did you not?
23 A. Yes, I did.
24 Q. Are you aware that the Minnesota PUC placed on
25 their website what actions they took?

1 A. I was not until you presented it yesterday.

2 Q. Are you aware now sitting there today?

3 A. I'm aware you handed -- if this is where that
4 came from, I'm aware of it now. I wasn't sure what the
5 source was that you're handing me.

6 Q. Have you taken some time to read that?

7 A. Yes, I have.

8 Q. Is that consistent with the actions the
9 Minnesota Commission took?

10 A. Fairly consistent. We'll see in the final
11 order what the actual wording is.

12 MR. MICHEEL: Your Honor, with that I would
13 move the admission of Exhibit 56.

14 JUDGE PRIDGIN: Any objections?

15 MR. BOUDREAU: I'm still not sure that this is
16 the appropriate -- it seems to me the appropriate exhibit
17 would be the Order itself.

18 JUDGE PRIDGIN: So what is your objection, I
19 guess?

20 MR. BOUDREAU: I guess my objection is this is
21 not the order of the Commission, of the Minnesota
22 Commission, so I'm not sure it has any particular
23 independent value.

24 MR. MICHEEL: Well, your Honor, this witness
25 just testified to what the Minnesota Commission did. I just

1 pulled this -- and you guys have access to the web up there.
2 Go to the Minnesota Commission. I mean, this is on their
3 website. I have no reason to believe that the Minnesota
4 Commission is going to be putting something on their website
5 that's factually incorrect. And I asked this witness if
6 this statement was consistent with what he testified to and
7 he said it was. I mean, it's certainly relevant.

8 JUDGE PRIDGIN: Mr. Boudreau, one more time,
9 what's your objection?

10 MR. BOUDREAU: Well, my objection is, like
11 this Commission, I assume that the Minnesota Commission
12 speaks solely through the orders it issues, and this --
13 although I don't know where it posted. I have no reason to
14 doubt Mr. Micheel's characterization of its source, but this
15 would be a synopsis, I suppose, of an Order yet to come.

16 And I'm not sure I have any objection to the
17 Order -- the actual Order of the Minnesota Commission being
18 submitted at the time it's available, but I'm a little
19 concerned that this be taken into the record as basically
20 evidence of what the Commission -- the Minnesota
21 Commission's Order is going to say.

22 MR. MOLTENI: It has all the validity of
23 Mr. Empson's testimony of what -- in fact, more so because
24 it's the original source coming off their own website, and
25 Mr. Boudreau doesn't object to the authenticity of the

1 source of the document. So to the extent that it
2 inaccurately explains what Minnesota's done, it does so no
3 more than Mr. Empson, who just validated the contents of
4 that writing.

5 JUDGE PRIDGIN: I'll overrule and let it in.
6 Exhibit 56 is admitted over objection.

7 (EXHIBIT NO. 56 WAS RECEIVED INTO EVIDENCE.)

8 MR. MICHEEL: Thanks for your time.

9 JUDGE PRIDGIN: Mr. Williams?

10 MR. WILLIAMS: Thank you.

11 CROSS-EXAMINATION BY MR. WILLIAMS:

12 Q. Mr. Empson, would you take a look at
13 Exhibit 56.

14 A. Could you -- they're not numbered for me,
15 Mr. Williams. Could you tell me for sure just what
16 Exhibit 56 is?

17 Q. It was the press release. It was the last
18 document.

19 A. Yes, I will. Thank you.

20 Q. Are there any factual inaccuracies in that
21 document?

22 A. It's not as complete as the conversation that
23 we had.

24 Q. I'm not asking as to its completeness. I'm
25 asking if it's accurate.

1 MR. BOUDREAU: I think the witness ought to be
2 allowed to answer the question.

3 MR. WILLIAMS: And I think he ought to answer
4 the question posed.

5 JUDGE PRIDGIN: Let me go ahead and overrule
6 the objection. Mr. Williams, try to let Mr. Empson answer
7 the question. If he doesn't answer, you can reask and stay
8 after him, but at least try not to interrupt.

9 BY MR. WILLIAMS:

10 Q. What I'm asking you is if any statements made
11 in this document are inaccurate?

12 A. None of the statements in this document are
13 inaccurate, but it's not a complete representation of the
14 discussions that we had about what it would take to get
15 approval in the State of Minnesota.

16 Q. That's fine. Mr. Empson, is the sole basis
17 for Aquila's position that its application be granted is
18 doing so would impact neither the rates charged nor the
19 service quality provided to its Missouri customers?

20 A. That is the -- one basis of the application,
21 yes, it is.

22 Q. Do you have other bases?

23 A. I think our point is that, given what we have
24 been advised of the standards in the State of Missouri of
25 not detrimental to the public interest, that's the

1 evaluation criteria that might be used by this Commission.
2 And I think as we were putting together the regulatory plan
3 to gain approval in the jurisdictions, we dealt with several
4 other issues.

5 Q. Would encumbrance of Aquila's Missouri assets
6 with the \$430 million three-year term loan entail no risk to
7 Aquila's Missouri utility customers?

8 A. I don't believe the risk would be any
9 different than exists today with the unsecured debt that is
10 out there that also has obligations back to those assets.

11 Q. Mr. Empson, on page 8 of your surrebuttal
12 testimony, you indicate that before pledging assets located
13 in their states as collateral, you met with the chairs of
14 the Rate Area Committees in Nebraska, the Lincoln, Nebraska
15 city attorney, and the Michigan Staff and Commissioners
16 regarding the pledging of Aquila's utility assets located in
17 their states and that you have met with them subsequently.

18 What concerns did the Rate Area Committee
19 chairs and Lincoln, Nebraska city attorney express to you?

20 A. The first consideration was understanding what
21 the state law was and why they did not have any approval
22 rights for us putting the Nebraska assets into a pool to
23 secure the debt. After we reviewed that with them and
24 this -- just to clarify, I was not personally involved in
25 the meeting. We had a meeting and I had people representing

1 me at that meeting.

2 But after that, they wanted some update on our
3 financial position, where we were, what our outlook was, and
4 then just some general questions about how we
5 see -- how we saw ourselves proceeding in the future in
6 working with them.

7 Q. And what were those general questions?

8 A. We were involved in preparing to file a rate
9 case in the State of Nebraska, and they wanted to know what
10 the implications were in the regulatory process for what we
11 were doing. They were wondering if it had any impact at all
12 on the quality of service that we were going to be providing
13 to the customers that we had in the state of Nebraska, and
14 they had questions about whether or not this meant the Iowa
15 utility properties themselves might be something that we'd
16 be looking at selling. I'm sorry. The Nebraska utility
17 properties might be something we were looking at selling.

18 Q. Did they express any other concerns?

19 A. Not to my recollection.

20 Q. What concerns did the Michigan Staff and
21 Commissioners express?

22 A. It was basically the same concerns. We went
23 up and met before we issued the debt so they would be well
24 aware of what the position was. We had advised them long
25 before even the meeting through our counsel up there, given

1 what the state law was, the steps we were going to take.
2 They were very understanding of what the state law was.
3 When we met with the chairperson of the Michigan Commission,
4 her questions dealt more with what's our outlook.

5 They have some troubled utilities up in the
6 State of Michigan. They wanted to know how we would
7 differentiate ourselves from those utilities, and they
8 wanted to know what steps we were going to take to make sure
9 that other states would also be participating in the
10 collateral pool in order to support the loan, so that
11 Michigan and Nebraska were not the only two states.

12 Q. That was only Michigan that expressed that
13 concern about other state participation?

14 A. To the best of my recollection, it was. I
15 participated in the Michigan meeting myself. As I said, I
16 did not participate directly in the Nebraska meetings.

17 Q. Has Minnesota made a decision regarding
18 Aquila's sister application in that state?

19 A. Has the State of Minnesota?

20 Q. Yes. And I'm referring to your -- the request
21 you're making here in Missouri.

22 A. Beyond -- beyond what I just explained in the
23 update of my surrebuttal testimony, they have made a verbal
24 Order or a verbal vote, and have not issued the Order yet.

25 Q. When are you anticipating that that Order will

1 be issued?

2 A. They thought within two weeks of last week, so
3 I would expect maybe next week or the week after we'll see
4 that Order.

5 Q. And has Kansas made a decision on your sister
6 application in that state?

7 A. They have not. We go to hearing right now
8 November 20th in the State of Kansas.

9 Q. Is there a procedural schedule that has any
10 timeline for when a decision may issue in that state?

11 A. There's not a formal procedural schedule.

12 Q. And Colorado has issued a decision?

13 A. Yes, it has.

14 Q. And when was that decision issued?

15 A. Toward the latter part of June. I believe it
16 was June 26th, if I remember correctly.

17 Q. And Colorado gave you approval?

18 A. Yes, it did.

19 Q. Did Colorado have any limitations on the
20 approval that it gave you for using its assets?

21 A. There were conditions that were assigned to
22 the approval.

23 Q. Were any of those conditions dependent upon
24 the actions of other states?

25 A. There was one condition that's been discussed

1 here. There's two parts to our application. First is the
2 collateralization of the initial \$430 million, and then we
3 also asked in all of our states if we could extend that
4 \$430 million collateralization when it became due out for
5 some period of time.

6 What they did was say they will approve the
7 initial use of Colorado assets for the first three years,
8 but they want to see what actions other commissions take in
9 these proceedings before they make a decision on the
10 extension.

11 Q. Has Iowa made a decision on your sister
12 application in that state?

13 A. They have not. We're anticipating that a
14 verbal vote will be taken today with an Order issued by the
15 end of the month.

16 Q. Is there any time frame by which a decision
17 must be made in Iowa that you're aware?

18 A. Yes, there is. It has to be issued,
19 the best of my recollection, it's either October 27th or
20 October 29th, but there is a set schedule that has to be
21 met.

22 Q. How did Aquila arrive at the figure of
23 \$430 million for its borrowing?

24 A. I'm just not part of that decision, so I could
25 not tell you.

1 Q. How is the figure of \$430 million related to
2 Aquila's working capital needs?

3 A. Of the \$430 million, we have identified
4 through the testimony of Carol Lownds that there's about
5 \$250 million of it needed for the cash working capital
6 requirements on a peak day for our U.S. utility property.

7 Q. What about the remaining 180 million?

8 A. I'm not sure of the question. What about the
9 remaining 180 million?

10 Q. How is it related to Aquila's working capital
11 needs?

12 A. My assumption is that there was some
13 indication that we were going to need at least that much
14 cash for our nonregulated part of the business.

15 Q. What's that assumption based on?

16 A. That we have a \$430 million loan.

17 Q. Are you aware of a FERC -- outstanding
18 authorization that Aquila has from FERC for issuing secured
19 debt?

20 A. I am not.

21 Q. When Aquila solicited lenders for the
22 \$430 million three-year term loan and associated first
23 mortgage bonds, was that offering oversubscribed?

24 A. My understanding from the testimony today from
25 Mr. Dobson is that it was.

1 Q. Do you know why Aquila didn't seek to borrow
2 more than \$430 million?

3 A. I do not.

4 Q. Mr. Empson, you've attached to your
5 surrebuttal testimony Schedule JRE-1 that discusses a means
6 of insulating utilities from nonregulated activities?

7 A. Yes, I have.

8 Q. Please direct your attention to page 5 of that
9 exhibit. Would you please read the first two sentences of
10 the third paragraph aloud.

11 A. In some instances, the utility is held as a
12 division of a parent company without a separate capital
13 structure. In these instances, the regulator might want to
14 consider requiring utility operations be held as a separate
15 subsidiary, instead of being operated as a division, so that
16 a clearly separate capital structure can be defined.

17 Q. That's not the sentence I was directing you
18 to. The third full paragraph.

19 A. I'm sorry. I thought you said the first full
20 paragraph.

21 Q. If I did, I misspoke. The third full
22 paragraph, the second sentence. Actually, if you'd go ahead
23 and read the first two.

24 A. State commissions generally have broad powers
25 to protect utilities from any adverse actions of affiliated

1 companies. Some of these powers are explicitly provided for
2 by statute, including prohibitions on the use of debt for
3 non-utility purposes and encumbering utility assets for
4 non-utility purposes.

5 Q. Now, would you please turn to page 12 of that
6 same exhibit. Would you read the sentence that begins, the
7 following are suggested areas to be considered, through
8 what's numbered 1 as a subparagraph, subsentence.

9 A. The following are suggested areas to be
10 considered ring fencing measures, paren, some are more
11 strenuous forms of others given, end of paren. No. 1,
12 Commission authority to restrict and mandate use and terms
13 of sale of utility assets. This includes restriction
14 against utility assets as collateral or guarantee for any
15 non-utility business.

16 Q. Do you agree that prohibiting the encumbering
17 of utility assets for non-utility purposes would serve to
18 protect utility operations from nonregulated activities?

19 A. Yes, I do. And that's why we have designed
20 our application in a way to provide that protection.

21 Q. I want to direct your attention back to the
22 peak day need working capital study for Aquila's utility
23 operations. What was your role with respect to that study?

24 A. I did not actively participate in the study at
25 all. My role was simply during our pre-meetings with

1 several of the state commissions during the latter part of
2 2002, and specifically when we had filed an initial
3 application in the State of Colorado, the State of Colorado
4 and the Staff asked us that question.

5 So as part of it, even though they were
6 already looking at what we needed for cash working capital,
7 I asked that we provide some documentation in these
8 applications so all the commissions would understand what
9 the support was for the \$250 million.

10 Q. So you initiated that the study be done?

11 A. I did not initiate that the study be done. I
12 initiated that it be included as part of our filing so we
13 would share it with the state commissions. The study was
14 initiated as part of our internal cash management process to
15 understand what working capital is required for a utility.

16 Q. Do you know when the study was initiated?

17 A. In my opinion, we were talking about it in the
18 latter part of last year, because we were having a lot of
19 detailed discussions about the filing of the applications,
20 and that's when I was aware they were looking at what our
21 peak requirements were.

22 Q. And do you know when the study was completed?

23 A. Well, my understanding would be, since the
24 date is April 23rd and we're using the forward price group
25 of April 23rd going forward, that it had to be completed on

1 or about April 23rd.

2 Q. Does that study include capital needed for
3 construction?

4 A. I cannot give the details behind the study
5 itself.

6 Q. Has Aquila entered into an agreement with
7 AmerenUE for the sale of what is known as the eastern gas
8 properties in Missouri?

9 A. That's my understanding, yes.

10 Q. Would the result -- would the sale of those
11 properties have an impact on the results of the peak day
12 working capital needs study?

13 A. There's no way to determine that. We're not
14 sure if the properties in the eastern system were part of
15 that coincident peak that we looked at that occurred on
16 January 2nd. So I cannot state whether it would or would
17 not have an impact.

18 MR. WILLIAMS: No further questions at this
19 time.

20 JUDGE PRIDGIN: Mr. Williams, thank you.

21 Mr. Finnegan?

22 MR. FINNEGAN: No questions at this time.

23 JUDGE PRIDGIN: Thank you. Mr. Molteni?

24 MR. MOLTENI: I don't have a question, your

25 Honor, but I have a housekeeping matter. Mr. Williams asked

1 Mr. Empson some questions about what took place in Nebraska,
2 and at the end of Mr. Empson's narrative he said, but I
3 wasn't there, which means everything he knows about Nebraska
4 is hearsay. And I would move that that be stricken from the
5 record.

6 MR. BOUDREAU: Well, my response to that is
7 the objection is way untimely. I don't think it's proper at
8 the best. The question has been asked and answered.

9 JUDGE PRIDGIN: I don't think it's proper and
10 timely, and so I'll overrule it.

11 Let me see if we have -- we don't have any
12 more questions from counsel, I understand. Let me see about
13 questions from the Bench.

14 Commissioner Murray, do you have any
15 questions?

16 COMMISSIONER MURRAY: I have a few. Thank
17 you, Judge.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Good afternoon.

20 A. Good afternoon, Commissioner.

21 Q. I think Mr. Boudreau, when he was redirecting
22 Mr. Dobson, indicated that a question that I had asked
23 Mr. Dobson would have been more appropriate for you
24 regarding the costs being potentially recovered in the next
25 rate case.

1 And before I ask you that, I would like to
2 refer you to page 5 of your surrebuttal testimony at lines
3 18 and 19 where you say -- 18, 19, 20 and 21 actually -- the
4 term loan will be functioning as a traditional revolver and
5 the Staff has agreed that costs associated with the
6 traditional revolver can be recovered in rates.

7 So first of all, what would those costs be?

8 A. As part of the process for planning for the
9 \$430 million term loan, I sat down to try to consider the
10 sensitivities that any state commission might have when
11 they're making the applications. And what we have done is,
12 while we have executed a term loan, a three-year term loan,
13 we have postured it within the corporation as if the
14 corporation were serving as the bank and the bank was
15 providing a revolving account for the utilities to draw on.

16 And they would only pay for the use of those
17 funds when they use it, and at that point in time they would
18 pay what the short-term typical revolver interest rate would
19 be for a BBB credit rated company. I believe Mr. Dobson has
20 testified he believed that might be in the 3 percent range.
21 So that that would be what would be included just on those
22 days that it was being used if we were to be involved in a
23 rate case.

24 Q. But if this -- whether or not this application
25 is approved, is -- or do you know if Aquila will be seeking

1 recovery of the costs of this proceeding in its next rate
2 case?

3 A. Commissioner, it was not our intent to do
4 that. And I'd like to step back, because there's a person
5 on my -- on my staff or who's part of our accounting group
6 that I asked that person to go back before we filed the last
7 rate case -- and it's in the testimony of the last rate
8 case -- to go through the entire test year and do the best
9 job they could of identifying any costs that related to the
10 financial difficulties our company was incurring at that
11 time and take them out of the test year.

12 So we've heard a lot of mention today about
13 Krull, consultants that we've used, whether it's Krull or
14 EverCorps or CSFB, what we have done is to try to strip all
15 those costs out. We've also instructed the accounting group
16 to make sure that any of the legal costs from our attorneys
17 that are representing us in these proceedings are held at
18 the corporate level and not allocated out to any of the
19 utilities.

20 So we've made the best effort that we could,
21 and I'm hopeful that it is as clean as possible, that the
22 costs that are directly associated -- incremental costs
23 directly associated with these proceedings will, first of
24 all, not be allocated out from the corporation to the
25 utility, and that we would not try to collect any of those

1 costs in a proceeding. And that if any costs happened to
2 miss the screening, that we would voluntarily and -- remove
3 all those costs from consideration.

4 Q. All right. Thank you for clarifying that.

5 I wanted to ask you about the concept of ring
6 fencing, and I know that you referenced the and included as
7 an -- an attachment to your testimony the article that was
8 provided at the last meeting regarding ring fencing. And I
9 guess my question is, do you think that it's possible to do
10 ring fencing that is at all effective with the structure
11 that Aquila has?

12 A. Commissioner, with our current structure, it
13 is virtually impossible to provide what you would say would
14 be a solid ring fence. The article itself I thought was
15 insightful, because there's been a lot of discussion about
16 the ring fencing of utilities from the nonregulated.

17 And this article or paper that was presented
18 has basically said there is no perfect ring fence, that no
19 matter what there's an inalienable right of the parent
20 company where they could, in fact, bring all of the property
21 that they're responsible for into bankruptcy.

22 What we were trying to do was to provide a --
23 what I'll call a financial operating ring fence, given our
24 structure and what we have to work with, what can we do to
25 ensure this Commission that, no, there will be no

1 operational or financial detriment to our customers in the
2 State of Missouri?

3 And so we have created what we believe is a
4 very legitimate ring fence from a regulatory perspective.
5 But we cannot do it given what our organizational structure
6 is today, from a structural perspective, and it's
7 questionable whether anybody can really provide that type of
8 structural ring fencing.

9 Q. On page 5 of that article attached to your
10 surrebuttal testimony, which was Schedule JRE-1, I believe?

11 A. Uh-huh.

12 Q. At the top of the page, the article addresses
13 a utility being held as division of a parent company without
14 a separate corporate structure, and it goes on to say, in
15 these instances the regulator might want to consider
16 requiring utility operations to be held as a separate
17 subsidiary instead of being operated as a division so that a
18 clearly separate capital structure can be defined.

19 Is that something that should be considered in
20 terms of Aquila?

21 A. At this point in time, in our corporate life,
22 that is not a possibility, because all of the debt is issued
23 at the Aquila, Inc. level, at the parent level. So we would
24 not have the opportunity to try to create a holding company
25 at this point in time.

1 Q. The last sentence in that paragraph states
2 that a regulated utility operating as a division of the
3 parent company results in a higher risk profile for the
4 utility than if held as a separate subsidiary. You would
5 not disagree with that, I assume?

6 A. I don't disagree with the statement, but I
7 also go back to how we've been operating our utility
8 property within the context of Aquila since 1988, where we
9 have established, for regulatory purposes, a hypothetical
10 capital structure which reflects the risk profile of a
11 utility. So the rates that we have into effect in Missouri
12 and what we would be proposing in future cases could be, in
13 fact, based upon that hypothetical capital structure.

14 And that, in fact, provides some form of ring
15 fencing or insulation of the financial costs that the
16 corporation might be incurring on the utility.

17 Q. But it only does so so long as the parent
18 remains healthy, right?

19 A. That's correct. That's why I try to
20 differentiate between a pure financial ring fencing and a
21 structural one, where we're not capable right now of trying
22 to do something structurally that might try to provide some
23 protection. We are capable of doing what we can to provide
24 whatever financial or operational protections for the
25 utility.

1 Q. And the pledging of the Missouri assets as
2 you're making application here to do would -- I know there
3 have been several scenarios that have been talked about,
4 depending on how many other assets are collateralized, but
5 assuming that Missouri's are the only additional assets that
6 get -- could get collateralized, what -- how would that
7 affect the overall corporate health?

8 A. If the Missouri assets were the only
9 additional utility assets put into the pool, we would then
10 receive an interest rate reduction of three-quarters of a
11 percentage point, which would save the company about
12 \$3.2 million, which does then free up cash flow that could
13 be used not only if it's to retire other debt but maybe for
14 the operational needs of a utility for capital investment or
15 other activities that they might be engaged in.

16 So by adding the next layer of utility in, as
17 long as it gets us to that coverage ratio, would give us
18 that interest rate reduction.

19 MR. MICHEEL: Your Honor, I'm going to object
20 to that question. When I asked Mr. Empson about what effect
21 would be putting the Iowa assets into the pool, he told me
22 that he wasn't an appraiser and he couldn't venture a guess,
23 and now in response to Commissioner Murray's question, which
24 is a hypothetical, he's ventured a guess of what those
25 assets are going to appraise at. He's speaking

1 authoritatively.

2 So I would ask that that be stricken because
3 this witness, by his own admission, can't tell because he's
4 not an appraiser what those assets are going to be valued
5 at.

6 JUDGE PRIDGIN: I'll overrule. Obviously
7 you'll have a chance to cross him on that.

8 COMMISSIONER MURRAY: I think most of my other
9 questions have pretty much been covered already. Thank you.

10 JUDGE PRIDGIN: Commissioner Murray, thank
11 you. Commissioner Gaw?

12 COMMISSIONER GAW: Thank you, Judge.

13 QUESTIONS BY COMMISSIONER GAW:

14 Q. Mr. Empson, Aquila has its heritage in a very
15 old company, does it not?

16 A. Yes, it does.

17 Q. Originally -- do you know what the original
18 name of Aquila was?

19 A. My history goes only for the last 17 years, so
20 I know Missouri Public Service, and there might have been a
21 predecessor company, but my familiarity starts with Missouri
22 Public Service when they started their acquisition of
23 utility companies about 1984, '85.

24 Q. And can you go through the changes in
25 corporate structure that have occurred since you arrived at

1 what is now Aquila?

2 A. It is my understanding there really basically
3 hasn't been a change in corporate structure, that we started
4 out with a single utility in the State of Missouri, and as
5 we grew, the utility really became the parent, Aquila, Inc.,
6 operating with the various divisions.

7 So we had Missouri Public Service as a
8 division, acquired People's Natural Gas; it became a
9 division. We acquired Michigan Gas Utilities; it became a
10 division.

11 And at some point in the history, given what
12 was going on with the deregulation of the wholesale markets,
13 we created wholly-owned subsidiaries of that utility that
14 were engaged in wholesale trading activities and merchant
15 activities.

16 Q. When was that?

17 A. About 1986 within People's Natural Gas,
18 we had two people that we basically assigned to start
19 growing that business. And that's what grew into the
20 merchant trading operation that we just recently closed
21 down, of over 1,200 people.

22 Q. And when it started out, it was a separate
23 subsidiary?

24 A. It's my understanding at the initial time it
25 started, it was not. It was doing some activities and was

1 pretty localized in the State of Kansas and that it was done
2 on a nonregulated basis by the utility for below the line.
3 But as that business grew, then we did incorporate it as a
4 separate stand-alone subsidiary of the parent utility.

5 Q. What was its name at that point, do you know?

6 A. Yes, I do, but right now it's slipping my
7 mind. I know it will come back.

8 Q. Okay. Well, if it comes on while you're still
9 on the stand, perhaps you can share that with us. And --
10 but that -- that trading activity started about 1986; is
11 that correct?

12 A. Yes, it did.

13 Q. And when did you come on board?

14 A. I started in 1986 with -- the company was
15 UtiliCorp United at that time.

16 Q. Okay. So about the same time you came on
17 board?

18 A. That's correct.

19 Q. And where did you come from prior to being
20 with this company?

21 A. I was with Northern Natural Gas Company that
22 later became Enron. I was there for about seven years.

23 Q. And as the trading operation went along, was
24 it expanded? Did it grow as time went on?

25 A. Yes, it did. It was grown kind of internally.

1 It was not grown through acquisition, which was different
2 than our utility strategy which we grew through acquisition.

3 Q. All right. And the other acquisitions that
4 were made -- and I'm strictly looking at from your arrival
5 forward, so we can kind of keep a timeline -- were any of
6 those acquisitions done in -- through a separated entity, a
7 separate corporate structure, if you know?

8 A. I'm really not sure, Commissioner.

9 Q. Okay. At some point in time, did the trading
10 company acquire a new name?

11 A. Yes, it did. It was known then as Aquila
12 Merchant.

13 Q. Do you know when that occurred, approximately?
14 A year would be fine if you've got that.

15 A. I can't -- I really do not recall. I know
16 they were still located in Omaha, Nebraska at that time
17 before relocating to Kansas City. So it probably would have
18 been five, six years ago, is what I would guess.

19 Q. Okay. And as far as unregulated activity of
20 the corporation and its affiliates were concerned, was all
21 of that done by the separate subsidiary, some of it, can you
22 give me an idea?

23 A. The vast majority of it fell within the
24 management of separate subsidiaries. They might have
25 created other subs in order to hold various assets they

1 might have purchased or have built, but I'm not aware of all
2 the legal entities that are involved in the ownership on the
3 merchant side of the business.

4 Q. All right. But you believe that most of the
5 unregulated activity was going on in a separate subsidiary?

6 A. Most of the merchant wholesale trading
7 activity was going on in the separate subsidiary. We had
8 other -- like the telecommunications business, that was
9 another separate subsidiary, I believe, that was created.
10 So typically, I believe, they were done through separate
11 subsidiaries when they were created, and we had a minimal
12 amount of nonregulated, like, an appliance repair program
13 was done as an integrated part of the utility.

14 Q. All right. Okay. So -- and at some point in
15 time -- and I assume the subsidiaries were wholly-owned
16 corporations, wholly-owned subsidiaries of UtiliCorp at the
17 time?

18 A. UtiliCorp and then probably moving to
19 wholly-owned subsidiaries of Aquila, Inc. That's my
20 understanding.

21 Q. At some point in time, did any of those
22 subsidiaries change in regard to the ownership of their
23 stock?

24 A. Yes. There was a partial IPO, I believe, of
25 the Aquila merchant business that occurred maybe in 2001, if

1 I recall correctly.

2 Q. All right. And tell me what you mean by a
3 partial IPO.

4 A. They didn't do a full IPO for 100 percent
5 ownership of the business. They did a percentage. I don't
6 remember the exact numbers, but they sold part of it to the
7 public to have public ownership of that business.

8 Q. All right. You want to say what an IPO is for
9 the record?

10 A. It's the --

11 Q. The initial public offering?

12 A. Right. Initial public offering. Thank you.

13 As I'm getting older, Commissioner, these things slip out of
14 the mind pretty easily.

15 Q. That's all right. I have the same problem.

16 And again, what time frame was that?

17 A. My recollection, it was about 2001 that that
18 was occurring.

19 Q. All right. Do you know -- do you know
20 approximately what the stock price was of the subsidiary
21 when it was first offered to the public?

22 A. I don't recall, Commissioner.

23 Q. Do you recall how -- what percentage of the
24 shares were sold?

25 A. My recollection is about 20 percent, I

1 believe, were sold.

2 Q. Of the outstanding shares?

3 A. Right, that they initially, yes, sold about
4 20 percent.

5 Q. Okay.

6 A. I think it is outlined in our 2001 annual
7 report, which we'd be glad to provide as part of the public
8 record if it's not already.

9 Q. Sure. I think -- I think you're right. I
10 don't know if it's a part of the record or not. If -- and
11 then I'm just trying to get a -- just kind of up to speed
12 from a historical standpoint. So at some point in time --
13 and the proceeds from the sale of that stock went where?

14 A. Back to Aquila, Inc., I assume.

15 Q. Was it still called Aquila, Inc. -- or
16 UtiliCorp at the time or was it called Aquila, Inc. by then?

17 A. My recollection is Aquila, Inc. by then.

18 Q. Do you know when that changed?

19 A. It also might have been around 2001.

20 Q. Was that around the same time -- approximately
21 the same time frame as when the merchant subsidiary was
22 offered to the public, that some of the stock was offered to
23 the public?

24 A. That's my recollection, give or take a year's
25 period of time in there.

1 Q. And you're not sure about how much revenue
2 that brought in to the parent?

3 A. I'm not but, again, I'll be glad to provide
4 the annual report. I'm sure it has the detail.

5 Q. And how long -- was there a point in time when
6 the parent sought to reacquire shares of stock that had been
7 offered to the public?

8 A. Yes, there was.

9 Q. And do you recall approximately when that was?

10 A. I do not, Commissioner.

11 Q. Was it -- was it within a year of the time
12 when it was initially offered, the stock was originally
13 offered to the public?

14 A. My recollection it was probably within about a
15 year to 18 months.

16 Q. And that reacquisition, what was the reason
17 for that?

18 A. At this point, I cannot recall, but I -- I do
19 have the 2001 annual report. If we take a break, I'd be
20 glad to read through that and be able to answer that
21 question.

22 Q. You knew at the time, though, I think?

23 A. We did. We had a meeting over here to explain
24 it with Mr. Stamm. We've gone through a lot of different
25 proceedings, and unfortunately that's one of those bits of

1 information I have not retained.

2 Q. If -- on the reacquisition of the stock, do
3 you know whether or not the stock price at the time of the
4 reacquisition was more or less than the stock price when it
5 was sold?

6 A. My recollection it was less.

7 Q. And was all of the outstanding stock brought
8 back into the parent?

9 A. I can't give a definitive answer on that,
10 Commissioner.

11 Q. At some point in time was the subsidiary
12 merged into the parent corporation?

13 A. Again, I'm not sure of the transactions. My
14 career life within this company has been on the utility
15 side. So I have not been involved a lot at the corporate
16 side or the merchant side to be able to give a good
17 definitive answer of what was going on at that level.

18 Q. Do you know if the -- if any entity affiliated
19 with Aquila, including Aquila itself, requested that
20 approval for the merger of that subsidiary into the parent?

21 A. Approval from a state commission?

22 Q. From this one in particular.

23 A. I'm not aware that we did, no.

24 Q. Now -- but, in fact, there was a merger at
25 some point, would that be correct? Because today -- the

1 reason I'm assuming that is because today the testimony is
2 that there is no separate subsidiary.

3 A. I'm just not sure of the transaction, but I
4 still believe we have a subsidiary that has the residual
5 part of our merchant business. So it would not be a
6 publicly traded entity, but I believe that there still is a
7 subsidiary that's within our corporate structure that is
8 involved in winding down a lot of those activities. But
9 again, I'm not knowledgeable enough on the legal structure
10 to give you an authoritative answer.

11 Q. Who would be? We seem to be -- I'm getting
12 different images. Maybe it's just my perception of what the
13 corporate structure of Aquila is at the present time. Who
14 knows the answer to that?

15 A. Probably the best person would be our general
16 counsel, and we would be glad to, if you would like, to have
17 us, we could provide a schematic of exactly what the
18 structure is to show the divisions, what the legal entities
19 are that are remaining, and provide that as a late-filed
20 exhibit.

21 Q. Well, I'd rather have it earlier than later,
22 but that's -- I'm not sure -- I'm not sure if I have
23 questions about that after I see it.

24 Let me ask you this. If -- what I'm trying to
25 understand -- and I may be going around the long ways for no

1 reason here. I'm trying to understand at what point in time
2 the obligations that you currently -- not you, but that
3 Aquila, the corporation that's requesting this ability to
4 use its regulated assets as collateral, at what point in
5 time the obligations that are now shown as obligations on
6 its books were incurred and for what purposes those
7 obligations were incurred, and whether or not any of those
8 obligations were ever originally separated into and through
9 a separate subsidiary, or if the entire length of history
10 since you came on board in '86 has always been that the
11 parent had all of the obligations regardless of the
12 corporate structure.

13 And I know that's very long, but just so you
14 can understand what I'm trying to grasp here in part.

15 A. It is my recollection, the vast majority of
16 the obligations resided at the parent level at Aquila, Inc.
17 There were some obligations where we would have -- for some
18 wholly-owned subsidiaries there might have been some unique
19 debt. I think we had a pipeline entity down in Texas that
20 issued some of its own debt at one point in time. Our
21 international properties would have issued some of their own
22 debt that would have just gone recourse back to those
23 properties.

24 My recollection would be that most of the
25 obligations resided at Aquila, Inc. and that is why when

1 back in '88 we started the concept of trying to financially
2 ring fence those obligations away from the utility and
3 propose to our state commissions that they regulate our
4 rates based upon comparable company analysis and
5 hypothetical capital structures, so whatever did exist out
6 there as far as costs would not impact the operations of the
7 utility as far as the ratemaking process.

8 Q. But if you move away from the ratemaking
9 process, which I understand is very important, but from the
10 standpoint of simply protecting the regulated assets from
11 the unregulated activity, was there ever any attempt by
12 Aquila to do that, to provide some corporate laws in between
13 the regulated and the unregulated basis of Aquila, UtiliCorp
14 or whatever it has been called over the years?

15 Since you came on board in '86 -- I'm not
16 doing that to put you on the spot, only because that's where
17 your knowledge begins -- has there been any attempt by
18 Aquila to provide legal protection through corporate
19 structure to separate the unregulated and regulated
20 activities of Aquila and its affiliates?

21 A. Unfortunately, I'm just not familiar enough
22 with how that merchant was structured to say whether or not
23 Aquila, Inc. was still behind that merchant activity or not.
24 So I apologize, but I just cannot give you a good enough
25 explanation on the legal structure and how those companies

1 were structured.

2 Q. But your general counsel would know that?

3 A. He sure should.

4 Q. Anybody else besides your general counsel that
5 would be knowledgeable about those sorts of things?

6 A. Our chief operating officer, Mr. Keith Stamm,
7 might be knowledgeable about those. I'm not a lawyer, and I
8 just don't understand.

9 Q. I've heard that statement from so many people
10 now, I just don't know how to take it.

11 A. Please take it in a positive way.

12 Q. For you or for the rest of us who might happen
13 to be, I don't know which that is.

14 If you -- if you're looking at the ability to
15 protect regulated assets from unregulated activity, you
16 mentioned some things. And I don't know, you may have
17 attached an exhibit, I think, that you were talking about
18 earlier.

19 To your knowledge, has there ever been -- have
20 you seen other corporate structures in your experience in
21 dealing with utility -- in the utility world where there
22 have been separations by corporate structure of regulated
23 from unregulated activity?

24 A. Yes, I have.

25 Q. Would you say that that is fairly commonplace?

1 A. I've seen several examples where it is, when
2 you set up a holding company. I've seen others where they
3 operate on a similar basis to what we do. So I don't know
4 the balance between whether or not it's totally commonplace
5 or not, but I think it's -- as we saw the industry changing,
6 there probably were some holding companies that were
7 created.

8 Q. And there are reasons or rationales why
9 sometimes state commissions have an interest in seeing that
10 separation occur, too, wouldn't you say?

11 A. Yes, I would agree.

12 Q. In fact, I believe -- and maybe you're
13 familiar with this -- isn't it true that recently Kansas has
14 made some effort to do that with some -- some of the -- one
15 of the entities that it regulates?

16 A. That is correct, the Kansas Commission looked
17 at that, and in the settlement agreement they backed off of
18 the forcing of the separation of the utility that was
19 embedded at the corporate level into a separate subsidiary.

20 Q. Mr. Empson, do you believe that if this -- if
21 the Missouri Commission were to deny the requested relief
22 here, that -- do you believe that you have done everything
23 that you, Aquila I should say, has agreed to do under the
24 financing agreement in regard to the Missouri portion of
25 your regulated assets by the request that you filed here, by

1 the testimony that you filed, by the extensive work that
2 your counsel has done in regard -- in presenting the case to
3 the Commission?

4 A. It would sure be my position that we've made
5 commercially reasonable efforts to gain the approval of this
6 Commission in this docket.

7 COMMISSIONER GAW: I think that's all I have,
8 Judge. Thank you, Mr. Empson.

9 JUDGE PRIDGIN: Thank you, Commissioner Gaw.
10 Commissioner Forbis:

11 QUESTIONS BY COMMISSIONER FORBIS:

12 Q. Mr. Empson, how are you?

13 A. Fine, Commissioner. Thank you.

14 Q. Just a couple of follow-up questions, I think.
15 Some of this may be getting repetitive. I'm trying to pound
16 it into my head. Aquila is -- the last couple days Aquila's
17 had some opportunities to talk about the benefit to the
18 company or the ratepayers, and so I'm going to ask you the
19 same question.

20 What do you see as benefits of -- I know that
21 you made a commitment to -- that we just talked about to ask
22 for it, and there are some -- some other maybe intangible
23 reasons, but do you see any other benefits to this proposal
24 being approved?

25 A. Yes. I believe we've talked about the

1 interest rate reduction, which again will help us
2 financially. There's two other elements that are probably
3 on the softer side of this transaction. As I mentioned,
4 I've been with the company for 17 years, and what we're
5 seeing is our company is transitioning now. There's a lot
6 of interest from our employees on just what the future
7 viability, financial viability of this corporation is.

8 So they are watching very carefully the
9 deliberations going on in the various states and are --
10 we're continually trying to update them. And I think I made
11 a comment during the interviews that we had with the Staff
12 that I believe favorable decisions by state commissions,
13 allowing us to do something of encumbering their assets or
14 basically issuing secured debt, which is fairly commonplace
15 among a lot of utilities, when we get that approval, it's
16 going to be viewed very favorably.

17 As I'm -- as I'm working as an officer within
18 the utility side of the business and a manager, I'm very
19 concerned about employee retention, that we can tell them
20 they do have a future and that we do not lose good people to
21 competitive businesses. So I think there's a very strong
22 intangible in the marketplace for how they're viewing
23 decisions that are coming out from commissions.

24 And not to put that burden back on this
25 Commission. It's something I just have to deal with as a

1 manager of a function, to try to explain to them if we do
2 get a denial why it occurred, and if we do get approval to
3 understand that we are getting the support.

4 I think the second thing is in the financial
5 markets. There was -- I remember reading some commentary
6 when we first were making the filings that there were some
7 assumptions made in the marketplace that we would gain
8 approval, believing that utilities have traditionally issued
9 secured debt. So when we don't gain approval in a state
10 commission, I think that does create some of the intangibles
11 that Mr. Dobson was talking about.

12 It casts some uncertainty in the minds of the
13 financial community if, for example, Minnesota does deny our
14 application. We go back and refile. We end up having it
15 denied. What message does that send on our ability to raise
16 secured debt in the future when it might be viewed in the
17 marketplace as something that is not uncommon for a utility
18 to do?

19 Q. Would it be safe for me to say, though, that
20 there is not a -- to be somewhat dramatic, there's not a
21 direct linkage between this request and Aquila staving off
22 financial disaster?

23 A. I can't say there's a direct linkage. I think
24 the testimony has been that we have received the money, that
25 we have enough collateral to support the utility part, and

1 that when we made this application, we were dealing more
2 with the -- our perception anyway and basically my
3 philosophy on fairness, that if we do have all the utilities
4 that need working capital, it would be fair, in my opinion,
5 to have all the utilities participating by putting their
6 assets in the pool. So it's one of those fairness issues
7 that I think is important for us to maintain in a
8 proceeding.

9 Q. Several states are still processing these
10 requests, and I know there's some indication at least others
11 are kind of waiting to see how it comes together, maybe
12 who's going to blink first. Do you have a sense of
13 whether -- would it not be reasonable for Missouri to wait
14 to see if, in fact, you really do need this, at least to the
15 degree that you're asking it, before we move ahead?

16 A. My assumption is that the basis for a decision
17 in Missouri would not be on a need basis, but is whether
18 what we're asking is detrimental to the public. And there's
19 been no demonstration in my understanding that this will
20 result in an increase in rates or a decrease in the quality
21 of service. So if we're looking at that standard versus a
22 need standard, I believe we meet that standard.

23 Q. So you're not envisioning that there's any
24 potential of a risk. There's some questions earlier perhaps
25 about losing control of the assets should there be a

1 bankruptcy proceeding and so on. You don't see, and even in
2 the short term or long term, there's a risk to the
3 ratepayers or the investors because of it?

4 A. Again, not giving a legal opinion, but having
5 gone through proceedings now in two other states, and we did
6 have a bankruptcy lawyer testify for us in the State of
7 Iowa. I think his basic testimony at that time was the risk
8 really hasn't changed.

9 MR. MICHEEL: I'm going to object to the
10 hearsay nature of that right now and ask that that answer be
11 stricken.

12 MR. BOUDREAU: The witness was asked about his
13 understanding about risk. I mean, he's -- he's trying to
14 answer the question.

15 MR. FINNEGAN: His answer is hearsay.

16 JUDGE PRIDGIN: I'll let him get into it.
17 You're obviously free to cross on it. I'll overrule.

18 MR. FINNEGAN: Your Honor, as a result of the
19 recent Supreme Court cases, appellate case, the use of
20 hearsay in these types of proceedings becomes relevant,
21 competent testimony if it's allowed in without objection.
22 We are objecting to the hearsay portion of this so it does
23 not happen that we just end up and agree that he can say
24 hearsay because it won't matter because this is the Public
25 Service Commission. That's not the law anymore.

1 JUDGE PRIDGIN: So is it your position that
2 once you do object, that the hearsay no longer -- that the
3 Commission can no longer use it simply by your objection?

4 MR. FINNEGAN: That's correct. It's
5 unobjected hearsay. It's hearsay. He's trying to give
6 something for the truth of what it says, and if that's the
7 case, that's hearsay, and unless it's -- if it's objected
8 to, it cannot be used as competent evidence. That's what
9 the recent ruling was in the Court of Appeals, I believe.

10 JUDGE PRIDGIN: Well, if I've overruled your
11 objection, what -- how does that case change that?

12 MR. FINNEGAN: It doesn't change that. I just
13 wanted to make sure that the objection's on the record.

14 JUDGE PRIDGIN: That's fine. And that's
15 certainly something that if you want to file any kind of
16 memorandum, show a case, that's fine. That's something that
17 can be addressed in a potential Report and Order. That's
18 fine.

19 I'm sorry. Mr. Empson, were you still trying
20 to answer Commissioner Forbis' question?

21 BY COMMISSIONER FORBIS:

22 Q. We can leave it at that, Mr. Empson.

23 A. Thank you.

24 Q. I want to ask you, then, your response to
25 this -- to a statement that was made yesterday, if it's

1 appropriate and you feel you can answer.

2 The statement was made that the Commission is
3 being asked to approve a request at the back end for
4 something we would never have approved at the front end,
5 which is committing regulated assets to, as I understand,
6 debt that is, in part, generated from nonregulated activity.

7 Do you -- how do I put this? Simply, would
8 you agree with that statement, that it's something that this
9 is basically a -- a different -- just a different way to
10 look at an issue that the Commission traditionally would not
11 consider?

12 A. I'll try to answer that. If I don't, please
13 reask it. There was a --

14 Q. My asking was somewhat inartful.

15 A. There was a statement within the question
16 itself that first I'd have to challenge, because you talked
17 about the regulated assets being used to support, I believe
18 you said, some nonregulated obligations. That is not what
19 we have filed to do. We have committed to this Commission
20 that we will maintain regulated assets to support the
21 working capital needed for the regulated utility, and we
22 will maintain nonregulated assets to support the working
23 capital needed for the nonregulated activity.

24 And at what point -- at the point in time we
25 cannot maintain that nonregulated commitment, then we will

1 retire the debt. So that inherent part of the question I
2 have a hard time responding to.

3 The second part, being that we're on the back
4 end, we would agree that, at this point in time, we do have
5 the debt that has been issued and we do have the money. But
6 before we could encumber that debt with Missouri assets, we
7 had to come before this Commission with this filing to gain
8 their approval. So in that perspective, it is more of a
9 traditional encumbrance-type application, from my
10 understanding.

11 COMMISSIONER FORBIS: I'll leave it. Thank
12 you for your reflection. I appreciate that.

13 That's it, Judge.

14 JUDGE PRIDGIN: Thank you, Commissioner
15 Forbis. Commissioner Clayton?

16 COMMISSIONER CLAYTON: Thank you.

17 QUESTIONS BY COMMISSIONER CLAYTON:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. First question that I wanted to ask you
21 relates to a comment that you made maybe five minutes, maybe
22 ten minutes ago relating to the standard of not detrimental
23 to the public interest. And you made a statement regarding
24 rates and customer service, and I was wondering if you have
25 any authority for that standard that you referenced?

1 A. The authority I have is from our counsel,
2 Mr. Paul Boudreau and Jim Swearingen, who I believe also
3 filed documents in the -- in this proceeding when we had the
4 oral argument whether the case itself, I'll call it, should
5 be dismissed. I know that's not the proper legal term. But
6 I believe that is the source of my information, is from our
7 legal counsel.

8 Q. Okay. Just -- and I just wanted to make sure.
9 You made reference to that, and I know that you're not a
10 lawyer. In this setting, there's so many accountants. I
11 like to say, well, I'm not a CPA, so bear with me.

12 A. I'm not a lawyer or a CPA, Commissioner.

13 Q. Lucky you. At the beginning of your testimony
14 here today -- and it was still on direct -- you made some
15 references to creditors having the same rights to property,
16 regardless of whether they were secured creditors or
17 unsecured creditors. Do you recall making that statement?

18 A. In general, yes.

19 Q. Okay. Would you explain what you mean by
20 that, that they are the same or that they have the same
21 rights?

22 A. It's in a very general way that my
23 understanding now is that we, virtually before we issued
24 this \$430 million, have all unsecured debt at the Aquila
25 Inc. level. So essentially all the assets that we have

1 within the corporation are backing the unsecured debt. So
2 if something fatal would happen to our company where we get
3 into a situation of bankruptcy, all the unsecured holders of
4 our debt would be going after the assets within the company.

5 By securing a portion of our assets to support
6 the \$430 million term loan, it's my understanding that as we
7 get into a proceeding of a bankruptcy, we're giving some
8 priority to those that have a secured interest first and
9 then the unsecured would follow.

10 Q. Let's assume that there's no bankruptcy
11 situation. Is it your understanding that there's a
12 difference in secured and unsecured status for a creditor?
13 Does one have more rights than another in a nonbankruptcy
14 setting, to the best of your knowledge?

15 And if you don't know, don't hesitate saying
16 you don't know.

17 A. I really don't know the specifics of that.

18 Q. Okay. Did you participate in the negotiation
19 of the loan at hand?

20 A. No, I did not.

21 Q. Okay. Did you participate in the negotiation
22 of the -- of the terms of the security agreement which is at
23 issue here today?

24 A. No, I did not.

25 Q. Are you personally familiar with the terms of

1 default in the security agreement?

2 A. No, I am not.

3 Q. Are you personally knowledgeable in the
4 payoff terms of the note at issue in this case?

5 A. Could you further define for me what the
6 payoff -- what you're referencing as payoff terms?

7 Q. You personally now, did you participate in the
8 negotiation of any of those terms?

9 A. No, I did not.

10 Q. So you weren't part of this financing. That's
11 not your role; is that a fair statement?

12 A. That is.

13 Q. Okay. Would it be a fair statement that you
14 don't have the legal background to discuss who has a better
15 right and who doesn't have a better right?

16 A. That is correct.

17 Q. Okay. And in the statement that you made
18 earlier about priority and abilities of secured and
19 unsecured creditors to take action against your company, you
20 really don't have any background to be providing this
21 Commission those opinions; is that a fair statement?

22 A. I don't personally have that background. It's
23 just based upon the comment of our company representatives
24 that do.

25 Q. Basically, in conversations with your

1 attorneys, these are the things that have come up?

2 A. That's correct.

3 Q. Are you familiar with whether or not the
4 company has treasury stock?

5 A. I am not.

6 Q. You're not. Are you aware of whether or not
7 any treasury stock was pledged for the security agreement at
8 issue in this case or potentially will be pledged?

9 A. I am not.

10 Q. It is your understanding that the company must
11 act diligently in seeking collateralization of these assets
12 according to the loan and security agreement; is that
13 correct?

14 A. Yes, it is.

15 Q. You mentioned earlier -- I believe it was you,
16 and forgive me if I mix people up. I apologize for that.
17 You mentioned earlier, I think, that you only needed perhaps
18 the value of the Iowa assets and you would reach the amount
19 of collateralization to satisfy the percentage of assets
20 pledged to meet the requirements under this security
21 agreement. Is that an accurate statement?

22 A. That was the proposition made by Attorney
23 Micheel, and I said I could not confirm that until we get a
24 full appraisal of that property to see if we did meet that
25 threshold.

1 Q. Okay. Well, let's just ignore the State of
2 Iowa. Could you give me a dollar amount that would need to
3 be pledged from some state to reach the -- is it the
4 1.67 times of value?

5 A. It's about \$60 million of value.

6 Q. Okay. If we were to make -- if we could
7 assume that you reach that amount before a decision is made
8 in Missouri, it comes from somewhere, I don't care where,
9 and I'm not going to ask you about cases or what's going on
10 in other states. But let's make that assumption, if we
11 could, that you get there. Under the terms of the
12 agreement, can Aquila walk away from Missouri and not have
13 to take action here anymore to collateralize the Missouri
14 assets?

15 A. If you mean by the term just withdraw from
16 this proceeding, I would say we might have a difficult time
17 doing that from what a commercially reasonable effort might
18 have been to gain the collateral, but I could not speak to
19 that interpretation for sure.

20 Q. As part of my hypothetical situation, assuming
21 that you've reached the asset level sufficient under the
22 agreement, you get the 60 million from somewhere else.

23 A. Uh-huh.

24 Q. Under the terms of the agreement, can Aquila
25 back away or withdraw its proposal in Missouri, under the

1 due diligence?

2 A. I really can't speak to the interpretation
3 that the lenders might give to that, whether or not we have
4 fulfilled all the obligation if there is a threshold amount,
5 or if we have to exhaust remedy in every one of our
6 jurisdictions first.

7 Q. Do you know who decides on the due diligence
8 on the part of Aquila to achieve a certain amount of
9 collateralization of assets? Who makes that decision? If
10 you don't know, you don't know. That's fine.

11 A. The entire plan was developed with the
12 approval of the chief operating officer and chief executive
13 officer of the company that we would pursue having all of
14 the states put into the -- to the collateral pool to support
15 all the states working capital. So I assume that the same
16 process would work, that we would go back through that with
17 the chief operating officer and CEO of the company and gain
18 that.

19 Q. So the COO and the CEO would decide when
20 Aquila has met the due diligence standard set out in the
21 security agreement and note?

22 A. I doubt very much if they'd make that
23 determination without consulting probably CSFB and say,
24 here's where we are, here's what has happened, do we -- have
25 we complied with that agreement and have some legal

1 interpretation, because we would not want to be viewed to be
2 in default of the agreement for not exercising all of our
3 commercially reasonable efforts.

4 Q. Well, that's my next question. What happens
5 if they say that you have not acted sufficiently in due
6 diligence? What happens if they say you haven't acted --
7 you haven't tried hard enough in Missouri, what would
8 happen?

9 A. I don't know if I can give a definitive answer
10 to that. I think you'd probably have to go back, and if
11 they did something, I guess we'd have to go back to
12 Mr. Dobson and find out if that is a problem within the
13 agreement.

14 Q. Do you know one way or the other whether that
15 would trigger a default?

16 A. I do not. Just in the discussion, I know
17 there was the emphasis on the importance of making sure that
18 we did put forth all commercially reasonable efforts to gain
19 approval in all of our jurisdictions.

20 Q. There's been considerable discussion regarding
21 segregation of funds between regulated and nonregulated
22 assets. Would you agree with that statement?

23 A. Yes, I would.

24 Q. Okay. Could you tell me the purpose behind
25 separating the loan proceeds to be used between regulated

1 assets and nonregulated assets?

2 A. Yes, I can.

3 Q. Would you do that for me?

4 A. Yes, I would.

5 Q. Briefly. I mean -- I don't mean that against
6 you. I mean, you don't have to worry about a long answer.

7 A. Basically, as I mentioned early on, when we
8 developed the strategy for the filing, we did have a lot of
9 pre-meetings with several of our state jurisdictions, and
10 the questions that came up are how are the loan proceeds
11 going to be used and what kind of assurances can you give us
12 that you're going to properly align the collateral for the
13 -- utility collateral supporting the utility needs and
14 non-utility collateral supporting the non-utility needs?

15 So as an element of our application when we
16 developed our plan in testimony, it was to reflect that
17 alignment.

18 Q. Okay. Is at least one of the reasons that --
19 that you were trying to protect regulated utilities from
20 supporting nonregulated utilities?

21 A. Yes, it is.

22 Q. So from that, is it a fair statement that if
23 loan proceeds were to go to a nonregulated asset from
24 perhaps funds that had been derived from a regulated asset,
25 there would be a problem, that would be in violation of your

1 policy at your company?

2 A. It would be in violation of the intent of our
3 policy, yes.

4 Q. I have been trying to, in my mind, compare
5 that to funds being used not across the line of regulated
6 versus nonregulated assets, but between regulated assets and
7 varying states. And there's been discussion about fairness.
8 Is it not the same thing using money or funds derived from,
9 say, a Missouri asset and use it in Kansas? Does that not
10 violate the same spirit that we discussed before?

11 A. I don't believe so. I mean, what we're trying
12 to achieve here is the most cost-effective way to meet the
13 cash working capital needs of the utility. If we were to
14 engage in a peak day analysis for every one of our utility
15 properties, we might find that that peak occurs at a
16 different time in the year. And if we did, if we added that
17 all up, it could be that we'd be going out for a larger
18 amount of financing to meet all of the noncoincident peaks
19 than we are if we pool it together and gain some economies
20 on a coincident peak.

21 So I believe there is some of that sharing of
22 benefit, but the economies of that are beneficial to our
23 customers, in that we're not incurring higher cost or higher
24 level of debt than we would have to if we didn't do it.

25 Q. Are you in a position to agree with me -- with

1 the statement that Missouri has the least needs of all of
2 utility -- regulated utility operations among the varying
3 states?

4 A. I can only agree with that statement based
5 upon the peak day that we sized this for, and that being the
6 January 2nd, I believe, in the analysis. I cannot agree
7 with that because we haven't gone out to determine what is
8 the peak requirement for Missouri electric.

9 When we're out there buying fuel in the
10 summertime for that plant, when we're buying purchase power,
11 we would find that that number should be significantly
12 different from the basic knowledge of how this -- how the
13 electric utilities operate versus the gas.

14 Q. But you would agree that some states need more
15 help than others?

16 A. Yes.

17 Q. And you can, in a general sense, list out
18 which states need more help than others in terms of meeting
19 those cash requirements?

20 A. Well, it's going to be on relative size and
21 fuel, most likely, and so if you were to look at, that's why
22 the peak occurred for us in January, the high price of
23 natural gas where it is today, and the number of customers
24 that we have on the natural gas side of the business. But
25 also Missouri represents our largest electric utility. So I

1 would expect that on a relationship basis, that we would
2 probably see the highest need on the electric side to be on
3 Missouri.

4 It is also the only jurisdiction we have that
5 does not have what we call an ECA or a fuel adjustment
6 clause for the electric. So all of that increased cost
7 above our base rates has to be borne somewhere within the
8 corporation through cash working capital needs.

9 Q. Would you agree that Missouri's assets,
10 regulated assets account for more than any other one state,
11 that it's the largest regulated asset of Aquila?

12 A. Yes. Missouri assets represent about
13 50 percent of our total utility investment that we have.

14 Q. Would you agree with the statement that
15 Missouri has the most to lose than any other state?

16 A. You have to give me some frame of reference on
17 what you mean by the most to lose.

18 Q. Would you agree with the statement that if
19 Missouri agrees with this arrangement and allows for the
20 pledging of these assets, that Missouri ratepayers have more
21 on the line than any other ratepayers in the varying
22 jurisdictions?

23 A. I can't agree with that statement.

24 Q. How come?

25 A. To me, what we're asking to do really doesn't

1 have any element of impact on the customers, because
2 there'll be no reflection in rates. It will be secured
3 debt. But I don't believe that it's adding another element
4 of risk there.

5 Q. Okay. Why do you think the reason is that the
6 lenders would require security for this type of loan if it
7 doesn't matter?

8 A. I'm not sure I used the word it doesn't
9 matter. My understanding at this point in time, in our
10 history, with our credit rating the way it is, the lenders
11 are requiring us to use secured debt. If we go back in the
12 history of our corporation, we have always issued a lot of
13 secured debt up until about 19, let's say '86 or '87, and
14 that the practice is still fairly common for other utilities
15 to issue secured debt.

16 Q. Do you believe that security provides
17 protections for a lender --

18 A. Yes.

19 Q. -- that would not otherwise be there in an
20 unsecured arrangement?

21 A. Yes, I do.

22 Q. Do you disagree with the statement that that
23 protection does not allow for additional risk to the asset
24 owner than if there were not?

25 A. I struggle with that conclusion. Typically

1 what we're seeing is that companies that are out there
2 issuing secured debt are doing that for financial reasons.
3 I think we have an exhibit in here, the secured debt that
4 has been issued during the last, like, 18 months, and the
5 vast majority of it was investment grade utilities.

6 And so they have placed their assets into a
7 secured position in order to gain that benefit. So the
8 motivation can be different, and what we don't know today is
9 that even if we were investment grade, would we not, in
10 fact, be here to issue secured debt to meet our working
11 capital needs.

12 Q. Are you familiar that the -- are you familiar
13 with what rights this creditor has while holding this
14 security?

15 A. I am not familiar with that. I cannot speak
16 to it.

17 Q. Are you familiar with the mechanisms for
18 seizing collateral under an agreement such as this, outside
19 of a bankruptcy proceeding?

20 A. I am not.

21 Q. Are you familiar with bankruptcy law enough to
22 discuss the rights and remedies of parties in a secured and
23 unsecured creditor setting in either Chapter 11 or Chapter 7
24 bankruptcy?

25 A. No, I'm not.

1 Q. Are you capable -- and I don't mean this as an
2 insult. Are you capable of determining whether or not there
3 is risk to the ratepayer without this knowledge in this
4 setting?

5 A. I guess I am capable of assembling the
6 information that I have heard in the proceedings and to
7 reach that conclusion as a personal observation, but not
8 represented as a professional, factual opinion that could
9 be -- could be used in a legal setting.

10 Q. I understand. And out of curiosity, I know
11 that you and Commissioner Gaw were discussing that. Who is
12 your general counsel?

13 A. Chris Perrett.

14 Q. And is he participating in this case?

15 A. He was deposed by the parties in this case,
16 but is not a participant in the proceeding per se.

17 COMMISSIONER CLAYTON: I thank you for your
18 patience with me.

19 JUDGE PRIDGIN: Commissioner Clayton, thank
20 you. Commissioner Murray, did I understand you had a
21 follow-up?

22 COMMISSIONER MURRAY: Thank you. Commissioner
23 Clayton covered it for me.

24 JUDGE PRIDGIN: Thank you. Commissioner Gaw?

25 COMMISSIONER GAW: Thank you. Thank you,

1 Judge.

2 FURTHER QUESTIONS BY COMMISSIONER GAW:

3 Q. I think Commissioner Clayton may have done
4 this as well, but have you any knowledge at all,
5 Mr. Empson, about how bankruptcy proceedings work? For
6 instance, are you familiar with the difference between a
7 Chapter 7 and a Chapter 11 bankruptcy proceeding?

8 A. It was explained to me that a Chapter 7 was
9 kind of a liquidation event, and a Chapter 11 was a
10 reorganization where basically you step in and have maybe a
11 debtor in possession that gets involved in the operations
12 and you continue to operate as an ongoing operation. That's
13 the extent of my knowledge.

14 Q. You're not -- then you're not familiar with
15 the way the -- the fact that in a Chapter 11, the purpose in
16 part is to see whether or not there can be some sort of a
17 reorganization that will allow the entity to continue to
18 exist?

19 A. I am familiar with the reorganization plan
20 that would have to be approved, just on that limited basis.

21 Q. And you're also familiar with the fact that
22 the creditors have an interest and have input in that kind
23 of proceeding?

24 A. Generally, yes.

25 Q. And you would also be familiar, would you,

1 with the fact that there is a significant difference in --
2 in the stake that unsecured creditors have from secured
3 creditors have in such a proceeding?

4 A. I'm sorry. I missed the first part of your
5 question.

6 Q. Are you familiar with the fact that there's a
7 significant difference in the stake that secured and
8 unsecured creditors have in the proceeding?

9 A. Yes, just of a general nature. Yes.

10 Q. Are you familiar with the fact that unsecured
11 creditors, as a result of a reorganization plan, can lose
12 significant amounts of what they're entitled to recover if a
13 plan is approved that also approves the lowering of the
14 amount of recovery that those nonsecured creditors have?

15 A. Yes, I am.

16 Q. And are you familiar with the fact, then, that
17 secured creditors, so long as their security interest is
18 greater than the amount of the debt, are for the most part
19 fully protected in such a proceeding, other than the stays
20 that may be in effect during the time frame that the
21 bankruptcy proceeding is going on, up until there is some
22 sort of an order that may allow that stay to be
23 extinguished?

24 A. Yes, I am.

25 Q. And are you familiar with the fact that in

1 such an environment, a secured creditor cannot have the
2 amount of -- so long as their interest, their security
3 interest is greater than the amount of the debt, cannot have
4 the amount of their loan lowered?

5 A. I am not.

6 Q. You don't know the answer to that?

7 A. I assume it's correct, but I cannot -- the
8 others I have heard. That one I have not.

9 Q. So if a corporation, for instance,
10 hypothetically, if you would assume that to be the case --
11 and I'll just ask you to assume it. If you were to assume
12 that to be the case, then gaining -- gaining secured status
13 is certainly a benefit to a secured creditor if the
14 possibility may exist, and it could in any case, I suppose,
15 exist that at some point in time there might be some sort of
16 a bankruptcy proceeding?

17 A. Yes.

18 Q. If all of the creditors were unsecured by a
19 corporation and if you assume that all of the creditors that
20 were thus unsecured would have to be part of a
21 reorganization plan, and that if it could be that that plan
22 would involve the reduction of all the debt that was
23 unsecured, the status in regard to the corporation itself
24 and its ability to lower the total amount of debt would be
25 different than if, for instance, you were dealing with

1 secured creditors who, if we assume that my presumption is
2 correct, would not be able to have their amount lowered,
3 would be a difference in the outcome in regard to potential
4 for lowering the debt, would there not?

5 A. I'm just not knowledgeable enough as you went
6 through those scenarios to say whether I could agree or
7 disagree.

8 Q. I understand. Are you going to present to
9 this Commission, as you did in Iowa, a bankruptcy expert?
10 No?

11 A. It was not an issue in the case, as a
12 contested part of the case as an issue. There was in Iowa,
13 so we did present one. I'm not sure what the process would
14 be to try to do the same type of thing here now, given that
15 it was not an issue in the filing.

16 Q. Sure. Well, bankruptcy law is a matter of
17 law, I suppose. If we need information on it, we can
18 receive it from other sources besides witnesses. I would --
19 I would ask -- and this is an issue that came up with
20 Mr. Dobson. I'm not sure I'm clear on it, Mr. Empson, as a
21 totally different process.

22 Does -- do you believe that if Aquila secures
23 permission from this Commission to use Missouri regulated
24 assets as collateral, that it is necessary if the amount --
25 if Aquila wishes to increase the amount of collateral or if

1 it's asked to do that by -- by the creditor in this case,
2 more than what Aquila's representing that it needs at the
3 present time, that Aquila must come back to the Commission
4 to request further permission to do that?

5 A. Can I paraphrase what I believe the question
6 is?

7 Q. I believe it's a long question.

8 A. Is the question if the lenders currently
9 believe that we need 1.67 times a certain amount in order to
10 provide proper collateral, if they would come back and say,
11 now we believe -- and I don't know if they can do this --
12 two times, would we have to come back, or is the question
13 dealing with the over-collateralization and if we want to
14 use the over-collateralization for future debt issuance?

15 Q. Why don't you answer both questions for me?

16 A. The first one I can't answer, as I don't know
17 if there's any capability for them to change what the loan
18 agreement already says, so I don't -- I can't answer that.

19 Q. If you assumed that they could, what would
20 your answer be?

21 A. Given that we are requesting to put all of the
22 assets into the pool, we probably would not need to come
23 back and say the collateral ratio has changed, because the
24 assets would still be supporting the same \$430 million. It
25 really wouldn't be a difference in that base amount.

1 If we would ever change the base amount, and
2 let's say that we went out and we needed to raise additional
3 funds to support the utility, we would come back to this
4 Commission and say, we now want to pledge assets for this
5 specific purpose to gain your approval, separate from the
6 \$430 million that you've already approved.

7 Q. All right. Now, the second part of that, did
8 you answer the second part of your original question?

9 A. I thought I had.

10 Q. I just want to make sure.

11 A. Okay. Because the first part -- my first part
12 was the second part, perhaps, in that we are only asking
13 this Commission to allow us to use the assets to support the
14 current \$430 million loan.

15 Q. All right.

16 A. And whether or not the collateral ratios
17 change, whether it's 1.67 to 2, if that is even
18 theoretically or legally possible, it would not be my
19 opinion that we would have to come back, because the assets
20 are already in the pool and it really doesn't change the
21 nature of what they are supporting. It still would be just
22 \$430 million.

23 Q. All of the Missouri assets would be in the
24 pool under your request?

25 A. Correct.

1 Q. So there wouldn't be any need to come back,
2 even if you initially only used a portion of them in the
3 pool?

4 A. If only a portion was really needed to provide
5 us with the coverage ratios, that is correct.

6 Q. And is that --

7 A. If that's the decision of the Commission.

8 Q. I'm sorry. I didn't mean to interrupt you.
9 Is that Aquila's decision in regard to how much, if the --
10 if the Commission says, we give you permission on your
11 request, Aquila, is it Aquila's decision about how much of
12 Missouri's assets to put in the pool or is that a foregone
13 conclusion under the agreement that you've already signed?

14 A. It would be my understanding that would be
15 this Commission's decision on what they grant on our
16 application. We have requested that all the assets be put
17 into the pool to support the debt collateralization.

18 Q. But if we grant that request and has
19 Aquila -- does Aquila have any ability under the terms of
20 the agreement that you've signed to say, we're only going to
21 place this amount in the pool, because we have more than
22 enough and we count up everything else, and we only need a
23 little bit or a portion of all of the Missouri assets?

24 A. It would be my understanding that all of the
25 property would be mortgaged and it would go into the pool,

1 because the excess would still be available to us just as if
2 it were not in the pool. So we would still have the ability
3 to do future financing on the over-collateralization,
4 whether it is or is not in the pool.

5 Q. Okay. Thanks.

6 A. Can I do one follow-up statement?

7 Q. Does it have --

8 A. Well, you asked me the question, PSI.

9 Q. Does it have to do with my question?

10 A. Yes.

11 Q. Yes. Please do.

12 A. You asked me what the original name was. It
13 was PSI, of our marketing group.

14 Q. PSI. Thank you. What did that stand for?

15 A. Well, now, it's good enough that I came up
16 with the initials.

17 COMMISSIONER GAW: Okay. Thank you.

18 JUDGE PRIDGIN: Commissioner Gaw, thank you.

19 We are at five o'clock. This seems to be a
20 perfect time to shut it down for the day. We will resume
21 tomorrow morning at 8:30, give counsel a chance to recross
22 Mr. Empson.

23 We are now off the record.

24 WHEREUPON, the hearing of this case was
25 recessed until October 22, 2003.

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