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2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 June 14, 2000
6 Jefferson City Missouri
7 Volume 14
8
9

10 In the Matter of Missouri-American)
11 Water Company's Tariff Sheets)
12 Designed to Implement General Rate) Case
13 Increases for Water and Sewer) No. WR-2000-281
14 Service Provided to Customers in)
15 the Missouri Service Area of the)
16 Company.)
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20

21 BEFORE:

22 KEVIN A. THOMPSON, Presiding,
23 DEPUTY CHIEF REGULATORY LAW JUDGE.
24
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Go ahead and call your
3 witness.

4 MR. ENGLAND: Let me call Mr. Amman.
5 (Witness sworn.)

6 JUDGE THOMPSON: Please take your seat, and
7 spell your name for the recorder, if you would, sir.

8 THE WITNESS: A-m-m-a-n.

9 JUDGE THOMPSON: Proceed, please.

10 MR. ENGLAND: Thank you.

11 ROBERT L. AMMAN, JR. testified as follows:

12 DIRECT EXAMINATION BY MR. ENGLAND:

13 Q. Would you state your full name for the
14 record, please?

15 A. Robert L. Amman, Jr.

16 Q. And your business address, please?

17 A. My business address is 1003 East
18 St. Maartens Drive, St. Joseph, Missouri.

19 Q. By whom are you employed and in what
20 capacity, Mr. Amman?

21 A. I'm employed by Missouri-American Water
22 Company as manager.

23 Q. Mr. Amman, are you the same Robert L. Amman,
24 Jr. that has caused to be prepared and filed in this
25 case prepared testimony entitled, "Direct Testimony of

1435

1 Robert L. Amman, Jr."

2 A. Yes, I am.

3 Q. And I believe that's been marked for

4 purposes of identification as Exhibit No. 1 in this

5 proceeding?

6 A. Yes.

7 Q. Turning your attention to that exhibit, are

8 there any changes or corrections which need to be made

9 at this time?

10 A. Yes, there are.

11 On Page 8, Line 5, there is a reference to

12 anticipated capacity of a well that was being

13 developed in Joplin, and the anticipated capacity

14 should have read 700,000 to 800,000 gallons per day as

15 opposed to 3 million gallons per day.

16 Q. I think you may have misspoke, or I have a

17 different copy of your testimony than you do. Did you

18 say Line 5 or Line 15?

19 A. Maybe you-all have a different copy, but

20 it's Line 5 on mine.

21 MS. COOK: I have difficulty as well.

22 JUDGE THOMPSON: It's Line 15 on mine, too.

23 BY MR. ENGLAND:

24 Q. It's the 3.0 MGD number?

25 A. That's correct.

1 Q. And wherever that appears in your testimony
2 for the Joplin District --
3 A. That's correct
4 Q. -- that's supposed to be what, please?
5 A. It's actually associated with Question
6 No. 17, and it's towards the end of that answer, next
7 to the last paragraph. It says ". . . with an
8 anticipated capacity of [3 MGD], 3.0 MGD . . ." It
9 should be 700,000 to 800,000 GPD.
10 MR. ENGLAND: Could we go off the record for
11 a minute?
12 JUDGE THOMPSON: You can.
13 (Discussion off the record.)
14 JUDGE THOMPSON: Okay. Let's go back.
15 BY MR. ENGLAND:
16 Q. Do you have any other corrections that need
17 to be made to your testimony Mr. Amman?
18 A. Yes, I do.
19 Q. And if you can, try to work from the --
20 A. I'll work from your copy.
21 Q. Okay. Thank you.
22 A. On Page 9, Line 27, the approximate cost
23 of -- the additional cost of monthly meter reading and
24 billing in St. Joseph should be \$161,113 as opposed to
25 the 126,478 shown.

1 MR. DEUTSCH: Say that again.

2 THE WITNESS: Should be 161,113 as opposed

3 to 126,478.

4 BY MR. ENGLAND:

5 Q. And did you obtain that number from

6 Mr. Salser?

7 A. Yes, I did.

8 Q. And that's consistent, then, with his

9 testimony?

10 A. Yes, it is.

11 Q. Okay. Thank you.

12 Any other changes or corrections?

13 A. No, sir.

14 Q. With those changes and corrections in mind,

15 if I were to ask you the same questions that appear in

16 the prepared direct testimony of Robert L. Amman, Jr.,

17 would your answers here today under oath be the same?

18 A. Yes, they would.

19 Q. And are those answers true and correct to

20 the best of your knowledge, information and belief?

21 A. Yes, they are.

22 MR. ENGLAND: Thank you.

23 Your Honor, at this time I would like to

24 offer Exhibit No. 1, and then tender the witness for

25 cross-examination, please.

1 JUDGE THOMPSON: Very well, Mr. England.
2 Are there any objections to the receipt of
3 Exhibit No. 1?
4 (No response.)
5 JUDGE THOMPSON: Hearing no objections,
6 Exhibit No. 1 as corrected is received and made a part
7 of the record of this proceeding.
8 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)
9 JUDGE THOMPSON: Cross-examination. Staff?
10 MR. SNODGRASS: We have no questions, Judge.
11 JUDGE THOMPSON: Very well.
12 Mr. Dority?
13 MR. DORITY: No questions. Thank you.
14 JUDGE THOMPSON: Mr. Zobrist is not here.
15 Public Counsel?
16 MR. COFFMAN: Ms. Cook will be handling this
17 cross-examination.
18 JUDGE THOMPSON: Proceed, Ms. Cook.
19 MS. COOK: Thank you, your Honor.
20 CROSS-EXAMINATION BY MS. COOK:
21 Q. Good afternoon, Mr. Amman.
22 A. Good afternoon.
23 Q. I have a few questions here for you.
24 You are the manager of the St. Joseph,
25 Warrensburg, Platte County, and Brunswick Districts of

1 the Company; is that correct?

2 A. That's correct.

3 Q. And, first, let me ask you, are you familiar
4 with any improvements that were made to the St. Joseph
5 River Water Treatment Facility after the 1989 drought?

6 A. I am somewhat familiar with those
7 improvements, yes.

8 Q. You weren't in your current position at that
9 time?

10 A. No, that's correct. I became manager in
11 St. Joseph in February of 1997 after those
12 improvements had been made.

13 Q. Okay. But you are familiar generally with
14 some of those improvements; is that right?

15 A. Yes.

16 Q. Were there improvements made to the intake
17 valves as a result of the 1989 drought?

18 A. 1989 drought?

19 Q. Yes.

20 A. I'm not familiar with a 1989 drought.

21 Q. Okay. Were you -- are you familiar with any
22 improvements that were made to reduce the plant's
23 vulnerability to drought conditions?

24 A. There were -- there were changes that were
25 made to the intake after a 1989 low-water condition on

1 the river that was the result of ice jams on the
2 river, not as the result of drought.

3 Q. Okay.

4 A. There were some improvements made to enable
5 the Company to withdraw water from the river during
6 low-water events.

7 Q. Can you briefly tell me what those
8 improvements were, or that -- to your knowledge?

9 A. I believe the intake was actually extended
10 into a deeper channel of the river. There was a
11 permanent pumping facility put in place and a housing
12 structure built around the pump.

13 Q. Okay. And these improvements were made to
14 reduce the plant's vulnerability to low-river
15 conditions then?

16 A. Yes, they were.

17 Q. And do you have any idea how much those
18 improvements cost?

19 A. My recollection is that it was about a
20 million, maybe a million and a half dollars. I'm not
21 absolutely certain of the number, but --

22 Q. And so I take it you're not certain how much
23 of that was included in rate base, but -- but that the
24 ratepayers did pay for those improvements in a
25 subsequent rate case?

1 A. Well, I presume that was a rate base in
2 subsequent rate cases and that the impact on the rates
3 would have been carried by the consumer, yes.

4 Q. Okay. Thank you.

5 And then let's talk about improvements that
6 were made to that same facility following the flood of
7 '93. Can you -- can you give me a brief overview of
8 what those might have been?

9 A. Yes. There were gantries put in place that
10 allowed the Company to actually remove the motors from
11 the pumps out of high-level water should that occur.
12 It did not actually protect the motors, but if you had
13 high water, it allowed you to lift them up above the
14 flood level so that when -- if you had high water, it
15 receded, you didn't have to go through the process of
16 having those motors dried out if they had become
17 inundated.

18 In addition, there were electrical switch
19 gear equipment that was raised above the flood level
20 of '93 also.

21 Q. All right. And do you have any idea how
22 much -- how much those improvements cost?

23 A. I think there were several million dollars
24 of improvements made thereto.

25 Q. Can you give me a little more of a ball

1 park figure? Several million, would that be less
2 than 10 million?

3 A. Yes. The exact number escapes me, but
4 my recollection is it was at least maybe 2 1/2 to
5 3 million, but I'm not certain.

6 Q. Possibly less than 5 million?

7 A. Possibly.

8 Q. And I take it that those improvements, the
9 costs for those were in rate base and the cost was
10 borne by the ratepayers for those improvements, too?

11 A. I presume that was in rate base, yes.

12 Q. Okay. But in this rate case, if I'm
13 correct, the Company is seeking to accelerate the
14 depreciation of the river water treatment facility;
15 isn't that right?

16 A. I'm not familiar with any accelerated
17 depreciation information that's been filed. That's
18 not my realm of responsibility.

19 Q. The river water facility is being abandoned,
20 though. Right?

21 A. That's correct.

22 Q. And so those improvements that were paid for
23 by the ratepayers to make the old facility less
24 vulnerable to low-river conditions and high-river
25 conditions are no longer providing them with any

1 benefits whatsoever; is that right?

2 MR. ENGLAND: Objection. I think the
3 question assumes facts not in evidence. She said
4 those improvements paid for -- I emphasize the past
5 tense -- by the ratepayers. It assumes they have been
6 completely paid for by the ratepayers. I don't
7 believe the evidence will show that.

8 MS. COOK: I can restate that question, your
9 Honor.

10 JUDGE THOMPSON: You may restate it.

11 BY MS. COOK:

12 Q. Any amount the ratepayers have already paid
13 or will be paying for those improvements that we just
14 talked about are not and will not be providing them
15 with any benefit whatsoever; is that correct?

16 A. That's correct.

17 Q. And in this current case, the Company is
18 asking the ratepayers to pay for a whole new treatment
19 facility which the Company claims is necessary to make
20 it less vulnerable to low- and high-river levels; is
21 that correct?

22 A. That's correct.

23 Q. Now, as manager for the four districts,
24 St. Joseph, Warrensburg, Platte County and Brunswick,
25 I believe your testimony stated that you are

1 responsible for seeing that the water quality and
2 quantity standards are met; is that right?

3 A. That's correct.

4 Q. Do you recall whether -- whether you made a
5 statement to the press that would have appeared on the
6 evening news in Joplin on or about May 19th of this
7 year to the effect that citizens who are concerned
8 about the proposed water rate increase would have to
9 prioritize their expenditures and maybe give up their
10 cable TV and cell phones to pay their water bill?

11 A. No, I never made such a statement.

12 Q. Okay. Would you be surprised that Public
13 Counsel has received several letters from consumers
14 who claim to have heard you make that statement on the
15 evening news?

16 A. I would be totally surprised, because I've
17 never made that statement on Joplin evening news.

18 Q. Let's talk about the water quality issues in
19 St. Joseph.

20 You're aware of many consumers who have
21 complained about the water quality coming from the new
22 treatment plant, I take it?

23 A. Yes.

24 Q. Have you heard complaints from consumers
25 about the taste of the water?

1 A. Yes. And, in addition, I've had compliments
2 from a number of consumers about the quality of the
3 water in St. Joseph.

4 Q. Have you had any compliments about a bitter
5 or chemical aftertaste of the water?

6 A. I've had people tell me they dislike the
7 taste of the water.

8 Q. Have you had anybody remark that they
9 experience a kerosene-like taste and odor?

10 A. We've had that complaint, but none of those
11 complaints have been verified.

12 Q. Verified by you?

13 A. By any of our folks, yes. In fact, we have
14 offered in many occasions to visit consumers' homes
15 when they've called with those complaints. In some
16 cases individuals are unwilling to state where they
17 live, which means you can't follow up on it. In other
18 cases, they refused to have our folks visit and see
19 what's going on.

20 Q. Okay.

21 A. It's pretty hard to follow up on those
22 complaints if you don't know where you have to go.

23 Q. Sure. Have you heard anyone complaints that
24 the "new water" -- the "new water" in quote marks, I
25 suppose, leaves a white residue on your dishes after

1 they've been washed?

2 A. Yes.

3 Q. And have you heard people complain that

4 their fish died after the new plant came on line?

5 A. Yes.

6 Q. Even though they purchased the special

7 equipment that the Company recommended for use in fish

8 tanks, aquariums, and ponds?

9 A. Yes, I have.

10 Q. And have you heard any similar complaints

11 about pet birds?

12 A. Yes, I have.

13 Q. Pet snakes?

14 A. I read it in the St. Joseph newspaper.

15 Q. Okay. Has Missouri-American issued any

16 press releases cautioning fish owners about

17 potentially toxic effects from the water supplied by

18 the new plant?

19 A. We made a special mailing to every customer

20 of the system; in fact, provided similar brochures to

21 the various water districts that we supply advising

22 them of the shift to chloramine as a disinfection

23 agent from chlorine, from free chlorine. Yes,

24 everyone was notified of that change, which is a

25 requirement of DNR.

1 Q. And the notification included a warning to
2 kidney dialysis patients about potentially toxic
3 effects from water being introduced into the
4 bloodstream as well?

5 A. That's true.

6 Q. Have you heard any complaints about an oily
7 film or scum that forms on the water when it's heated,
8 especially on coffee and tea?

9 A. Yes, I have.

10 Q. And have you verified that complaint?

11 A. Yes, I have. In fact, I saw it at my home.

12 Q. How -- what experience did you have at your
13 home that -- in which you saw the oily film? Was it
14 from making coffee?

15 A. Making coffee.

16 Q. Did you see that as a result of heating
17 water that didn't contain coffee?

18 A. Actually, not the oily film, but I did see
19 the formation of what I would describe as calcium
20 deposits on the surface of water that was heated, yes.

21 Q. There was actually particle formation on the
22 top of the water after it was heated?

23 A. Right. It causes the calcium hardness to
24 come out of suspension, or out of the solution and
25 forms basically clumps of calcium on the surface.

1 JUDGE THOMPSON: Please proceed.

2 MS. COOK: Permission to approach the

3 witness, your Honor?

4 JUDGE THOMPSON: You may approach.

5 BY MS. COOK:

6 Q. I'd like to call your attention to -- to

7 this document; particularly, this page here

8 (indicated). If you could look at that for a moment

9 and identify it for me.

10 A. Yes.

11 MS. COOK: Your Honor, I'd like to have this

12 document marked for identification, please.

13 JUDGE THOMPSON: All right. And how would

14 you describe it?

15 MS. COOK: How I would describe it?

16 JUDGE THOMPSON: What is it?

17 MS. COOK: I would call it a

18 Missouri-American press release, subject to correction

19 by the witness if he describes it as something

20 different.

21 JUDGE THOMPSON: All right. This will be

22 Exhibit 92.

23 (EXHIBIT NO. 92 WAS MARKED FOR

24 IDENTIFICATION.)

25 BY MS. COOK:

1 Q. Okay. Mr. Amman, I'm looking being at
2 Page 3 of the document I handed you, and these pages
3 aren't numbered, but the headline there is, "Missouri-
4 American Customers in St. Joseph Receive Water From
5 New Facility."
6 A. Yes.
7 Q. Can you tell me if that's a press release
8 that was actually released to the press?
9 A. Yes, it was.
10 Q. And I'm looking at the third paragraph of
11 this -- this document, and I'd like you to read, if
12 you would, the first two sentences, please, beginning
13 with, "The changes in the water . . ."
14 A. It says, "The changes in the water are the
15 result of two factors -- a new source of water supply
16 and a different treatment process. While the new
17 treatment plant is operational, not all components are
18 functioning and the treatment process is continuing to
19 be modified during this first month of operation."
20 Q. Okay. Thank you.
21 Could you tell me what the phrase "not all
22 components are functioning" refers to?
23 A. When we -- when we first brought the plant
24 on line, the chloramine process actually was not
25 operational due to a problem with ammonia feed. That

1450

1 was corrected later in the month, and we began feeding
2 chloramines before the end of April.

3 Q. Okay. Then if you turn to the next page of
4 this document, the last page, can you tell me if you
5 recognize what this is?

6 A. It's -- it's an e-mail.

7 Q. Okay. It's an e-mail from you to Lisa
8 Golden --

9 A. Right.

10 Q. -- is that correct? Okay. In the last
11 sentence of that e-mail you suggest, "Why not say that
12 the not all of the various components of functioning
13 optimally."

14 Was there -- was there some reason that
15 the -- to believe that the components were functioning
16 but not functioning optimally, that the chloramines
17 had not come on line yet?

18 A. Well to the average user, when you say
19 something isn't functioning, they think that they are
20 getting a product that probably is inferior, while in
21 reality that's not the case here. They were still
22 receiving water that met or exceeded all of the Drink
23 Water Standards albeit it was not the process that we
24 were ultimately going to use. So this was my effort
25 to make the news release more accurately describe the

1 situation.

2 Q. So it was designed as a semantic change to

3 maybe make it clearer to the consumer what it was you

4 were trying to get across?

5 A. That's correct.

6 Q. Okay. Moving on, you've been in your

7 current position as the District's manager since early

8 1997; is that what you told me?

9 A. That's correct.

10 Q. Okay. So I assume you are aware of what has

11 been referred to in this proceeding as the Warrensburg

12 water quality case?

13 A. Yes.

14 Q. And that was created by Commission order

15 immediately after Missouri-American's last rate case;

16 is that your understanding?

17 A. That's correct.

18 Q. And would you agree with me, if you know,

19 that that case number was WO-98-203 for the

20 Warrensburg water quality case?

21 A. I don't know the exact number, but I presume

22 that's the number.

23 Q. It was a '98 case, if you recall?

24 A. Yes.

25 Q. Okay. Do you think the Commission should

1 take a similar approach to the water quality issues
2 which are being raised by the St. Joseph customers?

3 A. No.

4 Q. You don't believe the Commission should open
5 a case to investigate those issues and possible
6 solutions?

7 A. No.

8 Q. And so I take it that the customers in
9 St. Joseph aren't really having water quality
10 problems, that they are -- they don't know what
11 they're talking about?

12 A. I think to a certain extent some people are
13 overexaggerating the situation that exists in St. Joe.
14 We have taken steps to alleviate, if you will, the
15 effects of the hardness by changing some treatment
16 processes.

17 When we first started the plant up, we
18 expected that the hardness from the ground water wells
19 would be in the area of 350 parts per million, the
20 calcium hardness. In reality, it was near 400 parts
21 per million when we started the wells.

22 In addition to that, when we first came on
23 line, in order to get the plant up and operational, we
24 were adjusting for pH using lime. Lime actually adds
25 hardness to the water, and so while we were starting

1 out with a very hard water, we actually increased it.

2 After we got the plant up and operational,
3 we switched from a lime pH adjustment to caustic soda
4 pH adjustment, which does not add hardness. In
5 addition, we've seen the hardness in the wells drop
6 closer to the levels that we expected when the plant
7 came on line.

8 Q. Okay. Let me stop you there and ask you,
9 what time frame are we talking about here when you're
10 talking about the step after adding the lime? What
11 was the last thing you mentioned?

12 A. We switched to caustic soda.

13 Q. And when was that?

14 A. Sometime during the month of April. Maybe a
15 week or so after we started the plant up. I'm not
16 sure exactly what day it was, but it was sometime in
17 April.

18 Q. Okay. And have there been further --
19 further improvements designed to address the taste and
20 quality issues since then?

21 A. Well, I take issue with the taste issue.
22 There is a different taste in the water in St. Joseph.
23 I don't know if you were in St. Joseph -- I know you
24 were in St. Joseph. I saw a lot of people drinking
25 the water there at the public hearing and I heard a

1 lot of people saying they don't understand what the
2 big beef is.

3 MS. COOK: Your Honor, I'd ask that remark
4 to be stricken as nonresponsive. I asked whether
5 there have been further improvements designed to
6 address the taste issue?

7 MR. ENGLAND: I think the witness was taking
8 issue with you.

9 JUDGE THOMPSON: I think he was responding.
10 He was indicating he didn't think there was a taste
11 issue.

12 MS. COOK: Okay.

13 BY MS. COOK:

14 Q. Okay. So there have been no further
15 improvements to address the consumers' perceived taste
16 issue since sometime in April?

17 A. No, not taste.

18 Q. I'm sorry.

19 A. Not taste, no.

20 Q. Okay. You were at the local public hearing
21 on May 31st in St. Joseph, I take it?

22 A. Yes, I was.

23 Q. And you heard people complain at that
24 hearing, at least one month later after the final
25 improvements were made to address the perceived taste

1 issue, and you heard those people complain still about
2 taste and odor?

3 A. Yes.

4 Q. Is that true?

5 A. Yes, I did.

6 Q. Okay. Do you believe, then, that there is a
7 conspiracy to discredit the Company by making false
8 complaints about the quality of the water?

9 A. I would not be surprised that there are some
10 folks out there who -- who have an issue that would
11 like to discredit the Company, yes. I have no doubt
12 about that whatsoever.

13 Q. And so those folks are making up reasons to
14 complain about the quality of the water?

15 A. It would not surprise me in the least.

16 MS. COOK: Okay. I think that's all I have,
17 your Honor.

18 JUDGE THOMPSON: Thank you, Ms. Cook.

19 Mr. Conrad.

20 MR. CONRAD: Yes.

21 CROSS-EXAMINATION BY MR. CONRAD:

22 Q. Just a few things, Mr. Amman.

23 Good afternoon.

24 A. Good afternoon, Mr. Conrad.

25 Q. Have we met before?

1 A. Yes, sir, we have.

2 Q. And was that on February the 18th, if you

3 recall?

4 A. Sounds like a good -- the right date to me.

5 Q. And did I and Dr. Morris accompanying me,

6 along with your guidance, then tour the now referred

7 to as riverside plant?

8 A. Yes. The old plant, yes.

9 Q. The old plant. And did we also tour the new

10 plant?

11 A. Yes, we did.

12 Q. Just one thing that I recall from Public

13 Counsel's testimony, you talked with Public Counsel's

14 attorney about the low-water intake?

15 A. Yes.

16 Q. Was that -- was that the terminology that

17 was used to describe it?

18 A. Quite possibly, yes.

19 Q. That was a submerged intake, I take it, out

20 somewhere in the middle of the -- middle of the river

21 channel?

22 A. Yes.

23 Q. A little bit downstream of the siphon

24 intake?

25 A. That's correct.

1 Q. And that's -- that was hydraulically driven?
2 A. Yes.
3 Q. What is the status of that intake today?
4 A. It's out of service.
5 Q. And let me ask you, sir, to turn, if you
6 would, to your direct testimony. I believe it is
7 Exhibit 1.
8 A. Yes.
9 Q. And Page 3. Your Question No. 12 starts at
10 Line 3, the answer continuing through 13. Do you see
11 that, sir?
12 A. Yes.
13 Q. And, again, we're talking about the copy
14 that your counsel has provided you --
15 A. Yes, the correct copy.
16 Q. -- to avoid the page and line confusion.
17 There, I take it, you're explaining why your
18 opinion is that an increase is necessary; is that
19 correct?
20 A. Yes.
21 Q. Would you agree with me that the driving
22 force for the increased -- or the request for
23 increased revenue by the Company is the capital
24 improvements that it has claimed to have added?
25 A. Yes.

1 Q. Would you agree with me that if capital
2 improvements of a lesser value had been added, the
3 revenue increase request would have been reduced
4 correspondingly.

5 A. I suppose so, yes.

6 Q. Turning to Page 6, your Question 14 --

7 A. Yes.

8 Q. -- let me draw your attention to what at
9 least on my copy appears at Line 13, Platte County
10 District?

11 A. Yes.

12 Q. -- five-million-two and change?

13 A. Yes.

14 Q. What is that for, sir?

15 A. Largely, as the result of improvements that
16 were made to the treatment plant in Saint -- or in
17 Platte County, and I -- and, in addition, a
18 one-million gallon storage tank and booster pump and
19 associated piping. There had been some previous
20 improvements to the treatment plant also.

21 Q. At a couple of other places on Page 7 and
22 continuing onto Page 8 you discuss the respective
23 district's improvements, and I believe at Page 7
24 towards the bottom on my copy we talk about the Platte
25 County/Parkville Districts. Do you see that

1 reference?

2 A. Yes.

3 Q. What is the capacity, the treatment capacity
4 of the plant there?

5 A. It's 3 million gallons a day.

6 Q. And there you list that 1 million gallon
7 distribution storage tank, pipeline, and a booster
8 station?

9 A. Yes.

10 Q. You did not list there that I saw reference
11 to the treatment plant improvements in Parkville?

12 A. Well, this was a reference to some specific
13 large projects. This was not intended to be and all-
14 inclusive list of every project that the Company has
15 undertaken since its last case that was -- that we got
16 rates on in 1997.

17 Q. Should I take it, then, that the '97 case
18 included what you're asserting are the treatment plant
19 improvements?

20 A. It included some treatment plant
21 improvements, but there have been some other changes
22 made since then.

23 Q. So back to Page 6, the Line 13, that's
24 just -- the five-million-two is just referring to the
25 million-gallon storage tank, the pipeline, and the

1 booster station to improve fire protection. I guess,
2 I'm confused, then, as to what the 5.287 --

3 A. My -- the 5.287 is an accumulation of
4 capital improvements. That's not a \$5.2 million
5 project in Platte County. There are other projects of
6 lesser significance that are in these numbers. We
7 highlighted the major projects.

8 Q. So the ones that you've listed then on
9 Page 7 would be the ones that you consider the most
10 important?

11 A. Right. And they were -- they were projects
12 that were underway at the time of the filing and would
13 be completed by the true-up date.

14 Q. Let me ask you to turn back to -- and
15 forgive me just a second, Mr. Amman.

16 Your Honor, was 92 offered and admitted?
17 I'm trying to --

18 JUDGE THOMPSON: No, 92 has not been offered
19 or admitted.

20 MS. COOK: Your Honor, I'd like to offer 92
21 into evidence, if it's an appropriate time.

22 JUDGE THOMPSON: It's not your turn right
23 now.

24 MR. CONRAD: It's still permissible to refer
25 to it, I guess.

1 JUDGE THOMPSON: It certainly is.

2 BY MR. CONRAD:

3 Q. You indicated that you were in attendance at
4 the public hearing on the 31st of May?

5 A. In St. Joseph?

6 Q. Yes.

7 A. Yes.

8 Q. Do you recall approximately how many people
9 there were there?

10 A. I -- the newspaper article the next day
11 estimated 250, and that's probably an appropriate
12 number, including probably 25 or 30 Company employees.

13 Q. Did you stick through the whole hearing?

14 A. To the bitter end.

15 Q. And it's your -- it's your testimony, then,
16 that there were people there who were testifying
17 favorably as to the taste of the water?

18 A. No, that's not my testimony.

19 Q. Do you recall anyone that was there out of
20 that 250?

21 A. No, I can't.

22 Q. Would that number encompass, then, your view
23 the faction that you're referring to here?

24 A. What faction are you --

25 Q. Well, I don't know, sir. It was your word.

1 There was the faction who was trying to discredit us
2 in the plant. I'm looking here on the second page of
3 what's marked as 92.

4 A. Yes.

5 Q. Is that --

6 A. I don't think that's all of the faction, but
7 I think --

8 Q. So there would be more than the 250 that
9 would constitute the faction in your view?

10 A. Possibly. I think the fact that there were
11 labor leaders there complaining about the fact that
12 the plant was built by a nonunion contractor indicates
13 that not all of those folks in that audience were
14 necessarily opposed to the quality of water we were
15 putting out. And there were a number of labor leaders
16 there who did not speak, also.

17 Q. Now, the very last page of this was where
18 counsel had directed you about the phrase functioning
19 optim-- I can't say it either -- functioning
20 optimally?

21 A. Yes.

22 Q. That appears to have been dated April 17.
23 Do you believe that all of the components of the plant
24 are now functioning optimally?

25 A. Let's put it this way: I think they are

1 functioning more optimally than they were at that
2 time. When you start up a new water plant, it's -- it
3 is an ongoing process of making adjustments to changes
4 in water quality and also to known conditions in the
5 system, in the treatment system.

6 So while I would say that the plant is
7 functioning optimally for today, tomorrow it may be
8 more optimally functioning, just because we're
9 learning more about the treatment process and how the
10 plant functions.

11 Q. What components of the plant are in your
12 view not functioning optimally today?

13 MR. ENGLAND: Excuse me. Objection. I
14 don't believe that was his testimony.

15 MR. CONRAD: It's cross-examination.

16 MR. ENGLAND: The question assumes facts not
17 in evidence.

18 JUDGE THOMPSON: I believe the question is
19 proper. I think he's replied to the preceding
20 question: Let me put it this way: The plant is
21 functioning more optimally now than it was at that
22 time, something along those lines. I think he can
23 explore that.

24 Please proceed.

25 THE WITNESS: When I say that, there are

1 numerous processes that are involved. One of them
2 is -- is the process of minimizing the effects of
3 hardness in water. And we began feeding a chemical
4 sequester of calcium hardness a month -- about a month
5 and a half ago, I guess. And that treatment is being
6 optimized every day as we see decreases in hardness
7 from the water coming from the wells, that process has
8 to be adjusted to counteract that or to deal with that
9 change.

10 So that's why I say, you know, you're in a
11 constant process of optimizing. But if you were to
12 ask me if everything is functioning today as we expect
13 it to be functioning, the answer would be yes.

14 BY MR. CONRAD:

15 Q. Do you have to adjust that process,
16 Mr. Amman, corresponding to the water quality
17 that's -- the raw water quality that's coming into the
18 plant?

19 A. It is adjusted according to raw water
20 quality insofar as hardness is concerned, but the raw
21 water quality coming into the plant is very
22 consistent. Hardness is dropping.

23 But the process itself changes as the
24 treatment plant discharge increases, as your -- as
25 your pumping rates go up, then changes are made to the

1 treatment process to deal with those changes. It's an
2 ongoing process. It's not as though you set it and
3 forget it.

4 Q. And I think, Mr. Amman, the last question
5 that I have is, you've been pumping from the alluvial
6 wells how long now?

7 A. They began pumping last July and actually
8 pumped to the river up until the time the plant came
9 on line.

10 Q. And was that at a test volume level, or was
11 that at a level that would correspond to actual
12 operations?

13 A. They were at levels that were recommended by
14 the hydrologist and the folks who designed the wells.

15 Q. Okay. Would that -- the level that they
16 recommended have corresponded to test levels or to
17 levels more akin to actual operation?

18 A. Normally, they would be levels higher than
19 normal operation. And the rate might vary also. You
20 may pump them very hard for a while and then slow it
21 down.

22 MR. CONRAD: Okay. Thank you Mr. Amman.

23 Your Honor, I believe that's all we have.

24 JUDGE THOMPSON: Thank you, Mr. Conrad.

25 Mr. Deutsch?

1 CROSS-EXAMINATION BY MR. DEUTSCH:
2 Q. Good day, Mr. Amman.
3 A. Good day.
4 Q. My name is Jim Deutsch. I represent the
5 City of Joplin.
6 A. Yes, sir.
7 Q. Were you at the Joplin public hearing on
8 May 18?
9 A. No, sir, I was not.
10 Q. That's what I thought.
11 Do you -- I notice you manage several
12 districts?
13 A. Yes, in northwest Missouri.
14 Q. Do you manage the Jefferson City District?
15 A. No, sir, I do not.
16 Q. Who manages that?
17 A. Actually, Jefferson City is not part of
18 Missouri-American at this stage of the game.
19 Q. Oh.
20 A. But there is an operations manager in
21 Jefferson City.
22 MR. DEUTSCH: Okay. That's all of the
23 questions I have, your Honor.
24 JUDGE THOMPSON: Thank you, Mr. Deutsch.
25 Mr. Amman, I have some questions for you

1 from Commissioner Schemenauer.

2 THE WITNESS: Yes, sir.

3 JUDGE THOMPSON: He is unable to be here at
4 this moment.

5 QUESTIONS BY JUDGE THOMPSON:

6 Q. Commissioner Schemenauer asks, when and why
7 did the original plan which was to have an affiliate
8 or third-party construct the St. Joseph Plant and
9 lease it to Missouri-American, when and why did that
10 plan change?

11 A. I'm not sure exactly of the dates, but it
12 changed as a result of Company's decision that it
13 could not accept the decision that was made, I guess,
14 by the Commission regarding financing costs. I'm not
15 all that familiar with them. I'm not a financial
16 person.

17 But that's my understanding, was that the
18 Company had applied for some special consideration in
19 terms of that financing and that that wasn't
20 forthcoming, and so it was determined by the Company
21 that they couldn't go forward with that plan.

22 Q. Okay. And when the Company made the
23 decision to build a new plant, did the Company at that
24 time consider the rate shock that would occur when
25 rates were adjusted to recover this new investment?

1 A. Rate shock is always a concern of the
2 Company. And, yes.

3 Q. Okay. Now I have some questions for you of
4 my own.

5 A. Sure.

6 Q. You indicated that you yourself observed an
7 oily film on water provided from the new plant that
8 you used to make coffee or otherwise heated; is that
9 correct?

10 A. That's correct.

11 Q. Do you have any idea what the oily film
12 consisted of?

13 A. I'm not a chemist, but what appears to be
14 happening is that -- or was happening, I should say,
15 when the water was heated, the extremely hard water
16 was heated, the calcium hardness would come out of the
17 solution and actually form a film on top -- on top of
18 the water. The oil apparently comes from the fact
19 that the natural oils in coffee are attracted to that
20 calcium and float on top of the water.

21 I personally did not see this at first
22 because I drink decaf at home --

23 Q. Uh-huh.

24 A. -- and it doesn't -- it's not as readily
25 noticeable with decaffeinated coffee because the

1 natural oils are removed through the decaffeination
2 process. But when I brewed regular coffee at home, I
3 did see.

4 Now, that was early on. But I do my own
5 analyses at home, if you will, and I'd have to say
6 that when we first started running the plant, I could
7 boil water in a pot and within just a few minutes, you
8 would see the film appear.

9 Last weekend I did the same thing and saw
10 nothing, so no deposits in the pot. There is still a
11 very slight film, if you will, on coffee. I'm not
12 certain that that doesn't occur all of the time in
13 coffee to some extent, particularly if it's made with
14 hard water.

15 Q. Okay. Thank you.

16 I believe you testified that during the
17 first month that the chloramine process was not
18 functional?

19 A. About the first three weeks it was not
20 functioning, yes.

21 Q. Okay. And what impact, if any, did this
22 have upon the safety public health-wise of the water
23 quality?

24 A. None whatsoever, because we still continued
25 the process of free chlorination which had been our

1 practice in the past and which is also an accepted
2 sterilization practice.

3 Q. I see. So as the chloramine process was --
4 became up and running, did you cease the free
5 chlorination?

6 A. Yes.

7 Q. Now, I notice that your direct testimony was
8 filed November 19th of 1999?

9 A. Yes, sir.

10 Q. Okay. And in there you testify that all of
11 the investments are, in fact, used and useful?

12 A. Yes.

13 Q. And, in fact, some of these you were talking
14 about projects that were not used and useful in
15 November but that would be by the time of this
16 hearing; isn't that correct?

17 A. That's correct, sir.

18 Q. Okay. So is it your testimony today that
19 all of these products are now used and useful?

20 A. Yes, it is.

21 Q. And with respect to the numbers that you
22 have on Page 6 which indicates the amount of capital
23 investment in each district and gives a total Company
24 amount, is it your testimony that the capital
25 improvements represented by those dollars are now all

1 used and useful?

2 A. Yes. Other than the fact that those numbers
3 may change slightly through the true-up process that,
4 I believe, Mr. Salser will be addressing in some of
5 his exam-- testimony.

6 Q. I understand. Okay. I just kind of wanted
7 to make sure that things had happened as expected,
8 sir.

9 A. Yes, sir, they did.

10 JUDGE THOMPSON: I have no further
11 questions.

12 Recross based on questions from the Bench.
13 Mr. Snodgrass?

14 MR. SNODGRASS: None from Staff, Judge.

15 JUDGE THOMPSON: Mr. Dority?

16 MR. DORITY: Just one, your Honor.

17 RE CROSS-EXAMINATION BY MR. DORITY:

18 Q. Mr. Amman, based on the question by
19 Commissioner Schemenauer, I think it related to the
20 question of, did the Company consider rate shock that
21 would occur before making the decision to proceed with
22 building the St. Joseph Area Treatment Plant. Your
23 answer was, yes, that you did take that into
24 consideration; is that correct?

25 A. It's my understanding that that was taken

1 into consideration. The decision to go forward with
2 the plant was actually made before I -- I came to
3 St. Joseph. But I know from my experience in the
4 organization that rate shock is always a concern when
5 you have a major project such as this.

6 Q. And would that have been based on the
7 55 percent projected increase that the Company is
8 requesting in this case?

9 A. Yes.

10 MR. DORITY: Thank you.

11 That's all I have.

12 JUDGE THOMPSON: Thank you, Mr. DORITY.

13 Ms. Cook?

14 MS. COOK: I have one brief topic I would
15 like to explore. It goes directly to a question that
16 your Honor asked of this witness.

17 Permission to approach?

18 JUDGE THOMPSON: You may.

19 RE CROSS-EXAMINATION BY MS. COOK:

20 Q. Mr. Amman --

21 JUDGE THOMPSON: We also have some
22 unfinished business with an exhibit?

23 MS. COOK: Yes. I think I can take care of
24 that.

25 BY MS. COOK:

1 Q. I'll hand you this document, and if you
2 could look at that for me real quick and identify it?
3 A. Yes.
4 JUDGE THOMPSON: This will be Exhibit
5 No. 93.
6 And how would you describe this, Ms. Cook?
7 MS. COOK: Okay. I would describe this as
8 an April 10th e-mail --
9 JUDGE THOMPSON: Okay.
10 MS. COOK: -- to Bob Amman.
11 (EXHIBIT NO. 93 WAS MARKED FOR
12 IDENTIFICATION.)
13 BY MS. COOK:
14 Q. Mr. Amman, do you recognize -- do you
15 recognize this document?
16 A. Yes.
17 Q. Can you tell me who Bruce Manning is?
18 A. Bruce Manning is Director of Water Quality
19 for our organization.
20 Q. For Missouri-American, or for --
21 A. Actually, he is based in St. Louis County,
22 but he functions as Water Quality Supervisor -- or
23 Director of Water Quality for Missouri-American also.
24 Q. Okay. He is an employee of
25 Missouri-American?

1 A. No. He's an employee of St. Louis County
2 Water Company.

3 Q. Okay. Those companies aren't merged,
4 though, at this point; is that right?

5 A. No, ma'am, they are not.

6 Q. Okay. Would you read for me into the
7 record -- this is in response to the question from the
8 judge about the source of the oil that seems to be
9 appearing on the top of the heated water.

10 Would you read the first paragraph for me,
11 and I think that will -- I think that will get in what
12 I need.

13 A. "First off, the oily film that you are
14 describing sounds like it is not oil at all but a film
15 which is caused by water with high hardness. Unlike
16 most substance which become more soluble when heated,
17 calcium and magnesium become less soluble when heated.
18 Though there may be some oil in coffee there should
19 not be a difference between coffee that is
20 decaffeinated and not. A good experiment that can be
21 performed to substantiate this phenomenon is to have
22 Dave Hines take a beaker of water and heat it to the
23 same temperatures without any other material in it
24 like coffee or tea. Allow it to remain at this
25 temperature for approximately 30 minutes. You should

1 see the same film form in that period of time."

2 Q. Mr. Manning is indicating that he doesn't
3 believe the oil is coming from the natural oils in the
4 coffee; is that your understanding?

5 A. That's his opinion, yes.

6 MS. COOK: Okay. I think that's all I need
7 to point out on this exhibit, and at this time, your
8 Honor, I would offer respectfully Exhibits 92 and 93
9 into evidence.

10 JUDGE THOMPSON: Do I hear any objections to
11 the receipt of Exhibit 92 or 93?

12 MR. ENGLAND: Only -- well, yes. Insofar as
13 I'm not sure I understand the purpose for which 92 is
14 being offered, and I'd like to know that. If it is
15 relevant, then perhaps it's something I need to
16 explore with redirect examination before I lose this
17 witness.

18 JUDGE THOMPSON: Okay. Is that a relevancy
19 examination?

20 MR. ENGLAND: Yes, sir.

21 JUDGE THOMPSON: Ms. Cook, do you have a
22 response?

23 MS. COOK: Well, I believe it is about as
24 relevant as it can be. We're talking about whether
25 the components of the plant are functioning, and they

1 are asking us for -- to include this plant in rate
2 base. I think that's pretty relevant.

3 This entire document deals with water
4 quality, which is always an issue in a water case. As
5 you know, water companies are charged with providing
6 safe and adequate water service, and I believe all of
7 these -- all of these pages go directly to that issue.

8 JUDGE THOMPSON: Mr. England?

9 MR. ENGLAND: Okay. I'll withdraw the
10 objection.

11 JUDGE THOMPSON: Thank you.

12 Hearing no objections, Exhibit Nos. 92 and
13 93 are received and made a part of the record of this
14 proceeding.

15 (EXHIBIT NOS. 92 AND 93 WERE RECEIVED INTO
16 EVIDENCE.)

17 JUDGE THOMPSON: Mr. Conrad?

18 MR. CONRAD: I have nothing further of this
19 witness, your Honor.

20 JUDGE THOMPSON: Thank you, sir.

21 Mr. Deutsch?

22 MR. DEUTSCH: No questions, your Honor.

23 JUDGE THOMPSON: Thank you, Mr. Deutsch.

24 You may step down, sir. You are excused.

25 Thank you very much.

1 MR. ENGLAND: May I have some redirect?

2 JUDGE THOMPSON: I do apologize. I don't

3 know what I was thinking of, Mr. England. I just

4 overlooked you.

5 Please proceed.

6 MR. ENGLAND: My nondescript appearance.

7 REDIRECT EXAMINATION BY MR. ENGLAND:

8 Q. Turning your attention to Exhibit 92 and at

9 the very top line of that exhibit, it appears to be an

10 e-mail with a date. Is it your understanding that

11 that would -- that the date appearing on that top line

12 is the date of this e-mail?

13 A. That's correct.

14 Q. Okay. And would that be the same as is --

15 would that be true as well for Exhibit 93?

16 A. Yes.

17 Q. Okay. Now, you were asked some questions

18 about Exhibit 92, and I believe the phrase that was

19 focused on was "functioning optimally"?

20 A. Yes.

21 Q. Do you see that?

22 Is there anything in Exhibit 92, or, more

23 importantly in your opinion, that would lead you to

24 conclude that the new St. Joseph Water Treatment Plant

25 was not in service and fully providing service to

1 customers by April 30th of this year?

2 A. None whatsoever.

3 Q. Was it meeting all Water Quality
4 Standards --

5 A. Yes, sir.

6 Q. -- as of that point in time?

7 A. Yes, it was.

8 Q. What is the status of the old St. Joseph
9 Treatment Plant?

10 A. Well, the old plant has basically been
11 de-commissioned. I guess you would call it
12 mothballed. It has been boarded up.

13 The pipe -- piping leading from the plant
14 has been cut and capped. The intake pipes into the
15 river have been removed as required by the Corps of
16 Engineers for the de-commissioning process. The
17 intake structure itself which housed the traveling
18 screen has been demolished. But, basically, it's out
19 of service and has been since April 3rd.

20 Q. Since April 3rd, what has been the only
21 source of water -- or, excuse me -- what has been the
22 source of water for the St. Joseph District as far as
23 Missouri-American's service is concerned?

24 A. It's been the new ground water treatment
25 facility at County Line Road.

1 Q. And with respect to Exhibit 93, is it fair
2 to say that you and Mr. Manning have a difference of
3 opinion as to whether there are any natural oils in
4 coffee?
5 A. I think that's safe to say, yes.
6 Q. You stand by your earlier testimony; is that
7 correct?
8 A. That's correct.
9 MR. ENGLAND: Thank you, sir.
10 I have no other questions.
11 JUDGE THOMPSON: Did you get all of the
12 redirect you needed, Mr. England?
13 MR. ENGLAND: Yes, I did.
14 JUDGE THOMPSON: Thank you.
15 I do apologize for that.
16 MR. ENGLAND: That's quite all right.
17 JUDGE THOMPSON: You may now step down. You
18 are excused.
19 THE WITNESS: Thank you.
20 (Witness excused.)
21 JUDGE THOMPSON: We're going to have
22 Mr. Jenkins now?
23 MR. ENGLAND: Yes, sir.
24 JUDGE THOMPSON: Okay. Mr. Jenkins, do you
25 understand that you are still under oath, sir?

1 THE WITNESS: Yes, sir.

2 JUDGE THOMPSON: Please proceed.

3 MR. ENGLAND: Your Honor, I believe we've
4 identified all of Mr. Jenkins' pre-filed testimony in
5 this matter, and I believe he's -- I'll ask him the
6 question just to make sure, but I believe he has made
7 whatever corrections or additions that need to be made
8 to that testimony.

9 And I'm just trying to think off the top of
10 my head if he's coming back again. If he is, I'll
11 reserve offering those exhibits. Maybe that's the
12 best approach, clearing that up at the end, because he
13 may be appearing as a witness again on another issue.
14 JAMES M. JENKINS, being previously sworn, testified as
15 follows:

16 DIRECT EXAMINATION BY MR. ENGLAND:

17 Q. So with that in mind, Mr. Jenkins, do you
18 recognize you are still under oath?

19 A. Yes, I do.

20 Q. Are there any additional changes or
21 corrections to the prepared testimony that you filed
22 in this proceeding?

23 A. No, there are not.

24 MR. ENGLAND: Thank you, sir.

25 I have no other questions, and would tender

1 him for cross-examination.

2 JUDGE THOMPSON: Are you sure he's coming
3 back?

4 MR. ENGLAND: Well, I don't know, but if you
5 will permit me to --

6 JUDGE THOMPSON: Why don't you go ahead and
7 offer them now?

8 MR. ENGLAND: I can do that now, or, I was
9 going to say, I can wait until the end of the hearing,
10 and those that we've missed I'll try to catch up at
11 that time.

12 Let me make sure I get the right -- it
13 appears that his rebuttal testimony was Exhibit 4 and
14 surrebuttal testimony was Exhibit 5.

15 JUDGE THOMPSON: That's correct.

16 MR. ENGLAND: If I may, then, I'll offer
17 them at this time.

18 JUDGE THOMPSON: Do I hear any objections to
19 the receipt of Exhibit 4 or 5?

20 (No response.)

21 JUDGE THOMPSON: Hearing no objection,
22 Exhibits 4 and 5 are received and made a part of the
23 record of this proceeding.

24 (EXHIBIT NOS. 4 AND 5 WERE RECEIVED INTO
25 EVIDENCE.)

1 JUDGE THOMPSON: Mr. Snodgrass?
2 MR. SNODGRASS: Staff has no questions of
3 this witness.
4 JUDGE THOMPSON: Thank you.
5 Mr. Dority?
6 MR. DORITY: No questions. Thank you.
7 JUDGE THOMPSON: Mr. Coffman, are you taking
8 the helm for this one?
9 MR. COFFMAN: Yes, I am.
10 Thank you.
11 CROSS-EXAMINATION BY MR. COFFMAN:
12 Q. Good afternoon, Mr. Jenkins.
13 A. Good afternoon.
14 Q. As just kind of a clarifying matter, you did
15 file another piece of prepared testimony in this case
16 earlier, did you not, direct testimony in support of
17 the Stipulation and Agreement?
18 A. Yes, I did.
19 Q. Okay. Were the questions and answers you
20 gave there accurate based on your knowledge and belief
21 at that time?
22 A. Yes, they were.
23 Q. Okay. And the Commission and all parties
24 have been provided with a copy of that prepared
25 testimony, have they not?

1 A. I don't know.

2 Q. All right. Okay. We'll address that later.

3 In your rebuttal and surrebuttal testimony

4 which have been marked as Exhibits 4 and 5, you -- at

5 least one of these exhibits list as an issue prudence.

6 Are you testifying here today on the issue

7 of prudence?

8 A. No. I'm testifying -- testifying on the

9 financial impact of a prudence disallowance.

10 Q. Okay. Would you consider yourself qualified

11 to perform a prudence review?

12 A. No, I would not.

13 Q. Okay. Is it your belief that a public

14 utility commission should ever allow recovery of an

15 investment that was deemed to be imprudent?

16 A. No.

17 MR. COFFMAN: Okay. That's all of the

18 questions I have, your Honor.

19 JUDGE THOMPSON: Thank you, Mr. Coffman.

20 Mr. Conrad?

21 CROSS-EXAMINATION BY MR. CONRAD:

22 Q. Mr. Jenkins, do you -- would you agree that

23 the Company's revenue requirement varies directly with

24 an increase in its rate base?

25 A. That is one item that causes a change in

1 revenue requirement.

2 Q. When I say a direct relationship, I'm
3 intending to contrast that with an inverse
4 relationship.

5 You would agree that the revenue requirement
6 would be higher if the rate base were higher?

7 A. Generally speaking, that is correct, unless
8 the added capital investment caused enough changes in
9 operating expenses to make that fact not correct. I
10 think as a general premise and a majority of the time,
11 yes, you are correct.

12 MR. CONRAD: Thank you.

13 That's all, Mr. Jenkins.

14 Your Honor, that's all.

15 JUDGE THOMPSON: Thank you, Mr. Conrad.

16 Mr. Deutsch?

17 CROSS-EXAMINATION BY MR. DEUTSCH:

18 Q. Hi, Mr. Jenkins.

19 Did you attend the Joplin hearing on
20 May 18th?

21 A. No, I did not.

22 MR. DEUTSCH: I have no further questions.

23 Thank you.

24 JUDGE THOMPSON: Thank you, Mr. Deutsch.

25 I have some questions from Commissioner

1 Schemenauer. Perhaps you heard me ask them of
2 Mr. Amman.

3 QUESTIONS BY JUDGE THOMPSON:

4 Q. It is true, is it not, that the original
5 plan with respect to the St. Joseph Plant was to have
6 an affiliate or third-party construct the plant and
7 lease it to Missouri-American; isn't that correct?

8 A. That is my understanding.

9 Q. Do you know when and why this plan changed?

10 A. No, I do not.

11 Q. And with respect to the decision to build
12 this new water treatment plant in St. Joseph, did the
13 Company at any time consider the rate shock that would
14 occur when recovery of this investment began?

15 A. I believe they did, and the appropriate
16 witness to address those issues who was around at the
17 time is Mr. Salser.

18 JUDGE THOMPSON: Mr. Salser.

19 Thank you, sir.

20 Recross. Mr. Snodgrass?

21 MR. SNODGRASS: None, Judge.

22 JUDGE THOMPSON: Mr. Dority?

23 MR. DORITY: No. Thank you.

24 JUDGE THOMPSON: Mr. Coffman?

25 MR. COFFMAN: No questions.

1 JUDGE THOMPSON: Mr. Conrad?
2 MR. CONRAD: No questions.
3 JUDGE THOMPSON: Mr. Deutsch?
4 MR. DEUTSCH: No questions.
5 JUDGE THOMPSON: Redirect. Mr. England?
6 MR. ENGLAND: No. Thank you.
7 JUDGE THOMPSON: You may step down, sir.
8 Are we having him back?
9 MR. ENGLAND: Could we go off the record for
10 a second, your Honor?
11 JUDGE THOMPSON: Absolutely.
12 (Discussion off the record.)
13 MR. COFFMAN: Your Honor, the piece of
14 testimony which was mentioned earlier which had been
15 prepared and filed with the Commission, yet not
16 offered by the Company, is a piece of testimony that I
17 believe would be relevant to the record, relevant on
18 an issue that we may or may not get to do
19 cross-examination on, and I would like to, at the
20 appropriate time, offer that into the record.
21 JUDGE THOMPSON: What testimony -- are you
22 referring to Mr. Jenkins' direct filed in support of
23 the non-unanimous Stipulation and Agreement?
24 MR. COFFMAN: I am.
25 JUDGE THOMPSON: Okay. And --

1 MR. COFFMAN: I guess I'm asking what would
2 be an appropriate time to do that? I would have
3 done -- I would offer it into the record at this time,
4 if that's appropriate.

5 JUDGE THOMPSON: Do you have sufficient
6 copies for the reporter?

7 MR. COFFMAN: Not at this time. I suppose I
8 could get them. I assume that the Company did not
9 provide them.

10 MR. ENGLAND: We -- I assume we filed
11 appropriate copies with the Commission at the time
12 they were filed. What we don't have or did not
13 anticipate were copies for purposes of the reporter or
14 parties here today or the Commissioners.

15 I'm troubled by the request, as I was
16 earlier with Ms. Cook's, simply because I'm not sure I
17 understand the purpose of the exhibit. So I guess my
18 question would be relevancy.

19 And, secondly, to the extent it is relevant
20 the particular issue here, again, I'd like the
21 opportunity to redirect my witness on that if there is
22 going to be some use made of that, and I don't have an
23 opportunity to respond through the redirect
24 examination.

25 JUDGE THOMPSON: Mr. Coffman?

1 MR. COFFMAN: I believe that it's relevant
2 to the issue of the Accounting Authority Order, and --

3 JUDGE THOMPSON: Which we haven't come to
4 yet?

5 MR. COFFMAN: Correct. Which there has been
6 some discussion of waiving cross on it. And, in fact,
7 it was addressed in Public Counsel's, I believe,
8 rebuttal testimony of Mr. Trippensee, but I think it
9 is important that these -- these sworn statements
10 under oath filed with the Commission be made a part of
11 the record. They are addressed.

12 Although we certainly understand that the
13 non-unanimous stipulation is not going to be approved,
14 statements made in this prepared testimony are
15 important to our case on the Accounting Authority
16 Issue.

17 JUDGE THOMPSON: Okay.

18 MR. ENGLAND: And there may be factual
19 information in there that we have no objection to. As
20 I said, I would just like to understand the relevancy
21 for which it's being offered, and --

22 JUDGE THOMPSON: I think he said he believes
23 it was relevant to the Accounting Authority Order
24 Issue.

25 MR. ENGLAND: Well, I think I'm entitled to

1 maybe a more specific point within that broad general
2 category, but what I was going to say is perhaps if we
3 could explore this at a break it may be that we can
4 stipulate to either all or a portion of that testimony
5 once I understand what it is he wants to put in the
6 record.

7 MR. COFFMAN: I think the witness made it
8 clear that at that time that this was filed, in March,
9 you know, his statements at that time were accurate.
10 I don't know how much more specific I need to be other
11 than that we believe it supports our position that
12 Company's earnings are adequate enough to not require
13 an Accounting Authority Order-type recovery in this
14 case, and that the event involved is not supportive of
15 an Accounting Authority Order.

16 I think the record is clear that those --
17 that the non-unanimous stipulation is not going to be
18 approved, but these statements reflect the Company's
19 belief and testimony at that time assuming the
20 Stipulation and Agreement would be approved.

21 JUDGE THOMPSON: Okay. So at this time
22 would you like to have that marked? I know you don't
23 have --

24 MR. COFFMAN: Yes. Very quickly we could
25 run three copies ourselves.

1 JUDGE THOMPSON: Well, since you don't have
2 all of your copies --
3 MR. COFFMAN: Yes.
4 JUDGE THOMPSON: -- I'm going to assume that
5 you need to go make some copies at the break, so why
6 don't you discuss it with Mr. England at the break,
7 and then after the break, I'll give you an opportunity
8 to again offer that exhibit into the record. Okay?
9 Why don't we go on now with Mr. Merciel?
10 (Witness sworn.)
11 JUDGE THOMPSON: Please be seated, and spell
12 your name, if you would, sir, for the reporter.
13 THE WITNESS: James A. Merciel, Jr.
14 "Merciel" is spelled M-e-r-c-i-e-l.
15 JUDGE THOMPSON: Thank you, sir.
16 Mr. Snodgrass.
17 MR. SNODGRASS: Thank you, Judge.
18 JAMES A. MERCIEL, JR., P.E. testified as follows:
19 DIRECT EXAMINATION BY MR. SNODGRASS:
20 Q. Mr. Merciel, would you state your business
21 address for the record, sir?
22 A. Yes, sir. My business address is Post
23 Office Box 360, 301 West High Street, Jefferson City,
24 Missouri, 65102.
25 Q. By whom are you employed and in what

1 capacity, sir?

2 A. I'm employed by the Public Service
3 Commission. I'm an engineer. My title is Assistant
4 Manager of Engineering. I work in the Water and Sewer
5 department.

6 Q. Did you prepare the pre-filed testimony in
7 this case which has been previously marked, sir, as
8 Exhibit No. 48, Direct Testimony of James A. Merciel,
9 Jr.; Exhibit No. 49, Rebuttal Testimony of James A.
10 Merciel, Jr., and Exhibit No. 50, Surrebuttal
11 Testimony of James A. Merciel, Jr.?

12 A. Yes.

13 Q. Sir, do you have any corrections or
14 additions you wish to make to your testimony at this
15 time?

16 A. I have one minor correction.

17 Q. Would you point that out to the court,
18 please?

19 A. Okay. It's in rebuttal testimony. I think
20 that was No. 49. And it's on Schedule 1-2. It's one
21 of the last --

22 Q. What is the nature of the change or
23 correction?

24 A. It is one of the last pages here.
25 There is down toward the bottom -- you see

1 the term "waste facility." And after that it says,
2 "two clarifiers," and the line below that it says,
3 "two process clarifier blowdown pumps." That should
4 be two waste clarifier blowdown pumps.

5 Q. All right. Now, with this correction in
6 mind, are the answers that you provided in this
7 pre-filed testimony true and accurate to the best of
8 your knowledge and belief, sir?

9 A. Yes.

10 Q. And if I asked you the same questions today
11 that are contained in that pre-filed testimony, would
12 your answers be the same?

13 A. Yes.

14 MR. SNODGRASS: Judge, I would offer
15 Exhibits 48, 49, and 50 into the record, and tender
16 this witness for cross-examination.

17 JUDGE THOMPSON: Thank you, Mr. Snodgrass.

18 Do I hear any objections to the receipt of
19 Exhibits 48, 49, or 50?

20 (No response.)

21 JUDGE THOMPSON: Hearing no objections,
22 those exhibits are received and made a part of the
23 record of this proceeding.

24 (EXHIBIT NOS. 48, 49, AND 50 WERE RECEIVED
25 INTO EVIDENCE.)

1 JUDGE THOMPSON: Mr. Dority,
2 cross-examination?
3 MR. DORITY: No questions, your Honor.
4 JUDGE THOMPSON: Mr. Coffman?
5 MR. COFFMAN: Thank you.
6 CROSS-EXAMINATION BY MR. COFFMAN:
7 Q. Good morning, Mister -- or good afternoon.
8 A. It's afternoon. Good afternoon,
9 Mr. Coffman.
10 Q. How are you doing?
11 A. I'm doing fine. And you, sir?
12 Q. Okay. You have worked with the Commission's
13 Water and Sewer Department for several years?
14 A. Yes, I have. Approximately 23.
15 Q. Yes. And you worked for several years under
16 the direction of Mr. Bill Sankpill when he was
17 Director of the Water and Sewer Department; is that
18 correct?
19 A. Yes, that is correct.
20 Q. Do you recall when Mr. Sankpill retired?
21 A. Not exactly. '94, '95, somewhere in there.
22 Q. Okay. Was the proposal or the concept of
23 building a new ground water facility in the St. Joseph
24 area an idea that had come to the Water and Sewer
25 Department's attention prior to Mr. Sankpill's

1 retirement?

2 A. Yes. It was at least in the talking stages.

3 Q. Uh-huh. And do you recall any opinions

4 Mr. Sankpill made at that time regarding this idea?

5 A. Well, yes. I think the only thing that I

6 recall right off the top of my head, and I shared the

7 opinion at the time, was just -- just the idea of the

8 concept of abandoning this plant because there had

9 been some capital improvements made at the plant and

10 that was an initial concern.

11 Q. So you recall Mr. Sankpill being concerned

12 that this might not be the most feasible alternative,

13 at least at one point?

14 A. Yes. That would be fairly accurate. It

15 was -- it was really the idea of abandoning some

16 relatively new plant that had been put up.

17 Q. Following the -- the flood of 1993, were you

18 asked to prepare a report to the Commission addressing

19 Missouri-American Water Company's reaction to that

20 flood?

21 A. Yes. I participated in it.

22 Q. Okay. Are you referring to what was called

23 a Natural Disaster Report?

24 A. Yes, that would be the one.

25 Q. Okay. Who else contributed in the

1 preparation of that report?

2 A. Mr. Sankpill, who you just spoke of, and
3 also Wess Henderson who was working in the Water and
4 Sewer Department at the time.

5 Q. Okay. Who contributed the majority of the
6 work on this report?

7 A. Oh, probably all three made the field trip
8 and asked some of the questions. I think probably
9 Bill and I did a little more of the work getting some
10 of the numbers and, you know, Wess is an accountant
11 and not really a technical person, so we probably did
12 a little more work than he did. But we all equally
13 shared in getting it written up and reviewed.

14 Q. And was it your opinion as stated in that
15 report that the Water Company acted prudently in
16 reacting to the flood generally?

17 A. Yes Generally, our conclusion was it was
18 something that they just couldn't -- it got to the
19 point that they couldn't deal with it, and they did
20 have to abandon and recover it as best they could.
21 Yes, that was our conclusion.

22 Q. Is it fair to characterize your opinion that
23 the flood was of such an unusual intensity and level
24 that it could not have been expected to develop the
25 way it did?

1 A. Yes.

2 Q. Okay. Do you recall stating an opinion in
3 that report that this company has -- has typically
4 acted prudently in its water treatment operations?

5 A. Yes, we made that statement. That would
6 be -- that would be true.

7 Q. Is it fair to say that you generally
8 approach proposals by Missouri-American Water Company
9 with the expectation that they will be prudent?

10 A. I would probably say yes. I -- it's been my
11 experience this company does a -- does a thorough job
12 in evaluating options and -- and assessing what needs
13 to be done, be it a customer complaint or project.

14 Q. Did you state an opinion in that report --
15 rather, did the Water and Sewer Department state an
16 opinion in that report that the Water Company was
17 demonstrating a prudent action by designing new water
18 treatment facilities to function during previously
19 unexpected river conditions?

20 A. Yes. Well, let me stop. I think that would
21 have already been done by the time this was written.

22 Q. Okay.

23 A. So by designing, present tense, it probably
24 would have said past tense.

25 Q. Had you developed any opinion at the time of

1 this report being filed October 15 of 1993 regarding
2 whether this company should develop a new ground water
3 facility or refurbish its old river treatment plant?

4 A. Well, that decision certainly hadn't been
5 made. The flood did cause everyone, the Company and,
6 I think, everybody, to step back and take a look at
7 what ought to be done.

8 As you know, as everyone knows, I think,
9 there were some plans on paper to do some improvements
10 and refurbishing of this facility. It did need some
11 work anyway. And I think it's very accurate to say
12 the flood pretty much changed the picture of how that
13 was going to progress.

14 Q. Okay. So there -- was the expectation at
15 that time that the river treatment facility would be
16 floodproofed and refurbished at that time?

17 A. There would have been an expectation that
18 something would have been done to address the flood,
19 yeah. I think the answer is yes.

20 Q. And your report addresses plans to
21 floodproof that plant, doesn't it?

22 A. Yes. There were some temporary measures,
23 and Mr. Amman just spoke about those when he was up
24 here a few moments ago. There were some temporary
25 measures to protect some of the plant components, not

1 so much protect as to be able to remove them and
2 safeguard them.

3 And an initial question that came up very
4 soon was, well, is it possible to relocate the plant?
5 In fact, I think there is a statement to that effect
6 in that report. One of the initial thoughts was to
7 put the treatment components up on the bluff directly
8 uphill from where the plant is located. That happens
9 to be, I think we already talked about, what are
10 called the huntoon storage tanks. There is a little
11 bit of property up there. I think the determination
12 was it's not so great to put in some treatment
13 facilities, but it was an issue question.

14 Q. And the various temporary and long-term
15 solutions you discussed in this report, do you recall
16 using the word floodproofing, being floodproofed in
17 that report?

18 A. I honestly don't recall. It may be there.

19 Q. Okay.

20 A. I don't remember everything that report
21 says.

22 Q. What's your definition or understanding of
23 the word "floodproof"?

24 A. Well, I think my idea of floodproof is it's
25 not going to be flooded as opposed to flood resistant

1 or protected to where there could be situations. You
2 know, you do -- you take some measures to protect it,
3 but there could be situations where it's going to get
4 flooded.

5 That's what we had there, the worst -- there
6 were some measures in place to protect it from
7 flooding, but in '93 they were not adequate.

8 Q. I mean, can you ever with metaphysical
9 certainty determine that any facility would never be
10 flooded? There is always a possibility?

11 A. Of course, it's dangerous to say "never" and
12 "always" a lot of times, but I think looking at these
13 examples, if the treatment facility is up on the hill,
14 it's -- well, I guess it can get flooded, but we're
15 going to be building Noah's Ark if that's the case.
16 You know, you can get to ridiculous points.

17 But the real point is, if it's in the flood
18 plain, it's -- it's pretty difficult to absolutely
19 floodproof a treatment facility --

20 Q. Okay.

21 A. -- or any other structure for that matter.

22 Q. Do you consider the new treatment source of
23 supply wells to be more reliable than the raw water
24 intake structure at the old plant?

25 A. More reliable than the intake structure?

1 Q. Uh-huh.

2 A. I wouldn't say so. It's probably -- well,
3 they are safer from damage during normal river
4 conditions. The old intake structure, there was a
5 risk, for example, if a barge would get loose or other
6 debris. It's in the river all of the time.

7 So I guess from that standpoint, the current
8 well field, the one that just got constructed, it's
9 some distance away from the river. So there is no
10 danger from boat traffic or debris doing damage.
11 During flood conditions, there would be more so of a
12 risk.

13 JUDGE THOMPSON: Mr. Merciel, is that a yes?

14 THE WITNESS: Well, I --

15 JUDGE THOMPSON: If you would, please
16 preface your responses with a yes or a no.

17 THE WITNESS: I will try to do that.

18 Let me try to give a straighter answer then.

19 The well field would be safer from river
20 conditions during normal river flows and probably
21 about the same risk during extreme flooding
22 conditions.

23 JUDGE THOMPSON: Thank you.

24 BY MR. COFFMAN:

25 Q. Have you performed any professional analysis

1 about what would likely happen to the new plant wells
2 in a flood event?

3 A. I'm not sure I know what you mean by
4 "professional analysis." I mean, I have -- I've been
5 to the site. I've looked at it and considered some of
6 the possibilities.

7 Q. Well, what expertise do you have in judging
8 floodproofing and flood damage questions?

9 A. Well, I guess my expertise is, I do have a
10 civil engineering background. I've not done any
11 projects on the river itself as some engineers have.
12 I have seen the effects of flooding on other water
13 treatment plants during the years, not just in '93,
14 but other times when plants have had problems. I do
15 have some understanding of debris floating down the
16 river and -- and marine traffic.

17 One thing I did notice when I was at the
18 facility, that the vertical wells -- there are seven
19 of those -- you have the well which is, basically, on
20 top of the ground there is a columns sticking out, and
21 there is also a steel structure. You have to climb up
22 a steel structure to get to the motor and the
23 electricals.

24 Well, that structure is on the upstream side
25 of the well, and the discharge pipe is on the

1 downstream side, so it's obvious to me that if you
2 lined it the other way, then, you know, you would
3 expose the pipe to debris or other damage. But as it
4 is, the steel structure does some protection. You
5 know, there are measures like that that I can see.

6 Q. In other words, the steel structure is
7 placed -- is oriented in a way that generally would be
8 in front of the intake structure?

9 A. Yeah. Not intake, but the piping and the
10 well structure itself. Yes, the steel structure is in
11 front of it. As river debris would flow down the
12 river, it would hit the steel structure before it gets
13 to the well or the discharge pipe.

14 Q. That doesn't guarantee that debris wouldn't
15 in some way hit the intake structure, does it?

16 A. No, it would not guarantee it. There is
17 that possibility. It very likely would get debris,
18 you know, to a certain extent. Damaging debris is
19 what you have to worry about, you know, a large tree.
20 Of course, during floods you don't have any boat
21 traffic, except you could have some large objects that
22 are floating.

23 Q. Okay. Did you perform a cost estimate
24 comparison analysis between the upgrading and
25 refurbishing of the existing river plant and the cost

1 of the new ground water source and treatment plant?

2 A. I did not perform a formal analysis. What I
3 did do, when the Company presented some evidence to
4 the Commission -- the Company had at some point
5 decided to go with a ground water plant, and they did
6 file Case No. WA-97-46, and those two options were two
7 of several. There were some other alternatives and
8 some combinations. And I did review what the Company
9 submitted and tried to use some logical thinking to
10 determine what the best -- what the best alternative
11 might be.

12 Q. Did you simply accept the estimates laid out
13 in the feasibility study prepared by Missouri-American
14 Water Company in comparing the costs of upgrading the
15 existing plant to construction of a new plant?

16 A. No, I didn't. I wasn't sure that I would
17 agree with all of the numbers they had. Let me expand
18 a little bit on that.

19 When you do estimates, I've noticed
20 consulting engineers, it's difficult to get to
21 accurate estimates. You know, even if you go to a
22 contractor to try to get some -- really nail down what
23 the costs are, you have to have a set of plans and
24 specifications. The estimates are just that. You
25 have to envision what's going to be designed and

1 constructed, and you have to go with the estimates.

2 In my opinion, that was the Company's job to
3 do that. They did it. I'm not sure I agreed with all
4 of the numbers they had, but I -- I was able to
5 satisfy myself that it was close enough that either
6 one of those alternatives would have been economically
7 feasible, as opposed to some of the other
8 alternatives.

9 There were, as you probably know, some
10 alternatives of buying water from Kansas City, and
11 those did appear to be a little more expensive.

12 Q. Okay. So what did you -- what other
13 resources did you utilize to reach that conclusion
14 that those estimates were -- or to review those
15 estimates?

16 A. I think I just relied on my common sense and
17 the appearance of the numbers that the Company gave.

18 Now, as you might recall, I did not have the
19 conclusion that the ground water plant was the most
20 economical --

21 Q. Right. Okay.

22 A. -- so --

23 Q. You stated that you didn't accept all of the
24 estimates, right, that you wouldn't -- it wouldn't be
25 accurate to say that you simply accepted them.

1 Did you express any -- any concerns on the
2 record during that certificate case, WA-97-46,
3 regarding the accuracy of any of the Water Company's
4 estimates?

5 A. Not on the record, I didn't, no.

6 Q. In what manner did you express concerns
7 about those estimates?

8 A. There were some dollar amounts for the
9 buildings that they had. The schedules they were
10 using I found a little hard to follow. It was a -- it
11 was a schedule of dollars spent per given year, and
12 then in another column they would show facilities to
13 be placed in service.

14 Q. My question was, in what way did you express
15 your concerns about those estimates that you didn't
16 accept?

17 A. Well, there have been several meetings
18 that -- meetings, field visits. We had talked about
19 it. Your office was involved. You recall several
20 meetings the Company had. They come down here, and it
21 was talked about to a certain extent.

22 Q. You raised concerns in meetings with the
23 Water Company an other parties; is that what you're
24 saying?

25 A. Yes.

1 Q. Okay. Is it your opinion that a prudence
2 review should be based on a review of the estimate of
3 options that could have been pursued to a particular
4 project?

5 A. An estimate of the options?

6 Q. An estimate of the cost of pursuing various
7 options?

8 A. Well, that's a large part of it. In -- in
9 the certificate case there were some other intangible
10 characteristics of each -- each option that was
11 outlined, and I brought that up in my testimony here,
12 things such as the availability of water, protection
13 from flooding. There were some things that you really
14 can't measure in dollars.

15 Q. Okay.

16 A. And that -- which is really what it comes
17 down to. That is what I relied my recommendation on.

18 Q. If I could refer you to a document that
19 has -- is attached to Mr. Ted Biddy's surrebuttal
20 testimony.

21 A. Okay. I don't have that with me, here.

22 MR. COFFMAN: You don't?

23 Permission to approach.

24 JUDGE THOMPSON: You may approach,

25 Mr. Coffman.

1 BY MR. COFFMAN:

2 Q. I'm referring you to Schedule TLB-16, which

3 is attached to Mr. Ted Biddy's surrebuttal testimony.

4 Have you reviewed that document?

5 A. I've seen this document in the context of

6 this case.

7 Q. Okay.

8 A. I did not see it in the certificate case.

9 Q. Okay. So your opinion in that case that

10 Company was pursuing a prudent course of action was

11 not based on that document?

12 A. That's correct.

13 Q. Is it your opinion now that Missouri-

14 American should have included all of the items shown

15 on that document in an analysis of the cost of making

16 plant improvements at the river treatment facility

17 when comparing it to the cost of building a new ground

18 water facility?

19 A. Well, I would -- no, I would not answer -- I

20 think the answer is no. I think they needed to do a

21 consistent comparison between the alternatives.

22 Q. In other words, are there items on that list

23 that should not have been included?

24 A. Items on this list, you mean, here?

25 Q. Yes.

1 A. Well --

2 Q. And if so, which items?

3 A. Well, I don't know that there are any items

4 that shouldn't be on the list. We -- I think we do

5 need to recognize that there are a couple things on

6 here that wouldn't happen right away, that being

7 the --

8 Q. What are those items?

9 A. Okay. That would be the ozone contactor.

10 It's 5.5 million. It's about two-thirds of the way

11 down on the list. And right below that is the

12 residuals. That would be -- that's for handling

13 residuals from the treatment process at the surface

14 water plant. At the time they had been just

15 discharging it into the river, and it probably

16 wouldn't have been done so immediately.

17 I think it's important to consider these

18 things, but, you know, we probably need to recognize

19 that it would be in the future. And, again, I'm not

20 sure I agree with -- necessarily agree with the dollar

21 amounts that are on here.

22 Q. Okay. Are ozone facilities and residual

23 handling facilities facilities that could be added

24 later to a project?

25 A. They could be added later, and that's why --

1 that's why I think it's -- they do need to be
2 considered at some point. The residual is probably
3 less certain than the ozone.

4 Q. Okay. Let me ask you some questions about
5 the ozone.

6 What's your opinion about when such ozone
7 facilities would be required at the river plant if --
8 if it were -- if that were -- refurbishment of the
9 river plant were the option chosen?

10 A. That -- the answer to that really depends on
11 what comes down from EPA, and we have what's called
12 the Surface Water Treatment Rule, and that's -- I
13 guess the best way for me to describe it, it's more or
14 less a three-stage rule.

15 Right now we have what's called the Interim
16 Enhanced Surface Water Treatment Rule, and there is
17 supposed to be a Stage I and Stage II, and I believe
18 November of this year something is supposed to happen
19 with Stage I, and that's really about the -- all of
20 the detail I can give to you.

21 But my point is, we're not really sure
22 what's going to happen, but we're pretty sure
23 something is going to happen. It has to do with
24 contaminants and microorganisms that are associated
25 with surface water.

1 Q. There is no certainty at this time what, if
2 any, requirements will be put in place or when?

3 A. It's not absolutely certain. Again, the
4 thinking in the industry is that something is going to
5 happen. I think it's certain that something is going
6 to happen.

7 Q. Moving on to residual handling, have you
8 discussed the present method of residual handling at
9 the existing plant with the Missouri Department of
10 Natural Resources?

11 A. Yes. I have in the past. Not in the
12 context of this case. Yeah, I've talked about it
13 before.

14 Q. Is it your understanding that Missouri-
15 American Water Company could have continued to return
16 residuals to the Missouri River at the existing plant?

17 A. That's the consensus. Today -- and to give
18 a little bit of background, today there are a number
19 of treatment plants around the country that -- that
20 discharge their residuals to the surface water where
21 they get their water from, in this case the Missouri
22 River. And at one time all of these facilities had
23 discharge permits similar to the discharge permit you
24 get if you are operating a sewage treatment facility.

25 Well, at some point EPA said, No, we don't

1 want to renew these permits. Well, you can't shut
2 down all of these water plants, so the plants have
3 been -- their permits have been expiring. And I don't
4 know about all, but a lot of the plants are operating
5 without a permit at this point in time.

6 It's an open issue. EPA would like to
7 permit them, and, yet, they don't really want the
8 discharge, so, you know, nobody knows what's going to
9 happen.

10 Q. And those water companies that are
11 continuing to operate despite having their old permits
12 expire include the permit to operate facilities at the
13 St. Louis Water company; is that right?

14 A. Yes, it does.

15 Q. And you're aware of several other major
16 facilities in the state that are also continuing to
17 operate?

18 A. Yes. Well, of course, St. Joseph was at the
19 time the plant was operating. Yeah, there are a
20 number of them.

21 Q. And have there been any -- has there been
22 any activity on this issue in recent years?

23 A. I haven't seen much activity. It's -- as I
24 say, it's an open issue, but I would say it's not
25 going anywhere very fast right now.

1 Q. And I assume that these -- these realities
2 are partly what you base your opinion on the fact that
3 perhaps residuals should not have been included as an
4 appropriate cost of improving the river treatment
5 plant?

6 A. Well, what I intended to say is the
7 residuals, I think, should have been included to the
8 extent that's something that might happen in the
9 future. That's not -- I didn't say to completely
10 exclude it, but I think we recognize that it's not
11 going to be immediate. But I think there is a good
12 chance sometime during the life of this plant the
13 issue would come up, and they're going to end up
14 having to handle residuals.

15 Q. Perhaps in the lifetime of some individuals
16 in this room maybe?

17 A. Maybe and maybe not. It might be many
18 years, but a plant that gets constructed is going to
19 be there for something on the order of 100 years, and
20 I think it's safe to say during that time we're going
21 to be dealing with residuals.

22 Q. But it's a lot less certain than the
23 possibility of any ozone requirement. Correct?

24 A. Yes, that is correct, in my opinion.

25 Q. Have you ever seen a detailed breakdown of

1 the lump sum figure of \$8 million for residual
2 handling facilities that are included in the
3 Schedule TLB-16?

4 A. I don't think I have, unless -- well, John
5 Young may have included it in his testimony, and I
6 reviewed it. His was pretty thick. I don't recall
7 seeing it. It may have been there.

8 Q. Have you ever performed an estimate of what
9 the cost of residual handling facilities would be at
10 this -- at the river treatment plant if such a
11 requirement were to come down?

12 A. I have not. I will say that dollar amount
13 strikes me as being kind of on the high side. I don't
14 know what they consider there. You have to -- you
15 have to understand, St. Joseph Plant, being in the
16 flood plain, flooding would be an issue on the
17 residual handling facilities, so if they're going to
18 build lagoons, we're talking about some very high
19 walls. It would be expensive if you're going to do
20 that. Probably a clarifier-type facility where you
21 have to pump into it. You would be talking about
22 another pumping station. That might be another way to
23 do it.

24 Q. Would that facility have to be currently
25 within the area that the river treatment plant had

1 been or could it be nearby?

2 A. Well --

3 Q. Or do you have an opinion?

4 A. I guess it could be either. If it's nearby,

5 you could pipe your residuals to it. I suppose it's

6 possible to haul by truck to some of the locations

7 directly out of the plant. That might be a little

8 more labor-intensive and, again, during flooding times

9 might be a little more of a problem.

10 Q. Would there be any reason to design a

11 refurbishment of the plant in such a way as to

12 consider residuals when there is no requirement at

13 this time?

14 A. Well, it's -- I guess the answer is, the

15 residuals probably ought to be taken into

16 consideration, but I'm not sure that's really that big

17 of a deal in designing a plant.

18 Q. Does the Clean Water Act specifically allow

19 raw water solids to be returned to the river?

20 A. I'd have to say I don't know exactly what

21 that says. This is a discharge permit that comes from

22 the Clean Water Act. That's really the question. Are

23 they going to allow it or not.

24 Q. Are you familiar with the content of the

25 sediments that are recovered, or were recovered, at

1 the river treatment plant?

2 A. I'm sorry. Am I --

3 Q. Do you -- do you know what percentage of the

4 raw water solids which were removed during the

5 pre-sedimentation process -- or how much of the

6 sediment was raw water solids?

7 Should I restate that?

8 A. If I understand your question, I think it

9 would be all of it. Well, that's not true either.

10 There would be some chemicals, your lime. I don't

11 know. Okay. I don't know the percentage.

12 Q. Okay.

13 A. It's probably mostly solids from the river,

14 and there is some lime, a certain amount of chemicals

15 that are added.

16 Q. Do you recall Mr. Young's testimony on the

17 stand last week referring to an amount of 2 million

18 pounds of sediment material which may contain

19 coagulation residuals?

20 A. Yes, I recall that number.

21 Q. Okay. And would only that portion of the

22 sediment material that contained coagulation residuals

23 be required to be treated with special handling under

24 a residual handling requirement?

25 A. I'm sorry?

1 Q. I'll retract that question.

2 Do you have knowledge about what -- how
3 large an area would be required for lagoons and drying
4 beds for, say, 2 million pounds over a year?

5 A. I'm afraid I don't have that number off the
6 top of my head. There is a -- in the Department of
7 Natural Resources Design Guide for Water Treatment
8 Facilities, it's -- it is outlined in there what
9 volume, and I don't remember. This volume might have
10 included surface area, but I couldn't tell you what
11 that number is.

12 Q. On Schedule TLB-16, the first item listed
13 there is raw water intake and pump station for a cost
14 of \$7.2 million. Do you recall that, or do you need
15 me to --

16 A. No, I recall that number.

17 Q. Okay. Do you concur with that \$7.2 million
18 figure?

19 A. Well, I wouldn't say that I do. I reviewed
20 the Company's numbers. That was their estimate.
21 Again, it's -- it's -- I find it difficult to say
22 whether it's -- that would be an accurate number or
23 not. That's -- but it is -- they say it is based on
24 another number at a similar, smaller facility in
25 Pennsylvania.

1 Q. Did you perform any independent analysis of
2 what a raw water intake and pump station might cost?
3 A. I did not.
4 Q. Have you analyzed the \$700,000 figure on
5 Schedule TLB-16 which was listed as access road to
6 river site cost?
7 A. Again, I haven't analyzed that number, but I
8 did -- it does appear to me that we're -- there is
9 need for, about, something on the order of three-
10 quarters of a mile to one mile of roadway that would
11 need to be constructed. Not improved. Constructed.
12 Q. Okay. Wasn't -- wasn't a road used during
13 the flood of '93 to -- for the Water Company to access
14 the site?
15 A. I don't believe. The Company used boats and
16 a flat car from the railroad.
17 Q. Okay. Where did you -- how did you develop
18 your opinion that three-quarters to a mile of road
19 needed to be constructed?
20 A. By studying maps and observing in the field.
21 Q. Did you go out to the area and attempt to
22 navigate that area --
23 A. Yes, I did.
24 Q. -- with a vehicle?
25 A. Yes, I did.

1 Q. And it's your opinion that there is no road
2 that's available --

3 A. That is correct.

4 Q. -- to reach the County Line Road?

5 A. Yeah. More accurately, there is a road
6 about -- from the old treatment plant about one mile
7 north. There is a roadway that you can drive on, and
8 then there is a gate and private property signs. And
9 the other end of the road is -- that's where it's,
10 whatever, about a mile, three-quarters of a mile.
11 Actually, that's near the -- near the new plant, which
12 is located on County Line Road. Coming from that
13 direction, there is another iron gate and private
14 property signs.

15 Q. Okay. Have you reviewed maps at the
16 Assessor's Office, either Buchanan or Andrew County's?

17 A. I reviewed maps that we have here in the
18 office, county highway maps and topographic maps.
19 Also, I have a map that the Company gave us on the --
20 it's actually for the raw water pipeline, and that's
21 available to -- there are actually -- it's not a map.
22 It's an aerial photo.

23 Q. Am I understanding your testimony that there
24 is a road that's a private road which is available and
25 that it's not available because it's a private road?

1 A. I don't think there is a roadway at all.
2 There may have been a roadway or a trail at one time,
3 but it's -- I didn't hike through that area, but it --
4 from what I can see, it looks like there is no roadway
5 at all.

6 What you can see from Interstate 229, it
7 crosses over where this pathway would go -- that's
8 where the raw water line is -- and there is a
9 right-of-way where you can get to the construction
10 road, but there is not a road at the present time.

11 Q. Okay. Did you perform any estimate on your
12 own of the cost of doing the road construction that
13 would be necessary?

14 A. I did not.

15 Q. Okay. In your rebuttal testimony on Page 2,
16 Lines 5 through 15, you criticize Mr. Ted Biddy's use
17 of the 1991 estimates for upgrading the existing plant
18 as compared to the cost of the new plant; is that
19 correct?

20 A. Yes, I did.

21 Q. Is it your understanding that Mr. Biddy
22 added five major items to the 1991 estimate?

23 A. Yes, he did. And I -- I do have to admit
24 that my testimony here failed to point that out, and I
25 attempted to make a correction to a certain extent in

1 my surrebuttal testimony.

2 Q. You did. Thank you.

3 And you do recognize now that Mr. Biddy also
4 updated the 1991 cost estimates to 1998 costs?

5 A. He did do that, yes.

6 Q. Okay. Do you agree or disagree with
7 Mr. Biddy's use of the Engineering News Record cost
8 estimates to upgrade from 1991 costs to 1998 costs?

9 A. I do not disagree with the use of that.
10 Engineering News Record is reputable, and I don't
11 quarrel with that figure.

12 Q. Okay. Is it your understanding that the
13 Missouri Department of Natural Resources has approved
14 the superpulsator clarifiers at a higher rate than the
15 three GPM per square foot as a full-scale
16 demonstration plan for a period of one year, with
17 final approval to be given one year after operation?

18 A. Did you say at a higher rate than three GPM?

19 Q. Yes.

20 A. No, not higher. It's -- three gallons per
21 minute is what they approved. That's in -- there's
22 some correspondence -- actually, that's what the
23 Company requested, and DNR, after some
24 correspondence -- initially, they didn't approve that,
25 but then they -- initially, they were going to go with

1 two. That's in the letter, as well, which is included
2 in Mr. Biddy's testimony, but they finally did go with
3 three --

4 Q. Okay.

5 A. -- as a demonstration project.

6 Q. So it's not your understanding that they
7 would allow more than three GPM?

8 A. That's my understanding, right.

9 Q. Are you familiar with requirements --
10 environmental authority requirements for floodproofing
11 as it relates to river treatment facilities?

12 A. Yes.

13 Q. Would you consider the river treatment
14 facility to have been floodproofed if Missouri-
15 American Water Company constructed a levy system
16 completely around the existing plant site to an
17 elevation of four feet above the record flood level
18 with an impervious clay core on seepage collars for
19 all pipes penetrating the levy?

20 A. I would not consider that floodproof.

21 Q. Why not?

22 A. Well, because it still -- the levies are
23 still subject to effects of the flood. Levies do
24 break. You can also have -- I guess I'd call it flood
25 water. When the ground is underwater and saturated,

1 you can have seepage from under the -- in other words,
2 it goes under the ground. In fact, I believe that's
3 what happened with this company's pump house.

4 It's a structure -- basically, a structure
5 with a basement, and water was coming in from the --
6 basically, a leaky basement, is what it amounts to.
7 It's well below the flood water.

8 I don't think -- I would not call a levy
9 floodproof. And, again, to illustrate, anybody who
10 saw the '93 flood, there were many fields, many areas
11 with levies that got flooded.

12 Q. My question assumed that a wall would be
13 built between the railroad and the current plant; is
14 that --

15 A. Oh, I understand that, yeah. Well, you
16 didn't say that, but that is my understanding.
17 That's -- that's been talked about.

18 Q. Do you -- so do you have a concern about
19 DNR's requirement about raising levies to an elevation
20 of four feet above the record flood level? Do you
21 believe that's inadequate?

22 A. Yes. Here is where I stand on -- for this
23 facility, we -- it's preferable -- we've seen whole
24 towns moved out of flood plains. I don't see anybody
25 constructing new structures, new facilities where

1 you -- where you -- if you can't afford for them to be
2 out of service. You see some warehouses or offices,
3 things that maybe a person or a business could
4 abandon. But something that -- that a whole town
5 depends on every day I don't think it's appropriate to
6 do some construction within the flood plain. And
7 that's what we're talking about here. We're talking
8 about replacing basically this entire plant.

9 Now, if we had, whatever, \$20 or \$30 or \$40
10 million sitting in the ground, it's not practical to
11 abandon a large investment like that. You would need
12 to construct levies and floodproof it as best you can.
13 But we're talking about replacing this facility, and,
14 in my opinion, the question is, do you replace it
15 there where it's at, or do you replace it somewhere
16 else?

17 Q. Do you know how much rate base was involved
18 in the river treatment plant when it was abandoned?

19 A. It's my understanding from both talking to
20 our depreciation engineer working on this case and
21 also Kim Bolin's testimony that the depreciated value
22 of rate base at the old plant is \$2.8 million, which
23 in my opinion is not very much. I think the total
24 plant in service was something like 7 million, and the
25 depreciated seven is \$2.8.

1 Q. Are you familiar with the various
2 floodproofing improvements that were made at the
3 St. Joseph River Treatment Plant since the flood of
4 1993?

5 A. Yes.

6 Q. Okay. Do you -- let's see. And do you
7 understand that there was an extension of the
8 perimeter levy system made after that flood?

9 A. I believe there was, yes.

10 Q. And that -- is it your understanding that a
11 drainage system was modified?

12 A. I'm sorry. What?

13 Q. A drainage system?

14 A. Yes, uh-huh.

15 Q. Okay. And do you know whether exterior
16 walls on the pump building had openings sealed where
17 there had been flooding?

18 A. Yes. My understanding -- and I didn't look
19 at each one of the projects on that, but it's my
20 understanding they did seal up some windows and
21 perhaps repaired some brick work, yes.

22 Q. Do you -- do you understand that there were
23 high-capacity sump pumps installed?

24 A. Yes.

25 Q. And is it your understanding that there were

1 major gantries and hoists installed to quickly
2 disconnect and raise motors and electrical switch
3 gear?

4 A. Yes. I'm not sure how quick it would be,
5 but, yeah, the provision was there to raise motors and
6 remove electrical in anticipation of floods.

7 Q. Would that allow for quicker disconnection
8 than was permitted during the 1993 flood?

9 A. Not quicker distinction, but it does allow
10 them to dismantle that equipment and then hoist it.
11 It would be suspended from these gantries. I mean,
12 they are connected the same way they were before, but
13 before there was no way, you know, to unbolt them and
14 move them out. You would have to by truck or some
15 other way move them out of the building. This way, in
16 place, you just unhook it and lift it up.

17 Q. So, in other words, there is expensive
18 equipment, motors and electrical switch gear that
19 could be raised above a flood that were not -- that
20 you could not raise during the '93 flood?

21 A. That's correct. That capability was not
22 there in '93.

23 Q. Okay. Are you familiar with any other
24 regulatory agency requirements for flood protection
25 other than the Missouri requirements?

1 A. I'm not aware of any.

2 Q. Okay. Okay. Are you -- do you understand

3 that protections for hundred-year-flood events are a

4 standard among regulatory agencies, or do you know?

5 A. I really don't know about that. I know 100

6 years is a -- it's cited in the Department of Natural

7 Resources Rule, although they are wanting to go with

8 flood of record now, too.

9 Q. And your -- and the flood of record is --

10 has been classified as a 500-year flood by the U.S.

11 Army Corps of Engineers. Correct?

12 A. That's correct, yes. The '93 flood is

13 considered a 500-year.

14 Q. So if I'm to understand what that means,

15 would I be accurate in saying that the odds of another

16 flood occurring of the same level as the 1993 flood

17 would be .2 percent in any given year?

18 A. Well, that number may be accurate, but --

19 Q. I mean, that's what's meant by a 500-year

20 flood. Correct?

21 A. Yeah, that would be right. Uh-huh.

22 Q. That's what I was asking.

23 A. I'm not sure I want to depend on a risk to

24 design a --

25 Q. I mean, it could happen next year, couldn't

1 it?

2 A. It could, yeah.

3 Q. But it would still be --

4 A. It may or may not. There is no way to

5 predict it.

6 Q. But to the best guess of anyone in the Corps

7 of Engineers, the odds of that happening are .2

8 percent in the year?

9 A. That's probably right.

10 Q. Okay. You stated earlier that you did not

11 agree that Missouri-American Water Company utilized an

12 alternate access road during the '93 flood?

13 A. I don't remember -- of course, I wasn't

14 there, but I don't remember any -- anything about

15 using a road. In their -- I believe it was in the

16 feasibility study, they talked about -- there was a

17 statement made about -- Mr. Biddy pointed this out --

18 a statement made about having access, fording creeks

19 and using four-wheel-drive trucks, but I don't believe

20 the Company actually did that to get to the plant.

21 Q. Okay. It's not your opinion, is it, that

22 components of a treatment plant that are not being

23 used and useful should be included in a utility's rate

24 base, is it?

25 A. That would be correct.

1 Q. And you've recommended some adjustments
2 based on excess capacity; would that be fair to say?

3 A. Yes. Yes, sir, I did.

4 Q. What -- what thresholds or limits would be
5 set for determining excess capacity design for a water
6 treatment facility?

7 A. Well, to use a different term in your
8 question, my methodology was to look at what the
9 Company did and take components that could reasonably
10 be excluded and simply exclude those from rate base.
11 There are -- there are certain things at the plant
12 that could have been constructed smaller, or, if there
13 are multiple items, not include quite so many, and
14 that's -- that's what I did.

15 There are some components to where if you're
16 going to build a plant, it doesn't matter what size,
17 you can incur a certain cost, and I don't think it's
18 practical for the Company to take any percentage or,
19 you know, if you have some fixed cost, I don't think
20 it's practical for them to somehow reduce that cost.
21 They can't do that.

22 Q. Okay. It's your position that the Water and
23 Sewer Department conducted a prudence review of the
24 alternatives available to the Company during the
25 certificate case WA-97-46?

1 A. Yes.

2 Q. There are no Staff work papers available to
3 support that prudence review, are there?

4 A. No, I'm afraid not. We didn't make up any
5 work papers at the time. It was a review of what the
6 Company had filed and unwritten correspondence and
7 meetings and simply -- simply thinking about it.

8 Q. And there are no notes available from you or
9 anyone else in the Water and Sewer Department to
10 document meetings -- those meetings or discussions
11 that occurred?

12 A. No, sir. I -- we had the data requests, and
13 I went back through the files, and I can assure you I
14 gave an honest attempt to find them. I questioned --
15 well, I guess it was one of the other Staff members
16 still available in the Department, and we didn't have
17 anything.

18 Q. Okay. Did the Staff of the Commission
19 propound any data requests during that certificate
20 case to the Water Company to aid in its -- to aid the
21 Water and Sewer Department in its prudence review?

22 A. No, not on that issue. There were no data
23 requests, I don't believe.

24 Q. Okay. And is it accurate to say that it's
25 Staff's belief that the best time to evaluate the

1 prudence of a water treatment plant decision is not
2 necessarily in a rate case?

3 A. That's correct. The Staff takes the
4 position that the best time to evaluate it is at the
5 time the decision needs to be made, and that's what
6 the Staff attempted to do -- well, that's what the
7 Staff did in that case.

8 Q. Isn't it true that sometimes information
9 relevant to whether a decision was prudent is made
10 available to regulatory agencies at a later date than
11 the time the decision was made?

12 A. I guess it could be, but it would -- I guess
13 what you're getting at, if it's around somewhere at
14 that time and at the time it's made but just not made
15 available. If that's what you mean, yeah, I suppose
16 it's possible.

17 Q. For instance, a relevant memo or document
18 that may bear on the question may not be in the hands
19 of the regulators at the time --

20 A. Sure, it's possible.

21 Q. -- or near the time?

22 A. It's possible.

23 Q. Do you recall a questioning as to the
24 prudence of a contract that Capital City Water Company
25 entered into with the Public Water District No. 2?

1 A. Yes, I recall it.

2 Q. And was that -- was that issue first raised
3 in Case No. WR-90-118?

4 A. That sounds right, yes, sir.

5 Q. Okay. It wasn't the recommendation of the
6 Water and Sewer Department that there be any
7 disallowance based on the prudence of that contract,
8 was there?

9 A. It's my recollection that the Water and
10 Sewer Department did not recommend it. It was a
11 ten-year old contract, and, if I recall correctly, we
12 took the position that at the time the contract was
13 entered into, there had been some changes with the
14 Water District and over the years there were some
15 changes, but our position was that it was not foreseen
16 and was not an issue at the time the contract was
17 entered.

18 Q. And other parties took the position that
19 that was an imprudent contract?

20 A. That is correct.

21 Q. And the Commission determined in that case
22 that the contract was imprudent to some degree, didn't
23 they?

24 A. Yeah, without remembering what the order
25 says --

1 MR. SNODGRASS: Objection, Judge. I think
2 that calls for a legal conclusion.

3 MR. COFFMAN: I --

4 JUDGE THOMPSON: I think he can say what the
5 order said --

6 MR. SNODGRASS: Fair enough.

7 JUDGE THOMPSON: -- to any extent he's able
8 to understand it.

9 However, Mr. Coffman --

10 MR. COFFMAN: Yes.

11 JUDGE THOMPSON: -- could you tell me what
12 the relevance of this line of questioning is to any
13 matter presently before this Commission for decision?

14 JUDGE THOMPSON: Yes. This is relevant
15 to --

16 JUDGE THOMPSON: To show that the Commission
17 has considered prudence in the past?

18 MR. COFFMAN: Yes. And also to when -- when
19 it is appropriate to conduct a prudence review and how
20 the Staff's Water and Sewer Department typically
21 conducts such a prudence review. Also, the
22 credibility of the witness to make such
23 determinations.

24 JUDGE THOMPSON: Well, I will let you pursue
25 it a bit further, but I want you to show me that it is

1 relevant to this matter.

2 And we'll take a ten-minute recess at this

3 time. You may take it back up when we return.

4 MR. COFFMAN: I don't think I have very much

5 further.

6 JUDGE THOMPSON: Okay. Thank you.

7 (A recess was taken.)

8 JUDGE THOMPSON: Back on the record.

9 Mr. Coffman.

10 BY MR. COFFMAN:

11 Q. Mr. Merciel, I believe I really just have a

12 few more cleanup questions here.

13 When we left for break, we were discussing

14 the Capital City Water case that involved an imprudent

15 contract.

16 A. Yes.

17 Q. And do you recall at that time that there

18 was a memo or a document that the Commission found

19 relevant to prudence that was discovered later than --

20 at that later date?

21 A. Honestly, I don't recall. I actually didn't

22 work on that issue.

23 Q. Okay.

24 A. And I really don't have knowledge of that.

25 Q. Do you -- do you recall in your years with

1 the Water and Sewer Department any time when the Water
2 and Sewer Department has made a recommendation that
3 the construction of water treatment facilities by a
4 regulated utility were imprudent?

5 A. Well, there -- there isn't much. The truth
6 is, we don't see much overbuilding in the water
7 industry. We have more problems getting companies to
8 do what they need to do rather than try to hold them
9 back any.

10 Q. You -- you spend a great deal of your time
11 working with the small water companies, don't you?

12 A. Yes. Yes, I do.

13 Q. Do you have knowledge of the -- the position
14 of the Electric and Gas Departments at the Public
15 Service Commission Staff with regard to their policies
16 on prudence -- prudence reviews?

17 MR. SNODGRASS: Judge, I'm going to object
18 to the relevance of this line of questioning on other
19 Departments' views. How does that relate to this
20 case?

21 JUDGE THOMPSON: Thank you, Mr. Snodgrass.

22 Mr. Coffman, do you have a response?

23 MR. COFFMAN: Yes. I -- we're questioning
24 what the Staff terms a prudence review, and I think it
25 is relevant to what this party, that is the Staff of

1 the Commission, has done in regard to prudence reviews
2 in other -- in other industries.

3 JUDGE THOMPSON: The objection is sustained.

4 MR. COFFMAN: Okay.

5 BY MR. COFFMAN:

6 Q. Mr. Merciel, I talked to you earlier about
7 the access road?

8 A. Yes.

9 Q. And it was your testimony, I guess, that
10 the -- that the road leading to County Line Road was
11 not accessible during the '93 flood, to your
12 knowledge?

13 A. Yes.

14 Q. Okay. Did you read the feasibility study
15 from 1996 which was attached to Mr. Biddy's testimony
16 as Schedule TLB-3 and separately bound?

17 A. Yes, I have read it.

18 Q. Do you recall a statement by the Water
19 Company in there that the road to the plant may be
20 accessible during hundred-year floods?

21 A. Yeah, without recalling exactly. Is that
22 talking about County Line Road or Water Works Road?

23 Q. Is it your understanding that there may be
24 access to the north during floods that didn't quite
25 reach the 1993 flood level?

1 A. That's probably true, if the road were
2 there.

3 Q. Do you recall the statement in that report
4 that County Line Road allows access to the plant from
5 the north but is barely passable using four-wheel-
6 drive trucks?

7 A. I recall that statement.

8 Q. Okay. Do you have any reason to believe
9 that that's not true?

10 A. Yes. If you read on -- I believe it's on
11 the next page, is where they talk about getting to the
12 plant by boats and getting a flat car from the
13 railroad.

14 Q. And that's during severe flooding. Correct?

15 A. Yes. That's what they did in '93, if I
16 recall.

17 Q. Okay. But, still, the plant was accessible
18 at that time using motor boats and other means?

19 A. By that method it was, yeah. That's no --
20 no small thing. I mean, you know, you're talking
21 about hauling chemicals in and . . .

22 Q. Do you recall also discussing what DNR
23 requires regarding the super-- or the filtration
24 rates?

25 A. Okay. Now, there is filtration rates. I

1 think we were talking about superpulsator rates.

2 Q. Superpulsator rates.

3 A. Maybe to clarify that, there is a rate of
4 four gallons a minute that we use for filtration rate,
5 but for the superpulsator rate, the rate was three
6 gallons per minute per square foot.

7 MR. COFFMAN: Okay. That's the
8 clarification I was interested in. Thank you.

9 Just a second, your Honor.

10 JUDGE THOMPSON: Certainly.

11 MR. COFFMAN: I may be nearing completion
12 here.

13 BY MR. COFFMAN:

14 Q. Mr. Merciel, do you have knowledge of the
15 general pattern of water use in the St. Joseph
16 District over the last few years?

17 A. Yes, if you mean, like, as in peak days.

18 Q. Yes.

19 A. Yes, I do.

20 Q. Okay. Hadn't that general pattern of water
21 use been decreasing over the last few years for both
22 average and maximum day water use?

23 A. Over the last few years, it has, yes.

24 Q. And there have been significant improvements
25 to the St. Joseph District, have there not, with

1 regard to repairing lines that contributed to
2 unaccounted for water?

3 A. Yeah. I'd have to say I haven't been
4 following that work, but they do seem to have the
5 system's distribution in pretty good shape.

6 Q. Do you have any knowledge of when those
7 improvements were made?

8 A. No, I don't. I'm sorry.

9 Q. Within the lasts ten years? Would you know?

10 A. That would sound reasonable, but I really
11 don't know.

12 MR. COFFMAN: Okay. That's all of the
13 questions I have at this time, your Honor.

14 Thank you.

15 JUDGE THOMPSON: Thank you, Mr. Coffman.

16 Mr. Conrad?

17 MR. CONRAD: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. CONRAD:

19 Q. Good afternoon, Mr. Merciel.

20 A. Good afternoon, Mr. Conrad.

21 Q. Do you believe the new treatment plant and
22 the well field present zero risk of interruption?

23 A. I would not say that. I'm not sure any
24 facility has zero risk.

25 Q. Would you agree with me, Mr. Merciel, that

1 other engineers in evaluating and estimating the cost
2 of refurbishment or renovation at the old facility
3 propose to make use of existing components that were
4 already Xed up at that facility?

5 A. Yes. I think there probably are some
6 differences of opinion of the appropriateness. But,
7 yes. The answer is yes.

8 Q. And forgive me, Mr. Merciel. I'm going to
9 kind of bounce around and just pick up a couple of
10 loose ends here.

11 Are you aware, sir, of the status of the
12 Quaker Oats facility in St. Joseph?

13 A. No, I'm really not. I've heard some
14 testimony in this case and sitting in the hearing, but
15 I really don't have any firsthand knowledge of the
16 status of the customers there.

17 Q. You testified, I think, at one point that
18 you're aware that entire towns had been moved from
19 flood plains?

20 A. Yes, sir.

21 Q. Was that done at the expense of the Federal
22 Government?

23 A. It probably was. I don't think individuals
24 did it.

25 Q. Certainly not ratepayers in another service

1 district of a utility. Right?

2 A. Well, if the Federal Government paid for it,
3 then I think we all paid for it. So, yeah, it
4 definitely was spread around.

5 Q. Through general tax revenue. Right?

6 A. I'm sorry?

7 Q. Through general tax revenue?

8 A. Yeah, that's right.

9 Q. Now, do you recall your cross-examination by
10 Mr. Coffman with respect to the natural disaster
11 report that was done in October of 1993?

12 A. Yes, sir, I do.

13 Q. Do you have available to you a copy of the
14 exhibit -- what has been marked, as least, as Exhibit
15 No. 87?

16 A. I believe I do, if you can give me a moment
17 to try to locate it.

18 Q. In order to speed this up, I might --

19 A. I was going to say, I was sure I brought one
20 with me, but I don't seem to have it here.

21 Thank you.

22 MR. CONRAD: Your Honor, for the record, I
23 have provided the witness with a copy of what's been
24 marked as Exhibit 87.

25 BY MR. CONRAD:

1 Q. Do you agree, Mr. Merciel?

2 A. I'm sorry? Agree this is the report?

3 Q. Agree that's a copy of --

4 A. Yes. Yes, this is a copy of the report.

5 Q. And the report to which Public Counsel was

6 referring you earlier is attached as a part of the

7 response that you made to that data request. Correct?

8 A. Yes, that is correct.

9 Q. And that is your signature that appears at

10 the bottom of the initial sheet. Correct?

11 A. Yes, it is.

12 MR. CONRAD: Your Honor, I offer Exhibit 87.

13 JUDGE THOMPSON: Do I hear any objections to

14 the receipt of Exhibit 87?

15 MR. SNODGRASS: No objection from Staff.

16 JUDGE THOMPSON: Hearing no objection,

17 Exhibit 87 is received and made a part of the record

18 of this proceeding.

19 (EXHIBIT NO. 87 WAS RECEIVED INTO EVIDENCE.)

20 MR. CONRAD: Permission to approach, your

21 Honor?

22 JUDGE THOMPSON: You may approach,

23 Mr. Conrad.

24 BY MR. CONRAD:

25 Q. If I could reclaim my exhibit?

1 A. Yes.

2 Q. I'll show you now, sir, what has also been
3 marked at an earlier point in this proceeding as
4 Exhibit 88.

5 A. Yes.

6 Q. Do you recognize that document?

7 A. Yes, I do.

8 Q. Would you agree with me that that is a
9 portion of the Interim Surface Water Regulations, the
10 final rule from the EPA?

11 A. Yes, I would. There is not actually much --
12 very much text, I see here -- well, yeah, there is.
13 Okay. Yes, I would agree with that.

14 Q. And I'll represent to you, sir, that rather
15 than reproduce the entire final rule from the Federal
16 Register we just picked up a selected portion of it.

17 A. Understandable. It's a fairly thick
18 document.

19 Q. Thank you.

20 Looking there, do you see a reference to a
21 phrase "ground water under the direct influence of
22 surface water"?

23 A. Yes, I do.

24 Q. Do you know the difference, sir, between
25 ground water and ground water under the direct

1 influence of surface water?

2 A. Yes, I do.

3 Q. Would you state that difference, please?

4 A. Well, the difference basically is -- it's

5 pretty much the way it sounds. You obviously have

6 water in the ground. If you have water flowing

7 directly in or flowing, what I would term as, a very

8 short distance through the ground from the surface,

9 that would be considered ground water under the direct

10 influence of surface water.

11 Q. Does that complete your answer, sir?

12 A. For the time being, yes.

13 Q. Would you agree with me that the document

14 that I've handed you that's been marked as Exhibit 88

15 is a correct copy of that portion of the regulations?

16 A. Yes.

17 Q. Is that a regulation that you occasionally

18 make reference to in your daily work?

19 A. Occasionally. Not on a daily basis.

20 Q. But you recognize the regulation?

21 A. Yes, I do.

22 MR. CONRAD: Your Honor, we would move at

23 this time admission of Exhibit 88 for what it is,

24 which is an extract of that -- of that larger rule.

25 I would also, if I could reclaim -- that

1 turns out to be my only copy of that that I have with
2 me today. I would request that the Commission take
3 official notice, in addition to the offer of the
4 exhibit itself, of the Federal Register of
5 December 16th, 1998.

6 JUDGE THOMPSON: Excuse me. What's the date
7 again?

8 MR. CONRAD: December 16, 1998. And a
9 further reference, your Honor, is Volume 63, No. 241,
10 Pages 69,477 through and including 69,521.

11 JUDGE THOMPSON: Okay.

12 MR. CONRAD: That being, your Honor, the
13 National Primary Drinking Water Regulations Interim
14 Enhanced Surface Water Treatment Final Rule
15 promulgated in the Federal Register by the
16 Environmental Protection Agency.

17 I will also endeavor, your Honor, to have
18 here tomorrow morning a sufficient number of copies of
19 the full portion of the regulation that the Bench can
20 take official notice of.

21 JUDGE THOMPSON: Very well.

22 MR. CIOTTONE: Your Honor, I have an
23 objection, if I may.

24 JUDGE THOMPSON: With respect to Exhibit 88,
25 do I hear any objections to the receipt of Exhibit 88?

1 MR. CIOTTONE: Yes, your Honor, if I may.

2 JUDGE THOMPSON: What is your objection,
3 sir?

4 MR. CIOTTONE: The objection goes to
5 relevancy. Consistent with the line of questioning
6 that Mr. Conrad posed to Mr. Young a few days ago, the
7 intimation is being made that this ground water
8 treatment plant is indeed a treatment plant that uses
9 ground water under the influence of surface water.

10 Ground water under the influence of surface
11 water is a technical criterion that the water being
12 taken either qualifies that or -- as that or it does
13 not. If it qualifies as that, the information
14 Mr. Conrad is attempting to offer is relevant. If it
15 does not qualify as that, it has no relevance
16 whatsoever.

17 All we have is Mr. Conrad's intimations, and
18 you have expert testimony in the record, and it's the
19 only testimony in the record at this time, about that
20 determination as to whether or not the water being
21 treated at the ground water treatment plant is simply
22 ground water or this other technically classified
23 source which is ground water under the influence of
24 surface water.

25 Now, if Mr. Conrad is going to supplement

1 the record later with some type of evidence to the
2 effect that this source is indeed ground water under
3 the influence of surface water, than perhaps this
4 information is relevant, subject to his ability to
5 offer that evidence. But in the absence of that
6 evidence, it is not only immaterial, but it is
7 prejudicial.

8 JUDGE THOMPSON: In what way is it
9 prejudicial?

10 MR. CIOTTONE: It implies that the -- one of
11 the issues in this case, if not the issue with respect
12 to prudence, other than these economic comparisons, is
13 whether or not the water, the health and safety
14 aspects of the water to the citizens of St. Joe, are
15 different between ground water and the river water.

16 The Company plans to make the point, and has
17 made the point both in direct testimony and will do so
18 further in cross-examination, that there were
19 considerable risks associated with surface water that
20 are not there with respect to ground water. In fact,
21 Public Counsel has recently made a great point about
22 aesthetic aspects, taste and odor and what have you.
23 The health and safety aspects, we submit, are even
24 more critical.

25 What Mr. Conrad is attempting to imply that

1 those health and safety aspects are not, in fact,
2 there, because grounds water under the influence of
3 surface water has similar characteristics to surface
4 water. And unless he can prove that it is indeed in
5 that -- in that classification, that the ground water
6 at this ground water treatment plant is ground water
7 under the influence of surface water, his intimations
8 are irrelevant and immaterial and prejudicial.

9 JUDGE THOMPSON: Do you have a response,
10 Mr. Conrad?

11 MR. CONRAD: I certainly do, your Honor.

12 In large measure we have covered this
13 before, the other day. There is testimony that has
14 been filed, although the witness has not yet taken the
15 stand, that --

16 JUDGE THOMPSON: Dr. Morris?

17 MR. CONRAD: Yes, Dr. Morris.

18 JUDGE THOMPSON: Okay.

19 MR. CONRAD: -- that addresses this issue in
20 various and sundry ways.

21 One of the clashes of the witnesses in this
22 docket is that a large portion of the justification
23 for the so-called surface water plant and some of the
24 benefits that reportedly accrue therefrom flow from
25 the nature of the water.

1 There is at this point a rather clear
2 conflict in the testimony of the various witnesses.
3 This -- this document, indeed that which I've asked
4 the Commission to take official notice of, if I might
5 end with a preposition, is nothing more than the
6 Federal Rules that pertain not only to ground water
7 under the direct influence of surface water, but to
8 the handling processes for surface water and to the
9 handling processes for ground water. So all three of
10 them are put there.

11 To take it one step further, it is, in fact,
12 our contention, at least partially, in this proceeding
13 that the classification of ground water under the
14 direct influence of surface water, which I believe
15 Dr. Morris's testimony will support, is, in fact,
16 treated under the regulations as equivalent to surface
17 water. And therein lies the conflict and therein lies
18 the relevance.

19 MR. CIOTTONE: Your Honor, if I may?

20 JUDGE THOMPSON: Mr. Ciottone.

21 MR. CIOTTONE: We want -- this is a delicate
22 but nevertheless critical distinction.

23 Dr. Morris testifies that the water that is
24 being taken from this ground water treatment plant is
25 influenced by surface water. That is true. The

1 Company offers testimony similar to that effect, too.
2 You heard testimony all this morning -- or earlier
3 this afternoon about how the hardness is being
4 affected and words to that extent.

5 Nowhere does Dr. Morris state, nor is he
6 qualified to do so, nor can he, because it would be
7 inconsistent with the fact, that this treatment
8 facility is taking water that qualifies as the
9 technically characterized ground water under the
10 influence of surface water.

11 This is not a subjective determination. It
12 is not a determination that this Commission can make.
13 It is a determination that is made by the Department
14 of Natural Resources. It says you are taking ground
15 water under the influence of surface water or you are
16 not. If you are, you have these criteria that you
17 have to meet. If you are not, you have these criteria
18 you have to meet.

19 And unless there can be some evidence
20 presented here that this water does rise to this
21 level, that it reaches that technical characteristic,
22 not simply that the water is influenced by surface
23 water, but it rises to that technical characteristic,
24 a defined term, of ground water under the influence of
25 surface water, none of this stuff applies. That's the

1 issue.

2 So Dr. Morris doesn't purport to say that,
3 because it would be inconsistent with the facts and he
4 does not say that. He simply says the water is
5 influenced by surface water, which it is. But it does
6 not rise to that level and is therefore not subject to
7 these requirements.

8 And that's the only evidence in the record
9 at this time. Unless Mr. Conrad can offer evidence to
10 the contrary, I have to make that point. It is not a
11 subjective determination. It is a technical, formal
12 determination made by the Department of Natural
13 Resources, which has been made.

14 MR. CONRAD: Again, your Honor, I think the
15 regulations say what the regulations say, and we will
16 in due course come -- in fact, the very next exhibit
17 is the Guidance Manual from the DNR. And I'm simply
18 going to ask this witness if he is familiar with it.

19 We've kind of been down this road before.
20 It is a pretty clear issue in the testimony. There is
21 certainly -- I will -- I will readily acknowledge that
22 there is a clash between the experts on this, but
23 that's -- that's why this is put in, because this is
24 the Federal Government's regulation. I mean, like it
25 or not, I might have written it a different way. He

1 may want to argue that it supports his side. I'm not
2 sure it does, but it seems to me it's relevant for the
3 Commission to know what the Federal Rules are and what
4 their own definition says.

5 JUDGE THOMPSON: Okay. The testimony that I
6 recall on this point was testimony during
7 cross-examination of Mr. Young; is that correct?

8 MR. CONRAD: That's correct;

9 JUDGE THOMPSON: Is there other testimony?

10 MR. CIOTTONE: And redirect.

11 JUDGE THOMPSON: And redirect.

12 And the testimony that I recall was that
13 essentially that DNR must have made the determination
14 that this was not ground water under the influence of
15 surface water because it had granted a permit to
16 operate a ground water plant.

17 MR. CIOTTONE: As opposed to a permit to
18 operate a plant using ground water under the influence
19 of surface water, which is a different permit.

20 JUDGE THOMPSON: Okay. Now, I don't recall
21 that there was testimony that it is a different
22 permit. There was an implication to that -- to that
23 point, but I don't recall that there was actual
24 testimony on the point, and I don't recall that the
25 actual permit itself is in evidence, or is it?

1 MR. CIOTTONE: I don't think so.

2 JUDGE THOMPSON: Okay. And, further, as I
3 recall, Mr. Young is an engineer with the American
4 Water Works Service Company and that his job is to
5 review, or perhaps he is in charge of designing plants
6 and plant improvements for all of the affiliates of
7 American Water Works. In other words, he is not a
8 water quality expert; isn't that true?

9 MR. CIOTTONE: I think that's true, as such.

10 JUDGE THOMPSON: So I'm going to let this
11 in, and I'm going to allow you guys to bash each other
12 in your briefs as to what it means or doesn't mean and
13 whether it applies or doesn't apply, because I don't
14 think -- based on the testimony in the record, I don't
15 think it is clear-cut enough to say one way or the
16 other. Okay?

17 So the objection is denied, overruled. And
18 I will admit Exhibit 88 over the objection.

19 (EXHIBIT NO. 88 WAS RECEIVED INTO EVIDENCE.)

20 JUDGE THOMPSON: Now, there was also a
21 request that the Commission take official notice of a
22 particular series of pages in the Federal Register.
23 Do I hear an objection to the request for official
24 notice?

25 (No response.)

1 JUDGE THOMPSON: Hearing none, the request
2 for official notice is granted. The Commission will
3 take official notice of the requested pages, and the
4 party who made the request will supply copies of the
5 pages in question. All right?

6 MR. CONRAD: Very well.

7 JUDGE THOMPSON: Okay. Let's move on.

8 MR. SNODGRASS: Judge, just for
9 clarification --

10 JUDGE THOMPSON: Mr. Snodgrass.

11 MR. SNODGRASS: -- we would just like to add
12 to the record that Exhibit 88 is only a portion of the
13 regulation that's involved in this case.

14 JUDGE THOMPSON: Absolutely.

15 MR. SNODGRASS: That's all I have to say.

16 JUDGE THOMPSON: And the whole thing is
17 coming along.

18 MR. SNODGRASS: Coming along down the pike.

19 JUDGE THOMPSON: It's coming down the pike,
20 and we'll receive that in due time.

21 Thank you, Mr. Snodgrass for that
22 clarification.

23 And Mr. Ciottone --

24 MR. CIOTTONE: Yes, sir.

25 JUDGE THOMPSON: -- just to clarify, as far

1 as I'm concerned, it's not clear to me what the status
2 of the water involved is. Okay?

3 MR. CIOTTONE: I understand.

4 JUDGE THOMPSON: And I don't want you to
5 think that this ruling goes one way or the other in
6 terms of that. And I hope that the parties are going
7 to make it clear. Okay?

8 And, if necessary, I will entertain a motion
9 to supplement testimony on this point.

10 Mr. Conrad, please proceed.

11 MR. CONRAD: Okay. If your Honor please, I
12 would show the witness Exhibit 6-- 89. Excuse me.
13 Eighty-nine.

14 BY MR. CONRAD:

15 Q. Mr. Merciel, I've showed you what's been
16 pre-marked as Exhibit 89. Do you recognize that
17 document?

18 A. Yes, I do.

19 Q. Would you identify that, please?

20 A. It's the Guidance Manual for Surface Water
21 System Treatment Requirements. It's a publication
22 from the Missouri Department of Natural Resources.
23 Yeah, it does say from the Public Drinking Water
24 Program.

25 Q. Is that also a document that you from time

1 to time deal with in your work?

2 A. Again, not on a daily basis. We do refer to
3 these from time to time.

4 Q. It appears to be a complete copy of that
5 document?

6 A. Yes, sir, I would say so.

7 MR. CONRAD: Your Honor, I would move
8 admission of 89 at this time.

9 JUDGE THOMPSON: Do I hear any objection as
10 to the receipt of Exhibit No. 89?

11 MR. CIOTTONE: Your Honor, let me have a
12 continuing objection to this entire line of
13 questioning.

14 JUDGE THOMPSON: Very well. So you would
15 like to apply the same objection that you raised to 88
16 to 89?

17 MR. CIOTTONE: Yes, sir.

18 JUDGE THOMPSON: Is that correct?

19 Very well.

20 That objection will be overruled.

21 Exhibit No. 89 will be received and made a
22 part of the record of this proceeding.

23 (EXHIBIT NO. 89 WAS RECEIVED INTO EVIDENCE.)

24 JUDGE THOMPSON: Please proceed, Mr. Conrad.

25 MR. CONRAD: By your leave, your Honor, I

1 will do so. I have, it looks like, six more exhibits.
2 We could mark those serially or as a group, as you
3 prefer.

4 JUDGE THOMPSON: Oh, let's take them up as
5 you come to them.

6 MR. CONRAD: Okay.

7 JUDGE THOMPSON: This one will be Exhibit
8 No. 94. And how do you describe it?

9 MR. CONRAD: It would be a response to Ag
10 Processing Data Request No. 208.

11 JUDGE THOMPSON: Okay. Response to Ag
12 Processing DR No. 208. This will be Exhibit 94.

13 (EXHIBIT NO. 94 WAS MARKED FOR
14 IDENTIFICATION.)

15 JUDGE THOMPSON: Please proceed, Mr. Conrad.
16 BY MR. CONRAD:

17 Q. Mr. Merciel, I've handed you what has been
18 marked for identification as Exhibit 94. Would you
19 agree with me that this is a copy of your response to
20 Data Request No. 208 from Ag Processing, et al?

21 A. Yes, sir.

22 MR. CONRAD: Your Honor, we would move
23 admission of 94.

24 MR. SNODGRASS: Judge, the Staff is going to
25 object to that admission at this time, the basis being

1 that this particular question directed to Mr. Merciel,
2 who is a non-attorney, requires a legal conclusion.

3 JUDGE THOMPSON: Mr. Conrad, a response?

4 MR. CONRAD: Well, your Honor, no
5 objection -- the data requests were transmitted to
6 counsel for Staff, and no objection was forthcoming.
7 In fact, the next response that we got was a response
8 from the witness. Now, if this is -- this is -- the
9 witness has already identified it as his response, so
10 it is a prior out-of-court statement. It's either
11 consistent with his testimony, in which case Staff
12 counsel has no objection, or it's inconsistent with
13 his testimony, in which it is clearly relevant as a
14 matter of impeachment.

15 MR. CIOTTONE: Your Honor, if I may join in
16 the objection. The standard for discovery is
17 certainly different than the standard for
18 admissibility. And the fact that Mr. Merciel answered
19 this question with his opinion is a credit to his
20 candor, but it doesn't rise to the level of entry for
21 the reasons that Mr. Snodgrass has announced.

22 JUDGE THOMPSON: Mr. Coffman --

23 MR. COFFMAN: Yes, if I --

24 JUDGE THOMPSON: -- would you like to join
25 in on this one?

1 MR. COFFMAN: -- might join in on the
2 response to the objection to emphasize that if Staff
3 had a concern about the form of the question, it had
4 ample time under the Commission's rule on data
5 requests to do so.

6 JUDGE THOMPSON: Anyone else?

7 MR. DEUTSCH: Yes. I would also join in
8 the --

9 JUDGE THOMPSON: In the objection or the
10 response?

11 MR. DEUTSCH: I think this time the
12 response.

13 JUDGE THOMPSON: Thank you, Mr. Deutsch.
14 Mr. Dority?

15 MR. DORITY: I'm going to keep my powder
16 dry, your Honor. Thank you.

17 JUDGE THOMPSON: At this point, Mr. Conrad,
18 is it clear on the record that this is, in fact,
19 inconsistent with the position that Mr. Merciel has
20 taken?

21 MR. CONRAD: That may be clarified with the
22 next data request, your Honor.

23 JUDGE THOMPSON: Mr. Coffman, you have
24 something to add?

25 MR. COFFMAN: Well, yes. I believe that it

1 is inconsistent with Mr. Merciel's direct testimony on
2 Page 5.

3 JUDGE THOMPSON: Okay. What does
4 Mr. Merciel say on Page 5 of his direct testimony?

5 MR. COFFMAN: He states in response to a
6 question, "Is it the Staff's position that Case
7 No. WA-97-46 was the appropriate time and forum to
8 address the questions surrounding the Company's choice
9 to construct the new supply and treatment facilities?"

10 And his answer was, "Yes."

11 I believe it's -- I believe it's either --
12 and I believe it's also inconsistent with a line of
13 cross-examination that Mr. Merciel and I engaged in
14 earlier, too.

15 Although the Staff may feel that there is
16 some distinction that he can make --

17 JUDGE THOMPSON: Well, the question on
18 Page 5 of Mr. Merciel's direct is a different question
19 than the question addressed in this data request. The
20 data request inquires as to prudence, and the question
21 on Page 5 inquires as to the best time to raise a
22 question about a choice to construct. I don't think
23 the two questions are identical.

24 MR. DEUTSCH: If I might add, your Honor --

25 JUDGE THOMPSON: Mr. Deutsch.

1 MR. DEUTSCH: On a separate note, as I read
2 the data request it asks whether Mr. Merciel makes an
3 assertion, and that's what he's answering. If it is
4 the answer yes, they would like to know the basis, but
5 being as the answer is no, what we have is simply he
6 is not making the assertion.

7 That is not a legal conclusion. He is
8 making no legal conclusion that I can see. He is
9 being asked, do you assert it. Now, if he has no
10 opinion on it, the answer would be the same as if his
11 answer were no, because he isn't asserting that. And
12 I think that's as far as the request goes, and for
13 that reason, the objection, based on it being or
14 calling for a legal conclusion, should be overruled
15 simply because it does not.

16 MR. COFFMAN: With regard to the
17 inconsistency, I believe that the statement is
18 inconsistent with the statements made by counsel for
19 the Commission Staff, and, perhaps, they would answer
20 that it -- it's in some way not inconsistent with the
21 way that they attempt to bifurcate prudence, and to
22 that extent, they may be able to clarify that on
23 redirect. But it does seem to be inconsistent from
24 testimony we've received and the statements made by
25 the Commission Staff.

1 MR. CIOTTONE: Your Honor, may I speak to
2 that?

3 JUDGE THOMPSON: Yes, Mr. Ciottone.

4 MR. CIOTTONE: The reason I interject is
5 because what Mr. Krueger said in his opening
6 statement, and I was present to hear it, is straight
7 down the line with what the Company's motion that was
8 filed at the beginning of the case states, and it
9 draws the distinction of prudence into two areas.

10 The Company does not say, does not argue,
11 nor, I think, does Staff when I heard Mr. Krueger's
12 statement, that this Commission cannot make a
13 determination that the building of the new treatment
14 plant was not prudent.

15 But, conversely, the issue would -- that the
16 Commission would have to look at would be the expenses
17 and the costs and the way the plant was built. For
18 example, if the -- if the Company built that plant and
19 it cost \$180 million, most certainly the Commission
20 could make a determination that that was imprudent.

21 The Commission did not give, to use Chair
22 Lumpe's characterization, a green light to do anything
23 there. The Commission gave the Company a green light
24 to build the plant within the parameters approved by
25 the Commission. That's the distinction.

1 The issue of prudence is still there because
2 the Company may well have built that plant
3 imprudently, although there is no evidence in this
4 record to that effect. In fact, several of the
5 witnesses, including Public Counsel's own witnesses,
6 testified that the estimate seemed to be appropriate.

7 So that issue of prudence is on the table.
8 This is what Staff counsel said. This is what the
9 Company's motion says. So to that extent prudence is
10 appropriate in this case.

11 That does not go to the question of whether
12 or not the Company does, indeed, again, using Chair
13 Lumpe's characterization, have a green light to build
14 this plant within the parameters approved in the '96
15 certificate case. That's the distinction, and I don't
16 think it's fair to put that on Mr. Merciel.

17 MR. COFFMAN: I --

18 JUDGE THOMPSON: I will never get to rule on
19 this.

20 By all means, Mr. Coffman, please weigh in.

21 MR. COFFMAN: I think Mr. Ciottone has
22 fairly characterized the position of Staff and the
23 Company, but that is certainly a legal dispute in this
24 matter. The Office of the Public Counsel does not
25 believe that prudence can be divided up in that way or

1 limited in that way. We don't believe it has ever
2 been done, and we don't believe, in fact, that the
3 Commission did do so in the certificate case.

4 What's being addressed with this objection
5 is whether this is a legal conclusion, if I understand
6 Mr. Snodgrass's objection, or asking for a legal
7 conclusion, and it is not clear that that is a concern
8 with this question. The question merely asserts
9 whether Mr. Merciel's opinion -- the decision --
10 whether the Commission had determined it was prudent,
11 if that was his understanding.

12 JUDGE THOMPSON: Have you beaten this horse
13 enough?

14 MR. COFFMAN: Sure.

15 JUDGE THOMPSON: Thank you.

16 First of all, the issue of what the
17 Commission did or didn't do in its prior order is a
18 legal -- certainly a legal question, and that's why
19 the motion made by the Company has been taken with the
20 case, so that the parties can file responses, as some
21 parties have already done, and/or consider the matter
22 to whatever length they wish in their briefs. It's a
23 legal question.

24 And I don't think asking Mr. Merciel or any
25 other witness as to what they think the legal effect

1 of the Commission's order was or is is appropriate or
2 something to which I or the Commission is going to pay
3 much attention. It's a legal question, and we are
4 waiting with bated breath for the learned discourses
5 of counsel on that point. All right?

6 As to this data request response, I think --
7 I think Mr. Deutsch was absolutely correct, and I may
8 be quoted on this, if you would like, that it simply
9 asks Mr. Merciel if he is asserting his position or
10 not. He says no. It doesn't take any legal know-how
11 for Mr. Merciel to know what position he is asserting.

12 I will overrule the objections. Exhibit
13 No. 94, for whatever it's worth, will be come in.

14 (EXHIBIT NO. 94 WAS RECEIVED INTO EVIDENCE.)

15 JUDGE THOMPSON: Let's proceed, if anyone
16 can remember where we are.

17 MR. CONRAD: I think we were in
18 cross-examination.

19 JUDGE THOMPSON: Thank you, Mr. Conrad.

20 This will be Exhibit 95, response to Ag
21 Processing DR No. 209.

22 (EXHIBIT NO. 95 WAS MARKED FOR
23 IDENTIFICATION.)

24 JUDGE THOMPSON: Please proceed, Mr. Conrad.

25 MR. CONRAD: Thank you, your Honor.

1 BY MR. CONRAD:

2 Q. Mr. Merciel, I've laid before you what has
3 been marked for identification as Exhibit No. 95. Do
4 you recognize this document?

5 A. Yes, sir, I do.

6 Q. Would you identify this document for me,
7 please?

8 A. Identify it? Okay. It's a data request. I
9 received it from you. It's -- your number is 209.

10 Q. And this is a correct copy of your response
11 to that data request?

12 A. Yes, sir, it is.

13 Q. Is it a complete copy?

14 A. Yes.

15 MR. CONRAD: Your Honor, we would move
16 admission of '95.

17 JUDGE THOMPSON: Any objections?

18 MR. SNODGRASS: Staff's not going to object
19 based on your previous ruling on the other DR, Judge?

20 JUDGE THOMPSON: Okay. Would you like a
21 continuing objection?

22 MR. SNODGRASS: No.

23 JUDGE THOMPSON: Okay. Hearing no
24 objections, Exhibit No. 95 is received and made a part
25 of the record in this proceeding.

1 (EXHIBIT NO. 95 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE THOMPSON: Mr. Conrad, I think you
3 said you had six. We've gotten two of them.

4 Thank you, sir.

5 This would be Exhibit 96. This looks like
6 response to Data Request No., what, 205?

7 (EXHIBIT NO. 96 WAS MARKED FOR
8 IDENTIFICATION.)

9 MR. CONRAD: That's correct.

10 JUDGE THOMPSON: Please proceed, Mr. Conrad.

11 MR. CONRAD: Thank you, your Honor.

12 BY MR. CONRAD:

13 Q. Mr. Merciel, I've laid before you what has
14 been marked for identification as Exhibit 96. Do you
15 recognize that document?

16 A. Yes, I do.

17 Q. Did you prepare that document in response to
18 our Data Request No. 205?

19 A. Yes, sir.

20 Q. Does it include a listing of all water cases
21 in which you have testified?

22 A. Well, as noted, it's not all cases I
23 testified. I've noted on here I compiled the list
24 from memory. I don't have a running list of cases
25 I've testified in. I know there are some missing, but

1 it was the best I could do.

2 Q. So the complete list, if one could be
3 created, would be something larger than this?

4 A. It would be somewhat longer, yes, sir.

5 Q. This is a complete copy of your response to
6 our data request?

7 A. Yes, sir.

8 Q. And your signature appears at the bottom of
9 the initial sheet?

10 A. Yes, it does.

11 MR. CONRAD: Your Honor, I'd move the
12 admission of 96.

13 JUDGE THOMPSON: Objections?

14 (No response.)

15 JUDGE THOMPSON: Hearing none, Exhibit 96 is
16 received and made a part of the record of this
17 proceeding.

18 (EXHIBIT NO. 96 WAS RECEIVED INTO EVIDENCE.)

19 JUDGE THOMPSON: This will be Exhibit 97.
20 This is the response to Data Request No. 206.

21 (EXHIBIT NO. 97 WAS MARKED FOR
22 IDENTIFICATION.)

23 JUDGE THOMPSON: Please proceed, Mr. Conrad.

24 BY MR. CONRAD:

25 Q. Mr. Merciel, I have laid before you what has

1 been marked for identification as Exhibit No. 97. Do
2 you recognize that document?

3 A. Yes I do.

4 Q. Was that prepared by you in response to Data
5 Request No. 206 from us?

6 A. Yes.

7 Q. Is that your signature at the bottom of it?

8 A. Yes, it is.

9 Q. Is that a complete copy of your data
10 request --

11 A. Yes, it is.

12 Q. -- of your response --

13 A. My response.

14 Q. -- to our data request?

15 A. Yes, it is.

16 JUDGE THOMPSON: Your Honor, I move the
17 admission of 97?

18 JUDGE THOMPSON: Any objections?

19 (No response.)

20 JUDGE THOMPSON: Exhibit No. 97 is received
21 and made a part of the record of this proceeding.

22 (EXHIBIT NO. 97 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE THOMPSON: Okay. This will be No. 98,
24 response to Data Request Number 207.

25 (EXHIBIT NO. 98 WAS MARKED FOR

1 IDENTIFICATION.)

2 JUDGE THOMPSON: Please proceed, Mr. Conrad.

3 BY MR. CONRAD:

4 Q. Mr. Merciel, I've laid before you what has
5 been marked as Exhibit 98. Do you recognize this
6 document?

7 A. Yes, I recognize it.

8 Q. Please identify it for me.

9 A. It's your Data Request No. 207, and it has
10 the question and the answer. My signature is at the
11 bottom.

12 Q. And that's a complete copy of your response
13 to our data request?

14 A. Yes, it is.

15 MR. CONRAD: Your Honor, I move admission of
16 98.

17 JUDGE THOMPSON: Any objections?

18 (No response.)

19 JUDGE THOMPSON: Hearing no objections,
20 Exhibit 98 is received and made a part of the record
21 of this proceeding.

22 (EXHIBIT NO. 98 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE THOMPSON: This will be Exhibit 99,
24 response to Data Request 221.

25 (EXHIBIT NO. 99 WAS MARKED FOR

1 IDENTIFICATION.)

2 JUDGE THOMPSON: Please proceed, Mr. Conrad.

3 MR. CONRAD: Thank you, your Honor.

4 BY MR. CONRAD:

5 Q. Mr. Merciel, I've laid before you what has
6 been marked as Exhibit No. 99. Do you recognize this
7 document?

8 A. Yes, I do.

9 Q. Please identify it for me.

10 A. It's Data Request No. 221 with the question
11 and the answer, and my signature is at the bottom. It
12 is a complete copy of the answer I provided you.

13 Q. Thank you.

14 A. Eliminate questions.

15 MR. CONRAD: I appreciate that.

16 Your Honor, based upon the witness's own
17 testimony, I would move Exhibit 99 into the record,
18 please.

19 JUDGE THOMPSON: Objections?

20 (No response.)

21 JUDGE THOMPSON: Exhibit No. 99 is received
22 and made a part of the record of this proceeding.

23 (EXHIBIT NO. 99 WAS RECEIVED INTO EVIDENCE.)

24 MR. CONRAD: Your Honor, that concludes my
25 cross-examination of this witness.

1 JUDGE THOMPSON: Thank you, Mr. Conrad.
2 Let's see who's next. That would be
3 Mr. Deutsch.
4 MR. DEUTSCH: No questions, your Honor.
5 JUDGE THOMPSON: Thank you, Mr. Deutsch.
6 Mr. England?
7 MR. ENGLAND: Mr. Ciottone.
8 JUDGE THOMPSON: I'm sorry. Mr. Ciottone.
9 MR. CIOTTONE: The B team, your Honor.
10 JUDGE THOMPSON: There clearly is no B team.
11 Please.
12 CROSS-EXAMINATION BY MR. CIOTTONE:
13 Q. Mr. Merciel, I've got several areas I would
14 like to question you about.
15 First, with respect to your recommended
16 disallowance of the Company's plan due to capacity.
17 A. Yes.
18 Q. As I understand that, you base it on two
19 criteria that are coincident. One is the argument
20 with respect to the filter utilization approval, and
21 the other is with respect to recent usage
22 characteristics in the St. Joe area; is that correct?
23 A. That would be correct, yes.
24 Q. First, with respect to the utilization of
25 those filters, it's a true -- is it true that the

1 Company can presently pump 30 million gallons a day
2 without being in violation of any law or regulation of
3 DNR?

4 A. Yes, that would be true.

5 Q. All right. Then on to the capacity aspect.
6 I'll tell you, and I can show you this in the interest
7 of time if you're not comfortable with the number, but
8 from JSY Schedule 21, he shows the 1999 actual usage
9 of 16.047 million gallons a day. Does that sound
10 appropriate?

11 A. I'm sorry. Say the date again. I could
12 hear the other numbers.

13 Q. 1999 actual usage for the year, 16.047
14 million gallons a day?

15 A. Okay. And that --

16 Q. And that's actual. Would you like to see
17 the schedule?

18 A. Yeah, that would be helpful.

19 MR. CIOTTONE: May I approach, your Honor?

20 JUDGE THOMPSON: You may approach,
21 Mr. Ciottone.

22 THE WITNESS: I think -- let's see here.

23 I believe what this is representing is the
24 average day, or at least the last number in the -- on
25 the -- in the last column would be the average day for

1 the whole -- the entire year period, averaging the
2 days. So, yes, 16.047 was the 1999 actual.

3 BY MR. CIOTTONE:

4 Q. And do you agree that the appropriate factor
5 for determining max day is 1.6?

6 A. For estimating, that is a number that can be
7 used, yes, 1.5, 1.6, sometimes 1.7.

8 Q. Would you agree that 1.6 mathematically
9 times 16.047 would produce 25.675 million gallons a
10 day?

11 A. It probably would, yes. Although, we have
12 actual max day numbers that are available, which is
13 what I used.

14 Q. The -- going to actual max day numbers,
15 isn't it true -- well, your recommendation is -- and
16 I'm reading your testimony from your rebuttal
17 testimony, Page 7 -- 17. You say, "Since the filter
18 capacity is not yet 30 million gallons a day, and peak
19 day demand has been relatively consistent for a number
20 of years at approximately 23 MGD, I think it would
21 have been reasonable to size certain other plant
22 components similar to the filter limitation more
23 practical"; is that correct?

24 A. Yes, it does say that.

25 Q. But it's also true, is it not, that the

1 Company has exceeded 25 MGD in 1991, in particular?

2 A. I believe it has exceeded that number. I

3 need to read the number here, which I'll do real

4 quick.

5 Q. I can hand you to refresh your memory JSY

6 Schedule 16, which has those numbers on it.

7 May I approach, your Honor?

8 JUDGE THOMPSON: You may approach.

9 THE WITNESS: Okay. The max day number

10 that's on this schedule is slightly different than the

11 number that I got from the plant operator, Slightly.

12 He's got a -- Mr. Young has 25.62. I have 25.33,

13 which is close.

14 BY MR. CIOTTONE:

15 Q. But both numbers are in excess of 23 MGD.

16 Correct?

17 A. Yes, that's true.

18 Q. Why do you think the usage -- the max usage

19 was that high in '91 and then hasn't -- we haven't

20 seen that number since?

21 A. '91 would have been a drier year.

22 Q. So it's weather probably, isn't it?

23 A. Weather is -- is quite a bit of the driving

24 force on a plant -- plant -- well customer demands,

25 demands on the plant.

1575

1 Q. And isn't it true that the Company has more
2 customers today than it had in 1991?

3 A. Actually, I don't have the customer count in
4 front of me. That may be.

5 Q. Let me hand you what has been marked as
6 JSY-16 again, and I'll direct your attention to the
7 second column from the left.

8 A. Okay. Yes. It does show -- yes, it does
9 show an increase in customers between '91 and today.

10 Q. So can we not conclude from that that if we
11 had the weather that occurred in 1991 again today with
12 a customer count higher than we had in 1991, that we
13 could easily reach similar or greater numbers than the
14 25 MGD per day?

15 A. It could happen, yes, absolutely.

16 Q. Let me move on to another area.

17 If -- with -- you stated that the Company
18 would be under harsh criticism -- I'm reading from
19 your rebuttal, Page 12. "The Company would be under
20 harsh criticism if it had made a large capital
21 investment in the flood area."

22 Had the Company resorted to renovating the
23 plant in the flood area and had it indeed flooded
24 again and caused extensive damage, can you give us
25 your opinion of what position the Staff would feel

1 obligated to take in that situation with respect to
2 cost recovery?

3 MR. COFFMAN: Objection.

4 MR. CONRAD: Objection. Hypothetical. No
5 foundation. Also cumulative.

6 MR. COFFMAN: Those are my objections as
7 well.

8 MR. CIOTTONE: Well, I'll rephrase the
9 question in formal hypothetical fashion if necessary,
10 but it's hardly cumulative.

11 JUDGE THOMPSON: Read back the question,
12 would you?

13 (THE PENDING QUESTION WAS READ BY THE COURT
14 REPORTER.)

15 QUESTION: Had the Company
16 resorted to renovating the plant
17 in the flood area and had it
18 indeed flooded again and caused
19 extensive damage, can you give us
20 your opinion of what position the
21 Staff would feel obligated to take
22 in that situation with respect to
23 cost recovery?

24 MR. COFFMAN: Your Honor?

25 JUDGE THOMPSON: Yes.

1 MR. COFFMAN: In addition to those
2 objections, I would add that this line of questioning
3 is not proper cross-examination under the Black's Law
4 Dictionary definition of "cross-examination." It is
5 defined as questions of an opposing witness. On this
6 particular matter, as to the prudence, Company and
7 Staff are not differentiated in any way.

8 JUDGE THOMPSON: Thank you.

9 Any further objections?

10 (No response.)

11 JUDGE THOMPSON: The objections are
12 overruled.

13 Please answer the question, if you can.

14 THE WITNESS: Okay. I think the question
15 was what -- basically, what would the Staff do if this
16 plant had been reconstructed in the flood plain and
17 flooded again.

18 And while it's difficult to say exactly what
19 the Staff would do, there would be some actual costs
20 that would be incurred by the Company, but I think the
21 best way to answer the question is the town would be
22 outraged. Probably every party in this room would be
23 outraged if the Company had spent money someplace
24 where it just -- just had a disaster.

25 I think it would be -- it would be difficult

1 to support the Company's decision in a hindsight-type
2 situation where something happened again after it
3 happened once.

4 BY MR. CIOTTONE:

5 Q. Let me move on to another area, Mr. Merciel.
6 I want to direct your attention to the cost numbers
7 that Mr. Coffman was referring to, and, in particular,
8 TLB-16 and Mr. Biddy's rebuttal testimony, the 78
9 million.

10 A. I remember the schedule, yes.

11 Q. All right. Are you familiar with the --
12 with the \$63.3 million number that was actually used
13 in the 1996 feasibility study which is also in
14 evidence as Biddy Exhibit TLB-3?

15 A. Yes, I am. That was the number that was
16 actually in the schedule of cost where all of the
17 alternatives were being compared. And the number you
18 just said is the one that was for the -- for the
19 ground water plant.

20 Q. Was this \$78 million number on TLB-16 used
21 in any way by the Company to justify its evaluation of
22 appropriate alternatives?

23 A. It -- the number was mentioned in the text
24 of the feasibility study. The number itself was not
25 used as a comparison that I recall, and I can

1 certainly say I didn't use that number in comparing
2 the various alternatives.

3 Q. I'm sorry.

4 A. That's my answer.

5 Q. With respect to some of these costs on
6 TLB-16, Mr. Coffman made to-do about ozon-- ozonaz--
7 ozonation.

8 A. Yeah. You were closer the first time.
9 Ozonation.

10 MR. CONRAD: That's why he made a to-do
11 about it.

12 BY MR. CIOTTONE:

13 Q. And his argument to you, I think, or he
14 proposed to you that ozone was not needed immediately.
15 Do you recall those questions?

16 A. Yes.

17 Q. Is it -- is it true or is it not true that
18 in the \$63.3 million that was used in the feasibility
19 study that the ozonation costs are, in fact, delayed?

20 A. They are delayed, but they are included in
21 that number.

22 Q. They're some four or five years later,
23 aren't they?

24 A. Yes, that's correct. It's shown that way.

25 Q. And in the projected cost -- cash flow cost

1 analyses that went with the feasibility study, that
2 was taken into consideration, that those costs were,
3 in fact, to be spent at a later date?

4 A. It was shown that way, yes.

5 Q. How about with respect to the residuals?
6 Mr. Coffman makes to-do about the cost of residuals
7 and whether or not they are necessary. Isn't it true
8 that there are no costs associated with residual
9 handling in the \$63.3 million in the feasibility study
10 comparisons?

11 A. That is correct. In that schedule the
12 residual handling facilities was not included in the
13 ground water plant.

14 Q. So it was not part of the evaluation?

15 A. It was not, that's correct.

16 Q. Mr. Coffman questioned you at some length
17 about the costs of residuals. Could you -- could you
18 briefly give us a scenario on how residuals are
19 handled? And the reason I'm asking you this is I'm
20 next going to ask you if Mr. Biddy's cost projections
21 for these necessary or possibly necessary activities
22 were appropriate.

23 Can you tell us what "residual handling"
24 means?

25 A. Yes. I'll -- maybe I can put it in context

1 of the -- of the current new plant. It does have
2 residual handling facilities. And, again, that plant
3 is different than a surface water plant in some
4 respects, but in some respects, it's also very
5 similar. It doesn't handle as many residuals.

6 But, anyway, the facilities at the present
7 plant are -- consist of two clarifiers and a pump
8 station with a total of six pumps -- they do three
9 different functions -- and a holding chamber that
10 holds the solids. And what it does, it's -- it really
11 gets the solids two places. One is the filter
12 backwash. As you flow water through the sand filter,
13 the filters catch some of the solids and periodically
14 you have to backwash it. And that water and those
15 solids go down to the clarifier to be settled out.

16 Also it gets -- gets solids from -- from the
17 process clarifiers. This is a -- there is actually
18 three of them. These are the facilities at the head
19 of the treatment plant, and that's where chemicals are
20 applied and some of the iron and manganese and other
21 minerals are settled out. Those solids flow by
22 gravity down to this residual handling facility.

23 What happens once all of the stuff gets down
24 there, it goes into these -- one of two clarifiers --
25 there are two of them -- and the solids settle out.

1 The clear water is pumped back to the head of the
2 plant as recycled water, and the solids go to this
3 holding tank which kind of keeps them stirred up, and
4 it's eventually pumped into the city sewer. That's
5 how it's handled at that plant.

6 Q. All right. But my question to you in
7 particular is, the proposed -- proposed possibility
8 that additional costs would be incurred because of the
9 inability or the possible inability of the Company to
10 pump the residuals back into the river.

11 What would be -- how would you handle those
12 residuals? What would you have to do?

13 A. Okay.

14 MR. CONRAD: Your Honor, once again I need
15 to object on the basis of foundation. It's
16 hypothetical, and it continues to be cumulative and
17 what we used to call friendly cross.

18 MR. CIOTTONE: Well, it's not hypothetical,
19 your Honor, nor is it cumulative. It is directly in
20 response to the questions raised by Mr. Coffman about
21 residual handling and what's involved.

22 MR. COFFMAN: Your Honor, in addition, I
23 believe it's improper cross-examination. What
24 Mr. Ciottone is attempting to do is redirect this
25 witness, and this is not his witness. It goes to the

1 point that I'm making that this is not
2 cross-examination.

3 JUDGE THOMPSON: Is this material covered in
4 direct in pre-filed testimony anywhere?

5 MR. CIOTTONE: There has not been the
6 opportunity to rebut the last contentions of Mr. Biddy
7 in his surrebuttal with respect to pricing, and that's
8 what I'm doing.

9 MR. COFFMAN: Your Honor, he's trying to
10 rehabilitate his case through another witness. That's
11 direct testimony.

12 MR. CONRAD: Your Honor, with all respect to
13 esteemed counsel, he admits the very point that I make
14 in that it's cumulative. His response is that he's
15 attempting to rebut Public Counsel's witness through
16 this witness. That's entirely inappropriate. That's
17 not the role of cross-examination.

18 If he has something that he wishes to test
19 the perceptions, the observations, the knowledge of
20 this particular witness about, that is relevant here,
21 but not using this witness as a conduit.

22 MR. CIOTTONE: Your Honor, I think that's
23 creative, but I don't -- that's not my understanding
24 of what is forbidden. Mr. Coffman deliberately tried
25 to support his own witness's testimony by using

1 Mr. Merciel, and I am challenging what Mr. Coffman
2 attempted to do.

3 MR. CONRAD: Your Honor, that's right,
4 because that's how this game works.

5 MR. COFFMAN: That's cross-examination, your
6 Honor, when you --

7 MR. CONRAD: That's cross-examination over
8 here.

9 MR. COFFMAN: -- when you ask questions of
10 an opposing witness. This entire question -- line of
11 questioning is of a witness that takes the same
12 position as the Water Company on this matter.

13 JUDGE THOMPSON: Anyone else?

14 MR. DEUTSCH: I'd have to join in the --

15 JUDGE THOMPSON: Which side, Mr. Deutsch?

16 MR. DEUTSCH: This time I'm going to object,
17 your Honor, because I think what this amounts to is --
18 I didn't see Mr. Merciel named as an expert on behalf
19 of the Company, and the Company is certainly using him
20 for nothing more than that. I think that's improper,
21 so I'm going to object also.

22 JUDGE THOMPSON: Well, thank you. I
23 appreciate that.

24 I can see that our changed position on
25 friendly cross has caused some difficulties which I

1 perceive are delaying this matter tremendously. The
2 rule against friendly cross in the past was contained
3 in the document called the Hearing Memorandum, which
4 was filed by the Staff on behalf of all of the
5 parties, and so it was essentially an agreement of the
6 parties.

7 And in the absence of a Hearing Memorandum,
8 the agreement of the parties not to engage in friendly
9 cross no longer exists, which has been the basis of
10 our refusal to uphold that objection, since there is
11 no longer a Hearing Memorandum setting out that there
12 will not be friendly cross. Okay?

13 And then you are left with the situation
14 that we find ourselves in here, where you have
15 multiple parties who may or may not be aligned with
16 one another on a particular issue, and yet you get a
17 chance at cross-examination which is then used to
18 bolster your position. Well, of course, everybody in
19 cross or direct is trying to get something out of the
20 witness that will bolster their case. That's the
21 entire point. Right? Otherwise, no one would engage
22 in it. So I don't think we should change the rules
23 here in midstream.

24 Mr. Ciottone, please try to bring this to a
25 conclusion promptly.

1 MR. CIOTTONE: Thank you, your Honor.

2 I will do it immediately.

3 BY MR. CIOTTONE:

4 Q. On this subject, Mr. Merciel, the handling
5 of residuals in the event that residuals cannot be
6 pumped back to the river --

7 A. Yes.

8 Q. -- with the drying lagoons, the front-end
9 loaders, the hauling, the finding real estate on which
10 to deposit it, and all of those other aspects
11 associated with treating those residuals, in your
12 opinion as an engineer could that be handled for
13 \$12,000 a year?

14 A. Well, I don't think so. They are spending
15 more money than that on the -- on the current ground
16 water plant, and residuals would be quite a bit more
17 at a surface water plant, so \$12,000 a year sounds
18 very low to me.

19 Q. Okay. Moving on to another subject,
20 Mr. Coffman questioned you about the utilization of
21 the inflation factors from the Engineering News
22 Record, and you testified that you thought they were
23 appropriate.

24 A. Right, on the inflation factors. Not the
25 dollars, just the inflation factors, yes.

1 Q. And they are appropriate because they,
2 indeed, transpired? They were after-the-fact; isn't
3 that correct?

4 A. Yes, that would be true.

5 Q. Would those be the factors that you would
6 have anticipated if you were required to make a
7 determination of what potential inflation was at the
8 time the Company had to make the determinations and
9 did not have the benefit of after-the-fact scrutiny of
10 history?

11 A. I'm sorry. I didn't quite follow your
12 question.

13 Q. Would you have guessed those numbers if you
14 had to guess what inflation was going to be in those
15 years before the fact?

16 A. Before?

17 Q. Yes.

18 A. Okay. Well --

19 MR. CONRAD: That calls for speculation,
20 your Honor.

21 THE WITNESS: Well, that's my answer. It is
22 speculation. You wouldn't know.

23 JUDGE THOMPSON: The objection is sustained.

24 BY MR. CIOTTONE:

25 Q. With respect to the flood protection,

1 Mr. Coffman or Mr. Conrad, or both, questioned you at
2 length about the levy that would be appropriate to
3 increase flood protection or, as they contend,
4 floodproofing of the old plant.

5 I think it's -- it was described by you that
6 there would be a levy that had to be at least four
7 feet above the most recent flood stage and/or a wall?

8 A. Yes.

9 Q. And the wall would be required presumably at
10 the back of the plant where there was not room for the
11 levy between the plant and the railroad tracks?

12 A. That's correct.

13 Q. Do you have any idea how high that wall
14 would have to be?

15 A. Well, we're talking -- the flood water was
16 probably on the order of five feet, another four feet,
17 so we're talking about a nine-foot wall, maybe it's
18 ten, or something.

19 Q. What does it take to build a wall like that?
20 Do you have to put in footings? Or what is necessary
21 to build a flood protection wall?

22 A. Well, you would not only need footing, but
23 if you're going to have nine feet of water on that --
24 well, it wouldn't be nine feet. If you're going to
25 have five feet of water, there is a lot of force to

1 push the wall over, so you need some lateral support.

2 Q. How do you get through these flood
3 protection facilities when there is no flood?

4 A. You drive over them or you could have a
5 flood gate.

6 Q. All right. Mr. Biddy testified that the
7 floodproofing could be accomplished for a little over
8 \$500,000, I think \$500,295. Dr. Morris testified it's
9 somewhat over 2 million, as I recall, 2.3 million.

10 Which, if either, of these figures seems
11 reasonable for you -- to you for flood protection?

12 A. Well, of course, Dr. Morris has some access
13 dollars. If I recall correctly, his was floodproofing
14 and access. He lumped that together, and I don't know
15 how he split that out.

16 But, again, it comes down to doing an
17 estimate, and -- and, frankly, I don't have a good way
18 to do it, but I think it's safe to say it would cost
19 millions.

20 My idea would be, and I've said before, I
21 don't -- I don't believe in this circumstance it's
22 appropriate to construct a levy in a wall. I think --
23 I think this plant would need to be either elevated or
24 built on high ground, build taller structures so that
25 you don't have to worry about water coming through the

1 ground or through the levies to flood it out. If the
2 flood is there, you're working above the flood.
3 That's the way I -- that would be the right way to do
4 it, in my opinion.

5 MR. CONRAD: Move to strike the portion of
6 the answer that follows the responsive answer as not
7 being responsive when he says it's his position, or
8 whatever exact words that he said. It went on beyond
9 the scope of the question that was asked.

10 JUDGE THOMPSON: Response?

11 MR. CIOTTONE: I'm just going to turn around
12 and ask him how he would have done it, so if you want
13 to sustain the objection, it's fine with me.

14 MR. CONRAD: I'll withdraw it. Go ahead.

15 JUDGE THOMPSON: Mr. Coffman?

16 MR. COFFMAN: I would like to make a
17 continuing objection that this is cumulative and not
18 proper direct.

19 JUDGE THOMPSON: Thank you, Mr. Coffman.

20 MR. CIOTTONE: Your Honor, I have one
21 further questions, and I'll be finished.

22 JUDGE THOMPSON: Please, Mr. Ciottone.

23 MR. CIOTTONE: One area of questioning.

24 BY MR. CIOTTONE:

25 Q. Mr. Merciel, can you tell me -- you were

1 somewhat challenged on the manner or your motives in
2 taking the position that you did with respect to
3 prudence on this company's plant.

4 Will you tell us how or what you have to go
5 through to have a position rise to the level of
6 something that you can submit in the name of the
7 Staff? Who looks at it? Who has to approve it? Can
8 you do it you unilaterally?

9 A. Are you asking how we would do it on the
10 Staff level, how we --

11 Q. I'm asking you how you did do it when you
12 did your testimony here? How many approvals did you
13 have to go through?

14 MR. CONRAD: Clarification. Are we talking
15 about his testimony here or -- in this proceeding?

16 MR. CIOTTONE: Yes.

17 THE WITNESS: Okay. This proceeding? Well,
18 supervisor, division director, legal. I might have
19 some other co-workers look at it.

20 BY MR. CIOTTONE:

21 Q. So this testimony, then, is the position of
22 the Staff and not simply the position of Jim Merciel
23 as Staff Engineer?

24 A. I would say it's the position of the Staff.

25 MR. CIOTTONE: That's all I have, your

1 Honor.

2 JUDGE THOMPSON: Thank you, Mr. Ciottone.

3 I have some questions for you,

4 Mr. Merciel --

5 THE WITNESS: Yes, sir.

6 JUDGE THOMPSON: -- from Commissioner

7 Schemenauer.

8 QUESTIONS BY JUDGE THOMPSON:

9 Q. In your opinion, were any of the expenses

10 actually incurred in constructing the new St. Joseph

11 Plant imprudent, extravagant, or unnecessary?

12 A. My answer is, the only ones are -- are those

13 expenses outlined in my testimony, and that would be

14 the exclusion of certain components of the plant.

15 I did review construction bids. They had,

16 you know, several bidders on certain components of the

17 project. That would be the treatment components. For

18 the treatment facility itself was one bidder. The

19 well field was a bidder. Pipelines was another one.

20 It appeared to me they took low bids.

21 There were some minor changes in the design,

22 or at least one that I can think of. It -- what I'm

23 saying is, it appeared to me the Company went to great

24 lengths to make sure they got the best -- the best

25 cost or the best deal, so to speak.

1 Q. What is the total of the items that you
2 identify in your testimony as being imprudent,
3 extravagant, or unnecessary?

4 A. Okay. The dollar amount is \$2,271-- I'm
5 sorry. \$2,271,756.

6 Q. Okay.

7 A. And that represents capital dollars, capital
8 investment. And I might point out, that's -- that has
9 nothing to do with the comparison of the treatment
10 plant alternatives. This is just for this rate case.

11 Q. All right.

12 A. Maybe -- maybe within a year or two they
13 might have to construct some of these components. I
14 don't have a problem with them designing and
15 constructing a 30-million-gallon plant. I just think
16 this is the level today that could have been built.

17 Q. Thank you.

18 You have testified, have you not, that a
19 certain amount of the plant capacity is excessive and
20 not required?

21 A. Yes, I have.

22 Q. And what exactly is that amount?

23 A. It's a 30-million-gallon plant. I
24 recommended 23 million gallons.

25 Q. Okay.

1 A. And what I recommended to be disallowed, I
2 believe the Company could have provided service of
3 23 million gallons with some peaks that exceed that --
4 Q. I understand.
5 A. -- on rare occasions.
6 Q. Commissioner Schemenauer's question is, are
7 you certain that the capacity you -- that you
8 characterized as excessive, which sounds to me like
9 7 million gallons per day --
10 A. Yes.
11 Q. -- will not be required in the very near
12 future?
13 A. That would be correct.
14 Q. You are certain it will not be?
15 A. Well -- well --
16 Q. That's just a yes or no question?
17 A. Yes. Yes, that's true.
18 Q. Thank you.
19 A. It could change in a few years, but today
20 that's -- that's the answer.
21 Q. Finally, will the reasonableness of the
22 Company's costs be addressed in the true-up phase, or
23 has Staff already reached a position on that?
24 A. I believe that's going to be in true-up.
25 Q. Okay. Those are Commissioner Schemenauer's

1 questions.

2 Now, I have some questions as well.

3 You testified that it was your belief that
4 with respect to surface water treatment or the Surface
5 Water Treatment Rule that something is going to
6 happen.

7 A. Yes, sir, I did.

8 Q. What is it that you think is going to
9 happen?

10 A. The Enhanced Surface Water Treatment Rule --
11 currently we're -- what is in effect right now is
12 called the Interim Enhanced Surface Water Treatment
13 Rule. There is a Stage I and a Stage II that are
14 being contemplated.

15 And I think I said before there is a date --
16 it's November of this year, the year 2000 -- where
17 Stage I is supposed to come into effect. I don't know
18 what the rules are. Frankly, I don't know what the
19 status is of how that's progressing. I really haven't
20 followed it that closely.

21 Q. And you say it's going to come into effect
22 when?

23 A. November of this year.

24 Q. I see.

25 A. That might be a rulemaking date. It may not

1 be the effective date of Stage I of the rule. Then
2 there is Stage II.

3 There is maximum contaminant level goal of
4 zero for the parasites, the Cryptosporidium and
5 Giardia. Right now the rule doesn't really require
6 zero removal, but the goal is to ultimately require
7 zero removal. That's why we're talking about
8 additional --

9 Q. Does that mean remove all of them?

10 A. All of it, right, so it doesn't exist.

11 Q. Okay. So that would be a more astringent
12 level?

13 A. Yes, it would.

14 Q. Okay. And if the -- if the present, or
15 what's referred to as the old plant, continued in
16 operation, would you believe that some sort of
17 improvements would be necessary at that plant to
18 permit it to reach this more astringent level?

19 A. Yes. And it could be further disinfection
20 or additional, what's called, contact time. Maybe a
21 combination. I think that's part of the uncertainty.
22 We don't really know exactly what's going to be
23 required.

24 Q. Okay.

25 A. Perhaps some people that are more in tune

1 with water treatment have a better idea than I do on
2 that, but -- but it is clear that something is going
3 to happen.

4 Q. Okay. Then you were asked about
5 Exhibit TLB-16.

6 A. Yes.

7 Q. And on TLB-16 you were asked about ozonation
8 contactor equipment --

9 A. Yes.

10 Q. -- and residuals, one for 5.5 million, the
11 other 8.0 million?

12 A. Yes.

13 Q. Now, were those amounts expended by the
14 Company in building the plant?

15 A. No. No, they were not.

16 Q. They were not?

17 A. Well, I should -- I should say that -- that
18 schedule you're looking at wasn't -- it was an
19 estimate for rebuilding of the ground water plant --
20 I'm sorry -- of the surface water plant --

21 Q. Okay.

22 A. -- which, of course, was not done.

23 Q. Which was not done.

24 A. Yeah.

25 Q. So those item are not --

1 A. Right. That estimate --

2 Q. -- an issue with respect to the plant that's

3 actually been built?

4 A. That would be correct.

5 Q. Okay. Thank you.

6 And what is the present capacity of the new

7 plant?

8 A. Thirty million gallons per day. Now, that's

9 the total -- total water treatment capacity. You do

10 have some in-plant-use water, so it's considered

11 30 million gallons per day treatment with about

12 28 1/2 million gallons available to go out to the

13 customers.

14 Q. Well, on Page 3 of Exhibit 49, your rebuttal

15 testimony, Lines 4 through 6, you state, "It appears

16 to me that an additional clarifier unit would be

17 needed for the design capacity of 30 million gallons a

18 day." Do you not state that there?

19 A. Let's see here. I believe I'm talking about

20 a plan -- what lines are you on, sir?

21 Q. I'm on Lines 4 and 5, Page 3 of your

22 rebuttal testimony.

23 A. Okay. Okay. That's actually talking about

24 a plan the Company had begun in 1991, and it's talking

25 about the superpulser clarifiers -- you might have

1 heard that term.

2 Q. Uh-huh.

3 A. -- which were contemplated to be used at

4 rebuilding the surface water plant. So what I'm

5 talking about here does not apply to the existing

6 plant.

7 Q. Thank you.

8 That was the clarification I needed.

9 Now, you've testified some items were

10 excluded, and you've given me the value. Does your

11 testimony include a list of these items?

12 A. Yes, it does. That's on Schedule --

13 Schedule 2, which consists of three pages.

14 Q. Okay.

15 A. And it kind of goes through some

16 evaluations.

17 Q. And that's attached to what? Your direct?

18 Your rebuttal?

19 A. I'm sorry. It's my rebuttal testimony.

20 Q. Very good. Now, there was some talk about

21 accessing the plant during the flood of 1993?

22 A. Yes.

23 Q. It was actually done by motorboat?

24 A. Yes.

25 Q. And were necessary supplies such as

1 chemicals taken into the plant in that fashion?

2 A. Chemicals, people, yes.

3 Q. Was that sufficient to keep the plant

4 operational?

5 A. Well, it was very difficult to do. Yes,

6 they were able to do it. I --

7 Q. So that's a yes?

8 A. The answer is yes.

9 JUDGE THOMPSON: Thank you.

10 That's all of the questions I have.

11 Recross. Mr. Dority?

12 MR. DORITY: No. Thank you, Judge.

13 JUDGE THOMPSON: Mr. Coffman?

14 MR. COFFMAN: Yeah, just one.

15 RECROSS-EXAMINATION BY MR. COFFMAN:

16 Q. Mr. Merciel, in response to Judge Thompson

17 you discussed the maximum containment level of zero

18 under the -- or a proposed Enhanced Surface Water

19 Treatment Rule?

20 A. Yes.

21 Q. And did I understand you correctly that that

22 MCL of zero was a goal, not necessarily a restriction?

23 A. It's not a current -- yeah, MCL, of course,

24 means maximum contaminant level. And this is what

25 they call a MCLG, maximum contaminant level goal.

1 That's what they would like to attain at some point.

2 MR. COFFMAN: Great. Thank you.

3 JUDGE THOMPSON: Mr. Conrad?

4 RECROSS-EXAMINATION BY MR. CONRAD:

5 Q. Judge Thompson asked you about the

6 motorboat.

7 A. Yes.

8 Q. Am I correct that the plant was off line for

9 four days in '93?

10 A. Yes, sir.

11 MR. CONRAD: Thank you.

12 JUDGE THOMPSON: Mr. Deutsch?

13 MR. DEUTSCH: No questions, your Honor.

14 JUDGE THOMPSON: Mr. England or

15 Mr. Ciottone?

16 MR. CIOTTONE: Just two, your Honor.

17 RECROSS-EXAMINATION BY MR. CIOTTONE:

18 Q. The judge asked you, Mr. Merciel, a question

19 on behalf of Commissioner Schemenauer, and he asked

20 you whether you were taking the position that co-- any

21 costs were imprudent, extravagant, or unnecessary.

22 It's true, is it not, that you're taking the

23 position not that they are imprudent or extravagant,

24 but that they are unnecessary?

25 A. That would be correct, yes.

1 Q. And, lastly, again, I'm not sure if it was
2 Judge Thompson's or Commissioner Schemenauer's
3 question about whether or not you are certain -- that
4 was the word, certain -- that capacity in excess of
5 23 million gallons a day will not be necessary in the
6 immediate future, and you said yes?

7 A. Yeah, I probably did.

8 Q. How do you reconcile that with the
9 conversation you and I had a few moments ago about in
10 1991 the Company having pumped 25.6 million gallons,
11 and the Company having more customers today, and that
12 that was attributable to weather and that weather
13 conditions such as those could recur? How do you
14 reconcile those two statements?

15 MR. CONRAD: Objection. Beyond the scope.
16 Beyond the scope of what you asked and what he
17 answered. He's saying he asked his question. He got
18 his answer. Now he wants to argue with the answer.
19 That's beyond what you're doing.

20 MR. SNODGRASS: Judge, I would just add from
21 the Staff's perspective that it sounds like a compound
22 question to me with many parts. I understand Counsel
23 Ciottone is trying to expedite this proceeding. I
24 think we all appreciate that, but it is a very lengthy
25 question for this witness to handle.

1 JUDGE THOMPSON: I will sustain Mr. Conrad's
2 objection.

3 MR. CIOTTONE: Which was --

4 JUDGE THOMPSON: Beyond the scope.

5 BY MR. CIOTTONE:

6 Q. All right. Let me just simply ask you this
7 then. The question from Commissioner Schemenauer
8 apparently was that you are concerned that the
9 capacity beyond 23 million gallons would not be
10 needed?

11 MR. CONRAD: And that one is asked and
12 answered.

13 MR. CIOTTONE: That was part of the question
14 you just sustained the objection to. I'm now
15 rephrasing.

16 JUDGE THOMPSON: I thought the part I
17 sustained the objection to was, "How do you reconcile
18 that?"

19 MR. CIOTTONE: Correct. If I may complete
20 my question, I will do so without that part.

21 JUDGE THOMPSON: Okay. Go ahead.

22 BY MR. CIOTTONE:

23 Q. Are you indeed certain, based on your
24 previous testimony, that capacity in excess of
25 23 million gallons a day will not be necessary?

1 A. My position is a plant with a capacity of
2 23 million gallons per day is adequate. That's not to
3 say you won't exceed that at sometime.

4 In fact, this 25-million-gallon-per-day peak
5 day, that was in '91, that was done with a 21-million-
6 gallon plant. The 23 million gallons that we're
7 talking about is not an absolute red line.

8 It's -- you wouldn't want to exceed it for
9 long periods. For short periods you can do it and you
10 can get by with it. And based on the usage that we're
11 seeing in St. Joseph, the days that exceed 23 million
12 gallons are few and far between.

13 Q. So did you just testify that it is
14 possible that the Company could be required to pump
15 over 25 million gallons a day?

16 A. It could happen, yes.

17 MR. CIOTTONE: Thank you.

18 That's all I have.

19 JUDGE THOMPSON: Thank you, Mr. Ciottone.

20 Mr. Snodgrass, additional redirect?

21 MR. SNODGRASS: Judge, I'm going to say that
22 I have no redirect at this time. I thought you would
23 be glad to hear that, your Honor.

24 JUDGE THOMPSON: Thank you, sir.

25 You may step down.

1 THE WITNESS: Thank you.
2 (Witness excused.)
3 JUDGE THOMPSON: We've got 14 minutes to
4 start Mr. Biddy.
5 MR. COFFMAN: Well, seeing as Mr. Biddy is
6 not here --
7 JUDGE THOMPSON: I guess we won't be
8 starting him.
9 MR. COFFMAN: My understanding was we would
10 start him on Thursday.
11 JUDGE THOMPSON: That's fine with me.
12 No point in starting anyone else, I wouldn't
13 suppose?
14 MR. ENGLAND: Our understanding was that we
15 would go as far as we could today, but if we completed
16 early, we would recess and wait for Mr. Biddy, who I
17 think is traveling.
18 MR. COFFMAN: He's probably on his plane
19 right now.
20 JUDGE THOMPSON: Okay. Eight o'clock
21 tomorrow morning.
22 We can go off the record now.
23 WHEREUPON, the hearing of this case was
24 continued to 8:00 a.m., Thursday, June 15, 2000.
25

1	I N D E X	
2		
3	PRUDENCE, CAPACITY AND SJTP VALUATION ISSUE:	
	MISSOURI-AMERICAN'S EVIDENCE:	
4	ROBERT L. AMMAN, JR.:	
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1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 1		1439
4	Direct Testimony of Robert L. Amman, Jr.		
5	Exhibit No. 4		1482
6	Rebuttal Testimony of James M. Jenkins		
7	Exhibit No. 5		1482
8	Surrebuttal Testimony of James M. Jenkins		
9	Exhibit No. 48		1493
10	Direct Testimony of James A. Merciel, Jr.		
11	Exhibit No. 49		1493
12	Rebuttal Testimony of James A. Merciel, Jr.		
13	Exhibit No. 50		1493
14	Surrebuttal Testimony of James A. Merciel, Jr.		
15	Exhibit No. 87		1542
16	Natural Disaster Report, done October 1993		
17	Exhibit No. 88		1553
18	Portion of Interim Surface Water Regulations		
19	Exhibit No. 89		1556
20	Guidance Manual for Surface Water System Treatment Requirements		
21	Exhibit No. 92	1449	1477
22	Missouri-American press release		
23	Exhibit No. 93	1474	1477
24	April 10th e-mail to Bob Amman from Bruce Manning		
25			

1608

1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 94	1557	1565
4	Response to Ag Processing DR No. 208		
5	Exhibit No. 95	1565	1567
6	Response to Ag Processing DR No. 209		
7	Exhibit No. 96	1567	1568
8	Response to Ag Processing DR No. 205		
9	Exhibit No. 97	1568	1569
10	Response to Ag Processing DR No. 206		
11	Exhibit No. 98	1569	1570
12	Response to Ag Processing DR No. 207		
13	Exhibit No. 99	1570	1571
14	Response to Ag Processing DR No. 221		
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