

1 BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

2

3 In the Matter of the Application
4 Of Missouri American Water Company for
5 A Certificate of Convenience and Necessity
6 Authorizing it to install, own, acquire,
7 Construct, operate, control, manage, and
8 Maintain a water system and sewer system
9 In and around the City of Eureka, Missouri

10

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12 Sworn and examined on May 6, 2022, between the hours
13 of nine o'clock in the forenoon and five o'clock in
14 the afternoon of that day, via WebEx teleconference,
15 before Jeanne M. Pedrotty, a Certified Court Reporter
16 (MO) and Certified Shorthand Reporter (IL), in a
17 certain cause now pending before the Missouri Public
18 Service Commission.

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A P P E A R A N C E S

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Judge

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1 IT IS HEREBY STIPULATED AND AGREED by and between
2 all parties that this proceeding may be taken in
3 shorthand by Jeanne M. Pedrotty, CCR/CSR, a Certified
4 Court Reporter and Certified Shorthand Reporter, and
5 afterwards transcribed into typewriting.

6 * * * * *

7 JUDGE SEYER: Let's bring this proceeding
8 to order and go on the record. Good morning, today is
9 May 6, 2022. The time is 8:30 a.m.. The Commission
10 has set this time for evidentiary hearing in the case
11 captioned as in the Matter of Application of Missouri
12 American Water Company for certificate of convenience
13 and necessity authorizing it to install, own, acquire,
14 construct, operate, control, manage, and maintain a
15 water system and sewer system in and around the City
16 of Eureka, Missouri. It is our file number
17 WA-2021-0376 and also includes the sewer system case
18 file number SA-2021-0377.

19 Previously on January 21st and 22nd -- I'm
20 sorry -- January 20th and 21st, evidence was presented
21 to the Commission in this matter. The purpose of
22 today's evidentiary hearing is to collect additional
23 evidence pursuant to the Commission's order granting
24 request to re-open the record issued April 21st. For
25 that order, today's evidence shall be limited to that

1 related to the Arbors of Rockwood Community
2 Improvement District. My name is Ken Seyer. I am the
3 regulatory law judge presiding over this hearing. The
4 hearing is taking place in Public Service Commission
5 hearing room, Room 310 of the Governor's office
6 building in Jefferson City, Missouri. However,
7 witnesses will also be participating over the Internet
8 via Cisco WebEx. So let's have counsel for the
9 parties make their appearances beginning with Missouri
10 American Water.

11 MR. COOPER: Thank you, Your Honor. Dean
12 Cooper from the law firm of Brydon, Swearingen &
13 England, P. O. Box 456, Jefferson City, Missouri,
14 65102, appearing on behalf of Missouri American Water
15 Company.

16 JUDGE SEYER: Public Counsel?

17 MS. VAN GERPEN: Good morning, Your Honor.
18 Lindsay Van Gerpen from Office of the Public Counsel,
19 P. O. Box 2230, Jefferson City, Missouri, 65102.

20 JUDGE SEYER: Okay. And the staff of the
21 Commission?

22 MS. BRETZ: Karen Bretz for staff,
23 B-r-e-t-z, address is 200 Madison Street, 8th floor,
24 Jefferson City, Missouri, 65102.

25 JUDGE SEYER: All right. For those in the

1 hearing room, I ask that everyone silence all cell
2 phones and mobile devices. If you are in the hearing
3 room and also logged on to WebEx I ask that you log
4 off WebEx to avoid feedback and other potential audio
5 issues. Also, for those in the hearing room please be
6 cognizant of when your microphones are on indicated by
7 a lit green light at the base of microphone and when
8 they are off. For those connected via WebEx I ask
9 that you mute your microphone when not speaking.

10 Also the court reporter today is not
11 present in the hearing room, but is instead
12 participating via WebEx. Therefore, it's important
13 that you speak into the hearing room microphones so
14 that she can record all of the proceedings. Do the
15 parties have any preliminary matters today?

16 MS. BRETZ: Judge, I didn't realize the
17 court reporter was going to be on WebEx. How should
18 we handle exhibits then?

19 JUDGE SEYER: As long, I think we all have
20 access to those exhibits.

21 MS. BRETZ: Since they are entered into
22 EFIS already?

23 JUDGE SEYER: Right. As long as the -- if
24 they are not already entered into EFIS, as long as
25 they are e-mailed to the exhibits at psc.Mo.gov e-mail

1 address. Okay. Are there any changes to the joint
2 order of witnesses and cross examination filed on
3 Wednesday, May 4th? Okay.

4 MR. SILVEY: This is Chairman Silvey.

5 JUDGE SEYER: Yes.

6 MR. SILVEY: I would like to note that I am
7 present as well as Commissioner Holtman. And I'm not
8 sure if any other commissioners are present.
9 Commissioner Coleman is here. Thank you, Judge.

10 JUDGE SEYER: I'm sorry. Who is that?

11 MR. SILVEY: I believe Commissioner Coleman
12 and Commissioner Holtman are also present.

13 JUDGE SEYER: Okay. Thank you. According
14 to the joint order of witnesses, staff will be calling
15 Craig Sabo, Curt Gateley, Amanda McMellen; and then
16 Missouri American Water would call Sean Flower and
17 Brian LaGrand; is that correct?

18 Okay. As far as the numbering of the
19 exhibits, previously exhibit numbers 1 through 99 were
20 assigned to Missouri American Water Company; 100
21 through 199 to staff, 200 through 299 to Public
22 Counsel, and 300 to 399 to the Commission. So any new
23 exhibits should follow that numbering. All right.

24 So, Ms. Bretz, would you like to make an
25 opening statement on behalf of the staff?

1 MS. BRETZ: Yes. Thank you. Good morning,
2 may it please the Commission. I am Karen Bretz for
3 commission staff. Thank you for re-opening the record
4 in this case to hear evidence whether residents of
5 Arbors of Rockwood subdivision development would pay
6 twice for their water system in the sale of the City
7 of Eureka water system to Missouri American is
8 completed.

9 JUDGE SEYER: Excuse me, Ms. Bretz, is
10 that microphone on?

11 MS. BRETZ: Yes.

12 JUDGE SEYER: I just want to make sure.

13 MS. BRETZ: Briefly, the Arbors subdivision
14 is on the north side of I-44 just east of Six Flags.
15 It's a brand new subdivision. There are 528 home
16 lots. And according to Mayor Flower's testimony, 405
17 occupancy permits have been issued to date. The
18 residents in the Arbors are subject to a community
19 improvement district or CID. Sections 67.1401 through
20 67.1571 RSMO provides for the formation of CIDs and
21 describes how they operate. Depending on the amount
22 of street frontage, homeowners in Arbors are annually
23 assessed between \$100 and \$800 annually to reimburse
24 the developers costs, which include the costs of
25 constructing the water system. The CID is authorized

1 to levy these assessments for up to 32 years from the
2 date the City of Eureka ordinance was passed. So
3 potentially Arbors residents will be paying these
4 assessments until 2048. Staff's opinion is that
5 residents of the Arbors will pay twice for the water
6 system serving their subdivision if the sale to
7 Missouri American goes through. Through their CID
8 assessments residents are currently paying the
9 developers costs of installing the water system.
10 Documents filed in EFIS from the state auditor's
11 office and St. Louis County Department of Revenue show
12 that Arbors residents have been paying these
13 assessments since 2018. On their real estate tax
14 receipts these assessments are listed as other
15 charges. This is one time that the Arbors residents
16 will be paying for their water system. If the sale to
17 Missouri American is completed, the appraised value of
18 the water system will be included in Missouri
19 American's rate base. Therefore, all Missouri
20 American customers including residents in the Arbors
21 will pay for this appraised value through their rates.
22 This is a second time that Arbors rate payers are
23 paying for their water system. Brian LaGrand of
24 Missouri American states in his testimony that Arbors
25 residents will not pay twice. His reasoning is that

1 under the appraisal statute fair market value
2 establishes rate base and regardless of whether the
3 value of the Arbors water system is considered
4 distributed property, the fair market value for the
5 entire transactions is \$28 million. Mr. LaGrand
6 further states that customers in the Arbors will pay
7 the same rate as all other Eureka customers. And this
8 actually bolsters staff's arguments because it
9 establishes that Arbors residents are paying fully for
10 Missouri American investments in the system. Mr.
11 LaGrand overlooks that Arbors residents have been and
12 would tend to pay annual assessments to the CID. The
13 parties have briefed the issue where the commission
14 must make a necessary or convenient for the public
15 interest finding when it purchase is made pursuant to
16 appraisal statute. Staff and OPC's position is that
17 the appraisal statute does not abrogate the
18 commission's duty to make this finding. Missouri
19 American's position, of course, is that the commission
20 must blanketly accept the Missouri American/City of
21 Eureka appraisal. The necessary or convenient
22 standard safeguards rate payers to help ensure that
23 their rates are fair just and reasonable. As we've
24 seen in this case, the necessary or convenient for the
25 public interest standard provides a vital check and

1 balance. It ensures that people are not paying twice
2 for the same system. Staff has subjected Craig Sabo,
3 an employee of the City of Eureka and a board member
4 of the Arbor's CID to be present today. Staff's other
5 witness Craig Gateley and Amanda McMellen are also
6 available for cross examination and commissioner
7 questions. Thank you.

8 JUDGE SEYER: Thank you. Ms. Van Gerpen,
9 would you like to make an opening statement.

10 MS. VAN GERPEN: Very briefly, Your Honor.

11 MR. SILVEY: This is Chairman Silvey again.
12 Are we going to have an opportunity to question after
13 the opening statement?

14 JUDGE SEYER: I'm sorry about that, yes.

15 MR. SILVEY: Thank you. I have a couple of
16 questions.

17 JUDGE SEYER: Do any of the other
18 commissions have any questions for Ms. Bretz?

19 MR. SILVEY: Yes. Ms. Bretz, thank you for
20 your opening statement. A couple questions. Did the
21 residents of this subdivision have an opportunity to
22 vote in the election?

23 MS. BRETZ: Yes. They voted as did the
24 other residents the City of Eureka did.

25 MS. SILVEY: And did the ballot language

1 include the sales price of \$26 million.

2 MS. BRETZ: Yes, they did. And it was
3 actually \$28 million.

4 MR. SILVEY: \$28 million. Thank you for
5 that correction. What portion of the CID that they
6 are paying their annual CID -- what portion of that is
7 specifically related to the water as opposed to
8 streets, sidewalks, and other things covered by the
9 CID.

10 MS. BRETZ: Amanda McMellen might be able
11 to better answer that question, but staff did a back
12 of the neck initial formulation of how much they will
13 be paying. And staff estimated the amount they will
14 be paying to reimburse the developer is the same as
15 what staff assigned as which is \$2.9 million, but
16 you're asking how much of their annual assessment will
17 be put towards the paying the developer?

18 MR. SILVEY: Specifically for the water
19 system because my understanding of how CIDs operate is
20 there is other costs included there, that the
21 developer is being reimburse for streets, curbs,
22 sidewalks, whatever would have been included in that
23 CID to begin with, so of the aggregate cost how much
24 of that are specifically related to the water
25 treatment center.

1 MS. BRETZ: As I recall and this is in the
2 development agreement, which we will be asked to be
3 admitted into evidence the brief entire total is \$3.4
4 million, and so approximately 2.9 of that will be for
5 the water system.

6 MR. SILVEY: Okay. So if the commission
7 were to determine -- what relief is staff asking for,
8 are you asking for us to just reject the sale outright
9 or is there a way in which the commission could craft
10 an order for the sale to proceed, but protecting the
11 interests of that particular neighborhood as it
12 pertains to double paying?

13 MS. BRETZ: I believe staff's position is
14 it's all or nothing situation. And that the language
15 of the appraisal statute says that you must either
16 accept it or reject it. And so we are asking for the
17 commission to reject entirely the Missouri American
18 application.

19 MR. SILVEY: So there are approximately 500
20 and some lots in this neighborhood, is that what your
21 opening statement says?

22 MS. BRETZ: 500 and some change, yes.

23 MR. SILVEY: 500 and some change. How many
24 lots are there in Eureka at large?

25 MS. BRETZ: I'm not sure entirely. I

1 recall testimony from, I think, it was from Mayor
2 Flower that he stated that the people living in the
3 Arbors development is approximately ten percent of the
4 population of the number of homes that are would be
5 potentially Missouri American customers.

6 MR. SILVEY: So if it's all or nothing
7 proposition and we have no authority to find a middle
8 ground or to specifically carve out that neighborhood,
9 you're asking us to reject an entire application based
10 on ten percent of the population. Is that an accurate
11 assessment?

12 MS. BRETZ: Well, I mean we had two days of
13 hearing in January, too. And we believe there is
14 other reasons why the application should be rejected.
15 At this time we're just addressing the Arbors -- the
16 Arbor issue. We believe that there are other reasons
17 why the application should be rejected as we
18 described, as we put testimony on in January.

19 MR. SILVEY: Sure, but as it pertains to
20 this hearing today for this one specific issue, all or
21 nothing based on ten percent for this argument.

22 MS. BRETZ: Yes. Yes, of course. Missouri
23 American is free to come back and submit another
24 application.

25 MR. SILVEY: How long would that take?

1 MS. BRETZ: We could ask for accelerated
2 schedule. I would think 60 days. Sixty days we could
3 come up with another recommendation -- staff could
4 come up with another recommendation.

5 MR. SILVEY: Okay. Thank you, Ms. Bretz.
6 Thank you, Judge. No further questions.

7 MS. BRETZ: Thank you.

8 JUDGE SEYER: Are there any questions from
9 the other commissioners?

10 COMMISSIONER: No questions, Judge.

11 COMMISSIONER: No question.

12 JUDGE SEYER: Thank you. Then Ms. Van
13 Gerpen.

14 MS. VAN GERPEN: Good morning, and may it
15 please the commission. My name is Lindsay Van Gerpen
16 and I represent the Office of the Public Counsel. The
17 OPC continues to request that the commission deny
18 Missouri American Water Company's application for
19 certificate of convenience and necessity in regards to
20 the acquisition of the City of Eureka, Missouri's
21 water and sewer systems. The OPC maintains the
22 position that it took in its initial and reply
23 post-hearing briefs, specifically that the commission
24 should deny the requested CCN because Missouri
25 American Water Company plans to pay too much for these

1 systems and it plans to provide water service to
2 Eureka through a new pipeline means that this
3 acquisition simply is not in the public interest.
4 Today we're here to explore the additional fact that
5 the residents of the Arbors subdivision will likely
6 pay twice for parts of their water system if Missouri
7 American Water Company completes this purchase. These
8 payments will come once through a community
9 improvement district special assessment and once
10 through their Missouri American Water Company rates.
11 Although the OPC does not dispute that Missouri
12 American Water Company is qualified and has the
13 financial ability to provide water and sewer service
14 to the citizens of Eureka. These facts will further
15 support the OPC's position that this acquisition as
16 proposed simply is not in the public interest. And
17 for these reasons the OPC continues to request that
18 the commission deny the requested CCN. Are there any
19 questions?

20 JUDGE SEYER: Any questions from the
21 commissioners?

22 MR. SILVEY: Thank you, Judge, this is
23 Chairman Silvey. I have a question. Thank you for
24 your opening statement. So since you mentioned in the
25 opening statement, you're contending Missouri American

1 is paying too much for the system?

2 MS. VAN GERPEN: Yes, that's correct.

3 MR. SILVEY: And they are paying it to the
4 City of Eureka, correct, not to an individual
5 developer?

6 MS. VAN GERPIN: That is correct.

7 MR. SILVEY: And the City of Eureka -- it
8 seems like this is a little bit of a different
9 situation than an acquisition to a private developer
10 because the citizens they are essentially paying the
11 citizens who are going to be receiving the service
12 through their elected city council and disbursing
13 those funds, is that an accurate assessment? So they
14 are over paying to themselves?

15 MS. VAN GERPEN: I'm not sure that I would
16 agree with that. Because the citizens of the Arbors
17 will still continue to pay for their water system
18 through the CID as well.

19 MR. SILVEY: But you also agree that they
20 participated in the election which stated the amount
21 of the sale?

22 MS. VAN GERPEN: Yes.

23 MR. SILVEY: And that the proceeds of the
24 sale will go to the city, which will be able to be
25 appropriated by their elected representatives?

1 MS. VAN GERPEN: Yes.

2 MR. SILVEY: Okay. Thank you. Thank you,
3 Judge.

4 JUDGE SEYER: All right. Are there any
5 other questions from the commissioners? All right.
6 Thank you, Ms. Van Gerpen. I apologize. All right.
7 Mr. Cooper, would you like to make an opening
8 statement?

9 MR. COOPER: Thank you. Before I go I
10 guess into my opening statement I did want to respond
11 to one thing that Ms. Bretz stated near the end of her
12 opening. She was asked about the timing it would take
13 to bring another application before this commission.
14 And she referenced, I think, the 60 days that is sort
15 of aspirational for the staff to file a recommendation
16 from the time an application has been filed with the
17 commission. I don't know how many cases that actually
18 happen in 60 days. But more importantly, as has been
19 discussed in this case when we were here before, the
20 sale of the system by the City of Eureka requires a
21 public vote, a public vote that passed calls for a
22 purchase price certain. So I think if we're talking
23 about some sort of situation where we came back to the
24 commission with some other purchase price you're
25 talking about placing another resolution on the ballot

1 and an election and that process before you ever get
2 around to thinking about coming back to this
3 commission. So I think it is a much longer time frame
4 than just coming back with a second application. That
5 having been said, I do want to say the issue we're
6 discussing today with the Arbors is largely a
7 continuation of an issue that has been discussed
8 previously. The Arbors development was specifically
9 discussed in this case to include staff's calculation
10 in its staff recommendation was incorporated in its
11 testimony. There was cross examination of the staff
12 witness about the Arbors, and Missouri American
13 addressed the Arbors in its initial brief. That
14 focused on the fact that the Arbors was being treated
15 as a contributed property or contributed plant by the
16 staff. And in fact, specifically that's what Missouri
17 American's initial brief talked about with the impact
18 contributed plant we believe should have on fair
19 market value which is none. But more to the point is
20 as can be seen in the testimony is Eureka has a
21 public question and answers website associated with
22 waste water and water property and sale process that
23 specifically address the Arbors situation -- the
24 Arbors CID, in fact, situation for some time.
25 Missouri American witness LaGrand points out that the

1 staff made specific reference to the city's question
2 and answer site as early as October 1st of 2021, when
3 the staff recommendation was filed. Throughout the
4 case, staff has been aware of Arbors's assets and the
5 fact they were contributed to Eureka. And as I said
6 earlier, took this into account in its recommendation
7 and, in fact, Mr. Gateley's testimony in today's
8 hearing specifically indicates that staff's
9 recommendation remains unchanged as a result of the
10 CID information. Now, more importantly the community
11 improvement district in place to recover a portion of
12 development cost related to property contributed to
13 the city where all development costs are assumed to
14 have been recovered or not in some way -- some other
15 way. The issue is the same for this commission, that
16 is once the assets are owned by a city does the path
17 of the city's acquisition matter in regard to the fair
18 market value of the assets owned by that city for
19 purposes specifically of section 393.320 RSMO. Again,
20 Missouri American believes the answers is it does not.
21 In accordance with 393.320 blink 5 subsection 1, the
22 lesser of the purchase price or appraised or fair
23 market value together with the reasonable and prudent
24 transaction closing and transition cost incurred by
25 Missouri American shall constitute the rate making

1 rate base for Eureka's system being acquired by
2 Missouri American. Assets referenced by staff are
3 owned by Eureka are currently in service and are used
4 and useful for the provision of water services to
5 Eureka residents. Nothing in section 393.320
6 references or creates an exception for contributed
7 property in the case of a municipal system. Now, this
8 does not mean that the concept of net book value is
9 completely ignored by section 393.320. If the small
10 water utility is a public utility subject to chapter
11 386 and small water utility completed a rate case
12 prior to the acquisition, the commission may utilize
13 the net book value determined by the commission in its
14 decision as to the rate making rate base. However,
15 again, that provision is not available where the small
16 water utility is a municipal system. That different
17 approach could be for one or all of several good
18 reasons. It could be because of the difficulty in
19 establishing a net original cost for unregulated
20 system. Because the consolidation of small water and
21 sewer systems with large systems should be encouraged
22 or perhaps that's because in the case of a
23 municipality as citizens, the customers, are receiving
24 value in that the city can use and apportion its sales
25 proceeds as it sees fit for the benefit of the city

1 and its citizens Now, I will add to my, perhaps, list
2 one more item, fourth class cities may sell property
3 pursuant to the power granted by section 79.010, but
4 its power must necessarily be exercised in conjunction
5 with Missouri, with the Missouri constitutional
6 provisions. Article 6 section 25, and section 23 for
7 that matter, prohibit a city from a grant of public
8 money or property to any private individual,
9 association or corporation. As a result, a city may
10 not donate to private businesses or charters, give
11 away assets or convey assets for nominal
12 consideration. And I would reference as a good
13 summary of this situation and case law surrounding it,
14 I would reference you to AG opinion 98-96, which was
15 issued on July 5th, 1996, and can be also cited in
16 Lexus 1996 AG Lexus 77. And I have copies of that
17 Judge if you're interested. If the city were to give
18 its water assets to Missouri American or the Arbor
19 assets to Missouri American for something less than
20 fair market value such an act would appear to violate
21 the Missouri constitution.

22 Now, I would also like to talk a little bit
23 about the sort of the perspective proportions involved
24 here in regard to the size of the Arbors. Arbors
25 subdivision, there are, as Ms. Bretz said, about 405

1 water customers currently in the Arbors area. This
2 compares to approximately 4100 total Eureka water
3 customers and approximately 340,000 Missouri American
4 water customers in St. Louis County, the district of
5 which Eureka water customers would become a part. The
6 \$2.9 million construction cost associated with the
7 Arbors water system assets that we're talking about
8 today compares to a water rate base for the St. Louis
9 County district of approximately \$1.2 billion as of
10 December 31st of 2020. The portion of any revenue
11 requirement associated with that \$2.9 million that one
12 could even argue would be recovered from the Arbor
13 water customers through MAWC rates would be extremely
14 small.

15 Finally, I leave you with a couple of
16 questions. Staff's argument, again, is its position
17 that the 405 water customers in the Arbors development
18 could pay twice for the Arbors water system. As
19 discussed before, MAWC believes this concept is not
20 applicable to a municipal system. However, even if it
21 were, if the sale does not go through, the assets stay
22 with Eureka and Arbors residents continue to pay the
23 same water rates as other Eureka customers, would
24 staff still say those customers are paying twice.
25 What if any absence of a sale to Missouri American

1 does Eureka water rates are similar to or even higher
2 than Arbors residents would have paid to Missouri
3 American, would staff still argue they are paying
4 twice if the system is acquired by Missouri American,
5 but not if the sale falls through and they pay higher
6 rates. It's just a fact that the crossover of assets
7 from a municipality to a regulated investor-owned
8 utility necessarily create sort of the overused phrase
9 of apples to orange comparison. Net original cost and
10 contributed plant are terms applicable to regulated
11 utilities and have nothing to do with municipal
12 utility accounting. And more important, nothing to do
13 with the fair market value of those municipal assets.
14 The issues raised in this hearing do not change the
15 argument Missouri American has made in its initial and
16 reply briefs and Missouri American asks that the
17 commission apply section 393.320 as written, grant
18 Missouri American's certificates of convenience and
19 necessity to provide water and waste water service
20 within the proposed service area subject to the
21 conditions described by staff, and establish the rate
22 making rate base for the systems acquired in amount
23 equal to the fair market value. Thank you.

24 JUDGE SEYER: All right, Chairman Silvey,
25 do you have questions?

1 MR. SILVEY: Thank you, Judge, I do.

2 EXAMINATION

3 QUESTIONS BY MR. SILVEY:

4 Q. Thank you for your opening. So you
5 reference the 405 customers in the submission, roughly
6 4100 customers total in Eureka, and 340,000 in St.
7 Louis County at large?

8 A. Approximately, yeah. Perhaps a few more
9 than 340,000, but that's pretty close.

10 Q. So just so I'm clear, if this acquisition
11 were to go through then the rate base for citizens of
12 Eureka would become 344,000 people. I mean they would
13 all be paying the same?

14 A. The number of customers in the St. Louis
15 County district for water would be approximately
16 344,000, correct.

17 Q. Would they all be on the same rate?

18 A. Well, within that number of customers there
19 are, I can't remember the rate designation, but there
20 would be some differentiation there. Rate A, there is
21 rate J for industrial. Mr. LaGrand could probably
22 give a better rundown. I know he can give better
23 rundown than I for the different rates.

24 Q. Let me rephrase.

25 A. Go ahead.

1 Q. So, yes, respective of different rate
2 classes, would the \$2.8 million that's at issue today
3 be spread across 340,000 some thousands people as
4 opposed to just the 4100 people in Eureka?

5 A. Correct, yes, Chairman.

6 Q. So your contention is the actual amount of
7 double payment would be very small because 340,000
8 people who aren't currently bearing that cost would
9 also be bearing that cost after the acquisition?

10 A. That's correct, yes.

11 Q. Okay. Thank you. Thank you, Judge.

12 JUDGE SEYER: Do any of the other
13 commissioners have questions.

14 COMMISSIONER: No questions, Judge.

15 JUDGE SEYER: All right. Thank you, Mr.
16 Cooper.

17 Q. I apologize. I do have one additional
18 question. So we have the election that occurred, is
19 the record -- does the record show what the results of
20 the election were specifically or just that it was
21 majority that approved the sale?

22 A. No, I believe, Chairman, that our -- I
23 don't remember exact count, but I believe our direct
24 testimony provides the exact count -- our direct
25 testimony in the first part of this case. And I'm

1 sure we can come up with that pretty quickly.

2 Q. Okay. For the specific issue today, I
3 don't recall seeing in the record. Would it be
4 possible to get the precinct results for this area
5 where the CID is into the record?

6 A. I can certainly look. I think whether it
7 comes into the record or not is a question for
8 yourself and the Judge, but certainly we can see if we
9 can come up with that information, Chairman.

10 Q. Okay. Thank you. Thank you, Judge.

11 JUDGE SEYER: Thank you, Mr. Cooper. All
12 right. Ms. Bretz, call your first witness.

13 MS. BRETZ: Our first witness is Craig
14 Sabo.

15 JUDGE SEYER: All right. Mr. Sabo. And
16 he is testifying via WebEx, correct?

17 MS. BRETZ: That's my understanding.

18 JUDGE SEYER: Are you here, Mr. Sabo?

19 THE WITNESS: I'm present.

20 JUDGE SEYER: Thank you. Would you raise
21 your right hand to be sworn in please. Thank you. Do
22 you solemnly swear or affirm that the testimony you
23 give in this hearing shall be the truth, the whole
24 truth, and nothing but the truth.

25 THE WITNESS: I do.

1 JUDGE SEYER: All right. Thank you. Go
2 ahead, Ms. Bretz.

3 EXAMINATION

4 QUESTIONS BY MS. BRETZ:

5 Q. Thanks. Good morning, Mr. Sabo?

6 A. Good morning.

7 Q. I'll turn this around so I can both look at
8 you and speak into the microphone. It's a little
9 awkward. You're an employee of the City of Eureka; is
10 that correct?

11 A. Yes.

12 Q. And what's your title?

13 A. City administrator.

14 Q. And what's your job responsibility in a
15 nutshell?

16 A. Oversee the day-to-day operations of the
17 city, provide managerial support and oversight.

18 Q. And you're also a board member of the
19 Arbors of Rockwood community improvement district; is
20 that correct?

21 A. Yes.

22 Q. How long have you been a board member?

23 A. Since its formation roughly five years ago.

24 Q. If I said 2016, does that sound about
25 right?

1 A. Yes.

2 Q. Do you have an official position in the
3 CID?

4 A. Yes. I'm secretary and treasurer.

5 Q. You're currently secretary treasurer of the
6 CID?

7 A. Yes.

8 Q. Is Barb Flint also an employee of the City
9 of Eureka?

10 A. Yes. She is our finance director.

11 Q. And she is also board member of Arbors CID?

12 A. Yes.

13 Q. Does she have a position other than being
14 board member? Is she an officer as well?

15 A. No.

16 Q. Okay. Staff subpoenaed you to be present
17 today, correct?

18 A. Yes.

19 Q. And staff asked you to bring some documents
20 with you?

21 A. Yes. Which were provided.

22 Q. Correct. We found out you were going to be
23 appearing WebEx and you were gracious enough to
24 provide these documents and you made those available
25 to staff, right?

1 A. Yes.

2 Q. I'll say for the record, staff distributed
3 to the other parties and also filed into EFIS these
4 documents. What you have marked as document one is a
5 copy of Ordinance 2394, which was passed by the City
6 of Eureka Board of Alderman and it establishes the
7 Arbors CID; is that correct?

8 A. Yes.

9 Q. You're familiar with that ordinance?

10 A. I am.

11 Q. And what you sent to us is a true and
12 correct copy of that ordinance?

13 A. Yes.

14 Q. And then what you marked as document two
15 are the resolutions passed by the Arbors CID?

16 A. Yes.

17 Q. And you're familiar with those resolutions?

18 A. Yes.

19 Q. What you sent to us are true and correct
20 copies of those resolutions?

21 A. Yes.

22 Q. And what you marked as document three is
23 the development agreement between the City of Eureka,
24 the developer, and Arbors CID?

25 A. Yes.

1 Q. And you're familiar with that agreement?

2 A. Yes.

3 Q. And what you sent to us is a true and
4 correct copy of that agreement?

5 A. Yes.

6 Q. Staff also asked you to bring the receipts
7 and financial records related to the water system at
8 the Arbors; is that correct?

9 A. Yes.

10 Q. And you wrote to me that that information
11 was contained in what you marked as document 2U,
12 correct?

13 A. Yes.

14 Q. Judge, we would ask for the subpoenaed
15 documents to be admitted as, I think, Exhibit 100. Is
16 that the correct numbering?

17 JUDGE SEYER: I would suggest that we make
18 that Exhibit 110, which I think is the next available
19 exhibit number.

20 MS. BRETZ: Sure.

21 JUDGE SEYER: So all three of those, all of
22 those documents or just document one?

23 MS. BRETZ: All the documents.

24 JUDGE SEYER: Okay. So what's essentially
25 document one, two and three, that collection would be

1 Exhibit 110. Are there any objections to that? All
2 right. Exhibit 110 is admitted.

3 MS. BRETZ: We don't have any other
4 questions, Judge.

5 JUDGE SEYER: All right. Ms. Van Gerpen,
6 do you have any questions.

7 MS. VAN GERPEN: No questions, Your Honor.

8 JUDGE SEYER: All right. Mr. Cooper?

9 MR. COOPER: No questions, Your Honor.

10 JUDGE SEYER: All right. Are there any
11 questions from the commissioners? Hearing none, I do
12 have some questions myself.

13 EXAMINATION

14 QUESTIONS BY JUDGE SEYER:

15 Q. So Mr. Sabo, you are currently a member of
16 the Board of Directors of the CID, correct?

17 A. Yes.

18 Q. And as you testified here today, are you
19 representing the district, the city or some
20 combination of both?

21 A. Presumably both.

22 Q. Okay. This community improvement district,
23 did the development of that area start before the
24 creation of that CID?

25 A. Legislative consideration preceded it for

1 the zoning.

2 Q. But actual shovel in the ground not before
3 the creation of it?

4 A. I can't speak as to how the timing of those
5 two met.

6 Q. Okay.

7 A. Certainly close. But not necessarily -- I
8 can't nail the time frame.

9 Q. Has that subdivision -- has that
10 development been completed?

11 A. No.

12 Q. Are there still lots for sale?

13 A. There is approximately 80 percent
14 developed, with lots for sale, yes.

15 Q. So approximately 20 percent of lots are
16 still for sale?

17 A. Correct.

18 Q. Okay. We have what has been filed in the
19 EFIS document system as document 2U, 2 and the letter
20 "U", are receipts for the development. So I'd like to
21 draw your attention to that document.

22 A. I have it available.

23 Q. Okay. Are any of the projects that were
24 developed under the CID, have they been sold or are
25 they to be sold to Missouri American water?

1 A. Well, the water and sanitary sewer
2 component including infrastructure, located on site,
3 which is well and tank softening equipment,
4 disinfection, fluoridation and the like.

5 Q. And as those portions of the development
6 were constructed, were they transferred to the city?

7 A. Upon completion and service being provided
8 by them, yes.

9 Q. And logistically, how was that done? Was
10 it done by resolution?

11 A. No. It would have been inspection by staff
12 and any consulting engineers. Same with any other
13 subdivision.

14 Q. So you mentioned the subdivision is roughly
15 80 percent completed. So has there been a certificate
16 of substantial completion submitted to the city?

17 A. I don't know. Just those components would
18 have been accepted. I generally view substantial
19 completion as the entire development, including all
20 other forms of infrastructure such as streets. And
21 that would not be the case in light of subdivision
22 still being under development.

23 Q. I'm not sure why the microphone turned off
24 there. If I can draw your attention to the amended
25 petition for creation of the CID?

1 A. Which --

2 UNKNOWN SPEAKER: Do you have a document
3 number for that?

4 JUDGE SEYER: I'm sorry.

5 UNKNOWN SPEAKER: Do you have a document
6 number for that?

7 Q. Give me a second here. It would be in that
8 document one that was filed with the subpoena in EFIS,
9 approximately six pages in.

10 A. I apologize. One moment please. Okay. I
11 have it.

12 Q. Okay. On the third page of that amended
13 petition it states there is a section for the
14 estimates of costs and improvements. And it states
15 that the estimated costs are approximately \$3,413,574.
16 In the annual report that was submitted to the state
17 auditor's office, it also lists obligations roughly in
18 that amount for the fiscal year ending June 30th,
19 2021. So can you tell me when those obligations were
20 issued, what particular date?

21 A. One moment please. I apologize. Many
22 documents.

23 Q. Of course.

24 A. Based on resolution 21-001, they appear to
25 be in 2016, throughout various months throughout 2016.

1 Q. So not issued all at one time?

2 A. Submitted -- they were submitted in April
3 of 2017, but not incurred all at the same time of
4 course.

5 Q. And what form were those obligations issued
6 -- in what form were those obligations issued?

7 A. My understanding there was a note, note or
8 notes issued carried by the developer.

9 Q. And issued to whom -- to what entities?

10 A. Rooster Road LLC, the entity, the developer
11 formed in connection with the project.

12 Q. Okay. If I could direct your attention,
13 still within that document 2U, roughly page 7 of 48.

14 A. Okay.

15 Q. At the top of that page it is headed Parc
16 Front Group LP, and then next line HTV CID
17 reimbursable project costs.

18 A. I see that. I'm not familiar with that
19 entity.

20 Q. If you can take a look at that page, would
21 you agree that this is essentially what those debt
22 obligations paid for, the \$3.4 million?

23 A. Yes.

24 Q. And so it amounts to roughly half a dozen
25 companies that contributed to the project and majority

1 of it was for water service, would you agree?

2 A. Yes.

3 Q. And then \$509,000 on streets and \$48,000 on
4 asphalt trail?

5 A. Yes.

6 Q. Okay. So were there -- so cost, and I know
7 the ordinance talks about lawns, trees, other
8 landscape, traffic signs, signals, drainage, et
9 cetera, storm and sewer systems. At least out of this
10 \$3.4 million, none of that was spent on lawns and
11 trees and so forth, correct?

12 A. Correct.

13 Q. All right. I believe those all the
14 questions I have at this time. All right. Ms. Van
15 Gerpen, do you have any recross based on my questions?

16 MS. VAN GERPEN: Nothing, Your Honor.

17 JUDGE SEYER: Or the commissioners,
18 question? All right. Mr. Cooper?

19 MR. COOPER: Just a couple for
20 clarification, Your Honor.

21 EXAMINATION

22 QUESTIONS BY MR. COOPER:

23 Q. Mr. Sabo, you were asked some questions
24 about the status of the subdivision and I think you
25 mentioned that it was about 80/20. About 80 percent

1 of the lots sold and about 20 percent, I guess, have
2 not yet been sold; is that correct?

3 A. Yes.

4 Q. Would the collection lines for the sewer
5 system and the distribution lines for the water system
6 already be in place in regard to that 20 percent of
7 the lots that have not yet been sold?

8 A. It is possible that a few mains have not
9 yet been extended. I'm not certain.

10 Q. And it was mentioned -- the sewer system
11 was mentioned, or perhaps I would say it was not
12 mentioned as a part of the cost being recovered
13 through the CID, is that correct?

14 A. Yes.

15 Q. That's all the questions I have.

16 JUDGE SEYER: All right. Ms. Bretz, do
17 you have further questions?

18 MS. BRETZ: Nothing. Thank you.

19 JUDGE SEYER: All right. Can this witness
20 be excused? All right. Thank you, Mr. Sabo. You are
21 excused.

22 THE WITNESS: Thank you.

23 JUDGE SEYER: All right, Ms. Bretz, call
24 your next witness.

25 MS. BRETZ: Staff's next witness is Curt

1 Gateley

2 JUDGE SEYER: Mr. Gateley, would you raise
3 your right hand please? Thank you. Do you swear or
4 affirm that the testimony you give in this hearing
5 shall be the truth, the whole truth, and nothing but
6 the truth?

7 THE WITNESS: Yes.

8 JUDGE SEYER: Thank you. Go ahead, Ms.
9 Bretz.

10 EXAMINATION

11 QUESTIONS BY MS. BRETZ:

12 Q. Mr. Gateley, would you please state and
13 spell your name?

14 A. C-u-r-t-i-s, Gateley, G-a-t-e-l-e-y.

15 Q. Where do you work and what's your job
16 title?

17 A. I work for Public Service Commission. I'm
18 the manager of the water, sewer and steam department.

19 Q. Are you the same Curt Gateley who prepared
20 testimony -- it's called direct testimony of Curt G.
21 Gateley with exhibits attached?

22 A. Yes.

23 Q. Do you have any changes or corrections to
24 your testimony?

25 A. I do not.

1 Q. If I asked you those same questions today
2 your answers would be the same?

3 A. Yes.

4 Q. And your testimony is true and correct to
5 the best of your knowledge?

6 A. Yes.

7 Q. Judge, we would ask for Mr. Gateley's
8 testimony to be -- and exhibits, the attached exhibits
9 -- to be entered as I believe -- is that 111 now?

10 JUDGE SEYER: Yes, that's correct. Is
11 there any objection? All right. I'm seeing shaking
12 heads with no objection. Exhibit 111 is admitted.

13 MS. BRETZ: We tender the witness for cross
14 examination.

15 JUDGE SEYER: All right. Ms. Van Gerpen?

16 MS. VAN GERPIN: Nothing from OPC.

17 JUDGE SEYER: All right. Mr. Cooper?

18 MR. COOPER: Nothing at this time, Your
19 Honor.

20 JUDGE SEYER: All right. Are there any
21 questions from the commissioners?

22 MR. SILVEY: No questions, Judge.

23 JUDGE SEYER: All right. Mr. Gateley, I
24 have a couple questions.

25 EXAMINATION

1 QUESTIONS BY JUDGE SEYER:

2 Q. For this particular subdivision, why is it
3 staff's position that the residents in that
4 subdivision will be pay twice for their water system?

5 A. Right now those customers, it's my
6 understanding, have been paying to reimburse the
7 developer for the assets and will continue to pay for
8 several years. In addition, the assets as part of the
9 purchase of Eureka will go into rate base for which
10 those customers will continue to pay that rate base
11 and the return on that investment. So unlike other
12 customers for whom Missouri American might construct
13 some infrastructure, some plant, and then recover that
14 and recover return, for those particular customers
15 they will be subject to the normal situation for
16 customers plus an additional tax assessment.

17 Q. If those purchasers of the lots in that
18 subdivision rather than pay the assessment over the
19 years had paid for those developer costs upfront as
20 part of the purchase of the lot, would staff still
21 have that same position?

22 A. No. The typical development situation,
23 developers, of course, are trying to maximize their
24 profit. They are trying to recover any of their
25 expenses through the sale of lots and development.

1 They are subject to market forces. They may not be
2 able to recover as much as they would like or all of
3 it, but it is expected that folks who are purchasing a
4 lot that aren't subject to a special district like
5 this, that, yeah, they will have already had to pay
6 for some portion of it in the purchase of the lot.
7 Our position would be different if it was an average
8 situation, yeah. These assets being contributed to
9 Eureka and then sold to Missouri American is a unique
10 situation for me. I have never encountered it. And
11 staff members I have talked to haven't encountered one
12 in this particular situation before.

13 Q. Is it common for developers to construct
14 assets that are then donated to the city, to the
15 municipal water or sewer system?

16 A. That's the more typical situation that I am
17 familiar with. Yes, sir.

18 Q. All right. I don't have any further
19 questions. Ms. Van Gerpen, do you have any follow-up
20 questions?

21 MS. VAN GERPEN: Nothing, Your Honor.

22 JUDGE SEYER: All right. Mr. Cooper?

23 MR. COOPER: Yes.

24 EXAMINATION

25 QUESTIONS BY MR. COOPER:

1 Q. Mr. Gateley, I think I heard you say that
2 in a situation where there was no CID where a
3 developer constructed a system, tried to, maybe did,
4 maybe didn't recover costs through the sale of the
5 lots or lot prices, that staff would view that
6 differently than the CID situation. Is that what you
7 said?

8 A. Yes.

9 Q. So in that situation where the assets were
10 contributed and there is no CID -- contributed by a
11 developer and there is no CID, you would not view that
12 as a contributed plan?

13 A. I'm not an auditor so I'm not -- I don't
14 calculate such things. That refinement of that kind
15 of question would probably be better for Amanda
16 McMellen.

17 Q. Okay. What causes my confusion is in this
18 case staff suggested that it didn't know about the CID
19 at the time it did its recommendation, and yet it did
20 view the Arbors construction costs as a contributed
21 plan, correct?

22 A. When we initially asked Missouri American
23 and DRs for what the contributed plan was the response
24 indicated there was none. It's my understanding the
25 staff found out about the contributed plan for the

1 Arbors when they made the effort to go to the city and
2 review the records and discuss the situation with the
3 city. Again, I wasn't in that particular portion of
4 the investigation so I'm speaking to my understanding
5 of it.

6 Q. But it was still identified as contributed
7 plant, wasn't it?

8 A. Yes. In our recommendation it was.

9 Q. Okay. Now, the Judge asked you about the
10 concept of the residents of the Arbors paying twice,
11 and you were talking about both the CID assessments
12 and then whatever might be in their rates if Missouri
13 American purchases the systems. Now, you're not
14 suggesting that the Arbors development would have its
15 own separate rate from the rest of St. Louis County,
16 are you?

17 A. Rates would be determined at the next rate
18 case. So I can't answer that question for sure, but
19 at this point I know staff is not making that
20 contention.

21 Q. And staff, in fact, has recommended in this
22 case that if the transition proceeds that all of
23 Eureka's customers should be become a part of the St.
24 Louis County water rate making district, correct?

25 A. I would have to look back at my testimony

1 for sponsoring of the staff req.

2 Q. But let's assume that's the case. If it
3 is, wouldn't the amount associated with the Arbors
4 water system be essentially spread throughout the St.
5 Louis County rate making district?

6 A. Yes. The total amount of the purchase of
7 Eureka in addition to the money spent to remediate
8 Eureka's assets would be spread amongst all the
9 customers in that rate district including the assets
10 of Arbors.

11 Q. Which is several hundred thousand customers
12 or at least a couple hundred?

13 A. Yeah. More than that, yes.

14 Q. Okay. Thank you.

15 JUDGE SEYER: All right. Ms. Bretz, do
16 you have redirect?

17 MS. BRETZ: No.

18 JUDGE SEYER: All right. Thank you. Ms.
19 Bretz, call your next witness.

20 MS. BRETZ: Our next witness is Amanda
21 McMellen.

22 JUDGE SEYER: Would you raise your right
23 hand please? Thank you. Do you solemnly swear or
24 affirm that the testimony you give in this hearing
25 shall be the truth, the whole truth, and nothing but

1 the truth?

2 THE WITNESS: I do.

3 JUDGE SEYER: Go ahead.

4 EXAMINATION

5 QUESTIONS BY MS. BRETZ:

6 Q. Ms. McMellen, would you please state and
7 spell your name?

8 A. It's Amanda McMellen. A-m-a-n-d-a,
9 M-c-M-e-l-l-e-n.

10 Q. Where are you employed and what's your job
11 title?

12 A. I'm employed by Missouri Public Service
13 Commission as utility regulatory audit unit
14 supervisor.

15 Q. Are you the same Amanda McMellen who caused
16 to be prepared testimony titled direct testimony of
17 Amanda McMellen?

18 A. Yes.

19 Q. Do you have any changes or corrections to
20 your testimony?

21 A. I do have one correction.

22 Q. What is it?

23 A. On page 2, line 15, I want to strike and
24 Mayor Sean Flower and change "were" to "was" because
25 he was not present at that meeting. That's my

1 mistake.

2 Q. With this change is your testimony true and
3 direct to your knowledge?

4 A. Yes, it is.

5 Q. If I asked you those same questions today
6 your answers would be the same?

7 A. Yes.

8 Q. Judge, we offer Ms. McMellen's testimony as
9 Exhibit 112.

10 JUDGE SEYER: All right. Are there any
11 objection? All right. Exhibit 112 is admitted.

12 MS. BRETZ: And staff tenders the witness
13 for cross examination.

14 JUDGE SEYER: Ms. Van Gerpen, do you have
15 any questions?

16 MS. VAN GERPEN: Nothing, Your Honor.

17 JUDGE SEYER: Mr. Cooper?

18 MR. COOPER: Yes, Your Honor.

19 EXAMINATION

20 QUESTIONS BY MR. COOPER:

21 Q. Ms. McMellen, do you agree with Mr. Gateley
22 that generally properties that are contributed or
23 given to the utility or city by a developer where
24 there is no CID would be included in rate base or in
25 your experience would you identify that as a

1 contributed plant?

2 A. Yes, we would.

3 Q. Okay. If you were to estimate an annual
4 revenue requirement associated with 2.9 million of
5 Missouri American's rate base, do you have a back of
6 the envelope percentage that you use for -- I have
7 heard people use ten percent or 11 percent or whatever
8 it might be to take into account a rate of return on
9 that plus something for depreciation. Do you have any
10 sort of percentage that you use for that purpose?

11 A. As an estimation, typically about ten
12 percent.

13 Q. So for 2.9 million that would be about
14 290,000 would be annual revenue requirement associated
15 with that sort of rate base?

16 A. For Arbors rate base, correct.

17 Q. And I suppose from rate case to rate case
18 that would also reduce, wouldn't it, as depreciation
19 reduced the amount of plant on which the company was
20 receiving a return?

21 A. Yes. That's correct.

22 Q. But in your -- let's say it's 290,000,
23 given the size of St. Louis County district for
24 Missouri American for water, something perhaps less
25 than a dollar per customer across the district, is

1 that the sort of magnitude that we're talking about?

2 A. That sounds about right. That's just for
3 Arbors. That's not including the total difference.

4 Q. Right. Just isolating this Arbors piece?

5 A. Correct.

6 Q. That's all the questions I have here.

7 JUDGE SEYER: All right. Thank you. Are
8 there any questions from the commissioners? All
9 right.

10 EXAMINATION

11 QUESTIONS BY JUDGE SEYER:

12 Q. Ms. McMellen, I would ask you the same
13 question I asked Mr. Gateley. Would it make a
14 difference if those homeowners who bought lots in the
15 subdivision had paid for those as part of their lot
16 purchase or home, just if it's a completed home, as
17 opposed to paying the assessments, would your opinion
18 be different as far as whether they are paying double?

19 A. In my opinion, they wouldn't be paying
20 double, but the staff calculation would remain
21 unchanged.

22 JUDGE SEYER: Ms. Van Gerpen, do you have
23 any follow-up questions?

24 MS. VAN GERPEN: Nothing, Your Honor.

25 JUDGE SEYER: Mr. Cooper?

1 MR. COOPER: Nothing, Your Honor.

2 JUDGE SEYER: Any redirect?

3 MS. BRETZ: Nothing.

4 JUDGE SEYER: All right. Thank you, Ms.
5 McMellen.

6 THE WITNESS: Thank you.

7 JUDGE SEYER: Ms. Bretz, do you have
8 further witnesses?

9 MS. BRETZ: We don't have any further
10 witnesses. We do have two other exhibits that have
11 been filed in EFIS. I would like to have them
12 admitted. The first is the certificate of the state
13 auditor and some attached documents. We would ask
14 that to be entered as Exhibit 113.

15 JUDGE SEYER: Are there any objections to
16 that? Exhibit 113 is admitted.

17 MS. BRETZ: And then the other exhibit is
18 the affidavit of Sneha Darsi. She is with the County
19 Department of Revenue and attached documents. We ask
20 that to be entered as Exhibit 114.

21 JUDGE SEYER: All right. And that has
22 already been filed in EFIS, correct?

23 MS. BRETZ: Yes. Both of these have.

24 JUDGE SEYER: Is there any objection to
25 that? Do we need to take a break here?

1 MR. COOPER: Just a short one.

2 JUDGE SEYER: Let's break until about five
3 'til and we'll go off the record.

4 (Whereupon, a break was taken.)

5 JUDGE SEYER: Let's go back record. Mr.
6 Cooper, call your first witness.

7 MR. COOPER: Thank you, Your Honor. We
8 call Sean Flower.

9 JUDGE SEYER: Good morning. Would you
10 raise your right hand please? Thank you. Do you
11 swear or affirm that the testimony you will give in
12 this hearing shall be the truth, the whole truth, and
13 nothing but the truth?

14 THE WITNESS: I do.

15 JUDGE SEYER: All right. Thank you. Go
16 ahead, Mr. Cooper.

17 EXAMINATION

18 QUESTIONS BY MR. COOPER:

19 Q. Please state your name.

20 A. Sean Flower.

21 Q. And are the testifying here today in a
22 capacity for the City of Eureka?

23 A. Yes.

24 Q. And what is that capacity?

25 A. I'm the mayor of Eureka.

1 Q. And you testified in this case previously,
2 correct?

3 A. Yes.

4 Q. And you prepared for purposes of today's
5 proceeding, rebuttal testimony concerning the Arbors
6 that is found in question and answer form?

7 A. Yes.

8 Q. Your Honor, I would like to mark that for
9 identification as Exhibit 14.

10 JUDGE SEYER: All right.

11 Q. (By Mr. Cooper) Mayor Flower, do you have
12 any changes that you need to make to that testimony at
13 this time?

14 A. No. It's accurate.

15 Q. And thus if I were to ask you those
16 questions and your answers as reflected therein would
17 be true and correct to the best of your information,
18 knowledge, and believe?

19 A. Yes.

20 Q. Your Honor, I would offer Exhibit 14 and
21 tender the witness for cross examination.

22 JUDGE SEYER: All right. Are there any
23 objections to the admission of Exhibit 14? All right.
24 Exhibit 14 is admitted. Ms. Van Gerpen, do you have
25 any questions?

1 MS. VAN GERPEN: Nothing, Your Honor.

2 JUDGE SEYER: Ms. Bretz?

3 MS. BRETZ: Nothing, Your Honor.

4 JUDGE SEYER: Okay. Are there any
5 question from the commissioners? All right. Hearing
6 none, Mr. Flowers (sic), I have a couple questions.

7 EXAMINATION

8 QUESTIONS BY JUDGE SEYER:

9 Q. Do you -- or can we provide him with a copy
10 of what is referred to as document 2U?

11 MS. BRETZ: I can do that, Your Honor.

12 Q. (By Judge Seyer) Thank you. If you go to
13 roughly page 7 and 8 of that document, would you agree
14 that those -- that's more or less a breakdown of the
15 costs that were incurred for the CID when it comes to
16 the Arbors subdivision at least as of that date?

17 A. Yes. This is the schedule of basically the
18 developer was authorized to have certain classes of
19 reimbursement, and this was their actual request to be
20 reimbursed from the CID, the district.

21 Q. And so would you agree that all of that,
22 all of those assets that were constructed are part of
23 the water and sewer assets that are to be sold to
24 Missouri American water?

25 A. On the schedule that's attached?

1 Q. Yes. On what is -- let's just --

2 A. It's the one titled Parc Front Group LHP.
3 Am I on the right page?

4 Q. Uh-huh.

5 A. These are not all water assets.

6 Q. So -- and I understand what you're saying,
7 there is the asphalt trail and also streets and what
8 have you?

9 A. Yeah. It looks to me on this there was
10 about \$590,000 for the street and paving and then
11 there was another paving and trail that's shown as
12 \$48,000. So there was \$640,000 or so that was
13 non-water assets that were allowed to be reimbursed.

14 Q. Okay. And water system assets are what is
15 being sold to Missouri American Water?

16 A. Yes. The rest of the costs were all
17 associated with the water system.

18 Q. Was there -- so was there any part -- is
19 there any part of the sewer system that's in the
20 Arbors subdivision that's also part of the sale?

21 A. Yes.

22 Q. What is that?

23 A. Well, there would be in conjunction with
24 the Arbors subdivision a large section of sewer was
25 constructed to tie in -- there was a big line running

1 underneath Highway 44, and then there is all
2 transmission system for sewer within the subdivision.
3 So there are all sorts of sewer improvements. Some
4 are directly related to the individual homes in the
5 Arbors and zoom are related to hooking that
6 subdivision up to the actual overall system that takes
7 it back to our treatment plant.

8 Q. And also were there any lift stations
9 constructed for that subdivision?

10 A. I do not believe they had a lift station.
11 I believe that is gravity system through there.

12 Q. And when those water and sewer system
13 additions were completed, how were they transferred to
14 the city?

15 A. Generally, what's done is on water and
16 sewer we'll go out -- the city will inspect after
17 they are complete and make sure those systems are
18 properly built, we'll get as-built plans that shows
19 they have been built as designed. And generally, they
20 are accepted at that point on plat by plat basis.
21 Sometimes a large development might have phases, but
22 as it stands now as soon as it's done they tell us
23 it's done, we inspect it and accept it.

24 Q. How is it that you accept it? What's the
25 procedure?

1 A. Generally, it's with the subdivision plat
2 coming in. There is an approval process. It's
3 basically through subdivision inspection. We have a
4 series of things that we know it's eligible.

5 Q. Not a formal resolution?

6 A. There is not a formal resolution. There is
7 not one specific just to that.

8 Q. Per the development agreement and I don't
9 know that you need to look at development agreement,
10 but it is schedule three.

11 MS. BRETZ: It is at the end of the
12 document.

13 Q. (By Judge Seyer) I wasn't sure if you had
14 given him that portion of it. Has a certificate of
15 completion been submitted by the developer and
16 accepted by the City and the CID?

17 A. I'd have to really look and see. There is
18 so many different certifications that go in and things
19 that go on with this, I'm not sure. I'd have to read
20 that one to give you a good answer.

21 Q. At the risk of getting off on a tangent --
22 I hope I'm not. But you're familiar with the
23 engineering report that was used as part of the
24 appraisal?

25 A. Yes.

1 Q. Okay. If that engineering report referred
2 to a lift station and it's referring to the Arbors
3 lift station, with a building value of \$350,000 --

4 A. You could be correct. That may be and it
5 could be oversight of my knowledge of lift station
6 there in that subdivision. I could rephrase what I'm
7 saying. I'm not familiar with that in there, but if
8 that's in the engineering report it very well could be
9 accurate and it's an omission by me.

10 Q. Okay. I don't have any further questions.
11 Ms. Van Gerpen, do you have any questions?

12 MS. VAN GERPEN: Nothing, Your Honor.

13 JUDGE SEYER: Ms. Bretz, any --

14 MS. BRETZ: No, thank you.

15 JUDGE SEYER: Mr. Cooper, do you have any
16 redirect?

17 MR. COOPER: No questions.

18 JUDGE SEYER: All right. Thank you, thank
19 Mr. Flower. Mr. Cooper, call your next witness.

20 MR. COOPER: Thank you, Your Honor. We
21 call Brian LaGrand.

22 JUDGE SEYER: Mr. LaGrand, would you raise
23 your right hand please? Thank you. Do you swear or
24 affirm the testimony you give in this hearing shall
25 about the truth, whole truth, and nothing but the

1 truth?

2 THE WITNESS: I do.

3 JUDGE SEYER: Thank you. Go ahead, Mr.
4 Cooper.

5 MR. COOPER: Your Honor, we'll mark or we'd
6 like to mark Mr. LaGrand's rebuttal testimony as
7 Exhibit 15 for identification.

8 JUDGE SEYER: All right.

9 EXAMINATION

10 QUESTIONS BY MR. COOPER:

11 Q. Please state your name.

12 A. Brian W. LaGrand.

13 Q. By whom are you employed and what position?

14 A. Missouri American Water. I'm director of
15 rates for Missouri.

16 Q. And you have previously testified in this
17 case?

18 A. I have.

19 Q. Did you prepare for purposes of today's
20 proceeding testimony rebuttal testimony concerning the
21 Arbors in question and answer format?

22 A. Yes, I did.

23 Q. If I were to ask you the questions
24 contained in that exhibit today would your answers as
25 reflected therein be true and correct to the best of

1 your information, knowledge, and belief?

2 A. Yes.

3 Q. Your Honor, at this time I would offer
4 Exhibit 15 into evidence and tender Mr. LaGrand for
5 cross examination.

6 JUDGE SEYER: Any objection? Exhibit 15
7 is admitted. Ms. Van Gerpen, do you have any
8 questions?

9 MS. VAN GERPEN: Nothing, Your Honor.

10 JUDGE SEYER: Ms. Bretz?

11 MS. BRETZ: Briefly. Thank you.

12 EXAMINATION

13 QUESTIONS BY MS. BRETZ:

14 Q. Good morning, Mr. LaGrand.

15 A. Good morning.

16 Q. Do you have your testimony in front of you
17 there?

18 A. I do.

19 Q. Perhaps you don't have to refer to it, but
20 do you remember writing in your testimony that Mr.
21 Gateley's statement that the Arbors residents will pay
22 for the water system twice, that that's incorrect?

23 A. I do.

24 Q. Okay. And that's on page 8 going over to
25 page 9?

1 A. Yes, I see that.

2 Q. Let's walk through this just briefly.

3 A. Sure.

4 Q. So residents of the Arbors are paying CID
5 assessments, right?

6 A. That's my understanding, yes.

7 Q. And are you aware of how much CID
8 assessments are?

9 A. I believe it depends on the size of the
10 home or maybe size of the lot. Maybe \$500 to \$700
11 annually.

12 Q. If I said \$500 to \$800, that's in the
13 ballpark?

14 A. Yes.

15 Q. Are you aware of how long they'll be paying
16 those assessments?

17 A. I'm not.

18 Q. If I said they will be paying them for up
19 to maybe 32 years, does that sound familiar?

20 A. I'm not familiar with the term, but I'm
21 sure it's in the agreement for the CID.

22 Q. Okay. But you're aware they will be paying
23 these assessments for a number of years?

24 A. Yes.

25 Q. Are you aware what these assessments pay

1 for generally?

2 A. Yes.

3 Q. What do they pay for?

4 A. My understanding is that is to reimburse
5 the developer for costs associated with some water
6 infrastructure as well as some roads and other
7 non-water infrastructure.

8 Q. Sure. Sure. So the residents of Arbors
9 will be paying for the developer's costs of the water
10 system; is that correct?

11 A. Yes.

12 Q. Okay. And then if Missouri American
13 purchases the Eureka sewer and water system at \$28
14 million, that \$28 million will be incorporated in
15 Missouri American's rate base; is that correct?

16 A. Yes.

17 Q. And as part of that rate base is it
18 accurate to say that the ratepayers are paying for the
19 water system?

20 A. It's water system in its entirety, yes.

21 Q. Okay. So they'll be paying twice for the
22 water system; first through their CID assessment and
23 second time through their American American rates; is
24 that correct?

25 A. No. I disagree with that.

1 Q. What's your reason for that?

2 A. Well, when we get the fair market value,
3 you know, appraisal of the property, which of course
4 is different than a net value approach where they say
5 if the company had not elected to use the appraise
6 methodology, the appraisal is for the entire system.
7 There is not appraised value for each specific asset.
8 And that the appraisal price would then be allocated
9 over the assets. So it eventually goes on to Missouri
10 American's books and becomes part of rate base. So if
11 the determination was made that there should be zero
12 value for these assets that would mean other assets
13 would have little bit higher value, but in total the
14 entire system would still be \$28 million.

15 Q. But resident of Arbors will pay same rates
16 as their other neighbors in Eureka, isn't that
17 correct?

18 A. Under Missouri American ownership?

19 Q. Right.

20 A. Yes. As they do today under the city's
21 ownership.

22 Q. Sure. So they will be paying for the water
23 system through their rates?

24 A. Yes.

25 Q. Okay. So they will be paying through the

1 CID and then through Missouri American rates twice?

2 A. I still don't see it as twice.

3 Q. Okay. I don't have any other questions.
4 Thank you.

5 A. Okay.

6 JUDGE SEYER: Any questions from the
7 commissioners?

8 MR. SILVEY: No questions, Judge.

9 JUDGE SEYER: Thank you. I have got a
10 question.

11 EXAMINATION

12 QUESTIONS BY JUDGE SEYER:

13 Q. This is similar to my question to Mayor
14 Flower. You are familiar with the engineering report
15 that was used as a basis in the appraisal, correct?

16 A. Yes.

17 Q. And in that engineering report there was a
18 City of Eureka asset value report depreciated value
19 assets in insurance list. Does that sound familiar?

20 A. Yes. It's been some time since I reviewed
21 that report, but --

22 Q. Okay. And so that list, it lists assets in
23 the Arbors subdivision. And I just want to kind of go
24 down the list real quickly. There is a well that was
25 constructed, correct?

1 A. Yes. Yes.

2 Q. A 500,000 gallon storage tank, water
3 storage tank, and a building that included water
4 treatment mechanisms for lack of a better word. Does
5 that sound familiar?

6 A. Generally. Again, I don't have the list in
7 front of me, but in general, yes.

8 Q. And also on the sewer system side there was
9 a lift station that was installed?

10 A. Yes. Again, without reviewing it --
11 subject to check, yes.

12 Q. Mr. Cooper, those tables were not -- have
13 not been previously included in the exhibit that was
14 the engineering report. Would you have any objection
15 to those two tables being admitted as a Commission
16 Exhibit?

17 MR. COOPER: I don't think so, Judge, but
18 having said that, I'd like to see them so I make sure
19 I know what you're referencing.

20 JUDGE SEYER: Sure. Let's go off the
21 record and you may approach the bench.

22 (Whereupon, a short break was taken.)

23 JUDGE SEYER: After some investigation off
24 record, those tables are in the record as part of Mr.
25 LaGrand's direct testimony, which is Exhibit 11. So

1 Exhibit 11, schedule BWL-3 pages 17 and 18, so there
2 is no need to resubmit it as an exhibit. So Ms. Van
3 Gerpen, do you have any follow-up questions?

4 MS. VAN GERPEN: Nothing, Your Honor.

5 JUDGE SEYER: Ms. Bretz?

6 MS. BRETZ: Nothing.

7 JUDGE SEYER: Any redirect?

8 MR. COOPER: Very briefly, Your Honor.

9 EXAMINATION

10 QUESTIONS BY MR. COOPER:

11 Q. Mr. LaGrand, you were asked by staff
12 counsel, Ms. Bretz, about why you say that the Arbors
13 customers will not be paying twice for the water
14 system. Were you here earlier when Ms. McMellen
15 testified?

16 A. Yes, I was.

17 Q. And did you listen to her testimony
18 concerning kind of a high level estimate of what
19 impact \$2.9 million of rate base would have on the
20 rates for the Arbors customers?

21 A. Yes. I believe her estimate was
22 approximately \$209,000, but it's a requirement overall
23 which would then be spread across 345,000 customers.

24 Q. So something less than a dollar, would you
25 agree with that kind of order of magnitude assessment

1 of what impact this could have at worst on an Arbors
2 customer?

3 A. Yes.

4 Q. That's all the questions I have, Your
5 Honor.

6 JUDGE SEYER: All right. Anything further
7 for this witness?

8 MR. COOPER: No, Your Honor.

9 JUDGE SEYER: You may be excused.

10 THE WITNESS: Thank you.

11 MR. COOPER: Your Honor, I have -- I'll
12 let Mr. LaGrand clear here. I was asked during
13 opening statements about the overall vote for the
14 Eureka resolution, and that can be found in Mayor
15 Flower's direct testimony, page 7, which is Exhibit 1
16 in the case, and reflects that there were 2289 yes
17 votes, which is approximately 67 percent yes, to 1127
18 no votes, which is approximately 33 percent. And we
19 have since then located the precinct-specific
20 information which we can file pretty quickly, probably
21 by this afternoon if you would like us to do that.

22 JUDGE SEYER: Okay. Yes. And is it
23 obvious which precinct the Arbors is a part of?

24 MR. COOPER: I think we can make it
25 obvious. I think there is a map that identifies the

1 precinct and then by that you can tell that is the
2 precinct that encompasses the Arbors.

3 JUDGE SEYER: Okay.

4 MR. COOPER: Do you want to assign an
5 exhibit number for that identification for that file?

6 JUDGE SEYER: I believe we're up to
7 Exhibit 16.

8 MR. COOPER: Yeah. So Exhibit 16 would be
9 the results of the election broken down by precinct.
10 And are there any objections to that coming into
11 evidence? All right. Then once that is submitted it
12 will be admitted into evidence.

13 MR. COOPER: Thanks, Your Honor.

14 JUDGE SEYER: Do you have further
15 witnesses?

16 MR. COOPER: I do not.

17 JUDGE SEYER: Do the parties need a break
18 before closing arguments?

19 MS. BRETZ: A short break would be great.

20 JUDGE SEYER: Let's break for ten minutes
21 and go back on the record at 10:35.

22 (Whereupon, a short break was taken.)

23 JUDGE SEYER: I'll take closing arguments
24 beginning with the staff, Ms. Bretz.

25 MS. BRETZ: Thank you, Your Honor. I would

1 like to briefly remind the Commission of the larger
2 picture here. Sure, the people of Eureka voted to
3 sell their systems to Missouri American according to
4 the testimony of Mayor Flower. 2289 people in the
5 city of Eureka voted to sell the systems. The bigger
6 picture is that the approximately 340,000 Missouri
7 American customers of St. Louis County did not have
8 that opportunity. They did not have the opportunity
9 to examine the appraisals. They didn't have the
10 opportunity to go to town hall meetings. They
11 probably didn't think of looking at FA request on the
12 city of Eureka's website. They didn't have the
13 opportunity to ask Mr. Flower questions. They had
14 really no opportunity to make a decision whether
15 paying more for the system's value was in their best
16 interest. So 2289 voters compared to the larger
17 picture of 340,000 people -- customers is really a
18 drop in the bucket. It's miniscule. And of course,
19 it's pure speculation, but if given the choice whether
20 to pay more than net book value for the system, pay
21 more for the system than they are worth, I would
22 imagine a large number of 340,000 people would say no,
23 I don't want to do that even if it's a dollar a year,
24 a month, there is no value to us there. The appraisal
25 statute creates the potential of perverse incentives.

1 Of course, Eureka's voter voted to sell their systems
2 for \$28 million. \$28 million, \$40 million, \$50
3 million, it doesn't make any difference. They were
4 unhappy with the quality of the water. They knew
5 their sewer system was failing. They wanted to unload
6 it. The more the better, and that's what they got.
7 What they are potentially being paid is more than what
8 the system is worth. It also creates perverse
9 incentive for Missouri American. The stockholders in
10 Missouri American are not going to pay for that added
11 -- for the increased value. In fact, they get
12 rewarded for it because the increased value will be
13 reflected in in their rate of return. Sure, in the
14 bigger scope of things this purchase -- potential
15 purchase will have a small burden on all ratepayers,
16 but there is also a slippery slope argument here.
17 Allowing Missouri American to purchase for \$28
18 million, which is substantially more than what staff
19 computed net book value to be which has been, of
20 course, traditional way of basing rates will encourage
21 Missouri American to purchase more systems at inflated
22 prices. This clearly does not created fair, just, and
23 reasonable rates. And we ask for the Commission to
24 deny the application entirely.

25 JUDGE SEYER: All right. Thank you. Ms.

1 Van Gerpen, would you like to make a closing argument?

2 MS. VAN GERPEN: Yes. Just briefly, Your
3 Honor. Again, the OPC would like to remind the
4 Commission of its position that the Commission should
5 deny Missouri American Water Company's application for
6 CCN to acquire the city of Eureka's water and sewer
7 systems because the acquisition simply is not in the
8 public interest. In making its decision the
9 Commission must bear in mind that it is the Commission
10 itself, not Missouri American Water Company, who must
11 determine whether the requested CCNs are necessary or
12 convenient for the public service. Missouri American
13 Water Company's decision to proceed under the
14 appraisal statute does not change this fact. Here if
15 Missouri American Water Company acquires the Eureka
16 systems as it proposes to do, the resident of Arbors
17 subdivision will pay twice for parts of their water
18 system; once through the Arbors of Rockwood community
19 improvement special assessment and once through their
20 Missouri American Water rates. Today we learned the
21 cost or reimbursement through the CID are mostly for
22 the water system which will be sold to Missouri
23 American Water Company. The residents of the Arbors
24 will continue to pay their special assessment through
25 approximately 2048. We also learned that Missouri

1 American Water Company will place the system into rate
2 base, which directly affects these customers' rates
3 for their water service. Therefore, the citizens will
4 likely pay twice for part of their water system. For
5 this and the reasons addressed in the OPC's initial
6 and post-hearing brief, it simply cannot be that under
7 these circumstances the acquisition is necessary or
8 convenient for the public service. Therefore, OPC
9 requests that the Commission deny the requested CCN.

10 JUDGE SEYER: All right. Thank you. All
11 right. Mr. Cooper, would you like to make a closing
12 argument on behalf of Missouri American Water Company?

13 MR. COOPER I would thank you, Your Honor.
14 There is argument that St. Louis County customers had
15 no opportunity to approve or not approve this
16 transaction. I don't think there is anything unique
17 or unusual about that. That's true of every
18 situation. Having said that, we addressed in our
19 previous briefs potential rate impact on those
20 existing customers. We think that to use Ms. Bretz's
21 word, any impact on existing water customers from this
22 acquisition would be miniscule, and in fact, on the
23 sewer side there is likely benefits for the existing
24 sewer customers. In regards to the process of
25 arriving at the fair market value, it certainly is

1 what has been used as a process identified in section
2 393.320, the appraisal process itself. The use of
3 certified appraisers, the use of more than one
4 appraiser, I believe, continues to be a buffer and a
5 good judge of what the fair market value of water and
6 sewer assets are in this case. I think therein kind
7 of lies the fundamental disagreement that we have with
8 staff. In its closing it again mentioned comparison
9 of the net book value, which is purely regulatory rate
10 making term to the fair market value. These things
11 are two different things. We've talked about that
12 before in this matter and in our briefs and would ask
13 the Commission it keep that in mind as it moves
14 forward. I think the one additional fact that we did
15 not have quite as specifically at the start of the day
16 as we have now through testimony is that even if --
17 and we don't agree with this -- but even if one wants
18 to view the Arbors residents as paying twice for
19 assets because of the Missouri American rate, the
20 amount of or the annual revenue requirement associated
21 with \$2.9 million of Missouri American rate base is
22 likely to be less than a dollar per year those Arbors
23 residents would end up paying. So it is an extremely
24 small amount at worst even if one wants to look at it
25 in that fashion. Beyond that, Your Honor, I would

1 just refer you to my opening statement. I don't think
2 anything would change from my opening statement based
3 upon the evidence that was taken today. And I very
4 much thank you for your time.

5 JUDGE SEYER: All right. Thank you. Are
6 there any other matters that need to be addressed
7 before we adjourn. All right. Then this evidentiary
8 hearing is adjourned and we are off the record.

9 (Whereupon, the hearing was adjourned at
10 10:41 a.m.)

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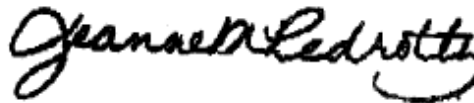
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I, Jeanne M. Pedrotty, a Certified Court Reporter (MO) and Certified Shorthand Reporter (IL), do hereby certify that the proceeding aforementioned was held on the time and in the place previously described.



Jeanne M. Pedrotty, CCR-Mo, CSR-IL

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