

Matter of the Application of Missouri-American Water Company

January 20, 2022

Vol 2

PHIPPS REPORTING

Raising the Bar!

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

Thursday, January 20, 2022

9:56 a.m. - 4:41 p.m.

Governor Office Building
200 Madison Street
Jefferson City, MO 65102-0360

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In the Matter of the Application)
of Missouri-American Water)
Company for a Certificate of)
Convenience and Necessity) WA-2021-0376
Authorizing it to Install, Own,)
Acquire, Construct, Operate,)
Control, Manage and Maintain a)
Water System and Sewer System)
In and Around the City of)
Eureka, Missouri)

KENNETH J. SEYER, Presiding
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,
MAIDA J. COLEMAN
JASON R. HOLSMAN
GLEN KOLKMEYER,
COMMISSIONERS

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1 The following proceedings began at 9:56 a.m.:

2 JUDGE SEYER: Let's bring this proceeding to
3 order and go on the record. Good morning. Today is
4 January 20, 2022. The time is actually 9:56. The
5 Commission has set this time for an evidentiary hearing
6 in the case captioned In the Matter of the Application
7 of Missouri-American Water Company for a Certificate of
8 Convenience and Necessity Authorizing it to Install,
9 Own, Acquire, Construct, Operate, Control, Manage and
10 Maintain a Water System and Sewer System in and around
11 the City of Eureka, Missouri.

12 This is Public Service Commission File No.
13 WA-2021-0376 and it also entails File No. SA-2021-0377,
14 and the two files have been consolidated for this
15 hearing. My name is Ken Seyer, and I am the Regulatory
16 Law Judge presiding over this hearing.

17 The hearing is taking place in the Public
18 Service Commission Hearing Room, Room 310 of the
19 Governor Office Building in Jefferson City, Missouri.
20 However, counsel and witnesses will also be
21 participating over the internet via Cisco WebEx.

22 Let's have counsel for the parties make their
23 entries of appearance beginning with Missouri-American
24 Water Company.

25 MR. COOPER: Thank you, Your Honor. Dean

1 Cooper from the law firm of Brydon, Swearingen & England
2 PC, PO Box 456, Jefferson City, Missouri 65102,
3 appearing on behalf of Missouri-American Water Company.

4 JUDGE SEYER: On behalf of the Public Counsel.

5 MR. WILLIAMS: Nathan Williams, Chief Deputy
6 Public Counsel appearing on behalf of the Office of the
7 Public Counsel and the public. My address is PO Box
8 2230, Jefferson City, Missouri 65102.

9 JUDGE SEYER: And for the Staff of the
10 Commission.

11 MS. BRETZ: Karen Bretz, B-r-e-t-z, for Staff
12 of the Commission. My address is 200 Madison Street,
13 8th Floor, Jefferson City, 65101.

14 JUDGE SEYER: Thank you. For those in the
15 hearing room --

16 MR. WILLIAMS: Judge --

17 JUDGE SEYER: Yes.

18 MR. WILLIAMS: -- if I may, I barely heard
19 Staff counsel.

20 JUDGE SEYER: Do you have your microphone
21 turned on?

22 MS. BRETZ: It's on. I'll speak more into it.
23 There we go.

24 JUDGE SEYER: Do you want to go ahead and
25 repeat?

1 MS. BRETZ: Sure.

2 MR. WILLIAMS: That's not necessary. I just
3 wanted to make the Commission aware.

4 JUDGE SEYER: Thank you. For those in the
5 hearing room, I do ask everyone to silence all cell
6 phones and mobile devices. For those connected via
7 Cisco WebEx, I ask that you mute your microphone when
8 not speaking. Also for those in the hearing room,
9 please be cognizant, like Ms. Bretz, of when your
10 microphones are on indicated by the green light and when
11 they are off. Please be aware that practically every
12 grunt, groan and page rustle will be picked up by those
13 microphones.

14 There are a few preliminary matters I'd like
15 to address. Mr. Linton, are you still here in the room?

16 MR. LINTON: Yes, Your Honor.

17 JUDGE SEYER: Yes, okay. David Linton is here
18 on behalf of the Jefferson County Public Sewer District,
19 but, Mr. Linton, it's my understanding that you do not
20 intend to stay for the hearing and that your witness
21 Douglas Bjornstad --

22 MR. LINTON: Right.

23 JUDGE SEYER: -- you've also asked that he be
24 excused from the hearing.

25 MR. LINTON: Yes, sir.

1 JUDGE SEYER: Do any of the parties have any
2 objection to that? I'm seeing shaking heads. So
3 Mr. Linton, you and your witness are excused from the
4 hearing.

5 MR. LINTON: Thank you, sir.

6 JUDGE SEYER: Also on the Joint List of Issues
7 that the parties filed, Issue No. 2 states that if the
8 Commission grants Missouri-American Water Company's
9 application for the CCNs: A, what conditions, if any,
10 should the Commission impose? And, B, of which service
11 areas should the Eureka water and wastewater systems
12 become a part?

13 Now, looking at the statements of position
14 that were filed by the parties, it appears to me at
15 least that the Company and Staff are in agreement as to
16 those issues, the conditions to be imposed and the
17 service areas. Am I correct about that?

18 MS. BRETZ: Yes.

19 MR. COOPER: I believe that's correct, Your
20 Honor.

21 JUDGE SEYER: Thank you. Do the parties have
22 any preliminary matters they'd like to address? I'd
23 like to go over the witness list as far as the order of
24 the witnesses and make sure that there are no additions
25 to the list that was previously filed.

1 For the Company, Mr. Cooper, I show Sean
2 Flower and I understand -- well, I'm sorry. I'm getting
3 my witnesses mixed up. Will he be here in person?

4 MR. COOPER: He is here in person.

5 JUDGE SEYER: Followed by Mr. Joseph Batis?

6 MR. COOPER: Batis.

7 JUDGE SEYER: Batis.

8 MR. COOPER: He will be appearing via WebEx.

9 JUDGE SEYER: Brian Eisenloeffel.

10 MR. COOPER: Yes. The rest of our witnesses
11 are here in person: Mr. Eisenloeffel, Mr. Kaiser, Ms.
12 Simpson and Mr. LaGrand.

13 JUDGE SEYER: There's no additions to that
14 list as far as what had previously been filed?

15 MR. COOPER: No.

16 JUDGE SEYER: And then for the Staff?

17 MS. BRETZ: So our first witness is Curt
18 Gateley, and then as we discussed Mr. Harris and
19 Mr. Roos are unavailable. So we'll figure out later how
20 to deal with that. Mr. Buttig is here, Ms. McMellen is
21 here, and Mr. Glasgow will be on WebEx.

22 JUDGE SEYER: As far as exhibits go, have all
23 exhibits been premarked?

24 MR. COOPER: We have supplied our hard copies
25 of Exhibits 1 through 12 to the court reporter.

1 MS. BRETZ: I have them here. I haven't
2 supplied them yet though.

3 JUDGE SEYER: I do have a question for the
4 parties. Does either party plan to offer into evidence
5 or plan to ask the Commission to take notice of the 2021
6 Uniform Standards of Professional Appraisal Practice?

7 MS. BRETZ: We would like to do that, yes.

8 JUDGE SEYER: And so that's something that you
9 have here today?

10 MS. BRETZ: Yes, I have copies of that.

11 JUDGE SEYER: There are also a couple of
12 matters I'd like to discuss with the parties. The
13 Commissioners are interested in whether the parties have
14 had prior cases involving acquisitions under Section
15 393.320 of the Missouri Statutes.

16 If that's so, will the parties have witnesses,
17 a witness or witnesses, here to testify during the
18 hearing as to those prior cases or can you make
19 witnesses available before the close of the hearing?

20 MR. COOPER: The answer for the Company, Your
21 Honor, is that yes, at least the Lawson, Garden City and
22 Orrick cases for Missouri-American Water Company were
23 processed under 393.320. It might depend upon the
24 question which of our witnesses would be the most
25 appropriate to answer it, but I'm sure that one of our

1 witnesses or maybe more than one of our witnesses could
2 handle those sort of questions.

3 JUDGE SEYER: Okay.

4 MS. BRETZ: For Staff, Judge, we can make
5 witnesses available; but if we could know in advance the
6 scope of the questions, the nature of the questions,
7 that might be more helpful to make sure that we have the
8 right witness for the Commission.

9 JUDGE SEYER: The Commissioners also have
10 questions regarding the sales comparison approach to
11 determining the value of a utility that focus, those
12 questions focus on the sales metrics used. For example,
13 the sales price per customer, the sales price per
14 million gallons per day treated, et cetera. Can you
15 tell me who would be the most appropriate witness or
16 witnesses to testify on that topic? Mr. Cooper?

17 MR. COOPER: For the Company, I believe it
18 would be Mr. Batis.

19 MS. BRETZ: For Staff, Your Honor, I think
20 Amanda McMellen could address that and perhaps also
21 Mr. Gateley.

22 JUDGE SEYER: Thank you. Are the parties
23 ready for opening statements?

24 Before we get into opening statements,
25 Chairman Silvey is here today. Would the other

1 Commissioners identify themselves, let us know they're
2 here for the hearing?

3 COMMISSIONER HOLSMAN: Thanks, Judge. This is
4 Commissioner Holsman. I'm on.

5 COMMISSIONER COLEMAN: Commissioner Coleman is
6 here.

7 JUDGE SEYER: All right. Thank you,
8 Commissioners.

9 Mr. Cooper, would you like to present your
10 opening statement?

11 MR. COOPER: Yes, Your Honor.

12 JUDGE SEYER: Thank you.

13 MR. COOPER: Your Honor, what I have handed
14 out --

15 JUDGE SEYER: Mr. Cooper, I'm not sure that
16 that microphone is on.

17 MR. COOPER: Doesn't seem to be, does it? It
18 still doesn't. I can do this from --

19 Is this better, Judge?

20 JUDGE SEYER: Yes.

21 MR. COOPER: What I have handed out is what
22 would have been a power point on the board; but I think
23 given our circumstances here in the room and on the
24 WebEx, I have both handed out hard copies of that power
25 point and I emailed to you, Judge, a copy as well and I

1 emailed a copy to Mr. Williams as well. So if others
2 are interested, if you would like to forward it to any
3 of the Commissioners, that would be wonderful.

4 JUDGE SEYER: Why don't you give me a second
5 to do that.

6 COMMISSIONER KOLKMEYER: Commissioner
7 Kolkmeier is here.

8 JUDGE SEYER: Good morning, Commissioner.

9 COMMISSIONER KOLKMEYER: Good morning.

10 JUDGE SEYER: This is Judge Seyer.
11 Mr. Cooper, you may proceed.

12 MR. COOPER: Thank you, Judge. This case
13 primarily concerns the application of Section 393.320 of
14 the Revised Statutes of Missouri, otherwise known as the
15 appraisal statute, to a transaction between the City of
16 Eureka and Missouri-American Water Company that had its
17 origin in 2019.

18 Eureka and MAWC have relied specifically on
19 that statute which is designed to encourage
20 consolidation of small water and sewer systems into
21 larger systems having greater economies of scale and
22 resources.

23 Section 393.320 applies where the buyer,
24 Missouri-American in this case, is a large water public
25 utility that provides safe and adequate service and the

1 seller, again in this case Eureka, is a small water
2 utility. There is no dispute in this case that MAWC's
3 and Eureka's water and sewer systems separately qualify.

4 The City of Eureka and MAWC signed a letter of
5 intent to explore a potential acquisition in July of
6 2019, to include an agreement to pursue an appraisal of
7 the systems. That appraisal was completed in March of
8 2020 by three certified general appraisers under Chapter
9 339 of the Revised Statutes of Missouri who additionally
10 have specific qualifications in utility appraisals.

11 On May 19 of 2020, Eureka Board of Aldermen
12 passed an ordinance providing notice of an election to
13 vote on Proposition S, a question as to whether the
14 water and wastewater utility owned by the City of Eureka
15 should be sold. The specific question on the ballot is
16 found on the second page of that power point that I
17 handed out, but it states shall the City of Eureka,
18 Missouri be authorized to sell its water and wastewater
19 (sewer) utilities to Missouri-American Water Company for
20 the sum of \$28 million.

21 The election was held on August 4 of 2020, and
22 a majority of votes cast were in favor of the sale.
23 Proposition S garnered 2,289 yes votes, or 67 percent,
24 to 1,127 no votes, or approximately 33 percent.
25 Thereafter, on November 17 of 2020, MAWC entered into a

1 Purchase Agreement with Eureka. This application was
2 later filed in April of 2021.

3 Missouri-American requests in this case
4 certificates of convenience and necessity to provide
5 water and sewer service within the identified service
6 areas in and around the City of Eureka utilizing the
7 Eureka systems. And as you probably have come across,
8 Judge, we filed a stipulation primarily with Jefferson
9 County District that further, doesn't further identify,
10 but agrees to an identified legal description and map
11 for those service areas.

12 The Commission may grant a water or sewer
13 corporation a CCN to operate after determining that the
14 construction and/or operation are necessary or
15 convenient for the public service. The Commission
16 articulated criteria to be used when evaluating
17 applications for utility certificates of convenience and
18 necessity in the case In Re Intercon Gas, Inc. Those
19 factors are commonly referred to as the Tartan Factors.
20 They are shown on the following page in the power point
21 slides.

22 In this case we believe there is a need for
23 the service as residents in and around the City of
24 Eureka currently make use of the existing water and
25 sewer systems. And, in fact, Eureka is the last

1 remaining municipality in St. Louis County that still
2 operates its own water treatment and distribution system
3 and its own wastewater system.

4 MAWC is qualified to provide the service as it
5 already provides safe, adequate and compliant water
6 service to over 470,000 Missouri customers and sewer
7 service to over 15,000 Missouri customers.
8 Missouri-American Water Company has the financial
9 ability to provide the services.

10 The Commission has indicated previously that
11 positive findings with respect to the other four
12 standards will in most instances support a finding that
13 an application for a CCN will promote the public
14 interest. The factors for granting certificates of
15 convenience and necessity to Missouri-American in this
16 case have been satisfied and it is in the public's
17 interest for Missouri-American to provide water and
18 sewer service to the customers currently served by the
19 City of Eureka.

20 Further, MAWC possesses adequate, technical,
21 managerial and financial capacity to operate and improve
22 the water and sewer systems it wishes to purchase from
23 the city. Thus, the Commission should authorize the
24 transfer of assets and grant MAWC the certificates of
25 convenience and necessity to provide water and sewer

1 service within the proposed service area.

2 Staff argues in the memorandum that is a part
3 of Mr. Gateley's testimony that the transaction as
4 requested by MAWC in its application, i.e., utilizing
5 the appraisal method contained in Section 393.320, RSMo,
6 is not in the public interest.

7 If you'll look at the following page in the
8 slide deck, there's a quote from a Commission case In
9 the Matter of the Joint Application of Great Plains,
10 KCPL, and Aquila from a Report and Order, and in that
11 section the Commission stated in part as follows as to
12 the public interest: The public interest is found in
13 the positive, well-defined expression of the settled
14 will of the people of the state or nation, as an
15 organized body politic, which expression must be looked
16 for and found in the Constitution, statutes, or judicial
17 decisions of the state or nation.

18 In this situation, the public interest has
19 been expressed through statute, that being Section
20 393.320, the appraisal statute. Utilizing that statute
21 cannot be contrary to the public interest.

22 Staff Witness McMellen further seems to
23 suggest in her rebuttal testimony that Staff's estimate
24 of the net book value is a more appropriate basis to
25 establish the value of the acquired City of Eureka

1 properties than the sales comparison approach used by
2 Missouri-American.

3 Essentially Staff is arguing that its after
4 the fact calculation of net book value is a more
5 appropriate measure of the value of the system than the
6 appraised value. Of course, net book value is not
7 mentioned in Section 393.320 and is very different from
8 the fair market value that is referenced by the statute.

9 Moreover, as already discussed, the decision
10 as to whether net book value or fair market value is a
11 more appropriate basis of establishing ratemaking rate
12 base in this situation has already been made by the
13 General Assembly. Use of the appraisal is mandatory,
14 not discretionary under the provisions of Section
15 393.320.

16 And again, if you'll turn to the next page of
17 the slide deck, the next three pages actually, are some
18 quotes from that statute which indicate that the
19 procedures contained in this statute may be chosen by a
20 large water public utility, and if so chosen shall be
21 used by the Public Service Commission.

22 Subsection 5 on the next page indicates that
23 the lesser of the purchase price or the appraised value,
24 together with the reasonable and prudent transaction,
25 closing, and transition costs incurred by the large

1 water public utility, shall constitute the ratemaking
2 rate base. And on the next page there's Section 8 which
3 says this section is intended for the specific and
4 unique purpose of determining the ratemaking rate base
5 of small water utilities and shall be exclusively
6 applied to large water public utilities in the
7 acquisition of a small water utility.

8 I would note that the use of water in that
9 statute is interesting in that it clearly applies to
10 both water and sewer, but the statute refers to those
11 entities in that fashion nonetheless.

12 This approach makes much sense given that
13 municipal systems such as those of Eureka have no net
14 book value as that term is used by the Commission. The
15 books and records of a municipality are greatly
16 different from those of a regulated Missouri utility.
17 In fact, Missouri-American would suggest that this is
18 one of the reasons that the appraisal statute is
19 necessary.

20 Similarly, aspects of the net book value
21 calculation are just plain inapplicable to a fair market
22 value analysis. For example, plant assumed to have been
23 contributed, or to have CIAC as the regulatory world
24 refers to it, and plant assumed to be fully depreciated,
25 would have no net book value. However, it's common

1 sense that fully operational plant that is providing
2 service to customers on a daily basis does have value
3 for purposes of a sale at fair market value.

4 In this case the purchase price, which was
5 specifically identified in the public election held in
6 Eureka, is equal to the appraised value. That amount,
7 together with the reasonable and prudent transaction
8 closing and transition costs incurred by
9 Missouri-American, the statute indicates shall be used
10 by the Public Service Commission and shall constitute
11 the ratemaking rate base.

12 Staff also attacks the appraisal itself. The
13 statute requires certain things. And again on pages 8
14 and 9 of that slide deck we reproduced that part of the
15 statute. The appraisal in this process in this case
16 follow the statutory requirements to include the use of
17 three appraisers all of which are certified general
18 appraisers under Chapter 339, among many other
19 qualifications.

20 Staff, without the benefit of the testimony of
21 any certified appraiser, tries to allege deficiencies in
22 the appraisal completed in March of 2020. Staff
23 primarily alleges that MAWC's intended plans for the
24 water system should have been taken into account that
25 certain MDNR reports associated with the sewer system,

1 and I would emphasize that this applies only to the
2 sewer system, undermine the high level review of the
3 condition of that sewer system and that MAWC should have
4 negotiated a lower purchase price. All of these matters
5 are specifically addressed in Missouri-American's
6 surrebuttal testimony, among other issues, and none of
7 those arguments change the validity of the appraisal
8 conducted by the certified appraisers.

9 As was mentioned previously, the Company has
10 no objection to the conditions proposed by Staff should
11 the application be approved, and additionally
12 Missouri-American takes the position that Eureka's now
13 approximately 4,100 water customers should be added to
14 the St. Louis County customer base of approximately
15 343,000 customers. And on the sewer side Eureka's
16 approximately 4,100 customers should join the other
17 Missouri sewer rate category of approximately 8,500
18 customers.

19 Missouri-American believes that given the
20 relative size of the St. Louis County Water District and
21 the other Missouri sewer district the impact of the
22 acquisition and the addition of the approximately 4,100
23 customers for each water and sewer and the appraised
24 ratemaking rate base for Eureka will have a de minimus
25 impact on the existing St. Louis County water customers

1 and be a measurable benefit for the other Missouri sewer
2 customers.

3 As a result of these matters,
4 Missouri-American asks the Commission to grant it the
5 water and sewer certificates of convenience and
6 necessity requested in this case subject to the
7 conditions proposed by the Staff and set the ratemaking
8 rate base for the Eureka water system at \$18 million and
9 the ratemaking rate base for the Eureka sewer system at
10 \$10 million plus reasonable and prudent transaction,
11 closing and transition costs as called for by Section
12 393.320. That's all I have, Your Honor.

13 JUDGE SEYER: Thank you, Mr. Cooper.

14 Mr. Williams, would you like to make an
15 opening statement on behalf of the Public Counsel?

16 MR. WILLIAMS: Briefly.

17 JUDGE SEYER: I'm sorry. Before we go there,
18 I'll give the Commissioners an opportunity to ask
19 questions. Chairman Silvey.

20 CHAIRMAN SILVEY: Thank you. Just a couple
21 questions. You mentioned it on several different pages
22 of your power point. Just to be clear, does the
23 Commission have the authority to take any action other
24 than approving or rejecting the application?

25 MR. COOPER: I'm more challenged by that than

1 maybe I should have been. I probably would have to
2 reflect more on it, Chairman. I think that is probably
3 true. However, that given the wording of 393.320 that
4 there's not really a middle ground in this case.

5 CHAIRMAN SILVEY: Does the Commission have the
6 legal authority to set a rate base at an amount
7 different from the appraisal?

8 MR. COOPER: I would say no. I think that
9 393.320 is fairly straight forward in terms of what it
10 directs the Public Service Commission to do in this
11 situation.

12 CHAIRMAN SILVEY: If the Commission is
13 persuaded by Staff's arguments that the appraisal is
14 deficient, what authority do we have as it pertains to
15 the appraisal?

16 MR. COOPER: Well, I'm thrown a little by the
17 word deficient, because I think that if it were truly an
18 unlawful appraisal, I think that the Commission could
19 find that. I think that if by deficient someone said I
20 would have appraised it differently or perhaps they
21 should have done X or maybe could have done Y, I don't
22 know that that makes it unlawful.

23 CHAIRMAN SILVEY: So by unlawful, the
24 Commission would have to find that one of the three
25 appraisers was not a disinterested person; is that the

1 only way that it could be unlawful?

2 MR. COOPER: That's certainly the most
3 obvious, I think. You know, the statute also says it
4 shall be in conformance with Missouri law and the
5 Uniform Standards of Professional Appraisal Practice,
6 which we certainly believe that the appraisal in this
7 case is.

8 CHAIRMAN SILVEY: So apart from those two
9 areas, appraiser in good standing with Missouri
10 practices and disinterested, those are the only two
11 things that are required for the appraisal itself to be
12 a legal appraisal?

13 MR. COOPER: That would be my understanding,
14 yes, Chairman.

15 CHAIRMAN SILVEY: Thank you, Judge. I have no
16 further questions.

17 JUDGE SEYER: Thank you, Chairman. Do any of
18 the other Commissioners have questions?

19 COMMISSIONER KOLKMEYER: No questions, Judge.
20 Thank you.

21 COMMISSIONER HOLSMAN: Same here, Judge. No,
22 thank you.

23 JUDGE SEYER: All right. Mr. Williams, now I
24 believe we're ready for your opening statement.

25 MR. WILLIAMS: Thank you. Public Counsel has

1 not taken a position as to whether or not the Commission
2 should grant a certificate in this case at this point in
3 time. However, really the ultimate question the
4 Commission is faced with is, is the public in Missouri
5 as a whole better off if Missouri-American Water takes
6 over and operates Eureka's water and sewer systems.

7 And part of the analysis should include -- or
8 must include the impact on rates because of the
9 appraisal statute. If it were not done because of the
10 appraisal statute, it would be done if there were an
11 acquisition premium, and that's actually been litigated
12 in the past whenever Great Plains Energy acquired
13 Aquila. There's a case out there State ex rel. AG
14 Processing, Inc. vs. PSC at 120 S.W.3d 732 (Mo.banc
15 2003).

16 As to Chairman Silvey's question about whether
17 or not the Commission can do anything in terms of does
18 it just have to approve the application or reject it, in
19 other words, issue a certificate or not, 393.170 gives
20 the Commission the authority to impose conditions on a
21 certificate. The parties -- Well, Missouri-American
22 Water and Staff have agreed to certain conditions, but
23 that list need not be exhaustive. In other words, the
24 Commission could impose other conditions should it
25 desire.

1 The only other thing I'd like to point out is
2 what I said in the position statement that for
3 negotiating a purchase price there's really no incentive
4 for either Missouri-American Water Company or the City
5 of Eureka to minimize that price. Certainly the city
6 wants to maximize it. There's really no incentive on
7 Missouri-American Water to minimize it. That's all I
8 have. I'd be happy to take any questions.

9 JUDGE SEYER: Chairman Silvey.

10 CHAIRMAN SILVEY: Thank you. I would just
11 like to follow up does Public Counsel agree with
12 Company's counsel that the Commission does not have the
13 legal authority to set a rate base at an amount
14 different from the appraisal under the statute?

15 MR. WILLIAMS: That's an interesting question.
16 I don't know that anyone has ever litigated exactly how
17 that statute works. In fact, I believe it has not. I
18 think all of the cases that were mentioned, and I think
19 the City of Bolivar is involved, involved a statute as
20 well were all resolved by settlement. I could be wrong
21 about that. In any event, I don't believe that question
22 has arisen and I don't know if it's the Commission or a
23 court where someone would challenge I guess the
24 underlying appraisal that's being used to support the
25 rate base treatment.

1 But aside from that, it seems to me if the
2 appraisal is legitimate, then the statute is clear on
3 its face.

4 CHAIRMAN SILVEY: To follow up on what you
5 just said, what is Public Counsel's opinion of what
6 would make an appraisal illegitimate?

7 MR. WILLIAMS: I don't know. I think it's one
8 of those things I would need to see it. Certainly
9 collusion. And I'm not asserting or claiming that any
10 of that applies in this case certainly.

11 CHAIRMAN SILVEY: Sure. I don't believe
12 anyone is necessarily just questioning what the
13 parameters would be to find an appraisal illegitimate.

14 MR. WILLIAMS: Frankly, I'm going to research
15 that issue. I don't doubt that the sufficiency of
16 appraisal has been challenged in other contexts,
17 condemnations, for example, but I'm not familiar with
18 that. Certainly something different than what the
19 matters I've seen before the Commission in the past.

20 CHAIRMAN SILVEY: Okay. Thank you, Judge.
21 Thank you.

22 JUDGE SEYER: Do any of the other
23 Commissioners have questions? All right. Hearing none.

24 Ms. Bretz, would you like to make an opening
25 statement?

1 MS. BRETZ: Yes, please. If it's okay, I'll
2 stay seated as well. It seems to be working best.

3 JUDGE SEYER: That's fine.

4 MS. BRETZ: Good morning. May it please the
5 Commission. I'm Karen Bretz representing Commission
6 Staff. Missouri-American proposes to purchase the City
7 of Eureka water and sewer assets. Each utility has
8 about 4,100 customers. Missouri-American and Eureka
9 received an appraisal valuing them at 28 million, which
10 is divided as the water system at 18 million and the
11 sewer system at 10 million.

12 Eureka voters voted in August 2020, to sell
13 their utilities for 28 million, and Missouri-American
14 and Eureka executed a purchase contract in November to
15 purchase them for 28 million. Missouri-American's other
16 customers did not vote on this and were not permitted to
17 vote on the acquisition.

18 Central to this case is the appraisal statute,
19 393.320, RSMo. This is not the first time that
20 Missouri-American has purchased small utilities using
21 the appraisal statute, but this is the Commission's
22 first opportunity to substantively consider its
23 parameters.

24 The process described in the appraisal statute
25 requires the large utility and the small utility to each

1 select an appraiser, and these two appraisers select a
2 third one. The statute says that each of the
3 appraisers, quote, shall be a disinterested person, end
4 of quote. The reason for this is to have a neutral
5 process. The appraisers are to jointly produce an
6 appraisal.

7 Missouri-American has made only one of the
8 appraisers, Mr. Batis, available today. The appraisal
9 statute's purpose is to facilitate large utilities
10 purchasing small typically ailing utilities. That's
11 what we have here. Missouri-American is a large utility
12 seeking to purchase the water and sewer assets of the
13 City of Eureka.

14 The sewer system is ailing. It's under the
15 Missouri Department of Natural Resources' enforcement
16 for not meeting effluent limitations and it regularly
17 has sanitary sewer overflows. Curt Gateley, Staff
18 Manager for Water, Sewer and Steam, is available to
19 answer questions about policy, Staff's investigation and
20 DNR compliance.

21 Although the water system is in compliance
22 with DNR, there are esthetic issues with it so that if
23 the sale goes through, Missouri-American intends to
24 build a pipeline from St. Louis County to Eureka to
25 provide a new source of water. In other words, the

1 assets that Missouri-American proposes to purchase for
2 18 million will be relegated to purchase a mere backup
3 system that will be largely redundant. If this
4 transaction is approved, the Eureka water system will be
5 incorporated into Missouri-American's St. Louis County
6 service area.

7 Missouri-American proposes to charge all these
8 customers the full \$18 million for a backup system for
9 its 4,100 Eureka customers. How is this fair? The
10 Commission is aware that Staff engineers Andrew Harris
11 and David Roos are unable to testify this week. At a
12 later time, they can further discuss the system's
13 conditions based on their physical inspections and
14 review of reports.

15 How did Missouri-American arrive at a value of
16 28 million? As I stated earlier, the appraisal statute
17 requires three disinterested appraisers to produce an
18 appraisal. Here the three appraisers hired Flinn
19 Engineering to assess the utility's condition, calculate
20 their 2019 estimated cost, and then depreciate them
21 based on the Missouri-American approved depreciation
22 schedule.

23 The engineers produced two studies. The first
24 is dated January 18, 2020, and the second is dated March
25 16, 2020. The first engineering study values the water

1 system at 10.5 million and the sewer system at 5.5
2 million for a total of 16 million. Interestingly, this
3 is \$2 million less than Staff's calculation of net book
4 value.

5 Also interesting is the number of emails
6 between Missouri-American and Flinn Engineering during
7 the report writing process. This is interesting because
8 Missouri-American is not the client. The appraisers
9 are. The appraisers hired Flinn Engineering to produce
10 a report. These emails show that Missouri-American
11 personnel were involved in creating the Flinn
12 Engineering report.

13 How can this possibly be considered neutral?
14 As I stated earlier, the first engineering report is
15 dated January 18, 2020, for a total estimated value of
16 16 million. A few weeks later on February 7, 2020,
17 Derek Linam, Missouri-American Engineering Manager, and
18 Kelly Simpson, a Professional Engineer at Flinn
19 Engineering, exchanged a series of emails to arrange a
20 meeting.

21 Ms. Simpson writes to Mr. Linam, quote, I'll
22 come to your office and bring everything on my laptop.
23 We can test various assumptions live on the spreadsheet
24 and see what it does, end of quote.

25 Mr. Linam writes back, quote, sounds good.

1 Thanks. End of quote. There's another email exchange a
2 few days later on February 10. Mr. Linam at
3 Missouri-American writes to Ms. Kelly, quote, here is a
4 crude spreadsheet I put together of parcel data year
5 built that we can discuss. Thought I would send it to
6 you to look at before our discussion. Again, just
7 wondering how a newer system assumption will impact
8 depreciated value for the water and wastewater
9 distribution and collection systems, end of quote.

10 These emails illustrate Missouri-American's
11 involvement in creating the Flinn Engineering report.
12 This cannot be the neutral process that the legislature
13 envisioned in passing the appraisal statute. The second
14 Flinn report is dated March 16, 2020. It values the
15 Eureka utilities at 31.5 million, which is almost twice
16 the original amount.

17 Missouri-American's explanation for the
18 differing reports is that for the second report it
19 provided Flinn with more accurate GIS data about the
20 assets' ages. However, Flinn Engineering did not offer
21 an explanation in the second report why it revised its
22 numbers from the first report. Flinn did not even
23 mention the first report in the second report. Again,
24 this causes Staff to question how neutral this process
25 was.

1 According to its engineering report, Flinn
2 based its valuation of the above-ground assets on
3 insurance values. Flinn made no independent valuation
4 of them, because Flinn didn't inspect them as part of
5 preparing its reports.

6 Ironically, while Flinn was hired to be the
7 consulting engineers for this project, Flinn never
8 visited the site before writing its reports.
9 Flinn based the replacement cost of the below-ground
10 assets on information from the City of Eureka vendors
11 and contractors.

12 For both reports, Flinn determined the asset's
13 current cost, then depreciated this based on
14 Missouri-American's approved depreciation schedule.
15 What the emails between Missouri-American and Flinn and
16 also the emails between Flinn and the appraisers do not
17 show is consideration of the utility's condition.

18 There is no substantive discussion of the
19 asset's condition, repairs that need to be done, the
20 status of DNR enforcement action or whether the systems
21 are even meeting DNR standards. The Flinn report is
22 full of fuzzy language about condition.

23 For example, on page 4 of both reports, Flinn
24 writes, quote, the water distribution system was not
25 observed for condition. Based on the condition of the

1 above-ground assets, it is assumed that the water
2 distribution system is also well maintained and is
3 assumed to be in good condition, end of quote.

4 On the next page, Flinn writes the same about
5 the sewer collection system. More fuzzy, unhelpful
6 language is on page 4 of both reports. Flinn states
7 about the sewer lift stations, quote, since they are
8 still in operation and could continue to stay in
9 operation well beyond the depreciation period, it is
10 assumed they are in good condition, end of quote.

11 What does this mean? Missouri-American
12 acknowledges that if it acquires the sewer system, it
13 will invest \$350,000 for wastewater lift station
14 replacement. Although this isn't a great deal of money,
15 it certainly raises the question of condition which
16 Flinn dodges.

17 The appraisers relied on information in the
18 Flinn report to perform their appraisal. Staff's
19 position is that the appraisal is flawed on numerous
20 levels and does not provide an accurate value of the
21 assets. There are different ways of appraising. Using
22 sales comparisons is one method. Another is the cost
23 approach. As its name implies, the cost approach looks
24 at the cost of construction less depreciation. This is
25 what Flinn engineers used to value the systems.

1 The appraisers looked at the sales of other
2 small systems on a per customer basis to assign the
3 Eureka assets per customer values. For example, the
4 most expensive water system on a per customer basis that
5 the appraisers looked at is the Village of Sidney in
6 Illinois near Champaign. Illinois-American purchased
7 the system for 2.3 million and it has 567 customers.
8 It's substantially smaller than the Eureka systems.

9 2.3 million -- this is for the water system.
10 2.3 million divided by 567 equals \$4,056 per customer.
11 This was the most expensive system on a per customer
12 basis that the appraisers looked at. Based on this, the
13 appraisers assigned an even more expensive per customer
14 value to the Eureka water system at \$4,500 per customer.
15 4,500 multiplied by at that time 4,009 Eureka customers
16 equals just over 18 million. The appraisers didn't look
17 at any comparable sales of small water systems at \$4,500
18 per customer. The highest, again the Village of Sidney,
19 was almost \$500 less than what the appraisers assigned
20 to Eureka.

21 The appraisers didn't explain why the Eureka
22 system is worth so much more than the next most
23 expensive system. The Commission lacks information
24 about this comparable to determine whether it's a valid
25 comparison. What's the point of using comparable sales

1 anyway when the appraisers just picked a number higher
2 than any of the comparables?

3 For the Eureka sewer system, the appraisers
4 looked at sales of small sewer systems and determined a
5 per customer value of \$2,500. 2,500 multiplied by 4,000
6 is almost 10 million.

7 Staff's position is that the sewer system
8 appraisal is flawed and the Commission should reject it.
9 The appraisal does not satisfy the requirements of the
10 appraisal statute and should not be evidence of
11 ratemaking base. This is because the appraisal takes no
12 consideration of the sewer system's condition.

13 Although the appraisers relied upon the
14 engineers to report on the system's condition, the
15 engineers never visited the site before writing their
16 reports. Crucial to determining value is consideration
17 of the property's condition. That's what you hire an
18 appraiser to do. It's self-evident that a component
19 that is running well and is meeting regulatory
20 requirements is worth more than one that is not.

21 The appraisers relied upon Flinn Engineering
22 to deliver a professional opinion whether the assets are
23 operating as they should by delivering safe and adequate
24 service. Flinn engineers did not deliver.

25 Regarding the water system, Staff believes

1 that \$18 million is too high for a system that will be
2 largely a backup system. Missouri-American has stated
3 that shortly after the sale it will construct a pipeline
4 to deliver water from a different source due to esthetic
5 issues with the water.

6 By failing to address future use, the
7 appraisal is irrelevant to the 393.170, RSMo, analysis
8 which is prospective in scope. Although
9 Missouri-American carries the burden to prove that this
10 proposed transaction is necessary or convenient for the
11 public service, Staff proposes its estimate of net book
12 value as a comparison to help the Commission.

13 As part of its investigation, Staff inspected
14 the systems, examined records from Missouri-American and
15 the City of Eureka, as well as publicly available DNR
16 records. It also reviewed Missouri-American's
17 application, its studies, responses to DRs, and
18 calculated the Eureka system's net book value as an
19 estimate.

20 Staff engineer David Buttig used asset
21 information in Missouri-American's feasibility study and
22 the Flinn Engineering report to calculate net book
23 value. He also calculated depreciation based on the
24 Commission's approved depreciation rates and the amount
25 of contributed plant to calculate an estimated net book

1 value.

2 Amanda McMellen took Mr. Buttig's information
3 and compared it to the appraised value. Staff's
4 calculation of estimated net book value is 10.7 million
5 for the water system and 7.1 million for the sewer
6 system for a total of almost 18 million. This is about
7 \$10 million less than the appraiser's valuation.

8 As I just stated, Staff's calculation of net
9 book value is based on Missouri-American's own list of
10 assets and original costs. Also, its methodology of
11 calculating rate base here is the same as it uses in
12 rate cases.

13 Eureka needs water and sewer service.
14 Missouri-American is qualified to provide the service
15 and it has the financial ability to provide it.
16 Missouri-American's proposal to take over the systems is
17 economically feasible. However, the acquisition will
18 not be in the public interest because the system's
19 inflated price will be paid by ratepayers in Eureka, as
20 well as those outside Eureka in the service areas that
21 absorbs these systems.

22 Missouri-American seems to believe that the
23 appraisal statute takes away Commission discretion. So
24 you must approve this transaction. According to this
25 line of thinking, the Commission does not determine

1 whether the transaction is necessary or convenient for
2 the public service as required by 393.170, RSMo. This
3 would make the Commission's role basically as a rubber
4 stamper to approve Missouri-American's application.

5 Repeal by implication is disfavored. The
6 Commission retains full authority under 393.170.2, RSMo,
7 to determine whether granting Missouri-American a CCN is
8 necessary or convenient for the public service. The
9 only authority the Commission loses under this appraisal
10 statute is the authority to set rate base.

11 Staff sees the Commission's role differently.
12 We believe that the appraisal statute cannot be read in
13 a vacuum. The transaction must still be in the public
14 interest. If the Commission determines that the
15 transaction is not necessary or convenient for the
16 public service, it cannot approve these acquisitions.

17 All of Staff's witnesses that I mentioned,
18 plus Scott Glasgow from Customer Experience, will be
19 available for cross-examination and any Commissioner
20 questions. Thank you.

21 JUDGE SEYER: Chairman Silvey, do you have
22 questions for Ms. Bretz?

23 CHAIRMAN SILVEY: I do. Thank you. So we'll
24 just start with a couple like I asked the other just for
25 the record. Does the Commission have the authority to

1 take any action other than approving or rejecting the
2 application?

3 MS. BRETZ: Our position has been that it's an
4 either/or thing; that we have asked the Commission to
5 reject the application. We were discussing this
6 yesterday with staff, and having said that I think we
7 would perhaps prefer to have a little bit more time to
8 consider a more nuanced answer, but our position through
9 all this has been that it's either reject or accept.

10 CHAIRMAN SILVEY: Does Staff believe that the
11 Commission has the legal authority to set a rate base
12 amount different than the appraisal amount?

13 MS. BRETZ: I would say the same answer. If
14 the Commission rejects the application, that should be
15 the end of the road. But we would appreciate the
16 opportunity to reflect on that some more and perhaps
17 have a more nuanced answer.

18 CHAIRMAN SILVEY: Did Staff review the
19 Illinois statute that Missouri-American references and
20 if so, were there differences?

21 MS. BRETZ: Yes. I believe that Witness
22 Amanda McMellen, she's certainly more familiar with the
23 statute than I am, and she could perhaps speak better to
24 how that's different than Missouri's.

25 CHAIRMAN SILVEY: Okay. And then some

1 questions directly related to your opening statement.
2 You mentioned some email traffic. Is that email traffic
3 in the record?

4 MS. BRETZ: No. We received that in response
5 to DR responses. We do intend to introduce those into
6 the record though.

7 CHAIRMAN SILVEY: Who initiated that email
8 traffic? Was it the engineers asking for more
9 information or was it the Company proactively reaching
10 out to the engineers?

11 MS. BRETZ: It basically went both ways.

12 CHAIRMAN SILVEY: Somebody had to start it.
13 There had to be an initial email.

14 MS. BRETZ: Could you repeat your question?

15 CHAIRMAN SILVEY: Who initiated the
16 conversation? Was it the engineers asking the Company
17 for more information or was it the Company seeking to
18 proactively have a conversation with the engineers?

19 MS. BRETZ: I guess I have to review that to
20 see exactly where it started, but there was a lot of
21 back and forth both ways.

22 CHAIRMAN SILVEY: You also mentioned that
23 there was a public vote in this case and you made the
24 comment that the remaining rate base was not allowed to
25 participate in that vote. Is that normal? I feel like

1 I've seen several cases where the public voted on being
2 acquired or not, but I don't recall ever seeing the
3 entire rest of the rate base participating in that kind
4 of a vote.

5 MS. BRETZ: What I meant is that the City of
6 Eureka voters voted on it. If the system -- If the
7 transaction goes through, at least the water system will
8 be incorporated into St. Louis County, but the St. Louis
9 County voters didn't have an opportunity to vote on
10 selling the Eureka assets.

11 CHAIRMAN SILVEY: Sure. But is that a normal
12 process? I don't recall ever seeing more than just the
13 people who are being acquired voting on something.

14 MS. BRETZ: Yes, this was the normal process,
15 of course. My point is that particularly because of the
16 inflated price of the systems it's unfair for the other
17 people of St. Louis County to take on the burden of the
18 system.

19 CHAIRMAN SILVEY: And then Staff's position is
20 they would like the Commission to just reject the CCN,
21 correct?

22 MS. BRETZ: That's what we have asked, yes.

23 CHAIRMAN SILVEY: But the system is currently
24 a failing system; it's not in compliance with DNR; is
25 that right?

1 MS. BRETZ: I don't think I can commit to
2 saying that it's a failing system. I think to say it's
3 ailing is perhaps more accurate. Mr. Gateley could
4 probably speak much better than I can to the status of
5 the system.

6 CHAIRMAN SILVEY: So if the Commission rejects
7 the CCN, that system just continues in its ailing and/or
8 failing status?

9 MS. BRETZ: Of course, the Commission is
10 concerned about that sort of thing. I believe Staff has
11 always been open to speaking with Missouri-American
12 about trying to reach a different price for the systems.
13 I'm sure those conversations would continue to try to
14 figure out a way to move forward that would work out for
15 all the parties.

16 CHAIRMAN SILVEY: Okay. Thank you. Thank
17 you, Judge.

18 JUDGE SEYER: Are there any other questions
19 from the Commissioners?

20 COMMISSIONER KOLKMEYER: Not at this time,
21 Judge. Thank you.

22 COMMISSIONER HOLSMAN: No questions. Thank
23 you.

24 JUDGE SEYER: The court reporter has asked
25 that the Commissioners identify themselves before they

1 speak. So that was Kolkmeier, correct? Commissioner?

2 COMMISSIONER HOLSMAN: And Commissioner
3 Holsman, I also said no questions. From here on, Judge,
4 I'll pipe up if I have a question. Otherwise, I'll be
5 quiet.

6 JUDGE SEYER: Very good.

7 COMMISSIONER KOLKMEYER: Likewise Kolkmeier
8 like Holsman, if I have any questions I'll notice up.

9 JUDGE SEYER: Gotcha. Ms. Bretz, I do have a
10 question or two myself. When it comes to the data
11 request responses that you mentioned in your opening,
12 are those parts of exhibits that you've listed and
13 intend to offer into evidence?

14 MS. BRETZ: Yes, they are.

15 JUDGE SEYER: Actually that may be my only
16 question.

17 All right. Mr. Cooper, would you like to call
18 your first witness?

19 MR. COOPER: We would, yes, Your Honor. We
20 would call Mr. Sean Flower.

21 JUDGE SEYER: Mr. Flower, would you take the
22 stand, please.

23 THE WITNESS: Do I just sit in the chair?

24 JUDGE SEYER: Yes. I'd like to swear you in
25 before you testify. Would you raise your right hand,

1 please.

2 Do you swear or affirm that the testimony you
3 give in this hearing shall be the truth, the whole
4 truth, and nothing but the truth?

5 THE WITNESS: I do.

6 JUDGE SEYER: Thank you. Go ahead,
7 Mr. Cooper.

8 MR. COOPER: Thank you, Your Honor.

9 SEAN FLOWER,
10 having been first duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Mr. Flower, would you please state your name
15 for the record?

16 A. It's Sean Flower.

17 Q. By whom are you employed and in what capacity?

18 A. I'm the mayor of the City of Eureka.

19 Q. Are you appearing today on behalf of the City
20 of Eureka?

21 A. Yes.

22 Q. Have you caused to be prepared for the
23 purposes of this proceeding certain direct and
24 surrebuttal testimony in question and answer form?

25 A. Yes.

1 Q. Is it your understanding that that testimony
2 has been marked as Exhibits 1 and 2 for identification?

3 A. Yes.

4 Q. Do you have any changes that you need to make
5 to that testimony at this time?

6 A. No.

7 Q. If I ask you the questions which are contained
8 in Exhibits 1 and 2 today, would your answers be the
9 same?

10 A. Yes.

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

13 A. Yes.

14 MR. COOPER: Your Honor, at this time I would
15 offer Exhibits 1 and 2 into evidence and tender the
16 witness for cross-examination.

17 JUDGE SEYER: Are there any objections?
18 Exhibits 1 and 2 --

19 MR. WILLIAMS: No objection.

20 JUDGE SEYER: Sorry. Exhibits 1 and 2 are
21 admitted.

22 (COMPANY EXHIBITS NOS. 1 AND 2 WERE RECEIVED
23 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

24 JUDGE SEYER: Mr. Williams, do you have
25 questions for the witness?

1 MR. WILLIAMS: Just a few I think. Good
2 morning, Mr. Flower.

3 THE WITNESS: Good morning.

4 JUDGE SEYER: Mr. Williams, can you hold on
5 for a second?

6 MR. WILLIAMS: Sure.

7 JUDGE SEYER: Mr. Flower, is the green light
8 on on your microphone?

9 THE WITNESS: I don't even know if I know
10 where it is, because there's nothing around the base.
11 Go ahead.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q. Mr. Flower, do you have any knowledge of the
15 Flinn Engineering report that Kelly Simpson is the
16 witness for in this hearing?

17 A. I've read through all the documentation at
18 different stages. I mean, I'm not an expert on it. I'm
19 generally aware, I'm familiar with it.

20 Q. Ms. Simpson testifies, it's not been admitted
21 into evidence yet, but that someone made her aware of
22 GIS data relevant to that engineering report. Do you
23 have any knowledge of who made her aware of the GIS
24 data?

25 A. I never got into any of that type of level.

1 I'm hearing about how the discussions have gone on, but
2 I don't have any direct knowledge of how the discussions
3 came out about GIS.

4 **Q. You're aware there were discussions about GIS**
5 **data?**

6 A. I am now. As we've gone into the hearings and
7 that type of thing, I was aware of what they've done
8 kind of how the conversations were going.

9 **Q. When did you -- I'm sorry? Did you say you**
10 **were not whenever the conversations were occurring?**

11 A. Yeah, I had nothing to do and no knowledge of
12 any conversations anybody was having. We basically came
13 back and got an appraisal.

14 MR. WILLIAMS: Okay. Thank you. No further
15 questions at this time.

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

18 MS. BRETZ: No, we don't.

19 JUDGE SEYER: Chairman Silvey, do you have
20 questions for the witness?

21 CHAIRMAN SILVEY: No, no, I'm good.

22 JUDGE SEYER: Are there any questions from the
23 Commissioners? It sounds like there are none. I have a
24 question or two, Mr. Flower.

25 QUESTIONS

1 BY JUDGE SEYER:

2 Q. When it comes to the ballot language, what
3 role did you have in forming that language?

4 A. Well, that's actually a pretty important
5 factor from the city's perspective, because like a lot
6 of the conversation in here has been kind of like
7 between the Public Service Commission and the Staff and
8 then the Mo-American, but one party that's not, I don't
9 like feel like is -- it's kind of being left out of the
10 discussion is the city because no matter what everybody
11 does the ballot language that we prepared was that the
12 sale price was based on the appraisal, because that was
13 one of the critical things when we went to have it on
14 the ballot I was requested by the public they wanted to
15 know if they're going to get into something, they were
16 concerned that you wouldn't just give the mayor a blank
17 check authority and say whatever number you come up
18 with, that's what we would agree to sell it for. So the
19 way we prepared that was we came in and said okay, we
20 waited to do the ballot until we went through that whole
21 appraisal process, had a chance to see it, had a chance
22 to share it with the public, had a chance to do it on
23 that level.

24 So the public in Eureka is relying on the
25 appraisal that was put out there. We put -- As kind of

1 a check on ourselves, that was the key term we put in
2 the ballot language was the \$28 million number. So in
3 addition to kind of the conversation we've had here
4 about negotiating it, I really -- I don't believe I have
5 the authority based on our ballot language to do
6 something else, and the city voters intentionally did
7 that to keep me from doing something that isn't of
8 value.

9 **Q. But you yourself was it -- What role did you**
10 **have, was it you and the Board of Aldermen and --**

11 A. And counsel.

12 **Q. -- and city attorney --**

13 A. Yes.

14 **Q. -- discussed that and came up with that**
15 **specific language?**

16 A. Yes. It was a mix of legal issues and it
17 would be a mix of political and all the rest, you know,
18 what is the fairest and best way to put that. I was
19 involved with the specific language. The city attorney
20 would probably be the person that physically drafted it
21 and then it was approved by the Board to put on the
22 ballot in that form.

23 **Q. Did you use other cities' ballot language to**
24 **kind of form your ballot language?**

25 A. I'm sure it was the basis of it. Our city

1 attorney probably looked at other, not that attorneys
2 ever do that, I'm sure she looked at models and said
3 okay, this is -- I do think the language on dollars I
4 know she had said -- that was probably the most heavily
5 discussed part of it, because again we had talked about
6 whether that language would go on prior to even having
7 -- Like one of the thoughts early on was could you try
8 and -- could you attempt to go through that process
9 before you even had an appraisal and authorize the Board
10 to pursue the negotiation and enter into that because
11 that's an option the city had but they didn't want to do
12 that or we didn't think it would be possible to get it
13 passed doing that.

14 **Q. So ultimately the city's counsel felt that it**
15 **was important that the actual dollar amount be included**
16 **in the ballot language?**

17 A. The city council, I don't know that she would
18 have said she was providing the language and the
19 options. It was absolutely critical to the Board,
20 myself and to the public because that was stated and
21 that was a key term that was discussed over and over
22 again, and I couldn't tell you how many times I referred
23 people to the appraisal to that process to the assets
24 and all those type of things. So I would have never
25 taken the time, because if you think about a big

1 picture, I mean, this is the first hearing we're up
2 here, but I started looking at the system in 2019 when I
3 was first elected as to options. It took all the way to
4 probably 2020 to get through negotiation, get on the
5 ballot, we voted on it in '20, they submitted -- we did
6 a final contract at the end of '20 and submitted it in
7 '21. So I mean, without -- I mean, this is a three-year
8 process for us with employees and the whole time we're
9 doing this we're maintaining that system.

10 From a city perspective, if you can't rely on
11 the appraisal, it's going to be very difficult. It's
12 hard to operate and run the system. That was our whole
13 point was there no reason to go to the ballot if you
14 don't have a price, there's no reason to get everybody
15 into this kind of state if you can't rely on the
16 purchase price.

17 **Q. When you were looking at other cities and the**
18 **language they used in their ballot issues, did they**
19 **typically include the sales price in the ballot**
20 **language?**

21 A. I'd be going off memory, but I think it was an
22 option she showed us both ways. It was an outside of
23 Missouri. She was looking at a lot of different places
24 and I think she had seen options either way. It seemed
25 like from my memory with talking to her though as the

1 dollar amounts increased, it became increasingly
2 important or it was more prominent as you saw it become
3 a more significant issue, there was more information to
4 the public.

5 JUDGE SEYER: Mr. Williams, do you have
6 follow-up questions?

7 MR. WILLIAMS: Just a couple.

8 FURTHER CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Mr. Flower, if I understood what you said
11 correctly, you testified that the 28 million in the
12 ballot was based upon the appraisal?

13 A. Yes.

14 Q. And did the city ever consider including in
15 the ballot language a price below which the sale would
16 not occur?

17 A. No.

18 MR. WILLIAMS: Thank you.

19 THE WITNESS: Is it okay to add something to
20 that?

21 JUDGE SEYER: No.

22 MR. WILLIAMS: Thank you. You answered my
23 question.

24 JUDGE SEYER: Ms. Bretz, do you have follow-up
25 questions?

1 MS. BRETZ: No.

2 JUDGE SEYER: Mr. Cooper, would you like to
3 redirect?

4 MR. COOPER: Yes, just a couple, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. COOPER:

7 Q. Mayor Flower, you were asked several questions
8 about the ballot language there. And I think this is in
9 your testimony, but in your opinion did you believe that
10 you could execute a sales contract before the completion
11 of that election? Did you believe you had authority to
12 enter into a contract prior to holding the election?

13 A. No, there was no authority. The residents had
14 to approve the -- they had to give us authority to enter
15 into an agreement.

16 Q. And Mr. Williams had just asked you about
17 other possibilities for the ballot language, I guess,
18 the ability to go lower than the appraisal. As a mayor,
19 do you believe that you can sell the city's property at
20 something less than its appraised value?

21 A. Again, sitting here in the hearing, that's
22 been one of the most difficult things for me to try and
23 figure out is that, for instance, again you guys have a
24 lot of language about book values or not book values or
25 appraisals or different things. One of the things that

1 happened to me a lot was the residents would always say
2 you need to make sure if we have these assets, they're
3 proud of the assets, they want to make sure they receive
4 fair compensation. In reviewing all these different
5 things, I mean, given this new situation, this would be
6 asking me to go back, for example, and say well, you
7 know, because a water tank was contributed in the
8 development and it doesn't have like a book value it
9 wouldn't have a price. I would have to basically give
10 it to Mo-American as opposed to sell it to Mo-American
11 from the city's standpoint because of the accounting.

12 And those are the exact type of things that
13 the residents didn't want me to have the authority to do
14 and which I don't feel like I have the -- I don't see
15 how I have the authority like any other asset to sell
16 things below their appraised value. And there's some
17 clear examples of that. No, I don't think I have --
18 that was -- it would have been a very strange. I mean,
19 if you had somebody, I don't know any sale transaction
20 where somebody would authorize you to do it at the
21 appraised value but then pick a number like a safety net
22 number. If there was a safety net number, I don't know
23 why -- you would think that again somebody would push
24 you right down to the -- I don't know how I could come
25 up with all those combinations. That to me was why the

1 appraisal was so critical because I thought, well, if we
2 have three appraisers and everybody comes out and looks
3 at the system and we have it and we do all that and we
4 provide all the information, in my mind I thought that
5 was what set the price. I thought that's what this was
6 all about. If you can't agree on the price, it sure
7 does seem like this process is going to have a hard
8 time. Just this is a lot -- It seems like usually in a
9 negotiated deal the price is understood pretty early
10 before you get into all the details. I didn't mean to
11 run on.

12 MR. COOPER: That's all the questions I have,
13 Judge.

14 JUDGE SEYER: Thank you. Mr. Flower, you may
15 be excused.

16 THE WITNESS: Thank you.

17 JUDGE SEYER: Thank you for your testimony.
18 Do we need to take a break here?

19 MR. COOPER: Judge, I'm sorry. Are you asking
20 or are you suggesting that we will?

21 JUDGE SEYER: Somewhat both. Would you like
22 to take a break?

23 MR. COOPER: Sure. It might not hurt to have
24 five minutes.

25 JUDGE SEYER: I suspect that the next witness

1 testimony may be somewhat lengthy. So yes, let's take a
2 break. We'll go off the record.

3 MR. WILLIAMS: For how long?

4 JUDGE SEYER: Let's make it 11:25.

5 (COMPANY EXHIBIT NOS. 1 THROUGH 12 WERE MARKED
6 FOR IDENTIFICATION BY THE STENOGRAPHER.)

7 (Recess 11:12 a.m. until 11:32.)

8 JUDGE SEYER: Let's go back on the record.
9 Mr. Cooper, call your next witness.

10 MR. COOPER: Thank you, Your Honor. We would
11 call Mr. Joseph Batis. Mr. Batis is on the WebEx.

12 JUDGE SEYER: Mr. Batis, I thought I had the
13 ability to unmute you, but it doesn't look like I do.
14 So could you unmute your WebEx connection? Thank you.

15 THE WITNESS: You're welcome, Your Honor.

16 JUDGE SEYER: You are Joseph Batis?

17 THE WITNESS: I am, sir.

18 JUDGE SEYER: Would you raise your right hand
19 to be sworn in, please.

20 Do you solemnly swear or affirm that the
21 testimony you give in this hearing shall be the truth,
22 the whole truth, and nothing but the truth?

23 THE WITNESS: Yes, I do.

24 JUDGE SEYER: Thank you.

25 THE WITNESS: You're welcome.

1 JUDGE SEYER: Go ahead, Mr. Cooper.

2 MR. COOPER: Mr. Batis, this is Dean Cooper.
3 For a moment there your camera came on and then it went
4 back off again. Can you see if you're able to start
5 that on your end?

6 MR. WILLIAMS: Dean, I see him.

7 THE WITNESS: I don't control that. I have
8 the video turned on, and I can see myself in the camera.

9 MR. COOPER: Gotcha. It just may have been
10 the view that I had in the hearing room. I apologize.

11 JOSEPH BATIS,
12 having been first duly sworn, was examined and testified
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. COOPER:

16 Q. Sir, would you state your name?

17 A. Joseph Batis, B-a-t-i-s.

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

20 A. I am employed by Edward J. Batis & Associates,
21 Incorporated, which is a real estate appraisal and
22 consulting firm, and I also own a company called Utility
23 Valuation Experts. I am the President of both
24 corporations.

25 Q. Have you prepared for purposes of this

1 proceeding certain direct and surrebuttal testimony in
2 question and answer form?

3 A. Yes, I have.

4 Q. Is it your understanding that that testimony
5 has been marked as Exhibits 3 and 4 for identification?

6 A. Yes.

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

9 A. No, sir.

10 Q. If I were to ask you the questions which are
11 contained in Exhibits 3 and 4 today, would your answers
12 be the same?

13 A. Yes, sir.

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

16 A. Yes.

17 MR. COOPER: Your Honor, I would offer
18 Exhibits 3 and 4 into evidence and tender the witness
19 for cross-examination.

20 JUDGE SEYER: Are there any objections to
21 those coming into evidence?

22 MS. BRETZ: Judge, we do object to the
23 admittance into evidence of the valuation report, which
24 I believe is attached to his direct testimony, Exhibit
25 3.

1 JUDGE SEYER: What's the basis of your
2 objection?

3 MS. BRETZ: There's a few objections.
4 Basically we have a foundational type objection to it.
5 According to the appraisal, three appraisers were
6 involved in producing this report, but Missouri-American
7 has only made one of the appraisers available to
8 testify. Mr. Batis cannot testify to pieces of the
9 appraisal that he didn't himself -- he wasn't involved
10 himself in preparing and we won't have the opportunity
11 to cross-examine those other appraisers also.

12 We also question the legality of the
13 appraisal. It's not clear whether all the appraisers
14 actually visited the site. According to the standard
15 rules, the appraisers are to sign a certification and
16 that certification includes the statement whether or
17 whether or not they actually visited the site. Based on
18 the emails, we can't determine whether they all actually
19 did visit the site.

20 The appraisers are also supposed to -- as part
21 of the certification, they're to state whether other
22 people were involved in assisting them in producing the
23 appraisal. It appears that there are actually four
24 appraisers involved in producing this appraisal, and
25 this fourth appraiser is not mentioned in the appraisal.

1 And of course, he's not available here to testify.

2 That's our objection, Judge.

3 JUDGE SEYER: I'm going to overrule your
4 objection and admit Exhibits 3 and 4.

5 (COMPANY EXHIBITS NOS. 3 AND 4 WERE RECEIVED
6 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

7 JUDGE SEYER: Mr. Williams, do you have
8 questions for the witness?

9 MR. WILLIAMS: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Mr. Batis, did you request Kelly Simpson to
13 prepare an engineering report regarding the Eureka water
14 and sewer system?

15 A. Yes, sir, I did on behalf of the three
16 appraisers that were selected for the assignment.

17 Q. In her direct testimony, Ms. Simpson says, and
18 it does not identify who, that she became aware of GIS
19 data that was relevant to that engineering report. Do
20 you have any knowledge of how she became aware of that
21 GIS data?

22 A. I don't know specifically how she became aware
23 of it. I do know that the typical process that we're
24 involved with involves communication, discussions
25 amongst the appraisers and the engineer.

1 **Q. I think you've already answered the question.**
2 **You said you don't know, did you not?**

3 A. I don't know specifically for that assignment
4 how she did, no.

5 **Q. So you didn't bring it to her attention?**

6 A. I may have.

7 **Q. If you did, what would have caused you to**
8 **bring it to her attention?**

9 A. Typically in the process, because we are
10 involved in appraisal assignments in different states
11 and in different counties, there are discussions amongst
12 the participants as far as their understanding and
13 knowledge of the existence of different data sources
14 including GIS data. It is not uncommon during an
15 inspection, or during a phone call, or during a meeting
16 that one or more of the appraisers or the engineer or
17 someone from the -- representing the seller, the local
18 municipal body, might mention, for instance, the
19 existence of GIS data, or tax assessor data, or
20 different sources.

21 **Q. Excuse me, sir, but I don't think you're**
22 **answering my question, because I'm asking why you would**
23 **have informed your basis and what I'm hearing is a lot**
24 **of hypothetical circumstances. I mean, did someone make**
25 **you aware of it?**

1 A. Again, I can't recall specifically what those
2 discussions were on site. I was just trying to explain
3 the process that those are the types of issues that come
4 up during those meetings and consultations where we talk
5 about data sources. I don't keep track of exactly who
6 mentioned what data sources. I'm sorry.

7 **Q. Let me ask it this way. Did you see an**
8 **initial report and then respond back to Ms. Simpson hey,**
9 **did you look for GIS data?**

10 A. No, I did not, sir.

11 MR. WILLIAMS: Thank you. No further
12 questions at this time.

13 JUDGE SEYER: Ms. Bretz, do you have
14 questions?

15 MS. BRETZ: Yes, thank you. Good morning,
16 Mr. Batis.

17 THE WITNESS: Good morning.

18 CROSS-EXAMINATION

19 BY MS. BRETZ:

20 **Q. Before we get started, perhaps we could**
21 **establish that you have the emails. Hopefully**
22 **Mr. Cooper has sent those to you. We've marked it as**
23 **Staff Exhibit 108. Do you have that before you?**

24 MR. COOPER: I don't think he does. Well,
25 perhaps he does.

1 MR. LaGRAND: He has the DR response.

2 THE WITNESS: I don't recall seeing that, no.

3 MR. COOPER: What's the DR number that you're
4 referring to?

5 MS. BRETZ: 61.

6 MR. COOPER: 61. Mr. Batis, it's possible
7 that DR 61 response went to you maybe yesterday late
8 afternoon, early evening probably from me I'm told,
9 although I have to look to be sure.

10 MR. LaGRAND: At 4:13.

11 MR. COOPER: At 4:13 I'm told by Mr. LaGrand.

12 MR. WILLIAMS: Dean, this is Nathan.

13 MR. COOPER: Yes, sir.

14 MR. WILLIAMS: I believe you got an email from
15 I believe Karen at least this morning that includes
16 those exhibits. I don't know if you could forward
17 those, perhaps.

18 MR. COOPER: Let me look here.

19 MR. WILLIAMS: If it helps, my email inbox
20 shows it arriving at 11:25 this morning.

21 MR. COOPER: For some reason my inbox hasn't
22 updated since 9:38. Hold on just a moment. I think
23 I've got to reconnect to the wi-fi.

24 JUDGE SEYER: I'm seeing if our staff can
25 forward those exhibits to him.

1 THE WITNESS: I found it.

2 MR. LaGRAND: I think he does have them.

3 MR. COOPER: You have those now, Mr. Batis?

4 THE WITNESS: Yes, sir.

5 MS. BRETZ: Should I proceed, Judge?

6 JUDGE SEYER: You may proceed.

7 BY MS. BRETZ:

8 Q. Then one other thing, Mr. Batis. I assume you
9 have a copy of your valuation report in front of you?

10 A. Yes, I do.

11 Q. Okay. Great. In the early stages of
12 preparing your report, did you receive documents from
13 Missouri-American about the Eureka systems?

14 A. I'm sure we did. When we start, that's
15 customary, and I believe we did in this case as well.

16 Q. Did you have a particular contact person at
17 Missouri-American that helped you to get documents and
18 relay communications?

19 A. There's a few people that I may have ended up
20 dealing with in this case. I do believe the primary one
21 would have been a lady by the name of Nikki Pacific.

22 THE COURT STENOGRAPHER: I'm sorry. What was
23 that last name?

24 MS. BRETZ: Pacific like the ocean.

25 JUDGE SEYER: Is that correct, Mr. Batis?

1 THE WITNESS: Yes, it is.

2 JUDGE SEYER: P-a-c-i-f-i-c?

3 THE WITNESS: P-a-c-i-f-i-c, first name Nikki,
4 N-i-k-k-i.

5 JUDGE SEYER: Thank you.

6 THE WITNESS: You're welcome.

7 BY MS. BRETZ:

8 Q. Was one of your contact people also a lady
9 named Melisha Billups?

10 A. I've dealt with Melisha before. Again, I
11 don't recall specifically if it was in the Eureka case,
12 but it wouldn't surprise me if it was.

13 Q. Do you know what Ms. Billups's position is at
14 Missouri-American?

15 A. I don't. I don't recall her title, no.

16 Q. Do you recall exchanging emails in October
17 2019 with Ms. Billups about getting these documents?

18 A. I don't recall specifically, but again it
19 wouldn't surprise me that there were emails back and
20 forth. The document that I just opened up does
21 represent the same.

22 Q. Do you recall discussions about 50 pounds of
23 documents from the City of Eureka regarding the Eureka
24 systems?

25 A. I'm sorry. Could you please repeat that? It

1 faded out at the end.

2 Q. Sure. Do you remember 50 pounds of documents
3 from the City of Eureka about the water and sewer
4 systems, discussions about 50 pounds of documents?

5 A. I don't recall that specific reference to 50
6 pounds. No, I don't recall that as I sit here today,
7 that specific reference.

8 Q. If you could please turn to page 123 of that
9 string of emails, and the numbers are in the top
10 right-hand corner.

11 JUDGE SEYER: Ms. Bretz, which exhibit number?

12 MS. BRETZ: Oh, I'm sorry. It's Exhibit 108.

13 BY MS. BRETZ:

14 Q. About the middle of the page there's an email
15 from Ms. Billups to you saying I believe he wants to
16 deliver the actual documents. As he said, there are
17 about 50 pounds of documents he's going to reach out to
18 you as well. If I said that the he there is Mr. Sabo,
19 the administrator, the city administrator of the City of
20 Eureka, does that sound right?

21 A. Yes, yes, that's reasonable it would have been
22 Mr. Sabo.

23 Q. And then above that email you responded back
24 sounds good; is that correct?

25 A. Yes.

1 **Q. So from this it sounds like you received 50**
2 **pounds of documents about the Eureka systems?**

3 A. I don't recall specifically if they were ever
4 received and how many pounds there were or what form
5 they came in. It's possible documents were shipped to
6 us.

7 **Q. Do you recall receiving documents from**
8 **Missouri-American about whether the systems meet**
9 **Missouri DNR regulatory requirements?**

10 A. I don't recall specifically, no.

11 **Q. You don't remember receiving any documents**
12 **about that?**

13 A. As I sit here today, I don't recall what was
14 in the 50 pounds of documents if they were received by
15 me. I don't recall specifically, no.

16 **Q. Do you recall any documents from**
17 **Missouri-American about DNR?**

18 A. Not specifically. I don't recall what
19 documents were received by us, no.

20 **Q. So it sounds like possibly there was a lot of**
21 **paper documents. Did you also use a shared drive to**
22 **share documents with Missouri-American?**

23 A. Generally speaking, that's a common way that
24 documents are shared. I don't recall specifically in
25 the Eureka case if a shared folder was used. Again, it

1 wouldn't surprise me.

2 Q. If you could please turn to page 115 of
3 Exhibit 108. At the top of the page, and the actual
4 email I guess starts at the bottom of page 114, but it's
5 the email from you to Ms. Billups, and you write yes, I
6 just downloaded all of the files and put them in a
7 Google drive folder which I shared with us, to
8 appraisers and the engineer. During the course of the
9 project, we will be using the Google drive folder to
10 download our photographs and draft of our report
11 sections. Did you see that?

12 A. Yes, I do.

13 Q. Do you recall any other documents besides
14 photographs and draft report sections being put on the
15 Google drive?

16 A. Again, I don't recall specifically, but by
17 looking at this email I probably would have shared
18 whatever documents I had received. That was the typical
19 protocol.

20 Q. It sounds like as you were drafting the
21 sections of your report the documents were put onto the
22 shared drive; is that right?

23 A. I think that that's partially true. The
24 shared drive is used for not just not drafts of parts of
25 the report but different information the appraisers

1 might be sharing or discussing whether or not it makes
2 it into the report.

3 Q. So also included on the Google drive is your
4 impressions and your discussions and your comments with
5 the other appraisers?

6 A. I don't necessarily think there were -- our
7 discussions and comments were on the Google drive. I
8 think, to clarify, if the appraisers were having a
9 discussion, for instance, about a particular sale or the
10 location of a lift station, we might use the shared
11 drive in those instances to share exhibits, plats,
12 notes, various information helping each other solve
13 whatever questions or issues we're dealing with during
14 the process of developing the appraisal report.

15 Q. Okay. That gives me a better idea. It sounds
16 like the use of the shared drive was pretty expansive;
17 is that accurate? In other words -- Let me rephrase the
18 question. In other words, you put a lot of documents
19 and information onto the shared drive?

20 A. Again, I don't recall specifically in the
21 Eureka case going back two to almost three years or two
22 and a half years how expansive the use of it was and how
23 voluminous the documents were. I'm just talking general
24 sense that's the process we would follow and we would
25 use very often a shared folder or shared drive when

1 necessary and appropriate to share that. It very well
2 may have been the case here, it seemingly was, in the
3 Eureka case. How extensive, I can't recall.

4 **Q. Do you recall who had access to that shared**
5 **drive?**

6 A. I can't with 100 percent certainty tell you,
7 but I can give you my best guess based upon our typical
8 procedures if you would like.

9 **Q. Okay.**

10 A. It would be the other appraisers participating
11 in the assignment, which in this case were Mr. Dinan and
12 Ms. Goodman Schneider. And depending upon the contents
13 of the folder, typically the engineering firm, which in
14 this case would have been Flinn Engineering. Very often
15 we would include a representative from the company, in
16 this case American Water. So could be any number of
17 those. Most likely that's the small group that would
18 have been invited.

19 **Q. Okay. Looking at the email right below the**
20 **email we discussed at the top of page 115, you see good**
21 **morning, Joe. Yes, we are all set. If you need**
22 **anything, please let me know. Also, were you able to**
23 **access the files? Thanks. Ms. Billups. Do you see**
24 **that?**

25 A. I'm sorry. What page of the exhibit is that

1 on, please?

2 **Q. 115. We're on the same page there.**

3 A. Yes, I do see that from Melisha Billups.

4 **Q. That indicates that Ms. Billups had access to**
5 **the shared drive, right?**

6 A. I don't recall. But by looking at this, I
7 can't conclude from her message if she's saying she has
8 access. She's saying we are all set. I'm not sure if
9 she's confirming access or not.

10 **Q. But based on what you said earlier, at least**
11 **somebody from Missouri-American had access to that**
12 **shared drive?**

13 A. I don't know with certainty. I think again
14 our typical process would be to include anybody that we
15 thought would be participating and providing documents
16 or need to see documents, and in many cases a
17 representative of the company would be involved. Again,
18 I don't know with certainty in this case if Melisha or
19 someone else from American Water was in that circle if
20 you will.

21 **Q. So did Missouri-American have access to your**
22 **draft appraisal sections as you were drafting them?**

23 A. Typically, no. That draft appraisal or
24 sections of drafts, if you will, because of this process
25 with three appraisers participating are typically shared

1 between the three appraisers as it pertains to the
2 analysis or conclusions. However, it's not uncommon for
3 us to share with in some cases, either American Water or
4 one of the clients or the selling community, sections of
5 the report that deal with property characteristics that
6 we might want them to be aware of such as assumptions
7 regarding the split of parcels into or division of
8 properties, assumptions regarding easements, ownership
9 rights. So sometimes they'll see sections or parts of
10 it, but we do not share with anyone other than the three
11 appraisers any part of the actual opinion analysis or
12 final conclusion or the market data that we're using.

13 **Q. Did Missouri-American personnel review drafts**
14 **of your report before the finished project?**

15 A. I'm sorry. One more time, please.

16 **Q. Did Missouri-American personnel review drafts**
17 **of your report before you had the final report?**

18 A. I don't believe so and I don't recall, but
19 again there's occasions where a draft is sent to a
20 client if there's an issue again with the assets and how
21 we're describing different land rights or issues with
22 easements and parcel splits. So it's not uncommon that
23 a draft will go out and we will ask the client please
24 pay attention to a particular section and see if this is
25 the correct interpretation or correct understanding of

1 what's being conveyed. Sometimes that draft might have
2 a value. It might be the full report is ready for
3 signatures or it might just be part of it. It's a very
4 fluid and changing process case to case depending upon
5 the flow of information and what's available.

6 **Q. Do you recall sending emails to the other**
7 **appraisers and Ms. Billups inviting them to make changes**
8 **and corrections to the report?**

9 A. I don't recall, but that's typically what I
10 would do as I'm putting together a final report is to
11 ask them to, so we could all check each other's work.
12 That's probably reasonable if that was done in this
13 case.

14 **Q. Could you please look at page 25 of Exhibit**
15 **108. Are you there?**

16 A. Yes.

17 **Q. You're there?**

18 A. Yes.

19 **Q. Okay. And that's an email from you to the**
20 **other appraisers and Ms. Billups, correct?**

21 A. Dated January 12.

22 **Q. And the email is hi all. While reviewing the**
23 **report this morning, I made several changes/corrections.**
24 **Use this copy for your review. Please send your**
25 **changes/comments. Thank you. Joe.**

1 A. Correct.

2 Q. So what parts of the report would you have
3 asked them to review?

4 A. Well, for instance, when we're putting
5 together the area analysis, that might be a combination
6 of the work product of two or three of the appraisers,
7 not always just one. So for instance, if Mr. Dinan's
8 office was putting together that and I supplemented it
9 with some graphs or demographic data, for instance, I
10 would send that out and hope that he would review that
11 to see that if I'm using the data in the right context
12 relative to that particular area and whether it is a
13 fair representation of the market.

14 Likewise, Ms. Schneider, Goodman Schneider,
15 for instance, might be working on the comparable sales
16 section and assembling our final tables and charts and
17 once I receive those and input those into the report of
18 the draft, I would send them out just to get extra eyes
19 to look at the math, to look at the reference to sales
20 numbers, to recheck the math. In cases -- In many
21 cases, for instance, Mr. Dinan's office would come back
22 and say comparable three when I looked at the unit price
23 it was off by \$20 a customer or something, math error,
24 we need to correct that or change that. So really what
25 I'm doing at this point is asking everyone to give a

1 final review since we are all signing the report we are
2 all responsible for its contents, make sure that we're
3 all comfortable with all of the final changes,
4 insertions and to make any corrections that are
5 appropriate.

6 **Q. Do you recall Ms. Billups giving you input**
7 **into the report before it was final?**

8 A. No. Ms. Billups is typically not involved in
9 that part of it. The only thing that she would give
10 feedback on is if she noticed that the assets that we
11 described, for instance, maybe we described a 10-acre
12 piece that had three buildings on it and she might
13 clarify that not all buildings were included in the
14 transaction or that they were splitting the property.
15 So her input was more limited to those types of issues,
16 and typically at this point of the assignment there
17 wasn't much feedback from her because those issues would
18 have been already resolved.

19 **Q. Could you please turn to page 92 of the**
20 **emails, and again this is an email from you to Ms.**
21 **Billups; is that correct?**

22 A. Just give me a moment, please.

23 **Q. Sure.**

24 A. Yes.

25 **Q. The email, this is from January 17, 2020?**

1 A. That's correct.

2 Q. Good morning, Melisha. I received from Kelly
3 last night the numbers for Eureka I'd like to discuss.
4 Please call me at your earliest convenience. Thank you.
5 Joe. That's what the email says, right?

6 A. Yes, it does.

7 Q. So from this it sounds like you're actually
8 discussing substantive numbers with Ms. Billups; is that
9 your interpretation?

10 A. Yes.

11 Q. Do you remember what numbers you were
12 discussing with her?

13 A. I don't recall, but the presumption is
14 whatever numbers were reported by Ms. Simpson.

15 Q. So you were taking Ms. Simpson's numbers, and
16 Ms. Simpson is the professional engineer from Flinn,
17 right?

18 A. Correct.

19 Q. So you took Ms. Simpson's numbers and then you
20 wanted to discuss those with Ms. Billups?

21 A. Yes, basically a status or update of where we
22 are, that we're receiving information and giving her the
23 update of the progress.

24 Q. That sounds more substantive than double check
25 the accuracy of buildings or other similar data, doesn't

1 **it? It sounds like you were actually discussing the**
2 **appraisal numbers?**

3 A. Well, no, I think that's misleading. First of
4 all, the context of these emails is completely
5 different. The first email or the previous email we
6 were discussing was draft reports that were going out
7 and my comments regarding feedback, typical feedback
8 from Ms. Billups about buildings and land size within
9 the context of verification and accuracy of the draft
10 report. This email clearly is in a different context.
11 This is an email that subsequent to me receiving from
12 Ms. Simpson the numbers and her work product and I was
13 sharing those, not the appraisal analysis and not any
14 value conclusions, but sharing the numbers that were
15 arrived at by Ms. Simpson that we would later be using
16 in our report and that ultimately Ms. Billups would have
17 access to anyway that they would be attached to our
18 appraisal report. But this certainly is not a
19 discussion of the appraisal opinions or appraisal
20 valuation process.

21 **Q. Okay. What parts of the appraisal report did**
22 **you prepare?**

23 A. Well, typically, and I believe in the case of
24 Eureka, I'm responsible for assembling all the sections
25 and putting the report together, more or less formatting

1 it and assembling it. I also work on -- We divide up
2 the responsibilities amongst the three of us. I
3 typically am responsible for, as I believe I was in
4 Eureka, land valuation or land descriptions, identifying
5 all the sites, all of the fee holdings, all of the
6 easements, all of the locations of the various
7 components and assets. I work on neighborhood and area
8 descriptions and data. I work a lot on the report
9 template, all of the USPAP requirements such as
10 explanations, definitions, standard requirements that
11 are mandated by Missouri law and by USPAP, and then I
12 also participate in with the other appraisers the
13 selection of comparable sales, the analysis and
14 discussion and confidencing regarding the relevance of
15 the different sales, which ones to use, which ones to
16 exclude.

17 And likewise with the appraiser who would be
18 responsible for collecting land sale data we would have
19 discussions about comparability and highest and best use
20 issues and the assemblage of that data that we would be
21 relied on by all of us in the report. Again, it's three
22 sets of hands in there all doing different things and
23 sometimes carrying over into each other's
24 responsibilities, but it's just the nature of the
25 assignments.

1 **Q. What part did Mr. Dinan prepare?**

2 A. Mr. Dinan again was involved with various
3 components with myself and Ms. Goodman Schneider. One
4 of his primary responsibilities was to collect market
5 data pertaining to land values in order to allow us to
6 develop opinions of the fee values and easement values
7 and easement contributions for the project. So he was
8 responsible for that research.

9 He also would be responsible for compilation
10 of the contributory values of all improvements and the
11 cost approach meaning buildings, fencing, structures
12 where they would cost them, depreciate them, measure
13 them obviously, describe them. His firm was also
14 instrumental in describing the property, the different
15 components. And then he lastly contributed to the
16 market analysis and descriptions of the area and the
17 overall general description of the property and its
18 location.

19 **Q. And what parts of the report did Ms. Goodman**
20 **Schneider prepare?**

21 A. Ms. Goodman Schneider again consulted with us
22 in various parts and would help with the description of
23 the buildings or the property as needed or maybe clarify
24 some issues, questions we would have maybe she
25 remembered, but her primary responsibility would have

1 been in this case to take the comparable sales that were
2 being utilized for the report or relied on for the
3 analysis and assembling them, analyzing them, providing
4 the statistical information, the exhibits with the data
5 and tables and all the descriptions of the data for us,
6 the market data.

7 **Q. Thank you.**

8 A. You're welcome.

9 **Q. You inspected the systems on December 10,**
10 **2019, right?**

11 A. I believe so.

12 **Q. Did anyone go with you on that inspection?**

13 A. I don't recall. I think actually I may have
14 inspected this one twice. I don't recall which
15 inspection I was with a group or which inspection I was
16 by myself. I know we had some difficulty with one of
17 the inspections because of the weather and either it was
18 postponed or not the whole group was there, but I don't
19 recall specifically who was there.

20 **Q. If you turn to page 1 of your appraisal and**
21 **there's some introductory type information there.**

22 A. Page 1 being the summary of salient facts?

23 **Q. Yes, you're there?**

24 A. I'm there.

25 **Q. It says about halfway down date of inspection**

1 December 10, 2019, Mr. Dinan, Ms. Goodman Schneider and
2 yourself, right, were inspecting it?

3 A. Right, right. So we were all there on the
4 10th. It was the subsequent date when I was alone.

5 Q. That's the March 18 date?

6 A. Correct.

7 Q. Could you please turn to page 98 of Exhibit
8 108.

9 A. Page 98?

10 Q. Yes.

11 A. Yes.

12 Q. So towards the bottom of that page there's an
13 email from you to Mr. Dinan, Ms. Simpson and Ms.
14 Billups. It's dated December 10; is that correct?

15 A. Yes.

16 Q. December 10, 2019?

17 A. Yes.

18 Q. And that was the date that you said that you,
19 Mr. Dinan and Ms. Goodman Schneider were inspecting the
20 property, right?

21 A. Yes.

22 Q. And that email says hello, Ed and Kelly. I
23 would like to set a date with Craig Sabo for the two of
24 you to inspect the Eureka facilities. It seems like all
25 of our information is in place and in order now. So

1 things should go smoothly. Please provide me a list of
2 the dates that you are available over the next seven to
3 ten days so I can check with Craig and get this
4 scheduled and keep it moving forward. A prompt reply
5 would be helpful. Thank you again. Joe. That's what
6 that email says, right?

7 A. It does.

8 Q. So if all of you were looking at the property
9 on December 10, why would you send an email to Mr. Dinan
10 to set up an inspection of the property?

11 A. Because I believe, again I don't recall all
12 the details, but I recall that on the inspection date,
13 which I believe was December 10, there was some problem
14 if you will with the coordination of either seeing all
15 the properties or maybe the information that we
16 requested, different exhibits and maps and foundation
17 material wasn't available. I believe at that time we
18 had decided that it wasn't real efficient to continue
19 and we were going to reschedule and come back another
20 time. If I'm not mistaken, this email is addressing
21 that matter that we need to schedule an appointment
22 fairly soon and get back down to the property.

23 Q. I guess I still don't understand. So you're
24 saying that the three of you inspected the property but
25 then you also sent an email to set up another

1 **inspection?**

2 A. Well, I think what happened, and maybe the
3 report is poorly written, but I think what happened was
4 we were there to inspect and maybe either started the
5 inspection or didn't have access to everything we needed
6 or all the information and it just wasn't in the best
7 interest or efficient to continue and we decided to come
8 back. I think it was more of a rescheduling if you will
9 to complete or reinspect.

10 **Q. So the three of you went down to Eureka and**
11 **things weren't going smoothly and then you sent an email**
12 **at 9:35 that morning to Mr. Dinan to schedule another**
13 **inspection?**

14 A. Again, I think those are the circumstances. I
15 don't recall. I remember something like that, those
16 circumstances taking place where there was a scheduling
17 conflict or an inspection that we couldn't complete.
18 That very well may have been how that played out.

19 **Q. You recall the three of you going down there**
20 **on December 10, 2019?**

21 A. I believe so, unless again my report and the
22 three of us misrepresented the date or made a mistake.
23 I believe December 10 was our first inspection there.
24 Whether or not we inspected all the facilities is a
25 different issue. I do believe we met there December 10.

1 **Q. But you weren't able to complete the**
2 **inspection?**

3 A. Again, to the best of my recollection, I would
4 say reading these emails and trying to recall the chain
5 of events that no, there was some problem or some issue
6 with trying to see all the properties. There may have
7 been a personnel issue, timing issue. It may have been
8 documentation and data that we needed. For whatever
9 reason, I believe we had to reinspect or come back on a
10 second occasion.

11 **Q. Okay. I think I better understand that now.**
12 **So then this email generated the inspection that was**
13 **planned for December 17, right?**

14 A. Apparently.

15 **Q. And then that inspection was canceled because**
16 **of bad weather, correct?**

17 A. I believe so.

18 **Q. I'm sorry. I didn't hear you.**

19 A. I believe so.

20 **Q. Was the canceled inspection rescheduled so Mr.**
21 **Dinan and Ms. Goodman Schneider could inspect the**
22 **property?**

23 A. I believe so. My best recollection is that it
24 was rescheduled and we were all present.

25 **Q. Can you show me where in your report or in**

1 **emails that's discussed?**

2 A. I'm sorry. Could you repeat that, please?

3 **Q. Could you please show me in your report or in**
4 **the emails where Mr. Dinan and Ms. Goodman Schneider**
5 **made the inspection?**

6 A. Probably the only reference to that would be
7 on page 1 of the report where the names and the dates
8 are listed. I don't know if there's any other section
9 of the report that addresses what day or dates, date or
10 dates any of the parties inspected the property. It's
11 not uncommon that multiple inspections are made. My
12 best guess is that we were all there on December 10 and
13 they either came back or we came back on another date.

14 **Q. But you don't recall what that later date was?**

15 A. No, not two years later. I'm sorry. I don't.

16 **Q. Okay. Was there a rush to get the appraisal**
17 **done by the end of 2019?**

18 A. Rush is a relative term. I've been doing
19 appraisal work for 38 years. I can't think of too many
20 assignments that weren't a rush. I think in the context
21 of this type of assignment a rush job would be anything,
22 you know, within a month or six weeks. That would be
23 what I call a desirable turnaround time. I think
24 typically we're able to do that and provide that type of
25 service depending upon a number of factors, including

1 the availability of information, the completion of the
2 engineering report, what type and how available access
3 to the property is, as well as access to any municipal
4 representatives that we might have to follow up with
5 questions to. While we never guarantee a client that we
6 will have it done by a certain date, the typical
7 expectation is about six weeks. That's considered quick
8 turnaround whether you want to characterize it as a
9 rush. That's a typical turnaround time, six weeks,
10 maybe eight most.

11 Q. Okay. There was some discussion in mid
12 December after the inspection was canceled about a Plan
13 B. Do you recall that?

14 A. I don't recall that specific reference.

15 Q. This is on page 35 of those emails. About
16 middle of the page there's an email on December 16 from
17 Ms. Simpson to you. Joe, we are getting some nasty
18 weather here. Can we discuss Plan B to get the Eureka
19 report done? Is the end of the year deadline an
20 absolute deadline? Do you see that?

21 A. I do see that.

22 Q. What was Plan B?

23 A. Well, that email is from Kelly, correct? I'm
24 sorry. Who is that email from?

25 Q. Ms. Simpson, Kelly Simpson.

1 A. Ms. Simpson. I don't know that -- I know with
2 certainty there was no Plan A, Plan B per se. I think
3 that's just -- I can only speculate what she meant. I
4 believe it's a reference to maybe an alternate plan or
5 another date because of weather, a Plan B, but not
6 necessarily some laid out identified plan or sequence.
7 It's more or less an alternate date or alternate option.
8 Then I believe it had to do with scheduling I guess is
9 all I can say or all I can speculate.

10 **Q. A fellow named Jordan Leiner is included in**
11 **many emails. Who's he?**

12 A. Jordan is one of the associates of Mr. Dinan,
13 and he is one of our contacts at the Dinan office for
14 helping to assemble information and do research for us
15 for our appraisals.

16 **Q. He's a certified appraiser like yourself?**

17 A. You know, I'm not sure of Mr. Dinan -- I'm
18 sorry, of Mr. Leiner's qualifications. I know he's a
19 long-time employee with the Dinan firm and I've met him
20 over the years doing work with them, but I don't know
21 his professional qualifications.

22 **Q. What was his participation in the report?**

23 A. Helping measure buildings, taking pictures,
24 collecting information for Mr. Dinan. Sometimes
25 Mr. Dinan would have up to three people attend from his

1 office. They would presumably just help him collect and
2 gather information.

3 **Q. Is there any particular reason why he wasn't**
4 **listed in your reports as giving you assistance?**

5 A. Yes.

6 **Q. There is a reason?**

7 A. Yes.

8 **Q. Why is that?**

9 A. USPAP and the Appraisal Institute only require
10 the identification of appraisers or non-appraisers that
11 have a significant contribution to the analysis and
12 final opinion. Both USPAP and the Appraisal Institute
13 bylaws and supplemental standards recognize that during
14 the course of an assignment, particularly one like this,
15 there are potentially many people that are helping with
16 different aspects of the assignment, collecting
17 information, verifying information, putting together
18 plat maps, aerial photographs, zoning information, et
19 cetera. And for those that are performing those
20 functions as part of the process and those steps not
21 being considered substantial to the analysis, it's not
22 necessary to list them. So the policy is -- The general
23 policy of appraisers is you don't list those people.
24 You're only required to and you typically only identify
25 those that contributed to the analysis itself.

1 **Q. Okay. You stated that you prepared some of**
2 **the comparables for the Eureka water system?**

3 A. Involved in the process, yes, in selecting
4 some and excluding others.

5 **Q. So you assigned -- Were you involved in**
6 **assigning a unit value of \$4,500 for the water**
7 **customers?**

8 A. Well, that's more a function of the primary
9 appraiser who is in charge of that responsibility, and
10 then that's discussed and analyzed and explained. We
11 either concur or talk about changing it. In this
12 particular assignment, Ms. Goodman Schneider was writing
13 up the sales and presenting them in report format style
14 and tables and exhibits. And after she completed that,
15 then as part of the discussion and review of the
16 information I was involved in the reconciliation of the
17 final opinion and the unit values.

18 **Q. Did you discuss or did you -- In preparing**
19 **your report, did you consider issues that the water**
20 **system has with DNR?**

21 A. I believe -- I can tell you with certainty we
22 would have considered whatever information was available
23 to us primarily through the Flinn report, but I don't
24 recall specifically what DNR issues were weighed and
25 considered on that assignment back then. Typically,

1 yes, we would consider whatever we were aware of and was
2 brought to our attention.

3 **Q. But you didn't discuss DNR issues in your**
4 **report, right?**

5 A. Not specifically, no. Maybe unless there was
6 reference to Ms. Simpson's report and they were
7 discussed there. That would not be something that we
8 typically would include in our appraisal report, no.

9 **Q. Is that because you took Ms. Simpson's**
10 **information and then -- let me rephrase that. You**
11 **weren't involved in finding out whether the systems were**
12 **meeting regulatory requirements, correct?**

13 A. When you say "you," I'm presuming you mean me
14 and the other appraisers --

15 **Q. Yes.**

16 A. -- the three of us putting our report
17 together? That is correct. That wouldn't fall under
18 something that we would typically do.

19 MS. BRETZ: Okay. Thank you. I have nothing
20 else. Oh, for housekeeping I would ask to admit Exhibit
21 108, Staff Exhibit 108 into evidence.

22 JUDGE SEYER: Are there any objections?
23 Exhibit 108 is admitted.

24 (STAFF EXHIBIT NO. 108 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THIS RECORD.)

1 JUDGE SEYER: We'll go to questions from the
2 bench. Commissioner Silvey, do you have questions? Are
3 there any questions from the other Commissioners?
4 Mr. Batis, I do have some questions.

5 QUESTIONS

6 BY JUDGE SEYER:

7 Q. I'd like to ask about your experience
8 specifically when it comes to appraisals of utilities.
9 How many utility appraisals have you performed?

10 A. Your Honor, by utility, you mean water and
11 sewer exclusively?

12 Q. Yes. Let's stick to water and sewer since
13 that's what's most applicable.

14 A. They make up the majority. Water and sewer
15 systems make up the majority of the utility systems I
16 participate in in the valuations on. I would say over
17 the last ten to fifteen years I've probably been
18 involved either solely, exclusively or participated with
19 others in assignments for about 50 to 75 systems in five
20 or six different states.

21 Q. How many of those, if you can recall, how many
22 were water systems, how many were wastewater systems,
23 how many were combined purchases of both wastewater and
24 water systems?

25 A. I would say that it would be pretty close to a

1 third of each. In some cases, for instance, in --
2 there's a community in southern Illinois where one
3 assignment was the water system and then one assignment
4 a year or two later was the sewer. That would be two
5 separate even though we ended up doing both of them. I
6 would say for a particular assignment probably about a
7 third were just water, a third were just wastewater, and
8 approximately a third would have been acquisitions of
9 combined systems.

10 **Q. Of those roughly 50 to 75 appraisals that**
11 **you've done, how many of those were in Missouri?**

12 A. Probably 15 to 20.

13 **Q. How many were for American Water Company and**
14 **its affiliates?**

15 A. Maybe half, two-thirds. I'm sorry. Are you
16 talking about Missouri or all?

17 **Q. All. Any of the affiliates of American Water**
18 **Company.**

19 A. Right. I'm sorry. Are you talking about what
20 percentage of all of the assignments or what percentage
21 of the Missouri assignments?

22 **Q. All of the assignments.**

23 A. All of the assignments. Probably about a
24 quarter to a third would be one of the American Water
25 Companies, I believe.

1 **Q. Then I will go ahead and follow up. How many**
2 **of those were for Missouri-American Water?**

3 A. Of that, approximate quarter or third I would
4 say. Probably half Missouri. We do about an equal
5 number in Illinois for American Water.

6 **Q. And so for Missouri-American Water, what kind**
7 **of numbers are we talking about as far as number of**
8 **appraisals?**

9 A. 10, 10 to 15 maybe. I'm not sure if the math
10 works out. I'm just giving you my best guess off the
11 cuff. I'd say maybe a dozen in Missouri for American.

12 **Q. That would be in that roughly 10 to 15 years?**

13 A. Well, I've been -- My experience goes back
14 between 10 to 15 years. My experience in Missouri goes
15 back about seven or eight years, I believe. So yes,
16 they would fall within the last seven to eight years.

17 **Q. As far as this particular appraisal, have you**
18 **ever worked with Mr. Dinan on other appraisals?**

19 A. Outside of Eureka or outside of utility
20 assignments altogether?

21 **Q. Outside of Eureka.**

22 A. Yes, certainly I have. He's been involved in
23 several of the assignments that I've participated in in
24 Missouri for American Water.

25 **Q. How about Ms. Goodman Schneider?**

1 A. The same, sir.

2 Q. If I could, could I direct your attention to
3 page 6 of your report which is marked here for the
4 hearing as Exhibit 3, your direct testimony, Schedule
5 JEB-2 which I believe is marked page 11 of 98.

6 A. Yes.

7 Q. So you have a definition of market value.
8 Does market value consider the condition of the assets
9 and if so, how?

10 A. Very good question, because it absolutely
11 does. I think implicit in market value opinion, not I
12 think, I'm 100 percent certain, that implicit in an
13 opinion of market value are all aspects of the property
14 including financial, economic, physical, locational,
15 time or market conditions. Understanding that although
16 those are factors and influences to value, the degree of
17 and the extent of information we always have with
18 respect to all those elements and how we're able to
19 analyze them varies from assignment to assignment. In a
20 perfect world and in a perfect appraisal assignment
21 which I've yet to see, we have all the information
22 necessary about the market, the financial components, we
23 have perfect sales data, we know everything about the
24 property physically, economically. So we try to take
25 into account all aspects of the property, but clearly

1 the extent of information we have varies from property
2 to property and assignment to assignment. It is a
3 factor that is considered just as it's a factor in the
4 comparable sales data that we relied on.

5 Q. On page 5 of your direct testimony on line 14
6 you make reference to a January 20, 2020 appraisal
7 report. Was that appraisal report -- Has that appraisal
8 report been made available to the Commission?

9 A. I do not know, sir. I don't know what was
10 submitted.

11 Q. But you are familiar with an appraisal report
12 dated January 20?

13 A. I am.

14 Q. If I could draw your attention to your cover
15 letter with the valuation report letter dated March 23,
16 2020. It is Schedule JEB-2, page 2 of 98.

17 A. I'm there, sir.

18 Q. The footnote at the bottom of the page, I
19 believe roughly halfway down the paragraph, it refers to
20 the engineer's report for an assessment of the water and
21 wastewater systems. Is there any standard for the level
22 of assessment to be performed as part of an appraisal?

23 A. It varies. That's a scope of work issue as
24 identified by USPAP. That varies from assignment to
25 assignment. So there's no etched in stone standard, but

1 there are guidelines per USPAP that help guide the
2 appraiser in understanding what they should be relying
3 on and how they should be relying on that type of data.

4 Q. I've got a couple of questions about the
5 December 10, 2019 site visit.

6 A. Yes.

7 Q. Was Ms. Simpson there that day?

8 A. I don't recall. My recollection is no, but I
9 can't tell you with certainty.

10 Q. And correct me if I'm wrong, and it's very
11 possible that I'm wrong, but I believe you testified
12 earlier that on that December 10 the site visit was
13 brief. I'm sure that's not the word you used, but for
14 whatever reasons that site visit did not last very long.
15 Am I correct about that?

16 A. That's my best recollection, sir, yes.

17 Q. If I go back to the emails, Exhibit 108, on
18 page 98 of that exhibit.

19 A. I'm sorry. What page? 98?

20 Q. 98. Actually I have to get there myself. So
21 bear with me. At the bottom of that page, your email is
22 dated December 10, 9:35 a.m. So does that --

23 A. Correct.

24 Q. Should we infer from that that by 9:35 a.m.
25 you were making plans for this other visit and were no

1 **longer at the site?**

2 A. I'm not sure if I was still there and emailing
3 or if I was -- if the time I spent there it was
4 completed, but clearly as I read that email, yeah, there
5 was some effort to get an alternate date set for
6 Mr. Dinan and Ms. Simpson. So I'm assuming they could
7 not make that date, the 10th, we were trying to
8 reschedule. It could have been a weather issue.
9 Frankly, I don't know. I don't recall.

10 **Q. The Flinn Engineering report, it states that**
11 **they did not participate in a site visit but they relied**
12 **on photos from a site visit. Were those photos, if you**
13 **know, from December 10, 2019 or from another date around**
14 **that time?**

15 A. My best guess, sir, is that they would have
16 been from one of those two or three inspection dates
17 from the appraisers. Whatever photographs were taken
18 during our customary inspection and uploaded to the
19 Google drive or shared folder that that's what Ms.
20 Simpson is referring to. I don't recall what date they
21 were taken or by whom.

22 **Q. Did those photos become part of the appraisal?**

23 A. Certainly part of the appraisal process in the
24 development of the opinions but not necessarily in the
25 appraisal report itself, no.

1 **Q. Would it be possible for the Commission to get**
2 **copies of those photos?**

3 A. I'll be happy to check, see where they are or
4 find them, track them down and get them to you if
5 they're available by all means. I'll get them to
6 Mr. Cooper certainly.

7 **Q. On page 10 of your report, that would be**
8 **Exhibit 3, page 15 of 98, I believe.**

9 A. Yes, sir.

10 **Q. It states also required by Missouri statute**
11 **pertaining to the valuation is the inclusion of a**
12 **professional engineer's report addressing the**
13 **depreciated cost estimates for the components and**
14 **infrastructure related to the water delivery and**
15 **wastewater system. Can you point the Commission to the**
16 **Missouri statute statutory language that requires the**
17 **inclusion of a professional engineer's report pertaining**
18 **to the valuation?**

19 A. Actually I don't think it's explicit in the
20 law, sir. I think that's not accurate and poorly
21 worded. It's a customary part of our assignment because
22 for USPAP we typically rely on engineering report, but I
23 don't think that the statute is explicit.

24 **Q. Later on in that same paragraph it states**
25 **based upon our reviews and independent research, we find**

1 the report prepared by Flinn Engineering to be thorough,
2 prepared in compliance with industry standards and
3 credible. What is meant by industry standards when it
4 comes to that sentence?

5 A. Well, part of the typical engineering report
6 deals with adjustments that are made or factors that are
7 applied to cost estimates, indexing if you will.
8 Depending upon the assignment, could be indexing
9 original costs forward or the reverse indexing of
10 estimating the current costs of an item and doing a
11 reverse index process to come up with an original cost.

12 There are various methods or procedures in
13 order to accomplish that, and typically engineers use
14 one of the resources out there. I believe the commonly
15 used one by Flinn is the Handy-Whitman Index which is an
16 industry index that provides data going back over a
17 hundred years for the cost and labor, the materials and
18 labor for construction and different aspects and
19 submarkets. My office maintains a database of five
20 different indexes: Handy-Whitman, Marshall Valuation,
21 CPI Indexes and a couple others.

22 And what I typically do when I receive an
23 engineer's report that involves any type of indexing and
24 cost data or original cost data, I look at my own
25 database with the blending of rates that I maintain

1 through subscription services to check on essentially
2 accuracy and if maybe I don't have the index they're
3 using to see if the cost figures that they use are
4 consistent with industry models. It's just kind of an
5 internal check if you will into the numbers that are
6 being used and represented in the report by the
7 engineer.

8 Q. And then at the bottom of that paragraph it
9 says our reliance on Flinn report, it says inconsistent,
10 I believe it's meant to state is consistent with the
11 Appraisal Institute's Guide Note 4. What is that?
12 First of all, what are the Appraisal Institute's Guide
13 Notes?

14 A. First of all, that's a perfect example of
15 using four sets of eyes sometimes don't catch those
16 mistakes. The Appraisal Institute, first of all, is a
17 private appraisal organization recognized as a world
18 leader in education, training, resources, and they
19 confer upon --

20 THE COURT STENOGRAPHER: Confer upon?

21 THE WITNESS: -- confer upon members who have
22 qualified and met the requirements different levels of
23 designations, the highest being the MAI which is a
24 designation held by me and Mr. Dinan, and as part of its
25 professional standards and requirements for its members

1 the Appraisal Institute has supplemental standards that
2 exceed the minimum requirements of USPAP. So there's
3 standards that apply for myself if you will that are
4 above and beyond the minimum requirements of USPAP, and
5 those are called supplemental standards.

6 As part of the Appraisal Institute's
7 supplemental professional standards, they also offer
8 input into various issues and circumstances that we
9 might find ourselves involved with such as a situation
10 where we rely on information or professional reports
11 prepared by others and at varying levels and degrees, of
12 course, could be incorporating those contents of those
13 reports or those opinions into our analysis into our
14 research. And Guide Note 4 from the Appraisal Institute
15 specifically addresses the issue of when an appraiser
16 designated member of the institute is going to use or
17 adopt or rely on the work of another professional who's
18 not an appraiser under what circumstances and rules
19 would it be appropriate to do so. And Guide Note 4 sets
20 forth those requirements.

21 For instance, are we familiar with the person
22 who prepared the report, are we familiar with their
23 qualifications and background, do we have any reason to
24 believe that their work is not untruthful or with bias
25 or lacks objectivity, does the work as far as we know,

1 although not being experts in their respective fields,
2 does it seem to meet or comport to their professional
3 standards as compared to other reports maybe that we've
4 seen or used or relied on. So there's a series of tests
5 if you will or standards that are used as a guide for us
6 before we just rubber stamp and use somebody's opinion
7 or somebody else's work product.

8 BY JUDGE SEYER:

9 Q. Okay. Thank you.

10 A. You're welcome.

11 Q. If I can refer you to page 12. And if you
12 could --

13 A. Yes.

14 Q. -- could you take a look at that last
15 paragraph.

16 A. Yes, sir.

17 Q. The last sentence states however, the three
18 professional real estate appraisers co-signing the
19 attached appraisal report assumed that the water
20 delivery and wastewater systems components, including
21 the plant pumps and all related facilities, are in
22 proper working order and have been maintained adequately
23 to meet all pertinent codes and regulatory requirements.
24 Given that statement, can you confirm if the maintenance
25 records were reviewed as part of the overall appraisal

1 **process?**

2 A. I don't recall if maintenance records were
3 completely reviewed by any or all of the three
4 appraisers.

5 Q. Did you review environmental regulatory
6 compliance records to determine if the assets had been
7 adequately maintained to meet applicable code and
8 regulatory requirements?

9 A. No, sir.

10 Q. If I could direct you to page 37 of your
11 report.

12 A. Yes, sir.

13 Q. The cost approach is described, and in the
14 third paragraph it references the different types of
15 depreciation properties experience and lists them as
16 physical depreciation, functional obsolescence and
17 external obsolescence. Can you explain physical
18 depreciation and give us an example?

19 A. Yes. Physical depreciation is -- If you will,
20 when I teach this course and this material to appraisers
21 entering the field, we simply describe it as the wear
22 and tear of an item, the physical wear and tear. Those
23 items could be physically depreciated in two classes, in
24 either curable or incurable which is an economic or
25 feasibility concept.

1 So for instance, at my house I have a broken
2 window. That's depreciation. It's not a brand new
3 window obviously. It is depreciated. That's curable.
4 Not from the sense that it can be fixed but that it's
5 economically feasible to fix it because it's worth it to
6 fix it. There are also incurable physical depreciation
7 items such as the foundation of my house. It is not
8 brand new. It has cracked. It is worn and torn over
9 the 70 years. But it wouldn't be feasible to tear apart
10 my entire foundation and replace it. So that would be
11 incurable physical. That's a very, very crude, excuse
12 me, but very crude example of what depreciation is and
13 the two classes of it.

14 **Q. How about functional obsolescence?**

15 A. Functional obsolescence is a loss in value or
16 diminishment in value that is caused by or resulting
17 from a change in market preferences. So for instance,
18 it's something internal to a property. So it's within
19 the four corners of the property. Again, for simplicity
20 I'll use my house as an example. My house has an
21 attached one-car garage. Hypothetically let's say it
22 does. And back when it was built that was the norm.
23 It's a 70-year-old home. However, people looking for a
24 home today are typically seeking a two or three-car
25 attached garage. While physically my garage is

1 contributing to value, there's nothing wrong with it as
2 far as the bricks and mortar go, my home has a
3 functional issue, or maybe the bathrooms are too small
4 in my home because everyone now likes big, large
5 spacious master baths. Physically while my bathroom is
6 okay and my garage is okay, they don't meet the
7 preferences of today's market buyers, and therefore if I
8 was building my house today and replicating it it would
9 be less than an otherwise newer home that would have the
10 more satisfying larger garage and bigger bathroom. So
11 it's a loss in value within the four corners of the
12 property caused by outdated utility, maybe older
13 kitchen, smaller closets, smaller bedrooms, but it's not
14 a physical issue. It's a functional issue.

15 **Q. Did functional obsolescence come into play in**
16 **your analysis?**

17 A. No, it didn't in either the cost approach or
18 the market approach because the comparable sales we used
19 are all concluded generally to have the same issues.
20 They're older systems that share similar utility, a
21 facility in the sense of a benefit or an amenity.

22 **Q. On page 39 of your report, on the last line it**
23 **says if a property suffers any functional obsolescence,**
24 **it is necessary to utilize the reproduction cost**
25 **estimate. Were any adjustments made for functional**

1 **obsolescence of any asset that you reviewed as part of**
2 **your appraisal?**

3 A. No, I don't believe there was any noted in
4 this assignment.

5 **Q. Could you explain for the Commission external**
6 **obsolescence?**

7 A. Yes. External obsolescence is a loss in value
8 to a property caused by some factor that is outside the
9 four corners of the property. So for instance, again
10 for purposes of simplicity, I like to relate it back to
11 a single family home. You can build the exact same
12 homes, same size, same quality, same material, same
13 workmanship, make it identical in two locations and the
14 house might cost the exact same to build in a particular
15 market area. So let's say the cost of the house with
16 all labor, entrepreneurial incentives, profits,
17 overhead, direct and indirect costs and site value, say
18 the total cost to build those two homes is \$300,000.
19 And one party builds the house in a subdivision of other
20 homes and the second party builds the exact identical
21 house at the exact identical cost in a location which is
22 directly across the street from an operating landfill.

23 In theory, although not a given, but you might
24 expect in most cases that the house that is across the
25 street from the landfill is going to have a lower market

1 value once it's built than the house that's in the
2 subdivision even though they are identical and in the
3 same time frame and in the same general market area.
4 The loss in value is attributed to something external to
5 the property. It could be the odor, could be the site,
6 could be the traffic, but there's something external to
7 the property that makes it undesirable and has a
8 negative impact on its value. That would be an example
9 of external obsolescence or external depreciation.

10 JUDGE SEYER: Thank you. I do have several
11 more questions. So at this point I'd like to break for
12 lunch and we'll continue with Mr. Batis after lunch.
13 Let's restart at 2:15. We're going off the record.

14 (STAFF EXHIBITS NOS. 100 THROUGH 109 WERE
15 MARKED FOR IDENTIFICATION BY THE STENOGRAPHER.)

16 (Thereupon, a lunch recess was taken from 1:08
17 p.m. until 2:22 p.m, after which the following
18 proceedings were held:)

19 JUDGE SEYER: All right. We are back on the
20 record and this is the hearing in Case WA-2021-0376. It
21 is 2:22 and we are in the middle of, I say we, I, Judge
22 Seyer, am in the middle of questioning Witness Joseph
23 Batis.

24 WITNESS JOSEPH BATIS RESUMED THE STAND.

25 BY JUDGE SEYER:

1 Q. So Mr. Batis, sticking with your report, your
2 appraisal report, if I can direct your attention to page
3 46.

4 A. I'm there.

5 Q. So there you touch on the sales comparison
6 approach. It states that the fundamental concept of
7 that approach is the principle of substitution which is
8 defined as a valuation principle that states that a
9 prudent purchaser would pay no more for real property
10 than the cost of acquiring an equally desirable
11 substitution on the open market. Can you explain, kind
12 of elaborate on that principle of substitution?

13 A. Sure. The principle of substitution is one of
14 the fundamental principles in valuation. Basically it
15 states that one of the measures of value, one of the
16 three approaches or one of three measures of value is to
17 look at the property through the eyes of the market
18 through potential buyers and through the hypothetical
19 seller of the subject property recognizing that in most
20 cases a buyer has other options or alternatives to
21 satisfy the need or the utility or the desire that
22 they're looking to achieve through the acquisition of
23 the subject property.

24 And so in a simple sense again, we'll take it
25 back to a residential property. If I'm looking for a

1 house that has certain amenities that are desired by me,
2 whether it be the size of the home, the location, the
3 quality of the home, which school district it might be
4 in, et cetera, the idea is that there are other sales
5 out there that I could choose from or select from, and
6 based upon what those properties sell for or are on the
7 market for will help narrow down the range of what the
8 subject would be in an open and competitive market. Not
9 unlike buying a car or any other tangible asset.

10 In real estate it's the same idea that there
11 are other alternatives to the property. No property is
12 -- Every property is unique in its own way, but there
13 are always suitable alternatives that could provide the
14 same utility and benefits.

15 **Q. For the properties that were used in this**
16 **comparison, were they looked at with the support from**
17 **any other party such as Flinn Engineering?**

18 A. Well, all of those properties that were cited
19 as comparable sales, they come to us or we find them,
20 right, through different resources. In many cases they
21 are properties that we're aware of because we have
22 appraised them, and we being the three of us
23 collectively or maybe Elizabeth inspected one of them
24 for an assignment she did, but the majority of the
25 transactions that are identified were, in fact, either

1 inspected and/or appraised by at least one of the three
2 of us. In many cases because we were performing
3 appraisals, we also would have been during at some point
4 in the process, normally at the inspection and early on,
5 we would have been involved with an engineer for that
6 assignment because that's the norm even though again the
7 Missouri statute doesn't require it. That is the norm
8 for these appraisal assignments in all states.

9 So for, you know, was Flinn Engineering or
10 someone like Flinn Engineering present at some of those
11 inspections, the short answer would be yes, in most
12 cases but not always. Sometimes that sales data comes
13 through us through public records and research where we
14 don't have the benefit of talking to an engineer about
15 it but most cases we do and we have.

16 **Q. Okay. I want to take you back to the**
17 **definition or the description of a sales comparison**
18 **approach. In that paragraph where it speaks on the**
19 **principle of substitution, can you explain what the cost**
20 **of acquiring means?**

21 A. Generally speaking, yes. I'm sorry. Was
22 there a specific reference to a statement that I could
23 look at you're asking about?

24 **Q. On page 46, in the middle of that second**
25 **paragraph -- I'm sorry. Lost my place.**

1 A. I think in the very first paragraph, Your
2 Honor, there's a statement about no one will pay more
3 for property than the cost of acquiring an equally
4 suitable parcel.

5 **Q. Yes, I'm sorry.**

6 A. Is that the reference?

7 **Q. Yes.**

8 A. Okay. You want me to comment on that and the
9 relationship between cost and market sales?

10 **Q. Well, what is included in the cost of**
11 **acquiring I guess is what I'm really seeking.**

12 A. Well, the cost of acquiring typically means
13 the acquisition, what it would take to either acquire an
14 existing property that is already built and that is
15 considered to be similar or comparable or possibly even
16 as an alternative the cost of acquiring property and
17 building a replica or duplicate property.

18 In this instance or in this context here, the
19 reference is to what it would cost to acquire an equally
20 suitable property. So again, water utility and
21 wastewater utility systems are very unique. It's
22 difficult for many people to understand the complexity
23 of the sales comparison approach as it applies. So in a
24 very general simplistic example if you will, again if
25 I'm looking at my parameters or my criteria for a home

1 are 3,000 square feet with three bedrooms and two
2 bathrooms, the idea is that I won't pay more for the
3 subject property that has those features what I'm
4 appraising. I won't pay more than 200,000 if down the
5 street I can buy all the homes that are equally suitable
6 that have that same -- the same level of amenities for
7 me. If they're all available and selling for 200,000,
8 the principle of substitution says I wouldn't pay more
9 than 200,000 because I could go buy one of those. It's
10 basically just again a measure of a property value based
11 on what properties similar to it either have sold for or
12 what they could be purchased for based on current sales
13 or listings.

14 **Q. All right. When it comes to the cost approach**
15 **compared to the sales comparison approach, were the**
16 **results of the engineer's report that was prepared for**
17 **the cost approach used to assist in deciding the**
18 **comparable utilities for the sales comparison approach?**

19 **A.** I don't know that they were necessarily and
20 directly involved in determining which ones were
21 selected. However, they're a useful resource in
22 determining comparability or levels of comparability
23 keeping in mind that engineering reports come in all
24 sizes, shapes, and forms. Sometimes an engineering
25 assessment or high level report provides enough

1 information on a comparable sale, one that again maybe
2 sold three years ago, that we can get out of that
3 assessment enough information and detail to understand
4 how comparable it is to the property we're appraising.
5 And in some cases there might be no engineering
6 assessment report or there might be one of very little
7 detail which isn't helpful in us understanding exactly
8 how comparable it is. That all is weighed and
9 reconciled at the end of the process as far as which
10 sales are given more emphasis in the final consideration
11 than others.

12 It's the quality and the quantity of the
13 information that we had for those particular sales,
14 because it varies from property to property and from
15 comparable sale to comparable sale.

16 **Q. All right. In your sales comparison approach,**
17 **under that approach it's based on sales price per**
18 **customer, but in your assessment did you review the**
19 **makeup of the types of customers for each utility used**
20 **in that comparison?**

21 A. Very good question because that is a factor
22 that in many cases is -- yes, we address it. We
23 actually use equivalent customer units or conversions
24 when meters are oversized and for multiple users like
25 apartment buildings, et cetera. So in our normal course

1 of business we research with the property we're
2 appraising, as well as all the comparable sales, how
3 many customers there are, how many of those connections
4 are active, how many are vacant, what their average
5 monthly. In some market areas depending on what kind of
6 properties we're dealing with, there are seasonal
7 fluctuations. We look at those. We also look at how
8 many of the meters are shut off but available to be
9 turned on. Maybe they have a high vacancy factor in the
10 community from employment or other reasons.

11 We look at how many are residential units and
12 residential customers and how many are nonresidential.
13 So for instance, I think in Eureka there was even a
14 situation where the campground was using some of the
15 water. Sometimes it's users that aren't in the system
16 for wastewater but they're in it for water, vice versa.
17 So we look at all those factors and try to come up with
18 a balance or an equivalent number of customers that we
19 can then compare to the comparable sales so we have
20 apples compared to apples if you will.

21 **Q. Can you direct the Commission where in your**
22 **report that the customer analysis is?**

23 A. That's not in the report. A lot of that type
24 level of analysis, and that's just one of the examples
25 of how we go about comparing comparable data. It's not

1 practical and typical to put all of that analysis into
2 the report because it would just be -- it would turn
3 these assignments from 60-page documents into 400-page
4 documents.

5 It's typically not what we recognize to be
6 anticipated or needed by the typical user based on their
7 intended use. So all the different type of metrics we
8 analyze and all the different levels of comparison and
9 we look at cost per foot of main, how many connections
10 they have in relation to how many feet of main. These
11 are all different analyses that we keep in our database
12 that help us run and sort comparable sales to find the
13 most comparable or similar at the end of the day. But
14 it's not -- All that detail is not included in the
15 report.

16 **Q. Okay. Thank you. When it comes to the**
17 **utility sales that were in your comparison, did you**
18 **assess the value of the sales price per million gallons**
19 **per day of those sales?**

20 A. That's one of the pieces of data that we
21 collect, but in many cases we don't have all the details
22 for all the sales. So that's one of the -- I'd say
23 that's one of the factors that is looked at depending
24 upon and weighed based on all the other information we
25 have. If we have really good solid and complete

1 information on all the capacities, existing and current
2 capacities, certainly that is something that is looked
3 at. In many cases like other factors to these
4 properties we don't have enough details to do it on
5 every assignment but one of the things we investigate,
6 yes.

7 **Q. So is the industry standard price per customer**
8 **or price per million gallons per day treated?**

9 A. The industry standard for valuation, this is
10 what we refer to as a unit cost and the unit cost varies
11 from property to property. But in utility systems
12 absolutely the unit cost that is typical in the
13 profession, whether it be in the engineering field or
14 sometimes engineers doing cost estimates for a system
15 and then they equate it and communicate it on a per
16 customer basis. Certainly appraisers.

17 And then most importantly when we talk to
18 buyers and sellers, that's a common reference to sales
19 when we are confirming data with parties which is part
20 of our responsibility with any of these market sales is
21 to confirm the sale date, the sale price, the conditions
22 of the sale, any extraordinary situations or
23 circumstances. And the most common reference dealing
24 with folks like American Water like Ms. Billups and Ms.
25 Pacific or representatives from AQUA or Central States

1 or Liberty, when we call those folks and we are doing
2 research with sales, the discussions are always in terms
3 of X number of dollars per customer. That's the norm in
4 the industry of unit cost.

5 **Q. So there's no other metric that is used that's**
6 **common practice within the industry?**

7 A. Again, there's different metrics and there's
8 different ways to break down and analyze sales and to
9 bracket them based on different ratios of different
10 components. But as far as unit cost goes, unit cost is
11 a term in the profession which is the most commonly used
12 reference to a sale price based upon some unit of the
13 property.

14 So let me give you an example for hospitals.
15 When hospitals sell, we talk about those sales not in
16 terms of per square foot of building area but we talk
17 about them in terms of so many dollars per bed for a
18 nursing home. Hotels are so many dollars per room.
19 Now, that doesn't mean that the other characteristics
20 aren't relevant like the size of the rooms or the age
21 and condition of the property. It just means that the
22 reference to the sales price down to a basic element or
23 unit that's easy to compare would be per bed or per
24 room. In the case of utility systems, it's per
25 customer.

1 Let me put it this way. In 15 years of doing
2 this, I've never had a discussion with anyone in the
3 profession or outside the profession who we deal with,
4 market participants, who talked about a sale price or a
5 value of a property in terms of this one is worth X
6 number of dollars per gallon or per capacity or per
7 gallons pumped a day. I've never even heard that
8 reference. It's not common at all. It's not to say
9 that it can't be done, but the industry norm is dollars
10 per customer.

11 **Q. Okay. I'd like to direct your attention back**
12 **to your report on page 70 which on Schedule JEB-2 is**
13 **page 75 of 98. At the top of that page that first**
14 **sentence says that the Eureka water system has 4,009**
15 **customers. Sales of systems with customer counts less**
16 **than 550 were excluded from the analysis.**

17 **If we go to Sale No. 2, which is on page 48, a**
18 **water system of 567 customers. What features of that**
19 **system made it comparable to Eureka's system?**

20 **A. Well, comparability is a tricky word. It's**
21 **certainly used in our profession. There are so many**
22 **different varying degrees of comparability and a lot of**
23 **differences amongst these properties. When we select**
24 **the comparables, in an ideal world they would be all be**
25 **very similar in size, age, location, et cetera, number**

1 of customers. The fact of the matter is they're not.
2 So while I can't speak for every detail and every
3 rationale that was used by Ms. Schneider in ultimately
4 selecting which ones were the most comparable and the
5 least comparable out of our total pool of probably 50 to
6 100 sales, my best guess is that comparability had
7 something to do with it being relatively recent.

8 I'm speculating based upon our experience that
9 if we went into the engineering assessment reports, all
10 the cost data, the original cost and the cost less
11 depreciation, we saw ratios that were similar to what
12 was demonstrated for the subject property. I'm also
13 assuming that this fell within our parameters for number
14 of customers per linear footage of mains, probably
15 capacity issues were considered, I can't answer with
16 certainty, but these are the types of things that we
17 would look at to determine does that particular property
18 generally fall within or check enough boxes to be one
19 that's representative of the range for the subject.

20 Is it different from the subject in many
21 aspects? Absolutely, they all are. That's the nature
22 of the beast with valuing this kind of special purpose
23 property. But a lot of the nitty-gritty of why this one
24 versus that one, sometimes it just comes down to we know
25 this one, we have high confidence in this sale because

1 we appraised it, we inspected it, we had a detail
2 engineering report. So we're very comfortable with what
3 we know of it as far as how it ranks or compares even
4 though it might be -- might lack a lot of other
5 similarities that we would like to see.

6 I can't tell you actually for any of the
7 comparable sales why that one versus why we excluded. I
8 just know as we went through them and looked at the data
9 that we have on each one, we get comfortable with a
10 certain group of them if you will.

11 **Q. So you can't tell me what the capacity of or**
12 **how the capacity of this Sidney, Illinois system**
13 **compares to Eureka's?**

14 A. Not as I sit here today, no, sir.

15 **Q. And you don't know whether or not that system**
16 **also had treatment facilities as part of its system?**

17 A. I apologize but I do not have the complete
18 file in front of it and I don't know all the details of
19 it as I sit here beyond what's represented in the
20 report.

21 **Q. And so for any of the comparables, you**
22 **wouldn't be able to tell the Commission whether or not**
23 **those systems had -- whether those systems were**
24 **maintained and in compliance with the environmental**
25 **regulations and laws comparable to DNR's regulations?**

1 A. What I can tell you is that, what I can and
2 can't tell you, what I can tell you is that those are
3 factors we are generally aware of, maybe not at the same
4 level of detail in all of them, but those types of
5 issues and questions are ones that are usually answered
6 as we appraise those properties and we have information
7 backing up these files for each property. But I don't
8 know. As I sit here today, I can't fill in all those
9 blanks, but that's part of the process we go through
10 when we are selecting comparables.

11 Sometimes we just don't have any information
12 and it's a sale that seems comparable on the surface
13 based on a couple of amenities and factors and different
14 elements but we don't know any of those details and so
15 we might use that sale and give it less emphasis at the
16 end of the day even though it might appear to be on the
17 surface the most comparable. We don't have enough trust
18 in it to put enough weight on it because we just don't
19 know enough about it. That's pretty much applicable to
20 all these sales if you will.

21 **Q. On this particular one, this Sidney, Illinois,**
22 **Village of Sidney Illinois sale, the last sentence says**
23 **the system is a sequential system purchasing bulk water**
24 **from Illinois-American Water Company. At the time, I**
25 **guess at the time this purchase, asset purchase**

1 agreement was signed in April of 2019, was that Sidney
2 system already connected to Illinois-American Water
3 Company?

4 A. For the water itself or the source of the
5 water, yes, they did not have their own intake or wells.
6 But the assets weren't owned or controlled by American.
7 Sometimes these sales include just components of a
8 system. For instance, a community might sell off all
9 the processing but not the collection system or vice
10 versa. So the understanding of what the assets were
11 that were included and being able to -- having the
12 benefit of reviewing an engineering assessment
13 pertaining to those specific assets is what assists us
14 as a tool for determining comparability and why maybe
15 that unit cost is higher or lower and outside the range
16 if you will of the others.

17 Q. Sidney's water system, on that page it says
18 pending. I assume that means the sale was pending at
19 the time that it was used in your appraisal; is that
20 correct?

21 A. Correct, and it has subsequently closed.

22 Q. There are several that also say pending; is
23 that not true?

24 A. That is true.

25 Q. Okay. But are pending sales allowed to be

1 **used in appraisals under Missouri law?**

2 A. Absolutely. The appraisal standards and
3 USPAP, there's absolutely no language and no
4 restrictions on what is considered a comparable market
5 data for an appraiser to consider, whether it be a sale,
6 a pending sale or even a listing. We've completed
7 appraisal assignments where we had no sales of property
8 but we had five listings. That is appropriate under
9 certain circumstances. Yes, the inclusion of pending
10 sales and other types of market activity, offerings of
11 contracts, listings, all of that is considered relevant
12 market data.

13 **Q. But isn't it possible though that a pending**
14 **sale used in your analysis can conclude with an actual**
15 **sales price that's widely different than what the**
16 **pending sales price was?**

17 A. Well, of course anything is possible, but our
18 research and experience shows that when these systems,
19 particularly in Illinois, when they go to a purchase
20 agreement and the price is agreed to, I can't think of
21 an instance where one of them didn't sell at the pending
22 price at the contract price. Could there be adjustments
23 to those prices? Absolutely. That would be the
24 exception, not the rule.

25 **Q. This particular sale again, it may sound like**

1 I'm picking on the Village of Sidney, Illinois, but is
2 pending sale information, pending sales in Illinois, is
3 that public? Is that a public record?

4 A. It becomes public record once the asset
5 purchase agreement is filed with the Illinois Commerce
6 Commission and it's part of a docket. Then certainly
7 it's available to the public. So during the process of
8 the approval and the consummation of the sale, sometimes
9 those APAs are public -- are available. Some cases
10 they're not, they're not disclosed until after the sale
11 is closed. So it varies.

12 Q. All right. I'd like to direct you to page 70
13 of your report. On page 70 it's where you've concluded
14 that a unit price, this is at the bottom of the page,
15 unit price of \$4,500 per water customer for the subject
16 property water system. Can you explain how you arrived
17 at that unit price?

18 A. Well, generally, yes, the same process we
19 always employ which is after comparing these comparable
20 sales and reviewing the information that we have
21 available, whether it be through information we obtained
22 on inspections or public information, through
23 engineering assessment reports or other types of
24 reports, we rank them and we rank the comparability of
25 each to the subject property. And if the subject

1 property is deemed to be superior to all of them in most
2 categories or elements, it could be at or above the
3 range of the comparables. Likewise we've had systems
4 that we've appraised where they're in such poor
5 condition that their concluded market values are far
6 below the lowest price.

7 We've had systems where pumps were being
8 powered by power extension cords that were running
9 across properties and plugged into a box in a field that
10 didn't meet any codes or requirements. Systems that are
11 at that level if you will, who would reasonably be
12 expected to be far below all the comparable sales that
13 don't have those issues. It's a matter of the
14 reconciliation process is one in which you take a step
15 back from all of the data and you look at it, you look
16 at the cost of the system, the subject system, you look
17 at the cost of the systems relative to the prices they
18 sold to see where the subject fits, how much
19 depreciation has the subject property experienced
20 relative to its cost compared to the others. At the end
21 of the day, that analysis leads us to a range of value
22 that we must pick our unit value from which in this case
23 was 4,500. But there's no simplistic it's this one
24 times three or this one plus 10 percent. Unfortunately
25 for this type of property it's not that simple. Just an

1 overall review of all the data and a reconciliation of
2 all of it and the quality and the quantity of what we
3 have to work with.

4 Q. At the top of that page when I look at the
5 other systems that are being compared, the highest per
6 customer is \$4,157. So I know you're saying that this
7 Eureka system has features that justify \$4,500 per
8 customer. I would just like you to explain to the
9 Commission why that is.

10 What features make it more valuable than any
11 of these other comparable properties?

12 A. Well, I don't know that I can put a finger on
13 the exact reason why it's the highest. Again, when Ms.
14 Schneider goes through this process and analyzes them
15 and looks at the different metrics and the comparisons
16 and looks at the engineering reports and the cost data,
17 that's her strength if you will, her major contribution
18 to this process.

19 When we walk through that analysis and it's
20 explained to us why the subject falls at this range or
21 above this range, we look at it unless something stands
22 out that flies in the face of it if you will or seems to
23 be inconsistent with the data or the other approach to
24 value, it normally is a reasonable conclusion. But I
25 can't tell you that -- These are strange birds if you

1 will. It's not like a house where that one sold for a
2 hundred thousand and we know its location is 10 percent
3 better so the answer is 110,000 or it's 90,000 if it's
4 10 percent superior. These assignments don't fall into
5 that category. The process is not that simple to
6 quantify the adjustments and quantify the end result.

7 A lot of it comes down to judgment, experience
8 based on being able to view and investigate the other
9 sales and understand what they were to conclude ours is
10 better than that, ours should be at least 10 to 20
11 percent higher than that range. That comes with
12 experience and it comes with understanding of the data.
13 But unfortunately there's no equation or no simple
14 answer to quantify it.

15 Q. All right. Thank you. I want to switch gears
16 to the wastewater system and that is just in your report
17 it starts on page 71 which is the very next page.

18 A. Uh-huh.

19 Q. At the bottom of the page it says the most
20 comparable properties would be those that include a
21 similar number of customer accounts for the sewer system
22 although other differences such as age/condition,
23 location and market area must be reconciled. In your
24 sales comparison approach, were there adjustments made
25 for differences that would impact the value of the

1 **system?**

2 A. Not quantitative adjustments that we'd be
3 accustomed to seeing in other types of appraisal
4 assignments. More of a qualitative analysis.

5 **Q. And then similar to my question about the**
6 **water system and how you arrived at \$4,500 per customer,**
7 **how did you arrive at \$2,500 per sewer customer?**

8 A. It would be the same explanation, sir, that I
9 provided with respect to the water which is going
10 through each one of the comparables, trying to get an
11 appreciation for what type of information we have, how
12 thorough it is, how reliable the information is, was it
13 first-hand information or information that we gained
14 through sources that all the blanks aren't filled in.
15 And then we started looking at the metrics and the
16 different ratios, and again ultimately through our
17 experience and judgment we get to a point where we get,
18 I hate to put it as a way like a warm and fuzzy feel or
19 comfort feel for where the property is, but the data
20 starts to point to, when you look at those different
21 ratios and different metrics, starts to point to we're
22 in the higher end of the range or we're in the lower
23 range or maybe we're just kind of in the middle.

24 The data is not perfect. There are clearly
25 some systems that seem to be very similar that sold for

1 more and there are some that seemingly are very similar
2 that sold for less. Sometimes there's some unknowns,
3 there's some vagaries in the sales data that can't be
4 answered for and it might justify something more in the
5 middle of the range. But unfortunately there's no
6 science to this where, you know, again like traditional
7 appraisal assignments we can capitalize an income and
8 measure things on so many dollars per unit value and the
9 adjustments based on that same quantitative method.
10 That process does not work with this type of data
11 unfortunately. There's no simplistic answer to it.

12 **Q. Right. I believe you maybe even used that**
13 **phrase in your report, it's an art, not a science.**

14 A. Clearly.

15 **Q. And similar to your appraisals of water**
16 **utility systems, is it industry practice that your**
17 **metric is sales price per customer as opposed to any**
18 **other type of metric?**

19 A. Again, I'd answer that by saying that's how --
20 that's the most common way to express prices and to
21 compare systems on a unit basis just like it is for
22 every other appraisal assignment. Office buildings, we
23 talk about what is the price per leaseable square
24 footage. Industrial buildings it's what is the asking
25 price per square foot or what is the rental price per

1 square foot. Land, how much is the land worth per acre.
2 Can you also analyze land on per front foot, per depth,
3 land to depth ratio, per square foot. All of those are
4 an absolute yes, but the most common way to compare them
5 on a similar basis is price per acre. That's the norm.

6 In the utility system valuation assignments,
7 it's probably the only way -- the only method that is
8 used for expressing sales prices and values is a price
9 per customer.

10 **Q. If I can direct your attention to page 6 of**
11 **your report.**

12 A. Page 6?

13 **Q. Page 6. On the schedule it's page 11 of 98.**

14 A. Yes, I'm there.

15 **Q. So at the bottom of the page it shows date of**
16 **physical inspection of the property December 10, 2019**
17 **and March 18, 2020. And then it also says -- I'm sorry.**
18 **It also says a few lines later that multiple site visits**
19 **were conducted between December 10, 2019 and March 18,**
20 **2020. Who did participate in the March 10, 2019 site**
21 **visit?**

22 A. Well, I inspected it on that date. I may have
23 been the only one on that date. The other appraisers, I
24 think maybe we had that scheduled as I talked earlier.
25 I think possibly that was the date that was tentatively

1 set for whoever could make it on the first inspection to
2 get the assignment going. And it's very probable that
3 the other appraisers based upon the emails that my
4 memory was refreshed with earlier that they made
5 inspections on subsequent dates, but clearly I was there
6 on December 10.

7 Q. Ms. Bretz asked you earlier about the email.
8 It's her Exhibit 108, page 97, 98. That was your
9 December 10, 2019 email that was sent at 9:35 a.m. and
10 that email is trying to make arrangements to schedule a
11 site visit with Mr. Dinan and the engineer. So it just
12 -- It strikes me odd that it's 7:35 a.m. So would you
13 have made that site visit and already decided by 9:35
14 a.m. to make another site visit?

15 A. Absolutely. You know, may I explain?

16 Q. Sure. That's why I asked the question. I'd
17 like you to explain.

18 A. I didn't know if you wanted a yes or no answer
19 or if you wanted me to elaborate. Very often these
20 assignments, because of a number of reasons, because of
21 the idea of turnaround time, expected delivery date, we
22 talked about that earlier, whether or not it's a rush
23 job or how soon it needs to be completed. Sometimes
24 there is a time pressure. There's also weather and
25 travel considerations. I drive and that's maybe a

1 five-hour drive for me to get to that location. For
2 Elizabeth, it's maybe an eight or a ten-hour drive. We
3 all have our own practices, all the appraisers and the
4 engineer. So coordinating a date on short notice that
5 we're all available to is sometimes very difficult.

6 Of course, there's weather considerations.
7 Even though the weather might be fine down there,
8 Elizabeth is driving from Wisconsin. So she may not be
9 able, because she doesn't fly down, she drives, she may
10 not be able to get down to an appointment because of the
11 weather in her market area.

12 So instead of putting off inspections until
13 everyone is available and the conditions are ideal for
14 all of us, including the host of the meeting which in
15 this case is the City of Eureka and its officials and
16 its staff, it's not uncommon for me to take the lead or
17 one of the other appraisers. Typically I will call the
18 client and say look, we're approaching holidays. It
19 might be weeks or months before we find a date where
20 everyone is available. Can I call the City of Eureka,
21 can I have a contact where I can call and go down and
22 meet them, go out and inspect the properties because
23 again I focus -- a big part of my focus is the land
24 values and the easements and the parcel sizes and I can
25 go down and start collecting data on the sites and the

1 locations, view them so I know what kind of properties
2 we're dealing with, are they residential properties in
3 town, are they water sewer locations, are they well and
4 septic locations, are they sloping and hilly
5 topographies, are they level buildable land parcels, but
6 very often the inspection is not had or does not take
7 place with everybody at the same time. On occasion it
8 does.

9 In this case based upon as I looked back and
10 went back and found my photographs and the dates on the
11 photographs, I recall specifically being there, driving
12 down early the night before and staying overnight and
13 getting there early in the morning for the appointment
14 that was scheduled just for me with the expectation that
15 I could be back home with my six or seven-hour drive by
16 evening. And I can say with confidence that now as I
17 think through the process and look at the emails that
18 once I got there I worked with the staff and whoever was
19 there on the city's behalf to start coordinating what
20 would be a good date to get the other appraisers in when
21 their schedules allow, when is the staff available, are
22 there going to be breaks during the holidays or days
23 when people won't be available to drive us around or
24 take us around.

25 It wouldn't surprise me at all that I was

1 there for an appointment at 8:00 or 9:00 in the morning.
2 We always start with a meeting in the office to go over
3 all the particulars of the assignment, and then at that
4 time that I started the process of picking a date and
5 suggesting a date and coordinating a date for the other
6 appraisers and engineer to come down. That's a very
7 typical process. So the timing of the email does not
8 surprise me at all. I think that's very reasonable
9 based upon how we go about this in instances when we
10 can't all be there at the same date.

11 **Q. You mentioned photos. You took photos on**
12 **December 10?**

13 A. Yes, sir.

14 **Q. Do you recall what those photos -- what you**
15 **took photos of?**

16 A. All the different locations when I went out on
17 the inspections with representatives from the city.

18 **Q. So well sites, storage tanks, et cetera?**

19 A. Yes, sir. Lift stations, pump stations,
20 treatment plants, towers, if there was excess land or
21 excess parcels, buildings, structures, whatever.

22 Whatever was identified at that time as being part of
23 the proposed sale assets, they would have been inspected
24 and photographed.

25 **Q. In those emails it looked like you were trying**

1 to arrange for maybe a December 17, 2019 site visit that
2 everyone could participate in. Did that site visit
3 actually occur on the 17th?

4 A. Well, I know it occurred but I don't know if
5 on that date. I can say with certainty that the others
6 inspected. Obviously that email was trying, as you
7 stated, was trying to coordinate. The purpose of that
8 was trying to coordinate and get everybody down there.
9 I don't recall what the replies and responses were and
10 if they all made it on the 17th or if they ended up
11 finding a date that worked, an alternate date. Clearly
12 that's what my objective was.

13 Q. Were you there on that, and whatever date it
14 was, the 17th, 18th, were you there that date?

15 A. No. I believe my next inspection date was in
16 March.

17 Q. But do you know who would have made that
18 second date in December?

19 A. I don't recall. I'm not even sure it was a
20 second date. It's very possible that Ms. Goodman
21 Schneider and Mr. Dinan ended up making their own
22 appointments individually. I just don't recall. Pretty
23 much left that to them to work out instead of trying to
24 be the middle person or middleman. I threw a date and
25 said can everybody be here next week. Whether they made

1 that date or whether they made their own inspections, I
2 don't know as I sit here today. I'll try to track that
3 down and reach them.

4 **Q. You mentioned that March site visit, March 18.**
5 **First of all, what was the purpose of that visit since**
6 **it was only five days before the report was released?**

7 A. I'm not sure. I'd have to go back and look.
8 I'm not sure if there were some either additional assets
9 or something I missed or still had questions on. It's
10 not uncommon if I'm working on an assignment that I
11 might be maybe down in the region working on something
12 else that if I have to either follow up and go check on
13 something about a building or maybe go look at the land
14 sales that I would go back down to the property for a
15 second view or third view. As a matter of practice, I
16 don't do that. As a matter of policy, I don't do that
17 practice. There are times when I'll go back and look at
18 it again. Could be for other reasons. I'm not sure
19 what it would have been.

20 **Q. So you were there that date? You were there**
21 **on the 18th, you yourself?**

22 A. Yes, sir.

23 **Q. Can you tell us --**

24 A. That's what my notes and the report indicate.

25 **Q. I understand. I can't account for every day**

1 of my life for sure.

2 A. Right. I have a hard time remembering what I
3 did last week. But I think yes, my best most certain
4 answer or most confident answer would be yes, I was
5 there that day.

6 Q. Do you recall who else among the appraisers
7 and engineers were there that day?

8 A. Again, I can check with them, but I don't
9 recall. I'm down in that region every six to eight
10 weeks looking at properties and doing something. I
11 don't recall who was there, unfortunately.

12 Q. Can you pull back up Exhibit 108 which
13 contains the emails.

14 A. Okay. I have the exhibit with me.

15 Q. All right. And on page 101 of 128, it states,
16 and again this is from you to Mr. Dinan, Ms. Goodman
17 Schneider, Jordan Leiner and Kelly Simpson, you write
18 hello, just checking in with everyone to see if you had
19 a chance to review any of the documents yet and if you
20 could send me an email about your availability to
21 reinspect Eureka so we can get this report finished in
22 the next few weeks for the client. And then you say
23 Elizabeth, I can recall that you're fine with your
24 inspections and did not need to come back for a second
25 trip. When you used the word reinspect Eureka, what are

1 **you referring to?**

2 A. I believe that -- Well, earlier today this
3 morning I testified that there may have been some
4 circumstances on this assignment regarding an inspection
5 where we showed up and the community wasn't ready for us
6 in one regard or another, whether it was staff or
7 documents. Whatever it is when we got there there was a
8 misunderstanding of why we were there and how much time
9 we needed to go see, because this is essentially a full
10 day of inspections, you know, going out in the field and
11 looking at all these properties.

12 And I recall, as I testified this morning,
13 that somewhere in the process for this system, for this
14 assignment, there was something like that that came into
15 play, something caused us to reschedule.

16 As I went back and looked at my notes, I found
17 that we originally met down there, all the appraisers,
18 in I think it was August of 2019 when we were initially
19 contacted about and all engaged to perform the
20 appraisal. I think we went down there. It was probably
21 premature. I think we were, like we do in many cases,
22 we get hired, we look at our schedules. Is it better to
23 go this week, next week, in three weeks. It still
24 worked out in August that everyone was available and
25 could meet there, it was convenient, and I think we did

1 it, and in retrospect I think it probably wasn't a good
2 choice because there was either misunderstanding or they
3 weren't ready for us or they didn't have everything we
4 needed. So while we were there and were able to see a
5 few of the assets and visit some of the sites ourselves
6 using the maps that we had going out and looking at the
7 plants, it wasn't the full scale inspection. And we all
8 agreed to reschedule it. I believe this email is
9 referencing that reinspection.

10 **Q. So you wouldn't really categorize that August**
11 **visit as an inspection?**

12 A. Well, I do from the point of, you know, the
13 inspection entails several items or several things. It
14 includes the opportunity to sit down typically with the
15 seller. It could be -- In this case I think it was
16 Mr. Sabo but it could be someone from his staff or a
17 clerk. It could be the director of public utilities or
18 the director of the water or sewer department or
19 utilities department.

20 When we commonly and generally use the term
21 inspection, it includes several things happening. One
22 is actually going to the property, meeting with
23 representatives, interviewing them, gaining information
24 and knowledge about the system, where the assets are
25 located. We have a series of questions that we go

1 through. We start talking about documents that we would
2 like, maps, and so forth, details. Then, of course,
3 there's the on-site physical inspection of each
4 location. That could be a drive-by. It could be get
5 out, park the car, walk through the buildings, measure
6 them.

7 The term inspection is used loosely in our
8 profession. It could mean a number of things. Whether
9 it's categorized as inspection or meeting or whatever,
10 we obviously were all there in August, began the process
11 of collecting information and needed to revisit and come
12 back on a second occasion to continue. Whether those
13 are considered inspections or not, you know, to us it's
14 all part of the process I guess.

15 **Q. When you say "we were all there," do you mean**
16 **Mr. Dinan, Ms. Goodman Schneider, Ms. Simpson?**

17 A. I mean Ms. Goodman Schneider and Dinan, and by
18 Dinan again it could have been anywhere from one to
19 three people from their office, Ms. Schneider and her
20 husband and myself.

21 **Q. So not the engineer, not Kelly Simpson?**

22 A. I don't recall if she was at the August
23 meeting or not. Again, typically she would have been
24 because we try to coordinate with the community and try
25 not to inconvenience them by being there multiple times

1 if possible, although sometimes that's unavoidable. So
2 you'd have to check with her, but I think she probably
3 was there in August and then -- but I don't know with
4 certainty. I can't answer that.

5 JUDGE SEYER: All right. Those are all the
6 questions I have.

7 THE WITNESS: Thank you, sir.

8 JUDGE SEYER: Thank you. Mr. Williams, do you
9 have follow-up questions?

10 MR. WILLIAMS: I think just a couple probably.

11 FURTHER CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. Mr. Batis, you testified that you had had, I
14 believe, or have had a relatively long-term relationship
15 with the other two appraisers; is that not correct? I'm
16 sorry. I can't hear him.

17 A. My apologies. I accidentally hit the mute
18 button. My answer was relatively speaking, yes, I think
19 I've known them for five to seven years.

20 Q. Is that true of Ms. Simpson as well?

21 A. I would say about the same time frame. I
22 probably met Ms. Simpson within the last five to ten
23 years.

24 Q. You've been working with her over that period
25 of time as well?

1 A. Working with her occasionally. We're on the
2 same projects but yes.

3 MR. WILLIAMS: No further questions. Thank
4 you.

5 THE WITNESS: You're welcome.

6 JUDGE SEYER: Ms. Bretz, do you have
7 questions?

8 MS. BRETZ: Just a little bit. Thank you.

9 FURTHER CROSS-EXAMINATION

10 BY MS. BRETZ:

11 **Q. Mr. Batis, I don't want to belabor the point,**
12 **but the December 17, 2019 visit, that was the canceled**
13 **visit because of the bad weather, right?**

14 A. It may have been. Again, I know I was there
15 on the 10th and I began the process of trying to
16 coordinate the December 17. I think you're right. I
17 think that was canceled because of weather. Again, I'm
18 sketchy on the details of exactly what dates in December
19 were scheduled and which ones were canceled. I know
20 there were multiple inspections down there.

21 **Q. If you could turn to page 30 of Exhibit 108,**
22 **please.**

23 A. Is that the email exhibit?

24 **Q. Yes.**

25 A. Okay. Page 30?

1 Q. Yes.

2 A. Okay.

3 Q. So the first email at the top is an email from
4 Mr. Sabo to Ms. Simpson, Mr. Dinan and yourself dated
5 Monday, December 16, right?

6 A. Correct.

7 Q. And the email reads Kelly, I will inform David
8 and Dave that the meeting is canceled. Dave Scott's
9 email address is such and such. It looks like Mr. Scott
10 and Mr. Rick (phonetic spelling) are employees of the
11 City of Eureka. That's what the email says, isn't it?

12 A. Yes.

13 Q. So that's definitive that that meeting was
14 canceled, right?

15 A. Yes. It appears that that was because of
16 weather, yes.

17 Q. So that means there was no inspection on
18 December 17?

19 A. Correct.

20 Q. Before we took our lunch break you discussed
21 an appraisal report dated January 20, 2020. Do you
22 recall that?

23 A. Yes.

24 Q. Would you happen to be aware whether this
25 report was made available to staff?

1 A. Unfortunately, no, I don't know what was
2 submitted to staff.

3 **Q. What's the difference between this January 20,**
4 **2020 report and the one that's been entered into**
5 **evidence as Exhibit 3?**

6 A. My recollection is that the original report
7 from January, our appraisal report was based on the
8 original, some original analysis and work that was done
9 by Flinn Engineering where at that time I believe there
10 was a certain number of assumptions that needed to be
11 applied or used by Flinn Engineering to conduct their
12 work to come up with their work product. And I believe
13 that as often is the case, you know, the assignments are
14 typically put together with whatever information we have
15 which always isn't the most complete, and then in some
16 cases like I believe was the instance here additional
17 information came to light which filled in some of the
18 blanks if you will or allowed Flinn Engineering to not
19 have to rely on assumptions but was able to actually use
20 some information that was researcher obtained or
21 provided which changed her analysis, her assessment or
22 list of cost data, depreciation data, contributory costs
23 or depreciated costs all of which are key to our report.
24 So we adjusted our report once we received revised work
25 from Flinn Engineering.

1 **Q. Do you recall what the new information was**
2 **that Ms. Simpson received?**

3 A. I don't recall specifically. I could
4 speculate but I don't recall exactly what she received.
5 I just don't recall that.

6 **Q. Does your later appraisal mention the first**
7 **appraisal?**

8 A. No.

9 **Q. Any particular reason why not?**

10 A. Not relevant, not necessary and would serve no
11 purpose. I appraise properties very often that have --
12 where something during the course of the assignment
13 something changes and we revise the appraisal or update
14 it. If it's still part of the original assignment and
15 it's not a new assignment, that's not something that has
16 to be reported or disclosed. Very normal in our
17 profession that information comes to us which we believe
18 is all the information that we will be getting or will
19 be receiving or have available and then we write a
20 report and we find out that here's a survey that shows
21 us four pipeline easements on that farm. So the report
22 is revised accordingly. Just a normal course of
23 business. Doesn't require us to go back and talk about
24 the changes that we had to make to get here, doesn't
25 serve any purpose.

1 **Q. What was the amount of your original**
2 **appraisal?**

3 A. The amount of the value opinion?

4 **Q. Yes.**

5 A. I don't recall.

6 **Q. You're in front of your computer there. Is**
7 **there any way you can access it?**

8 A. Sure. I can look back if you don't mind
9 waiting a few moments. Actually this database does not
10 have it. This just has the current work. I'd have to
11 go back and see through network later where it is. I do
12 not have it in front of me. I only have the updated
13 current valuation.

14 **Q. Do you recall off the top of your head how**
15 **much it was? Was it higher, lower, how much?**

16 A. I recall it was lower, but I do not recall how
17 much or what it was.

18 **Q. Judge Seyer asked you a number of questions**
19 **about how the appraisers reached the \$4,500 per customer**
20 **unit price for the water system and I have to apologize.**
21 **I misrepresented that the Village of Sidney was the most**
22 **expensive water system. Maybe I had a sticky on top of**
23 **the other one. But anyway, can you shed any light on**
24 **the particulars of the Eureka water system why it should**
25 **be valued on a per unit basis higher than any of the**

1 **other comparables you looked at?**

2 A. Nothing beyond what I already explained to His
3 Honor that it's a process that includes a reconciliation
4 of a lot of data and ranking of properties and ratios of
5 different assets and components, weighing the quality of
6 the information meaning is it first hand that we've seen
7 the system, we've appraised it, we know what's there
8 versus is it public information where details are
9 sketchy. Beyond that testimony and that explanation,
10 no, unfortunately there's no magic formula like there is
11 for a house appraisal that I can say well, it's this
12 plus this percent. It doesn't apply in these cases.

13 **Q. So there are no specifics about the Eureka**
14 **system that makes it more valuable than your most**
15 **expensive comparable?**

16 A. Well, again, it's the overall comparison to
17 all of the data and what we understood about the data.
18 We found it to be obviously superior in whatever the
19 different aspects were but we found the water system
20 because of its condition and the assets and what we knew
21 of it to be superior, considerably superior to some of
22 the sales that we had an equal amount or certain amount
23 of information about that we understood what those
24 assets consisted of and we knew what they sold for so we
25 knew it was superior. In the appraisal profession, it's

1 called the qualitative analysis. There's no plusses and
2 minuses and percentages and itemization of them. It's
3 just bracketing of data and trying to figure out in the
4 spectrum are we above the highest sale, are we within
5 the range but at the top of the range, are we
6 comfortable with everything we've known and seen and
7 researched that this property ranks towards the bottom
8 on a relative comparison basis.

9 A ranking and qualitative analysis,
10 unfortunately it's based in great deal on our formal
11 education and training, our experience, our first-hand
12 research, and there's no formula or way to explain it.
13 A lot of it comes down to judgment.

14 MS. BRETZ: That's all I have. Thank you.

15 THE WITNESS: Pardon me?

16 MR. WILLIAMS: Judge, if I might make a
17 suggestion at this point.

18 JUDGE SEYER: Go ahead.

19 MR. WILLIAMS: Public counsel would not have
20 any objection if the Commission were to direct the
21 Company to have the earlier appraisal report made a part
22 of the record in this case.

23 JUDGE SEYER: Mr. Cooper --

24 MR. COOPER: Yes, sir.

25 JUDGE SEYER: -- would you like to respond to

1 that?

2 MR. COOPER: I would. Would you give me just
3 a minute, Judge? Yes, Your Honor, we have no problem
4 with that.

5 JUDGE SEYER: All right. Then Mr. Cooper, do
6 you have redirect for your witness?

7 MR. COOPER: I do.

8 REDIRECT EXAMINATION

9 BY MR. COOPER:

10 Q. Mr. Batis, just to kind of start where we
11 finished here. You were asked about I think the \$4,500
12 per customer appraisal for the water system. Is the
13 sewer system appraised at higher than the comparables
14 that the appraisers looked at?

15 A. No. I believe the conclusion of value for the
16 subject sewer system was more towards the middle of the
17 range of the comparables that were cited and relied on.

18 Q. And those are included in the valuation
19 report, correct?

20 A. Yes, they are.

21 Q. And early in your testimony today you had
22 mentioned that you helped select and I guess kind of
23 deselect, not include, some of the comparisons that the
24 appraisers were aware of; is that correct?

25 A. Right. Some that we were aware of and I was

1 talking about the process of whether or not they should
2 be included in this assignment.

3 **Q. And were the appraisers aware of per customer**
4 **sales prices that were higher than those for water**
5 **systems that were listed in the valuation report?**

6 A. Substantially higher. Some probably double
7 the price of what's referenced and included in the
8 appraisal report. I think there were sales that were
9 over \$10,000 per customer that are part of our data
10 pool.

11 **Q. In fact, when we look back at I think it's**
12 **JEB-3 in your direct testimony, some of those numbers**
13 **are present in those materials, aren't they?**

14 A. Yes. That exhibit includes nine examples of
15 data from different appraisal assignments, not my
16 reports but other appraisers' work, and some of those
17 examples include references to sales that were at or
18 above \$10,000 per customer.

19 **Q. You indicated to early questioning that you**
20 **requested the Flinn report, correct?**

21 A. Yes.

22 **Q. What was the assignment for the Flinn report?**

23 A. Well, the assignment was, as is typically when
24 we get involved in these, the request for Flinn to
25 provide the appraisers with a report that does a couple

1 different things. Provides a list of assets or an asset
2 inventory. Usually we want to get to the current cost
3 and the best estimate if you will or calculation of
4 depreciation of the items based upon some age life or
5 modified age life method and a depreciated cost which is
6 a contributory value for different items. And then we
7 also request or expect to receive some type of broad or
8 overview or high level commentary on the system based on
9 whatever information is available which sometimes is
10 very scarce and limited and sometimes it's quite
11 extensive. Based upon what she or they are able to
12 research and provide us as far as an overall condition
13 assessment, recognizing that it's a difficult challenge
14 because when you have a system that varies in age and
15 all different types of assets and some you can inspect
16 it and some you can't, it's hard to sum down in one word
17 good, average, poor or fair a fair representation. That
18 being said, we try to communicate and get a feel for how
19 it ranks. And we have a pretty good understanding of
20 what an average system is through Flinn's eyes compared
21 to other work systems we've done and seen detailed
22 assessments and cost calculations.

23 We've seen examples of Flinn's work compared
24 to other engineers on the same projects in Illinois
25 where there's multiple engineers. So we trust and we

1 have a high level of confidence in the ability to give
2 us a simplistic overview, high level review of how does
3 this system rank. That helps us with our analysis and
4 our ultimate selection of comparable sales data.

5 **Q. To you from that answer I take it it's**
6 **important how it sort of relates to other systems that**
7 **have been reviewed?**

8 A. Absolutely. Having the benefit of extensive
9 research that we do and the records that we keep on
10 other facilities and the different ratios and metrics
11 that we analyze and our database runs for us, we also
12 have a certain sense of objective analysis. This system
13 was rated average by the engineer, this system had an
14 overall depreciation of between 30 and 50 percent of all
15 the different assets of water assets. When you remove
16 the mains and you concentrate on just the mechanical
17 systems, the pumps, the processing systems, the
18 treatment facilities, the depreciation was at maybe a
19 different level, the range. So we take -- I keep an
20 extremely -- very extensive database. I take all the
21 assessment information, all the inventory information,
22 all the cost data, all the depreciation data and the
23 overall it's a good system, it's average, and I use that
24 when we're evaluating sales to determine comparability
25 because if it all comes from the same source and through

1 the same channels, we know we have consistency.

2 Q. You were asked questions about or pointed to
3 some emails between you and I think Ms. Billups from
4 Missouri-American Water Company. Was there ever a point
5 in time where the Company had influence on the valuation
6 opinion?

7 A. No, not on this assignment. Not on any
8 assignment. We don't ask clients. We don't ask the
9 seller. We didn't ask the mayor or Mr. Sabo what they
10 thought it was worth. We don't solicit any opinions
11 from anyone. We are expected to be per our licenses and
12 USPAP to be objective and fair. What the client thinks
13 the property is worth is of no relevance or issue with
14 us.

15 Q. I think in response to some questions earlier
16 you were estimating how many utility appraisals you had
17 performed in your career; is that right?

18 A. I was trying to calculate on the fly, but yes.
19 I don't know how accurate it was but I did.

20 Q. Quite a few anyway, correct?

21 A. I would say compared to every appraiser I know
22 and people in the industry I probably do as many as
23 anyone, yes.

24 Q. Was there anything out of the ordinary in this
25 appraisal in terms of the involvement of

1 Missouri-American or Eureka?

2 A. Nothing at all, sir. Very typical, very
3 typical process as far as timing, flow of information,
4 information coming in bits and pieces and chunks. You
5 think you have information and then all of a sudden
6 there's more. That is part of the process. Some of the
7 communities we go to have zero records and all the
8 employees, we did one a few months, every employee just
9 quit, walked out. The clerk that we're dealing with
10 couldn't tell us a thing about the system, its age -- So
11 it's all over the board, but I would say overall the
12 Eureka process, the assignment, very typical and nothing
13 extraordinary at all.

14 **Q. You were asked questions about an email that**
15 **discussed a Plan B. Do you remember that?**

16 A. Yes.

17 **Q. Let me -- As I recall, that involved Ms.**
18 **Simpson. Did you ultimately follow a process that**
19 **allowed Ms. Simpson to move forward with her work based**
20 **upon pictures?**

21 A. Yes. I believe the Plan B reference was kind
22 of okay, we've got to do something other than what was
23 planned, whatever that might have been as far as the
24 inspection goes, maybe December 17. And because of the
25 timing and the schedule that both the client were on and

1 the seller, as far as some deadlines that needed to be
2 met and with our contract as well, it was determined
3 that Ms. Simpson could provide us what we needed
4 satisfactory to our level of need through descriptions,
5 photographs and in her own research that she would be
6 conducting personally. So I think I or maybe somebody
7 from the team forwarded to her the photographs we had
8 and whatever information we had collected.

9 **Q. And I believe you were asked earlier by the**
10 **Commission whether the Commission could obtain copies of**
11 **those photos and you were going to look to see whether**
12 **you still had those photos. Were you able to find those**
13 **photographs?**

14 A. I found not all of them but I found enough to
15 know in a work file that they exist and they're there
16 and I can track them down through the other appraisers
17 if I don't have all of them, yes. I did that during the
18 lunch hour.

19 **Q. These are photos that you took yourself; is**
20 **that correct?**

21 A. Yes, on December 10.

22 **Q. And you know it's December 10 how?**

23 A. Because I went into the properties on a couple
24 of them and checked the dates, and the time and date
25 stamp of the photographs matches what I now recall

1 happened that day that I was down there very early from
2 my initial inspection and I could see the photos that I
3 was able to locate the time that elapsed between
4 photographs. I was there for several hours.

5 **Q. You were asked questions about DNR issues.**
6 **Would you normally adjust to that level in an appraisal**
7 **and a valuation report?**

8 A. No. That's far beyond what the professional
9 appraiser is trained and qualified to do. Most
10 appraisers we try to take into account all relative
11 information that is within our wheelhouse that we know
12 how to collect, verify, how to process it, analyze it.
13 That type of information is not something that is
14 factored into our equations or our analysis, our
15 qualitative analysis because we know those situations
16 exist with, you know, the majority of the data. And
17 with most of the property that we've appraised we even
18 have indication or records or proof or evidence that
19 there might have been DNR issues or environmental
20 issues.

21 That's normally the case of why these systems
22 are being acquired, because they've gotten to a point
23 where they're not brand new operating at 100 percent
24 state of the art efficiency. It goes with the territory
25 and we see that in most if not all the systems. If

1 that's something that is extremely value influencing
2 that needs to be adjusted by us.

3 Q. Again, you were asked questions about how many
4 reports or how many valuation reports you've done in
5 Missouri and elsewhere. Does every -- Has every
6 appraisal that you've done of a utility system resulted
7 in a sale -- a closing of a sale I guess I should say?

8 A. No. As far as the best of my knowledge, no,
9 from what I understand and my research, my subsequent or
10 follow-up research I'd say the answer is no.

11 Q. In terms of -- How do you know that? Do you
12 follow up on your appraisals after the fact?

13 A. Absolutely. I make it a habit to if it's on
14 my calendar to reach out to certain clients several
15 times a year and to ask them specific information about
16 assignments that I was participated in, as well as other
17 projects that I'm not involved with or haven't been
18 involved with, and I confirm with them closing
19 information, information that I obtained through public
20 records like, for instance, the sale if I do see a sale
21 that was completed and finalized and there's a filing in
22 a docket, because I have my own researcher that does
23 nothing but look at dockets for that type of
24 information.

25 Very often he also does Google searches of all

1 the communities that we've done work in to see if
2 there's any news or publications about sales or pending
3 sales or consideration of transactions, the votes being
4 taken. So we try to track very closely and build up our
5 database with after the fact after we do an appraisal of
6 what occurred, when it occurred. We get first-hand
7 verification and then we start following up with
8 additional information such as economic and financial
9 information, capital investments, tariff information.
10 So we do quite a bit of follow up with each transaction
11 or I should say with each appraisal.

12 **Q. In questions about your expertise as to**
13 **appraisals, I think you mentioned that you instruct on**
14 **that subject matter. Would you explain that?**

15 A. Yes. I've been an appraiser for 38 years and
16 I'm quite involved in teaching and being an instructor
17 for different organizations, primarily the Appraisal
18 Institute. And as I got very involved in the valuation
19 of water and wastewater utility systems in the last 10,
20 12, 14 years, I found there to be a lack of resources
21 and educational material for our profession. Literally
22 zero classes, seminars, workshops, writings, books
23 published, no material at all to assist appraisers who
24 want to understand the process. So after many years of
25 working on a project with the assistance of many

1 appraisers, engineers, representatives of the water and
2 wastewater communities, talking to village
3 representatives, I developed a seminar that is used for
4 training purposes and educational purposes for
5 designated and state certified appraisers to teach the
6 methodologies and the process of everything we talked
7 about, collecting information, inspecting properties,
8 analyzing the sales data, researching data. So I
9 developed the material and I'm the -- I'm an exclusive
10 instructor for the Appraisal Institute chapters that I
11 teach in person and online. It's approved in the state
12 of Missouri by the Missouri appraisal licensing board.
13 They have seen the material and approved it for a
14 seminar for continuing education credits for its
15 licensed appraisers in the state of Missouri.

16 **Q. In your direct testimony, and this is within**
17 **your valuation report on I think it's page 11 of 98,**
18 **there is a definition of market value that you were**
19 **asked about. Do you have that in front of you?**

20 **A. I do.**

21 **Q. I'm curious if you could expand on the part of**
22 **the definition that says I guess the most probable price**
23 **of a specified date for which the specified property**
24 **rights should sell after reasonable exposure in a**
25 **competitive market. Can you expand on what's meant**

1 **there by that part of the definition?**

2 A. Sure. A real estate appraisal opinion or an
3 opinion of value is a professional opinion based on a
4 number of things. I'll say research data, experience,
5 education, judgment. But it presumes a hypothetical
6 sale as of a date. So let's put aside for the moment
7 the subject instance. But again somebody owns a house.
8 If I was selling my house today, what would it sell for,
9 what could I expect to sell it for. That's the problem
10 we're called to solve if you will. That opinion of
11 value, if it's a market value opinion, because there are
12 different types of value. There's assessment value, tax
13 value, value in use, insurance value, courts have
14 defined a particular value called special value that has
15 value unique to one particular buyer or said buyer in
16 our typical market, et cetera.

17 But market value is the more general and broad
18 value estimate that represents if a hypothetical buyer
19 comes forward who is not under duress but is a willing
20 buyer, knowledgeable, acting in their own best interest,
21 what they would be willing to pay for the property.
22 Property could sell for above market value or below
23 market value, but a market value opinion the objective
24 is to opine as to at what price or price range or level
25 the property should sell for in a typical market under

1 typical conditions without a buyer acting under a duress
2 or a seller. For instance, if the seller has to sell
3 the house because they got transferred and they have to
4 move out of state next week, the property might sell for
5 a fraction of its market value. It would be a duress
6 sale.

7 So market value eliminates all those types of
8 extraordinary circumstances and just says let's talk
9 about a typical scenario what a property should sell for
10 hypothetically and that's the objective of the subject
11 appraisal.

12 Q. If we turn on over to page 15 of 98 in that
13 same document, you were directed to earlier that
14 sentence about Missouri statute pertaining to the
15 valuation or the professional engineer's report is
16 required, and I think you testified that that was
17 essentially a typo; that the Missouri statute does not
18 require that. However, are there other states whose
19 statutes similar to this appraisal statute specifically
20 direct a professional engineer's report?

21 A. The states that I have experience in, and even
22 some that I'm licensed to do business in but I don't
23 necessarily participate in assignment there but I'm very
24 familiar with their legislation, that is the norm. From
25 state to state, this is not exact template legislation

1 where it's duplicated each time a new state enacts
2 legislation but there's a lot of similarities from state
3 to state. There's also some differences. Missouri is
4 unique in a few ways. One of them is that they're the
5 only state that I can think of or one of the very few of
6 the 12 or 15 that I know of that have legislation where
7 an engineering report is not a required component but
8 still used by appraisers but not necessary.

9 **Q. The statute does require however a**
10 **disinterested appraiser, correct?**

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

12 **Q. Does the statute in Missouri require a**
13 **disinterested appraiser?**

14 A. Yes. That's absolutely a mandate that the
15 appraisers are disinterested.

16 **Q. How do you define disinterested?**

17 A. Let's see.

18 **Q. Or let me reflect, let me ask that**
19 **differently.**

20 A. Sure.

21 **Q. How would the appraisal standards apply or**
22 **define disinterested?**

23 A. Disinterested party is addressed in one of the
24 mandatory requirements of Standard Rule 2 of USPAP which
25 is the inclusion of a certification. And if you look at

1 the appraisal report that we prepared, I believe there
2 should be a signed certification from each of the three
3 appraisers as required by law and by Missouri Code
4 because of the mandate to follow USPAP. That
5 certification includes amongst other statements by the
6 appraiser an affirmation that the appraiser has no
7 interest present or contemplated in the property being
8 appraised or in any interest in the property and no
9 relationship to the parties. So disinterested means --
10 It doesn't mean you don't know the client or you haven't
11 done work for the client or it's not a good client or
12 that there are anything to do with frequency or volume
13 of work. It has to do with having -- you're not related
14 to them like it's not a corporation that I own or own
15 part of and that I have no interest in the property
16 itself or I don't contemplate having any interest at the
17 date I do my appraisal. I think that kind of explains
18 how disinterested is interpreted by USPAP.

19 Q. In response to questions from maybe the bench
20 and from staff you were talking about I think sort of a
21 number of issues that all kind of fit into the jumble of
22 considerations when you're coming up with a price I
23 guess if it's reflected in price per customer -- for a
24 price per customer when you're also looking at
25 comparables. Would potential for growth in the market

1 area, would that be one of the many factors that would
2 have some impact for you?

3 A. Yeah, I think that is certainly -- I don't
4 know if I mentioned that specifically, but I talked
5 about the market or the market conditions and expansion,
6 an ability to expand not just from a physical standpoint
7 of the facilities and what they can accommodate and what
8 their capacities are, although that certainly is
9 something that's looked at, but also the potential
10 growth of the community. We might have in a small rural
11 area the system might have capabilities of expansion and
12 might be only used at 60 to 70 percent of its capacity.
13 It might be in a location where there's absolutely no
14 expectation, no reasonable probability of any growth
15 occurring or any new customers coming on board. So
16 market conditions, the overall growth of the community.

17 And earlier, if I may, when I was answering
18 questions to His Honor about research and inspections,
19 and so forth, I think I explained that we have a list of
20 questions that we go through and that's one of the
21 things that I specifically ask every seller, how many
22 new building permits do you have over the last few
23 years, where are your new subdivisions, are there any
24 contemplated, are your existing subdivisions built out
25 or is there growth potential, and then we tie that back

1 to can the system as it's constructed as it exists can
2 it accommodate growth. Absolutely those are factors
3 that come into play. In some of the smaller communities
4 where there's no growth potential, they don't check that
5 box if you will.

6 MR. COOPER: That's all the questions I have,
7 Your Honor.

8 THE WITNESS: Thank you.

9 JUDGE SEYER: Mr. Cooper, when it comes to the
10 photos from I believe it was December 10 and the January
11 20, 2020 appraisal report, is it possible to get those
12 submitted by the end of tomorrow?

13 MR. COOPER: I don't know is the short answer.
14 We can check. The photos in particular throw me off. I
15 think that -- I get the feeling that's going to be a
16 pretty substantial load of megabytes. So I don't know
17 what we'll be able to do with that for sure.

18 JUDGE SEYER: Then what let's plan on doing is
19 we'll mark those as Commission exhibits starting with
20 300, Exhibit No. 300. And if you can just let us know
21 tomorrow how soon you can get those to us. It may be a
22 situation where we ask you to submit them by the
23 following Friday, by a week from tomorrow. But again,
24 if you can just update us with that tomorrow, if you
25 know by tomorrow.

1 MR. COOPER: We will do so. We'll try to do
2 so.

3 JUDGE SEYER: All right. For all the parties,
4 do you have an estimate on how long you think the next
5 witness will take?

6 MR. COOPER: My part will be very short.

7 MR. WILLIAMS: Certainly no longer than the
8 other witnesses.

9 JUDGE SEYER: Ms. Bretz.

10 MS. BRETZ: I would say the same as
11 Mr. Williams.

12 JUDGE SEYER: What's your preference? Would
13 you like to break right now?

14 MR. COOPER: I need a short break, Your Honor.

15 JUDGE SEYER: Then have Mr. Eisenloeffel as
16 the last witness today.

17 MR. COOPER: Well, hope springs eternal.

18 JUDGE SEYER: Let's go ahead and break and go
19 back on the record at 4:15. So we're going off the
20 record.

21 (Recess 4:02 p.m. until 4:13 p.m.)

22 JUDGE SEYER: Let's go back on the record.
23 Mr. Cooper has called his next witness. That witness is
24 now on the witness stand.

25 Sir, would you raise your right hand to be

1 sworn in, please. Thank you.

2 Do you swear or affirm that the testimony you
3 give in this hearing shall be the truth, the whole
4 truth, and nothing but the truth?

5 THE WITNESS: I do.

6 JUDGE SEYER: Thank you. Go ahead, Mr.
7 Cooper.

8 DIRECT EXAMINATION

9 BY MR. COOPER:

10 Q. Please state your name.

11 A. Brian Eisenloeffel.

12 Q. And by whom are you employed and in what
13 capacity?

14 A. Missouri-American Water. I'm the Senior
15 Director of Operations.

16 JUDGE SEYER: Mr. Cooper. Excuse me. Can I
17 get you to get like within a couple of inches of that
18 microphone?

19 THE WITNESS: Is that better?

20 JUDGE SEYER: Like I said, within two or three
21 inches would pick it up better. I'm sorry. Go ahead,
22 Mr. Cooper.

23 BY MR. COOPER:

24 Q. Have you caused to be prepared for the
25 purposes of this proceeding certain direct and

1 surrebuttal testimony in question and answer form?

2 A. I have.

3 Q. Is it your understanding -- Well, let me back
4 up. That direct is in both public and confidential
5 versions, correct?

6 A. Correct.

7 Q. Is it your understanding that that testimony
8 has been marked as Exhibits 5P and 5C, public and
9 confidential, for the direct testimony and Exhibit 6 for
10 the surrebuttal testimony?

11 A. Yes, it is.

12 Q. Do you have any changes that you'd like to
13 make to that testimony at this time?

14 A. No, I do not.

15 Q. If you were to ask you the questions which are
16 contained in Exhibits 5P and 5C and 6 today, would your
17 answers be the same?

18 A. Yes, they would.

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

21 A. Yes, they are.

22 MR. COOPER: Your Honor, I would offer
23 Exhibits 5P and 5C and 6 into evidence and tender the
24 witness for cross-examination.

25 JUDGE SEYER: Are there any objections?

1 MR. WILLIAMS: No objection.

2 JUDGE SEYER: All right. Exhibits 5P and 5C
3 and Exhibit 6 are admitted into evidence.

4 (COMPANY EXHIBITS NOS. 5P, 5C AND 6 WERE
5 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

6 JUDGE SEYER: Mr. Williams, do you have
7 questions for the witness?

8 MR. WILLIAMS: Yes, please. Thank you. Good
9 afternoon, Mr. Eisenloeffel.

10 THE WITNESS: Hello.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. In her testimony, Kelly Simpson says that she
14 was made aware of GIS data relevant to her engineering
15 report. Do you have any knowledge of who made Ms.
16 Simpson aware of that GIS data?

17 A. Yes, I believe it was Derek Linam.

18 Q. I'm sorry?

19 A. I believe it was Derek Linam.

20 Q. Who is Derek -- I'm sorry. I didn't catch the
21 last name.

22 A. Linam, L-i-n-a-m.

23 Q. Who's Derek Linam?

24 A. Derek is an engineering manager for
25 Missouri-American Water.

1 Q. He's a witness here today?

2 A. I don't believe so.

3 Q. Did anyone instruct him to -- at
4 Missouri-American Water instruct him to provide that
5 information to Ms. Simpson?

6 A. I don't know the answer to that.

7 Q. Do you know why he provided that information?

8 A. I would speculate and I believe because he
9 thought it was important to the case that the
10 information contained in Ms. Simpson's report was as
11 accurate as possible.

12 Q. Well, is there something about the report that
13 she provided earlier that caused him to have that
14 opinion or do you know?

15 A. I don't know the answer.

16 MR. WILLIAMS: No further questions of this
17 witness at this time.

18 JUDGE SEYER: Ms. Bretz.

19 MS. BRETZ: Thank you. Good afternoon.

20 THE WITNESS: Hello.

21 CROSS-EXAMINATION

22 BY MS. BRETZ:

23 Q. Do you recall writing in your surrebuttal
24 testimony that you believe the Eureka sewer system is in
25 good condition?

1 A. Yes.

2 Q. And you believe that today as well?

3 A. Yes.

4 Q. Are you aware of a letter from Christy Savage
5 Clark at the Missouri Department of Natural Resources to
6 Mr. Sabo from December 23 about enforcement of the
7 Eureka sewer system?

8 A. Is that letter the one in my testimony or is
9 that a different letter?

10 Q. I think this might be a different letter.

11 MS. BRETZ: If I may, Judge, I'll distribute
12 the letter.

13 JUDGE SEYER: Yes. Go ahead.

14 BY MS. BRETZ:

15 Q. Have you seen that letter before?

16 A. I don't recall. I don't recall if I've seen
17 this exact letter before.

18 Q. Could you take a quick minute and read it?
19 Have you had a chance to take a look at that?

20 A. Yes, I did.

21 Q. What's the gist of that letter?

22 A. It's a letter from Christy Savage Clark who is
23 the compliance and enforcement chief at the DNR to the
24 city making them aware of their conditions with respect
25 to BOD and total suspended solids percent removal.

1 Q. Do you see where Ms. Savage Clark writes that
2 because of the pending sale that DNR will not take any
3 formal enforcement action against Eureka?

4 A. I do.

5 Q. Does it seem to you that a system that is in
6 good condition would be under DNR enforcement action but
7 for a pending sale?

8 A. The information we've got from Christy Savage
9 Clark, which I've got an email which was in my
10 surrebuttal testimony, is that these specific issues
11 that she's brought to their attention can be changed and
12 rectified with a simple permit change.

13 Q. But according to this letter, the DNR is not
14 going to pursue enforcement action because of the
15 pending sale, right?

16 A. That's what the letter says, yes.

17 MS. BRETZ: That's all I have, Your Honor.
18 Thank you.

19 JUDGE SEYER: Are there any questions from the
20 Commissioners? All right. Mr. Cooper, do you have any
21 redirect?

22 MR. COOPER: I may. I'm thrown off by getting
23 back to me so quickly. Give me just one moment here.
24 Let me try this, Mr. Eisenloeffel. I'm going to leave
25 it alone. No questions, Your Honor.

1 JUDGE SEYER: Thank you for your testimony.

2 THE WITNESS: Thank you.

3 JUDGE SEYER: All right. So we'll adjourn for
4 the day and start back at nine o'clock tomorrow morning.

5 MR. COOPER: Do we want to start with
6 Mr. Kaiser?

7 JUDGE SEYER: Do you want me to ask that same
8 question? Would you like me to ask that same question
9 how long everyone expects him to --

10 MR. COOPER: It worked out really well the
11 last time you asked it.

12 JUDGE SEYER: All right. How about you,
13 Mr. Cooper? How long do you think?

14 MR. COOPER: Yeah, I'm not in the best
15 position. I'd say it would be bench questions and
16 obviously questions from Staff and OPC that would drive
17 the issue.

18 JUDGE SEYER: Mr. Williams.

19 MR. WILLIAMS: I don't anticipate extensive
20 cross.

21 MS. BRETZ: Same here.

22 JUDGE SEYER: Okay. Then, yeah, let's go
23 ahead and hear his testimony.

24 MR. COOPER: Thank you, Your Honor.

25 JUDGE SEYER: Is this Mr. Kaiser?

1 MR. COOPER: We would call Mr. Jeffrey Kaiser.

2 JUDGE SEYER: All right. Mr. Kaiser is now
3 seated at the witness stand. Mr. Kaiser, would you
4 raise your right hand, please, to be sworn in. Thank
5 you.

6 Do you solemnly swear or affirm that the
7 testimony that you give today in this hearing shall be
8 the truth, the whole truth, and nothing but the truth?

9 THE WITNESS: Yes, sir.

10 JUDGE SEYER: Thank you.

11 DIRECT EXAMINATION

12 BY MR. COOPER:

13 Q. Would you please state your name?

14 A. Jeffrey Kaiser.

15 Q. You're going to have to get closer to the
16 microphone.

17 A. Jeffrey Kaiser.

18 Q. By whom are you employed and in what capacity?

19 A. I'm the Vice President of Operations for
20 Missouri-American Water Company.

21 Q. And have you caused to be prepared for the
22 purposes of this proceeding certain direct and
23 surrebuttal testimony in question and answer form?

24 A. Yes, sir, I have.

25 Q. Is it your understanding that that testimony

1 had been marked as Exhibits 7 and 8 for identification?

2 A. Yes, sir.

3 Q. Do you have any changes that you'd like to
4 make to that testimony at this time?

5 A. I do have two.

6 Q. Which piece?

7 A. On page --

8 Q. Let's back up. The direct testimony?

9 A. Yes, sir, direct testimony. Page 3, line 12.
10 2018 should actually be 2008.

11 Q. That's the only change on that page?

12 A. That's the only change on that page.

13 Q. And then is there another change?

14 A. Yes, sir. On page 8, it would be line 17.

15 I'd like to insert a sentence if I could. So after --
16 basically before MAWC, before the sentence that starts
17 there.

18 Q. On line 17, is that where you said you were?

19 A. Yes, sir. I'd like to insert the sentence the
20 City of Eureka has already undertaken a large portion of
21 this work replacing the air line between the blower
22 building and the lagoon. Are there any other changes?

23 A. That's all.

24 Q. If I were to ask you the questions which are
25 contained in Exhibits 7 and 8 today as now amended,

1 would your answers as amended be the same?

2 A. Yes, sir.

3 Q. Are those answers as now amended true and
4 correct, to the best of your information, knowledge and
5 belief?

6 A. Yes, they are.

7 MR. COOPER: Your Honor, I would offer
8 Exhibits 7 and 8 into evidence and tender the witness
9 for cross-examination.

10 JUDGE SEYER: All right. Are there any
11 objections?

12 MR. WILLIAMS: Not as long as they're as
13 amended.

14 JUDGE SEYER: Ms. Bretz.

15 MS. BRETZ: Nothing, no.

16 JUDGE SEYER: All right. Exhibits 7 and 8 as
17 amended are admitted.

18 (COMPANY EXHIBITS NOS. 7 AND 8 WERE RECEIVED
19 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

20 JUDGE SEYER: Mr. Williams, do you have
21 questions for the witness?

22 MR. WILLIAMS: Just a few, Judge. Good
23 afternoon, Mr. Kaiser.

24 THE WITNESS: Good afternoon.

25 CROSS-EXAMINATION

1 BY MR. WILLIAMS:

2 Q. In her testimony, Ms. Simpson refers to
3 somebody making her aware of GIS data that's relevant to
4 her engineering report. Do you know anything about who
5 made her aware of that GIS data?

6 A. My knowledge is similar to that of
7 Mr. Eisenloeffel that Derek Linam made her aware of that
8 information.

9 Q. Do you know why Derek Linam made her aware of
10 that information?

11 A. As Mr. Eisenloeffel said, we'd like this to be
12 as accurate as possible. Derek lives in that general
13 area, was aware of the GIS information that was
14 available, and he passed that on.

15 Q. Was that a decision he made on his own to pass
16 that information on?

17 A. I can recall having a conversation with Derek
18 about that when he asked me, no real particulars but is
19 this something we should let her know and I believe I
20 said yes.

21 Q. Do you know anything about why he thought she
22 was unaware of the GIS data?

23 A. My understanding is that the data that she
24 used, the assumptions that she made as far as the age of
25 the infrastructure, Derek felt that the GIS data would

1 enable her to have a better assumption as far as the age
2 of the infrastructure.

3 Q. Is that a roundabout way of saying he believes
4 the age of the infrastructure was different than what
5 she had indicated in the report?

6 A. Yes, I would agree with that.

7 Q. Did Missouri-American Water provide any
8 information to Ms. Simpson regarding the DNR violation
9 issues?

10 A. Not that I'm aware of.

11 Q. Why not?

12 A. I couldn't answer that.

13 Q. Do purchasers normally inform buyers of -- I'm
14 sorry. Do purchasers normally inform sellers of issues
15 they think they may have with sales prices?

16 A. In the context of these of utility sales?

17 Q. Let's just do sales generally. Do sellers
18 normally inform buyers hey, we think your price is too
19 low?

20 A. I would assume that it would be part of a
21 negotiation.

22 Q. Well, normally buyers and sellers negotiate
23 prices, do they not?

24 A. In certain circumstances they do and other
25 circumstances they don't.

1 Q. Is this a circumstance, this acquisition of
2 your Eureka system one where they do?

3 A. No, we've agreed that we would settle on it on
4 an appraisal price.

5 Q. So the sale price was decided by the appraisal
6 price; is that what I'm hearing?

7 A. That's my understanding.

8 MR. WILLIAMS: No further questions. Thank
9 you.

10 JUDGE SEYER: Ms. Bretz.

11 MS. BRETZ: Staff doesn't have any questions.

12 JUDGE SEYER: Are there questions from the
13 Commissioners?

14 CHAIRMAN SILVEY: No questions, Judge.

15 JUDGE SEYER: Thank you. All right.

16 Mr. Kaiser, I have a couple of questions.

17 QUESTIONS

18 BY JUDGE SEYER:

19 Q. In your direct testimony page 6 you make a
20 reference to a report from Bartlett and West Engineers
21 and it's included as a schedule with your direct
22 testimony, Schedule JTK-1, I believe, yes. And that
23 report was prepared for the City of Eureka, correct?

24 A. Yes, sir.

25 Q. And what is the date on that report? Looks

1 **like December 28, 2018?**

2 A. Yes, sir.

3 **Q. Okay. What information does that report**
4 **present and why do you make reference to it in your**
5 **report?**

6 A. The question of the most economical way or the
7 options that are available to improve the water quality
8 for the City of Eureka, there are always options on what
9 you can do. The city was looking at doing improvements
10 to their wells that would provide further treatment than
11 what they're currently doing. That's basically what
12 this report laid out. The other option that we believe
13 would be more cost effective would be to run a pipeline
14 down from our existing system which is about, I believe
15 if I'm correct, about five miles.

16 Mainly the initial cost estimates that we have
17 are about a million dollars less to run the pipeline and
18 the operational cost would be significantly less over
19 time.

20 **Q. But in your direct testimony on page 5 you**
21 **state the estimate for that pipeline is \$9 million,**
22 **correct?**

23 A. Correct.

24 **Q. How did the Company arrive at that figure?**

25 A. We put together a cost estimate based on the

1 size of the pipeline, what our experience is, what kind
2 of a cost per foot basis and the length of the pipeline,
3 looked at do we have to run down the highway, can we run
4 out from underneath the pavement, those type of things.
5 That's how we arrived at the \$9 million cost.

6 Q. In the Bartlett and West report, if you look
7 at it's their Section 5.2 which is page 15 of 29 of
8 Schedule JTK-1, it looks like that report estimates the
9 cost to make improvements at \$3 million. And I believe
10 that refers to a pipeline to connect to their system.
11 Can you testify as to why their estimate would be \$3
12 million compared to the \$9 million estimate?

13 A. I believe that's a different pipeline than
14 what we're looking at, and I don't know that that was
15 also -- I don't believe that solves their bigger
16 problem. But that's --

17 Q. Okay. Maybe if you go back a page. That
18 Section 5.1.1 Scenario 1. So they're talking about a
19 pipeline provided by Missouri-American. So is that --
20 How is that different from what Missouri-American has in
21 mind under the purchase agreement?

22 A. I don't believe this would be -- this would
23 serve their whole system. If you go up another
24 paragraph, it says, you know, desired pressure values as
25 needed. If an outside water source were to be

1 introduced, my understanding, and again I would have to
2 go back and look at this and confer with Bartlett and
3 West, but that's not a replacement for all of their
4 facilities. That is strictly an additional water source
5 or not a complete different water source.

6 JUDGE SEYER: Okay. All right. Those are all
7 my questions. Mr. Williams, do you have any follow up?

8 MR. WILLIAMS: Thank you, no.

9 JUDGE SEYER: Ms. Bretz.

10 MS. BRETZ: No.

11 JUDGE SEYER: Any redirect, Mr. Cooper?

12 MR. COOPER: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. COOPER:

15 Q. You had the questions early on, Mr. Kaiser,
16 about Mr. Linam's involvement and his information about
17 age of infrastructure. Just to clarify. When we're
18 talking about that age of infrastructure, are we talking
19 about underground facilities or above ground facilities?

20 A. Buried infrastructure.

21 Q. Only buried infrastructure?

22 A. Yes.

23 Q. You were asked about why not DNR information
24 being shared. You view the environmental information
25 pertaining to the Eureka sewer system to be significant

1 in comparison to other systems you have seen?

2 A. No, I think --

3 MR. WILLIAMS: Object to expressing opinion on
4 that topic or I am objecting to it.

5 JUDGE SEYER: Mr. Cooper, would you like to
6 respond?

7 MR. COOPER: I think it helps explain
8 Mr. Kaiser's answer to the question of why the DNR
9 information may not have been shared.

10 JUDGE SEYER: I'll overrule the objection and
11 allow it.

12 THE WITNESS: So the type of information that
13 DNR has provided of what I've seen of it is typical for
14 most water systems. DNR does inspections. They say
15 here's shortcomings. If there are incidences of
16 excursions, if a report is submitted that shows a BOD
17 release greater than what's in the permit, DNR will
18 follow up and say what are you doing to correct this,
19 this needs to be looked at. I've never seen a sewer
20 system in my 35 years that doesn't need work or doesn't
21 have a letter from a DNR, an Illinois EPA, an Iowa
22 Department of Environmental Protection that says this is
23 things you need to do or there's an upcoming permit
24 that's going to require modifications. The system
25 continues to age. As it ages, things break, events

1 happen, you fix them, you move on, and these are typical
2 inspection reports and other correspondence. So from
3 our standpoint what we saw is not significant.

4 MR. COOPER: That's all the questions I have,
5 Your Honor.

6 JUDGE SEYER: Ms. Bretz.

7 MS. BRETZ: No, nothing else.

8 JUDGE SEYER: All right. Then if there's
9 nothing further, let's adjourn for the day and go off
10 the record. Thank you.

11 (Thereupon, the proceedings concluded for the
12 day at 4:41 p.m, and will continue in Volume 3.)

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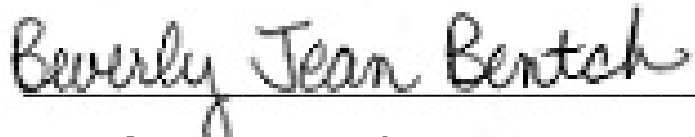
CERTIFICATE OF REPORTER

STATE OF MISSOURI)
COUNTY OF COLE)

I, Beverly Jean Bentch, RPR, CCR No. 640, do hereby certify that I was authorized to and did stenographically report the foregoing Public Service Commission hearing and that the transcript, pages 7 through 192, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or counsel connected with the action, nor am I financially interested in the action.

Dated this 2nd day of February, 2022.



Beverly Jean Bentch, RPR, CCR No. 640

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