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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
November 12, 2003
Jefferson City, Missouri
Volume 2

In the Matter of the Joint)
Application of Missouri-American)
Water Company and Warren County Water)
& Sewer Company for Authority for)
Missouri-American Water Company to) Case No. WM-2004-0122
Acquire Certain Assets of Warren)
County Water & Sewer Company and, in)
Connection Therewith, Certain Other)
Related Transactions.)

NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.

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

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS

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P R O C E E D I N G S

(EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE DIPPELL: This is Case No. WM-2004-0122, in the matter of the joint application of Missouri-American Water Company and Warren County Water & Sewer Company for authority for Missouri-American Water Company to acquire certain assets of Warren County Water & Sewer Company and, in conjunction therewith, certain other related transactions.

My name is Nancy Dippell. I'm the Law Judge assigned this matter, and we've come here today for a hearing on some of the issues. I will begin by asking the attorneys to make their oral entries of appearance. They've made written entries to the court reporter, so if you'd like to just state your name and who you're representing, that will be sufficient. I'm going to begin with Staff.

MR. KRUEGER: Keith R. Krueger for the Staff of the Missouri Public Service Commission.

JUDGE DIPPELL: Public Counsel?

MS. O'NEILL: Good morning, your Honor. Ruth O'Neill on behalf of the Office of the Public Counsel and the Public.

JUDGE DIPPELL: Missouri-American?

MR. ABERNATHY: David Abernathy from

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1 Missouri-American Water Company, 535 North New Ballas Road,
2 B-a-l-l-a-s, St. Louis, Missouri 63141.

3 JUDGE DIPPELL: Warren County?

4 MR. SHORR: David Shorr, Lathrop & Gage,
5 314 East High Street, Jefferson City, representing Warren
6 County Water & Sewer and Gary Smith.

7 JUDGE DIPPELL: Thank you. Is there anyone
8 else present to make an entry?

9 I will remind you-all that you will have to
10 speak into the microphone and turn yours on and off as
11 necessary, and that we are broadcasting this over the
12 Internet. If you see me messing with a keyboard up here,
13 that's what I'm -- I'm controlling that. So -- and I will
14 ask the attorneys when they're doing their questioning and
15 making their opening statements to come up to the podium to
16 do that. And I will ask everyone else to maintain
17 appropriate hearing room decorum.

18 Okay. Off the record, we premarked some
19 exhibits just for identification, and the first thing I'd
20 like to take up is, I'm going to go ahead and have you state
21 on the record the witnesses you're intending to call. And
22 I'll start with Missouri-American.

23 MR. ABERNATHY: We anticipate having three
24 witnesses. The first will be Robert J. LeGrand, L-e capital
25 G-r-a-n-d; then Jeff Kaiser, K-a-i-s-e-r; and then finally

1 James M. Jenkins, J-e-n-k-i-n-s.
2 JUDGE DIPPELL: Okay. Warren County?
3 MR. SHORR: We will be calling Gary Smith,
4 S-m-i-t-h.
5 JUDGE DIPPELL: Okay. Public Counsel?
6 MS. O'NEILL: Yes. We will call Kim Bolin
7 from my office. Also, and we would ask to do this today,
8 your Honor, is call two members of the public who are
9 customers of Warren County Water & Sewer, Paul Jeannot,
10 J-e-a-n-n-o-t, and James Walter -- Walters? Walter.
11 MR. WALTER: J-a-m-e-s W-a-l-t-e-r.
12 MS. O'NEILL: They are here present today.
13 JUDGE DIPPELL: Okay. And Staff?
14 MR. KRUEGER: The Staff expects to call only
15 Dale W. Johansen, J-o-h-a-n-s-e-n.
16 JUDGE DIPPELL: Because we do have a couple of
17 members of the public here today, I'm going to extend them
18 the courtesy of bringing them on today so that they don't
19 have to remain if they don't wish to. Would you propose
20 that we go ahead and do those witnesses first in order today
21 or --
22 MS. O'NEILL: I believe that might be best. I
23 know that the schedule is that we will be ending this
24 proceeding in time for me and the other people who need to
25 go to Joplin for the local public hearing in that other case

1 to get there, and it may be better to have them on before
2 Missouri-American Water begins their presentation, which may
3 be fairly lengthy.

4 JUDGE DIPPELL: Okay. We will take those
5 witnesses up after opening statements if there's no
6 objection to that. We will be adjourning by one today
7 because there were several conflicts noted, and so we'll
8 adjourn by one today, and when we adjourn I'll announce what
9 time we're going to begin tomorrow, see how the schedule
10 looks.

11 So then the order of the day will be opening
12 statements, and unless there's an objection, I'm planning on
13 having Missouri-American begin with opening statements, and
14 then Warren County, then Staff, and then the Office of the
15 Public Counsel.

16 Then we'll proceed with direct testimony.
17 We'll have Missouri-American, then Warren County, Staff and
18 Public Counsel. Cross will be in the order of, again,
19 Missouri-American, Warren County, Staff and Public Counsel.
20 And then, of course, depending on who's doing the direct,
21 that order will change. And then we'll do closing arguments
22 in reverse order, with Missouri-American going last.

23 Is there any objection to that order today?

24 (No response.)

25 JUDGE DIPPELL: The direct is basically to

1 state your case and the cross will be limited to the scope
2 of the direct. We have recross limited to the scope of
3 questions from the Bench, and then we'll do redirect limited
4 to the scope of all of the cross and questions from the
5 Bench. Because of the expedited nature of this hearing and
6 the lack of time for preparation for the parties, I may be a
7 little liberal in my interpretation of what's within the
8 scope. So I'll just let you know that now.

9 Okay. We had -- we were going to discuss a
10 little bit about the issues that are being presented here
11 today. This is an application for Missouri-American to
12 purchase Warren County Water. The Commission -- I think
13 everyone's in agreement the Commission has to find that it's
14 not detrimental to the public interest.

15 The commission set this hearing in order to
16 determine -- the Commission didn't feel that it had enough
17 evidence on the record to determine whether the sale was not
18 detrimental to the public interest, because for one thing it
19 didn't know the value of the assets.

20 There has been a request in the application to
21 set a rate moratorium and also to get -- have the value of
22 the assets or the purchase price set at -- as the value of
23 the assets for ratemaking treatment, and those are the
24 issues that I see that need to be presented here today and
25 clarified and fair game, I guess, for Commission questions.

1 Mr. Abernathy, did you have something else you
2 wanted to say about that?

3 MR. ABERNATHY: Just wanted to kind of clarify
4 a distinction between the issues. I understand as the
5 Movant to purchase the assets of Warren County Water & Sewer
6 that we have the burden of showing that the sale to
7 Missouri-American is not detrimental to the public. I agree
8 with that.

9 My issue, though, more goes to the burden of
10 proof which is, I think, the reason we're here, which is to
11 determine what the value of those assets really were. And
12 what I don't want to have happen is -- because we all
13 acknowledge and agree that records of Warren County Water &
14 Sewer are not the best. I don't think anybody here can
15 safely say that they know exactly what the value of those
16 assets really is. So I've got the burden of having to prove
17 those value of assets up. It's not going to happen. I
18 don't think anybody can.

19 So what I'm trying to say is I don't think the
20 burden of proof ought to be on Missouri-American to be able
21 to prove up a certain value and everyone else can sit back
22 and say, you didn't prove it up, so our number prevails.
23 That's my issue.

24 JUDGE DIPPELL: And I think that, like I said,
25 the burden in granting the application is not detrimental to

1 the public interest, and so after the hearing, if the
2 Commissioners can't say that, then they can't find in favor
3 of the application. And that is the reason that I tend to
4 tie the value of the assets along with that, since that's
5 the unknown right now. And I don't believe that your burden
6 is to prove a certain value. I think your burden is to show
7 the value of the assets or that the sale price really is
8 reasonable or if it's not detrimental to the public
9 interest.

10 MR. ABERNATHY: That's -- we're going to try
11 to show our sale price is reasonable and is not detrimental.

12 JUDGE DIPPELL: And then Staff in its
13 recommendations made some suggestions for conditions. And I
14 think it's Staff's burden to show that those conditions are
15 reasonable and necessary or -- and that that's what makes it
16 not detrimental to the public interest or however you want
17 to look at it.

18 Mr. Krueger, do you have comments on that?

19 MR. KRUEGER: I don't agree with the last -- I
20 don't disagree with the last point, your Honor. I think the
21 Staff believes that this transaction is not detrimental to
22 the public interest, except for the question of the relief
23 that the Applicants requested in paragraph 16 of their
24 application, which is that the rate base be established at
25 the contract price, rate base for the purpose of ratemaking

1 be established at the contract price.

2 That's the only thing, the principal issue
3 that the Staff disputes, and I think the burden of proof on
4 that issue is on the Applicant. If they're unable to prove
5 it, then they have failed to meet their burden. The Staff
6 will present evidence regarding the -- what the rate base
7 ought to be for ratemaking purposes or what the value of the
8 assets -- what the value of the assets ought to be for
9 ratemaking purposes. It's not our burden.

10 JUDGE DIPPELL: Well, I don't want you to go
11 through your entire opening statement right now, because I'm
12 going to have you come up and do that when the Commissioners
13 are here, but go ahead and finish your thought, if you can
14 remember.

15 MR. KRUEGER: I think I've lost it now.

16 JUDGE DIPPELL: Okay. Are there any other
17 comments about the issues or the burden before opening
18 statements? I'll let you-all address those in your opening
19 statements as well.

20 (No response.)

21 JUDGE DIPPELL: Okay. I think, then, that
22 we're ready to go ahead. I'm going to -- I'm going to take
23 a short break. I'm going to call the Commissioners and then
24 we can proceed with opening statements. So let's go off the
25 record.

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

2 JUDGE DIPPELL: We were having a little bit of
3 technical difficulties before we left. Mr. Krueger's
4 microphone seems to have some sort of horrible static in it.
5 I'll ask you to try to use it again when you talk, but if it
6 makes that horrible noise, we'll see if we can get that
7 worked on this afternoon. Otherwise, I encourage the rest
8 of you to remember to speak into the microphone.

9 One thing I forgot to cover before we do
10 opening statements, we have some highly confidential
11 information filed in this, and -- in this case, but there
12 was also some numbers and things in the application that
13 weren't highly confidential. I wanted to ask if the sale
14 price is indeed a highly confidential number?

15 MR. ABERNATHY: No, it's not.

16 JUDGE DIPPELL: All right. So if there's
17 anything that is highly confidential, I'll leave it up to
18 the attorneys to bring it to my attention. We can always go
19 in-camera if we need to discuss that. But otherwise I just
20 wanted to get that clarified so we didn't expose something
21 that was confidential.

22 Let's go ahead and begin with opening
23 statements, and I will begin with asking Missouri-American.

24 MR. ABERNATHY: I assume we're on here. Good
25 morning. I'm David Abernathy representing Missouri-American

1 Water Company.

2 Frankly, we're a little surprised here this
3 morning having to adjudicate this Warren County Water &
4 Sewer Company purchase. No one disputes that this is a
5 small, troubled water and sewer system in desperate need of
6 new, responsible ownership. Missouri-American Water
7 believes, as the largest private water supplier in the
8 state, that it has the responsibility to assist in solving
9 the problems faced by many of the state's small water and
10 sewer purveyors, over 1,400 water and 700 sewer systems of
11 similar size and makeup as Warren County Water & Sewer,
12 maybe not as troubled, but small, essential systems faced
13 with enormous cost pressures.

14 In the instance of Warren County Water &
15 Sewer, Missouri-American believed it was stepping up and
16 solving a problem for the community it served, as well as
17 solving a problem for the State and for this Public Service
18 Commission.

19 Because of the condition of the Warren County
20 Water & Sewer system, there are no good records of which to
21 speak. It is hard to determine expenses, rate design or the
22 company's rate base. Even Staff, in its filing -- it was in
23 a memorandum attached to their filing in this case --
24 acknowledged a lack of information and indicates only a
25 certain small amount of verifiable information.

1 Consequently, the company with an offer to
2 purchase Warren County Water & Sewer, in order to solve
3 those problems connected with the system, made an offer that
4 it thought was reasonable in respect the amount of assets
5 and property contained within that system.

6 This offer of \$335,000 was also made with the
7 knowledge that another bidder was also vying for the system,
8 a bidder which, to Missouri-American's knowledge, was
9 willing to offer at least \$300,000 to purchase the system.
10 As market valuation approaches go, they're not very far
11 apart.

12 In fact, before Missouri-American made its
13 offer to purchase the system, it informally even asked of
14 Staff as to what the rate base numbers were for Warren
15 County Water & Sewer. Missouri-American was told informally
16 that there were no good numbers for rate base because the
17 records were so poor.

18 Because of this uncertainty in regard to rate
19 base, when the company asked for approval to purchase the
20 system, it asked for an up-front declaration that the
21 purchase price be the rate base. It made sense that
22 Missouri-American believed its offer was conservative in
23 relation to the amount of assets contained within the system
24 and the fact it was a good market valuation from another
25 competitive bidder.

1 It was at this point that Staff seemed to
2 oppose the application. They asked to conduct an analysis
3 of rate base. After about four weeks, Staff eventually
4 declared a rate base of no greater than \$50,000 came out.
5 That same \$50,000 is based on the same lack of information
6 on which the company could not rely. In other words, there
7 is probably not enough verifiable information to prove or
8 disprove either party's number.

9 The Commission will have to do its best to at
10 least determine which party's position is more reasonable.
11 Missouri-American would put forth that it believes its
12 offer -- that the -- its offer is well below the actual
13 value of this system.

14 Missouri-American would also suggest that a
15 rate base of \$50,000 is too low to even make the system
16 financially viable, and therefore would not attract the
17 private investment necessary to solve the problems of such a
18 troubled system.

19 In fact, many small systems within the state
20 of Missouri are in this similar situation.
21 Missouri-American would like to be in a position to assist
22 in solving these problems. However, without reasonable
23 treatment of the investor-owned utility in such situations,
24 Missouri-American will be unable to justify assisting in
25 these solutions in the future.

1 Thank you.

2 JUDGE DIPPELL: Thank you, Mr. Abernathy.

3 Mr. Shorr?

4 MR. SHORR: Good morning. Thank you.

5 Mr. Smith has been instructed to sell Warren County Water &
6 Sewer by the United States Federal Court. In addition, the
7 Commission has filed a proceeding requesting a receiver,
8 which has been continued pending the outcome of sale.
9 Mr. Smith is the sole owner of this company. This
10 transaction is between a willing buyer and a willing seller.

11 Mr. Smith wishes to complete the transaction,
12 pay his creditors and place the company in the hands of a
13 responsible provider. The purchase price is reasonable and
14 meets the requirement of the Federal Court and is consistent
15 with the goals and objectives of the receiver statute.
16 Mr. Smith is entitled to fair market value for this company.
17 That's it.

18 JUDGE DIPPELL: Thank you. Mr. Krueger?

19 MR. KRUEGER: Thank you. Good morning. May
20 it please the Commission? My name is Keith R. Krueger and I
21 represent the Staff of the Missouri Public Service
22 Commission in this proceeding.

23 This case originated in September when
24 Missouri-American Water Company and Warren County filed a
25 joint application to approve the transfer of the assets of

1 Warren County to Missouri-American.

2 The Staff regards Warren County as a problem
3 company and generally supports the transfer of its assets to
4 another qualified utility company such as Missouri-American.
5 The Staff is pleased that Missouri-American wants to acquire
6 these assets. A couple of issues have arisen, however,
7 which prevent the Staff from supporting all of the relief
8 that the joint applicants have sought. A little background
9 information may be helpful.

10 The Office of the Public Counsel filed two
11 complaints against Warren County in September of 2001 in
12 which it asked the Commission to direct the General Counsel
13 to seek the appointment of a receiver for Warren County.
14 The Staff supported that petition by -- or complaint by
15 Public Counsel.

16 The Commission then held an evidentiary
17 hearing on the complaint in June of 2002, and in October the
18 Commission granted relief that the Public Counsel had
19 requested and directed the General Counsel to seek
20 appointment of a receiver and to further seek the
21 liquidation of the assets of Warren County Water & Sewer
22 Company.

23 The General Counsel's office then did file
24 suit for that purpose in Warren County in October of 2002,
25 and the case came on for hearing in May of 2003. At that

1 time, the company stated that it had made an agreement to
2 sell its assets to Missouri-American Water Company. The
3 agreement between those two companies was only oral at that
4 time, but it provided for the sale of the company's assets,
5 which was the relief that the Commission was seeking by its
6 action in the Warren County Circuit Court.

7 In order to give Warren County and
8 Missouri-American time to formalize their agreement and to
9 present their application for transfer of assets to the
10 Commission for approval, the parties filed a memorandum with
11 the Court by the terms of which Warren County agreed to the
12 appointment of a receiver effective 90 days after that date.
13 Shortly after the end of the 90-day period, Warren County
14 and Missouri-American filed the application in this case.

15 The Staff supports the Joint Applicants'
16 request that the Commission approve the transfer of Warren
17 County's assets to Missouri-American and believes that such
18 a transfer would not be detrimental to the public. In fact,
19 the Staff believes that the public in general and the
20 customers in Warren County service territory in particular
21 would very much benefit from the transfer of Warren County's
22 assets to Missouri-American.

23 But Missouri-American also requested an Order
24 or agreement that the assets that it was buying be, quote,
25 valued for ratemaking purposes at the purchase price

1 contained in the agreement, unquote. The Staff opposes that
2 portion of the request. The Commission then scheduled a
3 hearing, quote, to determine the value of the assets and any
4 other contested issues in this matter, unquote. That's what
5 we're here for today.

6 Missouri-American contends that the assets
7 that it seeks to acquire are equal to -- equal in value to
8 the \$335,000 purchase price or greater that is specified in
9 its contract with Warren County. The Staff, on the other
10 hand, contends that the value of the assets for ratemaking
11 purposes is at maximum approximately \$50,000.

12 Obviously there's a huge discrepancy between
13 the numbers of the Applicant and the Staff's valuation of
14 the value of the assets. Why is there such a huge
15 discrepancy? The Staff will present persuasive evidence
16 that its valuation of the assets is far closer to the true
17 value for ratemaking purposes.

18 It's important to note that what
19 Missouri-American seeks in this case is that the assets be
20 valued for ratemaking purposes at the purchase price
21 specified in the agreement. It didn't ask for a
22 determination of the fair market value of the assets or the
23 original cost of the assets or the replacement cost of the
24 assets.

25 The Staff will, therefore, present evidence

1 concerning the value of these assets for ratemaking
2 purposes; that is, evidence concerning the regulatory rate
3 base of the assets of Warren County that it proposes to
4 transfer to Missouri-American. To try to determine the
5 value of those assets for any other purpose other than
6 ratemaking would be to try to answer a question that
7 Missouri-American did not ask.

8 At a prehearing conference in this case on
9 September 29th, Missouri-American's attorney made the
10 following statement: Quote, what we're asking for is the
11 price we're paying for this property be the rate base
12 number, because we don't know what the rate base number is
13 precisely. Nobody does, unquote. He made a similar
14 statement this morning in his opening statement.

15 Perhaps Missouri-American does not know what
16 the rate base number is, but the Staff will present evidence
17 that will show that the rate base is close to the \$50,000
18 figure that we have previously mentioned.

19 The Staff will show that the subject assets
20 were developed and installed by the company that developed
21 the Incline Village Subdivision. It will also show that
22 that developer subsequently contributed those assets to a
23 water utility and a sewer utility; furthermore, that these
24 utilities did not pay anything to the developer for those
25 utility assets, and that the utilities reported to the

1 Commission that the rate base of those assets was zero.

2 It's reasonable to assume that the developer
3 passed the cost of these assets along to its customers in
4 the cost of the lots that it sold and that the residents in
5 the service area have already paid for those assets. The
6 Staff's evidence will further show that Warren County
7 Water & Sewer Company subsequently acquired these assets
8 from the Incline Village Utilities Company at a tax
9 foreclosure sale by paying past due taxes of approximately
10 \$10,000.

11 Staff's evidence will also show that it
12 determined -- that the Staff determined in a small company
13 rate increase case in 2002 that Warren County's total water
14 plant in service less depreciation was approximately \$22,000
15 as of June 30, 2001, and that Warren County's total sewer
16 plant in service less depreciation was approximately \$31,000
17 as of the same date.

18 The Staff's evidence will show that it
19 presented the results of this investigation to Gary Smith,
20 the owner of Warren County Water & Sewer Company, and that
21 Mr. Smith didn't challenge the Staff's determination of the
22 rate base at that time. In effect, Mr. Smith thereby
23 acknowledged that the Staff's number was accurate.

24 The Staff has not conducted an audit of Warren
25 County's books since June 30, 2001, but to the Staff's

1 knowledge, there has been no significant new investment in
2 the company's rate base since that time. The Staff's
3 evidence will therefore establish that Warren County's rate
4 base is approximately \$53,000.

5 The question that remains is why the Joint
6 Applicant could place a value as high as \$335,000 on Warren
7 County's assets. The Staff expects the joint applicants to
8 reach this conclusion by relying on estimates of the costs
9 to construct the assets that are included in Warren County's
10 plant instead of relying upon the historical costs that is
11 generally utilized in utility ratemaking or upon documented
12 evidence of the value of rate base as reported in documents
13 that have been filed with the Commission by Warren County or
14 its predecessors.

15 In its Order Setting Expedited Hearing, the
16 Commission indicated that it also wants to see evidence of
17 how the value of this -- of these subject assets may
18 potentially affect rates. The Staff will, therefore,
19 present evidence that shows that if the subject assets are
20 valued for ratemaking purposes at the \$335,000 purchase
21 price that's specified in the contract between the Joint
22 Applicants, it could potentially result in rates that are
23 nearly 15 percent greater than they would be if the assets
24 are valued for ratemaking purposes at the \$53,000 that the
25 Staff's evidence supports.

1 The Staff's position is that Missouri-American
2 can pay Warren County whatever it's willing to pay for these
3 assets, but the Commission should not require the ratepayers
4 to pay a second time for assets that they already paid for
5 once.

6 Finally, the Staff will present evidence that
7 Warren County owes the Commission \$15,966.75 in past due
8 assessments. Dale Johansen will testify on behalf of Staff
9 in this proceeding and will be pleased to answer your
10 questions. Thank you.

11 JUDGE DIPPELL: Thank you, Mr. Krueger.
12 Ms. O'Neill?

13 MS. O'NEILL: Thank you. Good morning,
14 Commissioners, your Honor and counsel. As you know, I'm
15 Ruth O'Neill and I represent the Office of the Public
16 Counsel.

17 Public Counsel's interest in this application
18 for transfer of assets is heightened because this case
19 represents the end of a long journey for us, one that began
20 many years ago.

21 As Mr. Krueger indicated and as our
22 investigations over the years have shown, Warren County
23 Water & Sewer has been a problem utility for years. The
24 quality of the service was negligible. My office filed a
25 formal complaint in Case No. WC-2002-155 in the fall of

1 2001. There was also a sewer complaint case filed and they
2 were consolidated into that case number.

3 In this case we sought the appointment of a
4 receiver and a finding that the company should not be
5 returned to the owner. We sought appointment of the
6 receiver because we wanted the company sold. That formal
7 complaint filing in September of 2001 was preceded by
8 several months of informal investigation and discussion and
9 speaking to a number of customers and other witnesses, some
10 of whom eventually testified in the local public hearing
11 that was held in March of 2002 and in the evidentiary
12 hearing that was before this Commission in June of 2002.

13 In fact, there are two witnesses here today
14 who were customers of Warren County Water & Sewer, Paul
15 Jeannot and Jim Walter, and I've had contact with both of
16 them; Mr. Jeannot since the beginning of our initial formal
17 investigation, and Mr. Walter less -- I have less of a
18 history with him, but I've had quite a bit of contact with
19 him about the concerns that the customers have had over
20 Warren County Water & Sewer.

21 We had a lot of reasons to seek receivership
22 of the company. The company's owner/manager had a long
23 history of poor and even hostile customer service. The
24 company failed to pay its bills, assessments and taxes when
25 they were due. The water system was inadequate to provide

1 for the growth of the system that had occurred since
2 Mr. Smith bought the company. The company failed to
3 maintain its sewer systems to the point where Mr. Smith was
4 indicted and eventually convicted of felony violations of
5 the Clean Water Act in federal district court.

6 That's where the court order to sell the
7 company comes from, is from that case, the Order that
8 Mr. Shorr discussed this morning.

9 Mr. Smith's poor management included attempts
10 to transfer assets out of the company without Commission
11 approval, poor to non-existent recordkeeping, as you've
12 already heard about this morning, use of unregulated
13 affiliate to perform regulated utility work. The sewer lift
14 stations malfunctioned on a regular basis, even after we
15 filed our formal complaint. Missouri DNR and the EPA cited
16 the company for numerous violations of their rules.

17 I want to talk a little bit about the timeline
18 that brings us here today, although I think I've given you
19 the highlights. Once we had the hearing in June of 2002, it
20 was October 8th that the Commission entered its order in
21 WC-2002-155, and I would ask that the Commission take notice
22 of that opinion in that Report and Order in which you stated
23 the conclusions the company's unable or unwilling to provide
24 service.

25 And it was following that Order that the

1 General Counsel filed a Petition for Receivership in Warren
2 County Circuit Court, and it was May 13th that the events
3 transpired that Mr. Krueger discussed.

4 Actually what happened was Warren County
5 Water & Sewer Company asked for a continuance. We objected
6 and eventually entered into the settled disposition of the
7 case in which Warren County Water & Sewer would consent to
8 the appointment of a receiver, and that was stayed for 90
9 days pending an application being filed with the court
10 stating that the application was on file, that the matter
11 would continue further.

12 My office and Mr. Krueger were in contact with
13 both companies over the course of the summer on several
14 occasions, trying to make sure that that timeline was met.
15 As it turned out, it was about three weeks after the
16 expiration of that 90 days that the application got filed.

17 However, we did -- based on conversations we'd
18 had, we were able to report to the judge in July at a status
19 hearing that we believed that things were on track, and at
20 that time the court continued the matter pending results of
21 what happened here.

22 That's how we're here today. Although it took
23 longer than originally anticipated for the parties to file
24 the application for approval of the transfer of assets,
25 we're now before the Commission with recommendations from

1 all parties in this case that the transaction be approved,
2 which brings us to the questions for today's hearing.

3 And the first one, I think, is does
4 Missouri-American's request that the Commission allow it to
5 purchase this company and include the amount of the purchase
6 price as the rate base in the next rate case make this
7 transaction detrimental to the public interest? And second,
8 what is the total value of the assets being purchased?

9 As a side issue, I think that when the
10 Commission decides what's detrimental to the public
11 interest, in its historical decisions it has always taken
12 consideration of all the evidence and all the circumstances
13 surrounding the transaction. I think the evidence today
14 will show that the situation with the current customers of
15 Warren County Water & Sewer is one that is clearly
16 detrimental to the public interest. They have inadequate
17 water service and, at times, unsafe sewer service.

18 The company that currently owns their system
19 refuses or is unable to correct these problems, despite
20 years of proceedings before this Commission. There's a
21 construction moratorium on lots in the major service
22 territory of this company because of the inadequacies of the
23 system. That moratorium was placed by a Warren County
24 governmental agency. If the sale is not approved, that will
25 not be lifted unless those improvements are made.

1 My office advocated for a receiver to be
2 appointed in this case, and if we didn't have the sale
3 application before you, I would still be making that
4 argument. But frankly, a receiver appointment at this stage
5 is going to delay the improvements to the system that these
6 customers so sorely need.

7 We have a buyer. We have an agreement to
8 purchase. A receiver could negotiate a sale. A receiver
9 could attempt to get financing to make these improvements,
10 but frankly things are going to get a lot better for these
11 customers a lot faster if the sale goes through now instead
12 of when the receiver gets through with whatever competitive
13 bidding process the receiver goes into. This is only going
14 to delay the relief that this company's customers so sorely
15 need.

16 You know, when we filed this complaint over
17 two years ago, we would have been happy to just argue that
18 Mr. Smith forfeit the company based on all the violations,
19 but that wouldn't have been lawful for us to do. We're
20 aware of the constitutional requirements that prohibit the
21 State from taking private property from someone without just
22 compensation, and pursuant to the right to contract, if
23 Missouri-American wants to pay whatever price they want to
24 pay, that's fine.

25 We are concerned, and we do share the Staff's

1 concern that we don't have enough information to determine
2 what rate base should be in a future rate case. That
3 doesn't mean that we should lose sight of the real issue,
4 which is that customers continue to call my office every
5 week to complain about their service from Warren County, and
6 the Commission needs to act in a manner that will give those
7 people relief.

8 I know that you're seeking information
9 regarding the value of the assets that are being purchased,
10 and as you know, this may be a different value than what can
11 be considered a verifiable rate case number. It could
12 include real estate on which capital improvements are
13 planned to be built, which may well become part of rate base
14 in the future, but could not really be considered rate base
15 at this time.

16 It's our understanding the assets being
17 purchased may also include items that are not currently
18 technically owned by Warren County Water & Sewer, but that
19 are owned by Gary Smith. Those things would not be included
20 in a rate base calculation that may have been made in the
21 past, but would in the future be an appropriate
22 consideration for rate base.

23 Our understanding is also that some assets may
24 have been eliminated from rate base in Staff's prior
25 analyses, not because they had no value, but because of poor

1 quality of the records kept by Mr. Smith.

2 You've probably noticed that I've probably --
3 and I may sound a little frustrated to be here after two --
4 more than two years after we filed the original complaint
5 and still not have a final disposition in what I see as my
6 complaint case, even though this has a different number and
7 is a different -- technically a different proceeding.

8 But the customers that are here today to
9 testify, Mr. Jeannot and Mr. Walters, have been living
10 through this longer than I have. They really wonder if
11 they're ever going to see any progress for getting the water
12 storage, upgraded sewer treatment plant, whether those goals
13 for them are going to remain elusive. They wonder whether
14 they're going to be able to fish and swim in Incline Lake
15 next summer, whether or not the fish kills will be so bad
16 that they can't enter the water.

17 My office, so we're clear, opposes including
18 any acquisition premiums in rates. We always have, and
19 that's consistent with our position. However, we also
20 believe that it's proper to consider the value of all the
21 assets in determining whether or not the sales price was
22 reasonable in this case, and I believe that those are
23 actually two different considerations.

24 There was a competitive bidding in this case.
25 There's potential for growth. There may be a lot of sound

1 business reasons why Missouri-American decided to pay what
2 they are offering to pay for this property. Some of those
3 things may not be recognizable in rates. And certainly the
4 records that are being kept by the current owner make it
5 unlikely that we can know for sure today what the true value
6 is.

7 However, my office believes that uncertainty
8 as to the actual value of these assets should not prevent
9 the Commission from approving the sale, even to the point
10 that it may be appropriate for the Commission to leave the
11 amount that may be disallowed as an acquisition premium to
12 be determined in a future rate case.

13 JUDGE DIPPELL: Thank you, Ms. O'Neill. Would
14 you like to go ahead and call your first --

15 CHAIRMAN GAW: Judge, can we ask a couple of
16 questions?

17 JUDGE DIPPELL: Certainly. Chairman Gaw
18 wanted to ask a question of the attorneys.

19 CHAIRMAN GAW: Maybe more than that. From
20 Public Counsel, I want to make sure I understand what your
21 position is in regards to Missouri-American's application
22 for the -- well, they're not -- in regard to this sale. Is
23 Public Counsel taking the position that we should not grant
24 the request that Missouri-American has in regard to
25 ratemaking treatment in this case?

1 MS. O'NEILL: That's correct. We believe you
2 should approve the sale. We believe that there's just not
3 enough certainty about the actual value for ratemaking
4 purposes to be able to make that determination at this
5 point, and probably that would best be left to a future rate
6 case.

7 However, we do believe that you can look at
8 the circumstances, all the circumstances in this case, and
9 determine whether or not the purchase price is --

10 CHAIRMAN GAW: I'll get to that in a minute,
11 but I'm trying to understand where we are to begin the case,
12 because I want to know what the dynamic here is in regard to
13 the parties' positions. Is Missouri-American taking the
14 position that they will not complete this sale without that
15 ratemaking treatment request being honored by the
16 Commission? Missouri-American?

17 MR. ABERNATHY: We're going to speak to that
18 with one of our witnesses, but I think it would depend on
19 the number maybe the Commission comes up with. But if it's
20 \$50,000, Commissioner, I think the answer is yes, we would
21 not do the sale.

22 CHAIRMAN GAW: I guess I'm asking something
23 that's a little prior to the issue of whether or not we come
24 up with a value, and that is whether or not this Commission
25 is -- if Missouri-American -- I know you're requesting us,

1 but are you requiring this Commission as a contingency to go
2 forward with the sale to determine that a value that will
3 lock a future Commission in for ratemaking on that -- on a
4 particular value?

5 MR. JENKINS: I'm not familiar with the proper
6 protocol, but as the treasurer of the company, I --

7 CHAIRMAN GAW: I think I need to hear from the
8 counsel. And if you-all need to confer, that's fine. We'll
9 hear the testimony in a moment.

10 MR. ABERNATHY: Commissioner, to answer your
11 question, I think in our mind, we would like to have an
12 answer as to what the rate base is. I mean, it's either we
13 get it now or we do it later in a rate case time, and if we
14 don't have it now, I don't understand why the records would
15 be any better later than they are now.

16 CHAIRMAN GAW: I understand your request. I'm
17 asking something more pointed than that, and that is whether
18 or not it is a requirement in order for Missouri-American to
19 proceed with the sale that this Commission make such a
20 finding in regard to ratemaking treatment?

21 MR. ABERNATHY: All right. I don't know.

22 CHAIRMAN GAW: I know that's putting you on
23 the spot.

24 MR. ABERNATHY: I'm not sure I can require the
25 Commission to do anything, frankly, but I --

1 CHAIRMAN GAW: I'm asking you if you have a
2 position in regard to whether or not you will -- you can go
3 forward with the sale. I'm not talking about whether or not
4 we set a value that comes about as a result of determining a
5 detriment to public interest standard. I think that's --
6 that is an issue that we have to contend with today.

7 What I'm asking is whether or not your
8 particular request to bind a future Commission on ratemaking
9 treatment is something that is necessary in order for you to
10 go forward with the sale?

11 MR. ABERNATHY: I think it is.

12 CHAIRMAN GAW: Because if that's the case, the
13 Commission may have a problem with our legal ability to do
14 that. I wanted to understand where we're coming from, and
15 it also sounds like Public Counsel is taking the position
16 that we cannot do that as well as Staff, and if that's the
17 case, we need that legal issue also resolved.

18 I realize Public Counsel is taking the
19 position strongly here with opening statement that you
20 believe that the sale should go forward, but if
21 Missouri-American is unwilling to go forward with the sale
22 under your conditions and your position, then that does put
23 us into a position where I don't know whether resolution by
24 this Commission is going to result in anything happening.

25 MS. O'NEILL: Chairman Gaw, I think that our

1 office's position is that if Missouri-American chooses not
2 to proceed with the sale, then the next best thing is to
3 continue with the receivership appointment that is pending
4 in Warren County Circuit Court, which I believe will not
5 take that much longer.

6 The reason we want the sale to go through is
7 because we want this to be over, but if it's not going to be
8 over, depending on what the Commission decides to do, then
9 we will continue to press for a receiver to be appointed as
10 quickly as possible.

11 CHAIRMAN GAW: And my -- to close this issue
12 with you -- and I'm not trying to close out other counsel.
13 I'll get to them as well. But Public Counsel's position
14 does not change in regard to your position about not setting
15 a particular rate base in this case if it results in the
16 sale not going forward?

17 MS. O'NEILL: If there's evidence to support a
18 particular rate base number, that's one thing. At this
19 point in time, the information that I've been able to review
20 doesn't do that, and we have concerns that the numbers that
21 Staff has for rate base are based in part on the poor
22 recordkeeping and the poor information being provided by the
23 company that currently owns those assets, as opposed to what
24 actually would be in rate base if this was a properly run
25 company.

1 There might be other things involved. So if
2 there was evidence that supported a particular number and
3 the Commission determined what that number was, that would
4 ease our concerns. We are concerned about binding future
5 Commissions, though.

6 CHAIRMAN GAW: Mr. Shorr, did you want to
7 comment? I'm not trying to keep you out of this
8 conversation.

9 MR. SHORR: More appropriately, I wish to be
10 noticed by Judge Dippell. I do not have something to add,
11 but it's collateral to the conversation that you have
12 generated.

13 JUDGE DIPPELL: Go ahead, Mr. Shorr.

14 MR. SHORR: Judge, I would respectfully
15 request, in light of the opening statements and the
16 conversations that have been had relating to this case,
17 which in my opinion are inconsistent with the notice that
18 was provided to parties, I would respectfully request that
19 judicial notice be given for the docket for the Eastern
20 District Court of Missouri and included as that notice.

21 And also I would respectfully ask, I note that
22 this is a proceeding where parties who are operating in the
23 context in their official capacity, specifically the Staff
24 of the Commission providing evidence or commentary, there
25 has not been any provision regarding the oath with respect

1 to the veracity of that commentary.

2 And considering that the fact that I have a
3 client who's involved in multiple cases and this is taken
4 under testimony, I am questioning what the context of the
5 statements delivered by the Staff of the Commission through
6 counsel are.

7 JUDGE DIPPELL: I don't believe we've gotten
8 to the evidence yet, Mr. Shorr. We've just been discussing
9 the legal issues here, and the standards and burden. If
10 you'd like the Commission to take notice of the Eastern
11 District case, could you -- if you could provide me with
12 that number, that would be helpful.

13 MR. SHORR: The docket for the case is
14 4:01-CR-00195-ERW-AL.

15 CHAIRMAN GAW: Just to continue, from my
16 standpoint, part of what I would like to hear in this
17 case, and I think what we have discussed -- and maybe the
18 others may want to add to this -- is how it is -- is what
19 evidence that is appropriate after the Ag Processing case
20 that was just recently handed down. That is part of the
21 reason that we're here to try to make sure that we have an
22 adequate record in order to comply with that decision.

23 And I'm sure you-all are aware of that
24 decision and what that entails, and that's -- that has a lot
25 to do with why we're here this morning. That's all I have,

1 Judge. Maybe some of the others have --

2 JUDGE DIPPELL: Was there any other --

3 MR. ABERNATHY: I just have one more comment,
4 Commissioner. In all things, and this is said repeatedly
5 down here, it's an issue of fairness. The company believes
6 it can be treated fairly in this situation. We're flexible
7 in this matter. We're not going to stand on our soapbox and
8 scream and yell.

9 This is a situation where I think if we'd
10 known up front when we first made the original deal with
11 Warren County Sewer and Water that the rate base was only
12 \$50,000, the deal might not have been struck in the first
13 place.

14 CHAIRMAN GAW: So the statement you made a
15 while ago may not be quite as black and white as what I
16 think you were --

17 MR. ABERNATHY: Exactly. Exactly. I wanted
18 to answer your question, but I'm not trying to say I'm
19 painting myself in a corner either.

20 CHAIRMAN GAW: All right. Thank you for
21 clarifying.

22 Thank you, Judge.

23 JUDGE DIPPELL: Are there other Commission
24 questions, Commissioner Murray, before we begin?

25 COMMISSIONER MURRAY: As to the question of

1 whether we should determine rate base in this proceeding or
2 in the rate case, if there is insufficient evidence because
3 of poor recordkeeping to determine rate base now today, can
4 any party tell me why there would be any better records at
5 the time of the rate case?

6 MS. O'NEILL: Commissioner, I don't know that
7 there would be better records, but I do believe that once
8 the assets are transferred and the operation is taken over
9 by a different company, they would be in a better position
10 to review what records there are and do actual inspections
11 and make some determinations and maybe do some backtracking
12 and they were able to do during this proceeding. I don't
13 know whether or not they've done all of that.

14 I know that Missouri-American is planning on
15 offering a study that I received this morning, and that may
16 answer some of those questions. I don't know if they would
17 be better, but I think that there would be a better
18 opportunity for the new owner to develop and reconstruct
19 those records than what we have today. But I don't know
20 that it would be better. I don't know for sure.

21 COMMISSIONER MURRAY: So is it kind of an
22 academic question as to whether we'd do any better later?

23 MS. O'NEILL: It might be, yeah. I think that
24 it's -- I don't know if we would do better later. I know
25 that we have -- my office has concerns because we know and

1 we support for ratemaking purposes exclusion of items for
2 which there's not proper records. I think that's the
3 appropriate way to go.

4 But we know that there are some other things
5 that are being purchased that aren't in that rate base right
6 now, and I'm not sure how those will be valued for
7 ratemaking purposes if they become used and useful or if
8 they are used and useful right now. So those things may
9 change from what the numbers are the Staff has right now.

10 So we're concerned about locking into the
11 Staff's number as this is what rate base will be, as much as
12 we're concerned about the company just saying, okay, give us
13 all of this money as rate base and then we'll do the
14 improvements that we need to do, because I'm not sure that
15 there's adequate support for either of those numbers. We
16 just don't know. And we don't know what the number is, so I
17 can't really pick which one.

18 COMMISSIONER MURRAY: But you think at some
19 point you will know what that number is?

20 MS. O'NEILL: I think that as -- for example,
21 I think that some of the -- among the assets, based on
22 information we've got from the company -- and I'm sure this
23 will come out in testimony -- some of the assets that were
24 purchased include some real estate that's not currently in
25 rate base, because it's real estate where the water storage

1 tower was going to be built, for example, and once that
2 water tower is up it probably would be included in rate
3 base, but it's not right now.

4 I think there's another piece of property
5 where it was anticipated that there would be upgrade to the
6 sewer treatment plant. That's not used and useful and so
7 isn't in the rate base right now.

8 COMMISSIONER MURRAY: Okay. I'm not really
9 wanting to go into that.

10 MS. O'NEILL: I don't know the details but, I
11 mean, there may be some things that would be clearer once
12 the rate case comes along, those types of things. Whether
13 or not it would be, you know, the 53,000, whether or not
14 that gets cleared up, I don't know.

15 COMMISSIONER MURRAY: Ms. O'Neill, you
16 indicated earlier in your statements that there certainly --
17 I think I could conclude from your statements that there
18 would certainly be detriment to the public to continue with
19 the situation that these customers are currently in. Would
20 that be the case?

21 MS. O'NEILL: Yes. We believe that the
22 current situation is detrimental to the public interest, and
23 no matter what the condition -- well, although we don't want
24 to support anything that might be considered to be an
25 acquisition premium, all things considered and all factors

1 considered, the transfer of these assets to a company that
2 can conduct business in a more professional manner is
3 beneficial to the public interest.

4 COMMISSIONER MURRAY: And if Staff had not
5 come back and presented some kind of a calculation that
6 resulted in the significantly different figure than was
7 agreed upon for the sale price, would Office of Public
8 Counsel have objected to the inclusion of the sale price in
9 rate base, claiming that it would be detrimental to the
10 public interest, even though the bottom line would be an
11 increase of 15 percent in rates and, as you stated earlier,
12 would allow the moratorium on construction to be lifted and
13 allow these consumers to have safe and adequate water and
14 sewer service and to go ahead with the improvements that
15 they, as you stated, are sorely needing?

16 MS. O'NEILL: I think that Staff's coming in
17 with the figure they came in with was very troubling to us.
18 I think that our office policy and position would always be
19 that if there is an acquisition premium, it shouldn't be
20 included in rates. Whether or not we would be willing to
21 state that this would -- this does include an acquisition
22 premium, which frankly we still really don't know, I don't
23 know.

24 I think we would have -- we would have raised
25 that as a concern, but I don't think it would have prevented

1 us from recommending approval. It still hasn't prevented us
2 from recommending approval of the transfer.

3 COMMISSIONER MURRAY: So long as the company
4 eats any discrepancy in the purchase price?

5 MS. O'NEILL: Yeah, and we believe that even
6 the Ag Processing decision doesn't really change our
7 position on that. I know that there's a lot of language in
8 there that's troubling considering acquisition premiums, but
9 we believe that that's still part of the calculus that the
10 Commission undergoes in deciding whether or not there's a
11 detriment.

12 We also think that, despite Ag Processing,
13 that the Commission could approve this without binding a
14 future Commission with regard to the ratemaking issue. But,
15 you know, it's a difficult consideration because we do
16 believe that these improvements need to be made and we do
17 believe that finality is important for these customers and
18 it's been a very difficult issue for our office. We have a
19 lot of competing policy considerations and a lot of
20 customers who need some help.

21 COMMISSIONER MURRAY: So if you had to weigh
22 which was more detrimental, to continue with the status quo
23 or to have a 15 percent increase in rates, which would you
24 say would be more detrimental? Can you make that judgment?

25 MS. O'NEILL: I probably shouldn't.

1 MR. JEANNOT: I can.

2 JUDGE DIPPELL: Sir, we'll get to the
3 witnesses and the evidence in a few moments.

4 MS. O'NEILL: I think that the company's
5 customers are aware that once improvements are made, there's
6 going to be a rate increase regardless. And depending on
7 what the amount of increase difference would be, I think the
8 customers would probably be willing to live with that if
9 they were going to get good water and sewer service. And
10 that's a factor that weighs heavily into the positions that
11 my office takes.

12 COMMISSIONER MURRAY: Would anybody else like
13 to comment on whether there would be any better evidence at
14 the time of the rate case to show rate base treatment?

15 JUDGE DIPPELL: I have both Staff and
16 Mr. Abernathy wanting to respond, so I'm going to let Staff
17 go first.

18 MR. KRUEGER: Yes. The Staff will present
19 evidence concerning the rate base value of these assets as
20 the Staff determined them to be in the last small company
21 rate increase case that the -- that Warren County presented
22 in 2001 -- or 2001, and also the Staff's determination
23 concerning the rate base value of those assets in the prior
24 small company rate increase case.

25 We will present sufficient evidence to enable

1 the Commission to make a determination on what the rate base
2 is. Now, this might not be as secure a determination as you
3 would be able to make if it was in a full-blown rate case.
4 If it was a full-blown rate case, there would be more time
5 for preparation of the case. There would be opportunities
6 for discovery and so forth.

7 But we will present evidence from which we
8 think the Commission would be able to determine what the
9 rate base is. What the company has -- what the Joint
10 Applicants have asked for is that the assets of the company
11 be valued at the contract price. That's a yes or no
12 question. They didn't say, we want it to be valued at
13 \$335,000, or if you don't like that then set it 325 or 300
14 or 250 or some other number. They asked that it be set at
15 the contract price.

16 And you mentioned also the Supreme Court's
17 decision in the Ag Processing case, and what the -- as I
18 understand, the decision in that case, what the court
19 criticized there is the Commission's failure to address the
20 issue of UtiliCorp's being allowed to recoup the acquisition
21 premium.

22 Now, as I understand Missouri-American's
23 position, they contend that there is not an acquisition
24 premium. So the Commission could answer that question that
25 the Supreme Court said that it should have answered in the

1 UtiliCorp case, that is should the company be allowed to
2 recoup its acquisition premium. They can answer that no,
3 and we would ask the Commission to do that. So that's --
4 and then the rate base could be determined in a future case.

5 COMMISSIONER MURRAY: Part of the Staff's
6 reasoning that the purchase price should not be included in
7 rate base is that the ratepayers have already paid for most
8 of those assets; is that correct?

9 MR. KRUEGER: I said it's reasonable to assume
10 that the ratepayers, that the -- that that money may have
11 been paid to the development company as part of the lot
12 price.

13 COMMISSIONER MURRAY: But you're not
14 presenting any evidence to that effect?

15 MR. KRUEGER: We will be presenting evidence
16 regarding what the rate base was at that time.

17 COMMISSIONER MURRAY: Okay. And then I'd just
18 like the question answered that if -- if that is the case,
19 that ratepayers have paid for those assets and that they are
20 only worth about \$50,000 to rate base, why should Warren
21 County be paid twice for those assets?

22 MR. KRUEGER: I don't think Warren County
23 should be paid twice for those assets.

24 COMMISSIONER MURRAY: Okay. I'll probably
25 have to ask that of a witness rather than counsel here.

1 Does the -- I believe that counsel for
2 Missouri-American wanted to respond to the evidence at the
3 time of the rate case versus evidence in this proceeding.

4 JUDGE DIPPELL: Mr. Abernathy?

5 MR. ABERNATHY: Yeah, I just want to add real
6 quickly, I think this is probably the best time to look at
7 what the value of the system is. Once the hearing was set
8 here in this matter, the company went out and spent \$10,000
9 to do an original cost study on the assets of Warren County
10 Water & Sewer, and we have it here to present into evidence,
11 which details all the assets out there, makes an inventory
12 list, trends it for original costs, as it depreciates and
13 everything. So it's there for us to look at now.

14 COMMISSIONER MURRAY: And is there any better
15 evidence that would be available at the time of a rate case?

16 MR. ABERNATHY: I don't think there's anything
17 else you can do at this time. Not that I'm aware. Maybe
18 somebody else has a different idea, but not that I know of.

19 COMMISSIONER MURRAY: And, Mr. Shorr, do you
20 have anything to add?

21 MR. SHORR: Ms. Murray, the only thing I had
22 to add is that the argument becomes that this system's value
23 has a replacement cost as well, and these people are paying
24 for easements, right of way, all kinds of other materials,
25 just including the capital plant, and that has not been

1 assessed or valued.

2 I will also point out that the informal rate
3 cases were informal rate cases. All were denied, and I
4 would make the argument that, as a direct result of that, my
5 client's in the situation that he's in.

6 So we can do all that kind of testimony if we
7 wish to do it this way or we can focus on what the charge
8 was in the document that I received, which is to present the
9 data regarding what is the value of this operation, and that
10 is what I was told that we were going to be here for today.

11 COMMISSIONER MURRAY: And are you here today
12 to present data about the value?

13 MR. SHORR: Ms. Murray -- Commissioner Murray,
14 I am here to present merely that this is a -- from our end,
15 as I indicated in my opening, the only thing we are going to
16 present from Warren County is that this is a willing buyer
17 and willing seller in the state of Missouri, and they are
18 prepared to present evidence regarding what the value that
19 they believed it was worth when they made their purchase
20 price and our contract.

21 COMMISSIONER MURRAY: In order to be a willing
22 seller, the seller must have some idea of value.

23 MR. SHORR: And I will present some testimony
24 to that effect.

25 COMMISSIONER MURRAY: Based on what?

1 MR. SHORR: Missouri standard of what is a
2 willing buyer, willing seller, what does the seller believe
3 the cost of the property is with respect to his area.

4 COMMISSIONER MURRAY: So it will only be based
5 on market data?

6 MR. SHORR: Correct.

7 COMMISSIONER MURRAY: All right. Thank you.
8 Thank you, Judge.

9 JUDGE DIPPELL: Are there any other Commission
10 questions before we begin with the witnesses? Commissioner
11 Clayton?

12 COMMISSIONER CLAYTON: I was just going to ask
13 just to make sure in terms of what we can anticipate in
14 terms of evidence here today, it's my understanding each
15 party is or is not going to present evidence on what the --
16 what the value of this company is or what the rate base
17 should be in this company? Is each party doing that, will
18 provide that evidence?

19 MR. ABERNATHY: Yes.

20 MR. KRUEGER: Yes.

21 COMMISSIONER CLAYTON: And, Mr. Shorr, would
22 you clarify what Commissioner Murray asked, exactly what
23 evidence or testimony that your client will be presenting
24 here today?

25 MR. SHORR: Market value.

1 COMMISSIONER CLAYTON: Simply market value?

2 Will your client be providing any evidence of, as you
3 mentioned, replacement value, as you said?

4 MR. SHORR: No. Market value.

5 MR. ABERNATHY: Commissioner, just to clarify,
6 we do have the replacement value numbers, too.

7 COMMISSIONER CLAYTON: As a part of this
8 study --

9 MR. ABERNATHY: Yes.

10 COMMISSIONER CLAYTON: -- that cost \$10,000?
11 Just wanted to make sure.

12 MR. ABERNATHY: You're right, same study.

13 COMMISSIONER CLAYTON: Mr. Shorr, can you tell
14 me when the last -- when was the last rate case that your
15 client had a rate that was set? Do you know how long ago
16 that was? Or you mentioned that there had been several
17 denials over the course of several years. The current
18 rates, what were they -- when were they set?

19 MR. SHORR: According to my client,
20 Commissioner Clayton, 1983 was when the water rate was set,
21 and that carried over. Your Staff may have some different
22 information. There was an additional increase, my client
23 believes, around '94 or '95. There was a \$3 increase in
24 sewer only.

25 COMMISSIONER CLAYTON: Just a second, Judge.

1 Mr. Shorr, you made the statement that you
2 will be presenting evidence of the market value based on a
3 willing seller and a willing buyer. You said that earlier.
4 Is it a fair state -- I mean, is your client really a
5 willing seller?

6 MR. SHORR: According to Missouri law,
7 Commissioner Clayton, he's a willing seller.

8 COMMISSIONER CLAYTON: I don't think I have
9 any other questions at this time.

10 JUDGE DIPPELL: Commissioner Forbis?

11 Okay. All right, then, let's go ahead and
12 begin with the first witness. Ms. O'Neill?

13 MS. O'NEILL: Thank you. I'd call Paul
14 Jeannot.

15 JUDGE DIPPELL: Thank you, Mr. Jeannot. I'd
16 like you to raise your right hand, if you don't mind, and
17 I'll swear you in.

18 (Witness sworn.)

19 JUDGE DIPPELL: Thank you very much. Proceed,
20 Ms. O'Neill.

21 PAUL JEANNOT testified as follows:

22 DIRECT EXAMINATION BY MS. O'NEILL:

23 Q. Paul, could you state your full name for the
24 record, please?

25 A. My name is Paul Jeannot, J-e-a-n-n-o-t.

1 Q. Mr. Jeannot, are you a customer of Warren
2 County Water & Sewer Company?

3 A. I am.

4 Q. How long have you been a customer?

5 A. About four and a half years.

6 JUDGE DIPPELL: Mr. Jeannot, could I get you
7 to move the microphone a little bit toward you there?

8 THE WITNESS: Can you hear me now?

9 JUDGE DIPPELL: Yes, I can.

10 THE WITNESS: Sounds look a commercial,
11 doesn't it? Can you hear me now?

12 BY MS. O'NEILL:

13 Q. Mr. Jeannot, have you been in contact with my
14 office over the years regarding problems with Warren County
15 Water & Sewer?

16 A. Yes, I have. In fact, I remember the first
17 time we got together here in Jeff City. It was January 31,
18 2001 when we started this journey along with the Staff of
19 the PSC.

20 Q. And have you been following the proceedings
21 regarding the complaint and now this application for
22 transfer of assets?

23 A. Oh, yes.

24 Q. And as a customer of Warren County Water &
25 Sewer Company, what would you like to see happen in this

1 case?

2 A. Let me ask you a question --

3 Q. Well, let me --

4 A. -- before I answer that.

5 Q. Let me ask you a different question first.

6 How's that sound?

7 A. Yeah.

8 Q. Could you tell us a little bit about what it's
9 been like to be a customer of Warren County Water & Sewer
10 Company?

11 A. Well, my personal experience with Mr. Smith is
12 probably different than most people. Actually, he's been
13 very responsive to me personally when I've had issues. But
14 in my role as a former president of the Village of Incline
15 Village, there have been many reports about issues, many of
16 which I followed up that didn't go very well. Let's put it
17 that way.

18 Q. Turned out the issues were complaints that
19 turned out to be accurate, is that what you mean?

20 A. Yes.

21 Q. And is there -- can you tell the Commission a
22 little bit about what it's been like on this journey of
23 dealing with the problems with Warren County Water & Sewer?

24 A. Well, actually it's -- I remember at that
25 meeting back almost three years ago, you thought that it

1 would probably be a two-year journey. It looks like we're
2 closing in on three, and it's been very frustrating. And,
3 quite honestly, some of the frustration that is in evidence
4 right here is -- and I hate to say this, but it seems like
5 the Commission is mired in minutia and not looking at the
6 big picture. That's just a conclusion that I think I'll be
7 able to -- to let you understand and maybe the Commission
8 will, too.

9 Q. Is there anything you'd like to tell the
10 Commissioners about?

11 A. Yeah, actually there's several things here.

12 Q. Why don't you go ahead, fairly briefly?

13 A. Yeah. First comment is, I really think that
14 it was -- as far as it was inappropriate for the PSC Staff
15 to have included in the section that's called other
16 potential buyers, I didn't really think that that was an
17 appropriate thing to have in that report. It was actually
18 in the official case file memorandum. It was clear that the
19 Staff didn't really talk to the decision-makers at the water
20 district. I think they talked to probably a manager of the
21 company called Alliance that actually manages it for them.

22 So all the information about other potential
23 buyers is really speculative, in my opinion. And what I
24 think is that it was used as ammunition for the Commission
25 not to make a decision. So I don't think it should have

1 been part of their report at all. It should not have been
2 considered.

3 I think what should have been considered is
4 what they have before them and that's what we're talking
5 about here today. So I don't think that should have even
6 started to be in the Staff report, in my opinion. So that's
7 kind of comment No. 1.

8 Comment and question No. 2 is, in some stuff
9 that was on the webpage I kind of looked at the Commission's
10 purpose and responsibilities, and let me just quote this,
11 because I want to go somewhere from here. The Public
12 Service Commission has the statutory responsibility of
13 ensuring that customers receive safe and adequate service at
14 just and reasonable rates. Everybody would agree that
15 that's part of their charter.

16 These rates must be set at a level which will
17 provide the company shareholders with the opportunity, not a
18 guarantee, to earn a reasonable -- now you can hear me -- to
19 earn a reasonable return on their investment. So what I
20 have a problem with is the rate base formula that does not
21 allow for the owners or the shareholders of the system to
22 make a reasonable profit and does not allow for inflation or
23 allow current market value or market potential. It seems
24 very antiquated.

25 So my question kind of goes to the fact of, is

1 this formula required, is it required in the statutes. You
2 keep talking about rate base, but I'm not sure -- I've not
3 been able to find it, I'm not an attorney -- that it either
4 has to be the \$50,000 that we're talking about or this new
5 number that I finally found out today of what the offer was,
6 \$335,000?

7 It would seem to me that one of the things
8 that could be considered is possibly looking at a compromise
9 number. It seems to be either apples or oranges, and it
10 doesn't seem to me that it has to be either one. It's kind
11 of the American way to compromise. So -- and I guess the
12 other thing that's new news to me is if the \$335 --
13 335,000 contract were used as the rate base, the increase to
14 us would be 15 percent.

15 Now, let me tell you, my bill runs about \$40 a
16 month. Six bucks to me a month is -- and that's a
17 worst-case situation -- is not anything that's going to make
18 or break me. I mean, the biggest detriment that we have is
19 the delay that the Commission is causing by not making a
20 decision. Our problems are, as Ruth alluded to, is that we
21 have a building moratorium that has -- that started last
22 July. If this sale were consummated tomorrow, we'd probably
23 be six to eight to ten months out before building could
24 start again.

25 The equity in our houses is going thud,

1 downward. It's not going up. Property's not being bought.
2 Property's not being sold. And a receivership is not the
3 answer. That's another delaying tactics -- another delaying
4 tactic, because the receiver would not make improvement in
5 the system which is required by the DNR, who indirectly
6 dictated that this building moratorium would happen, and it
7 was actually run through Warren County Planning and Zoning.
8 So the answer is not a receivership. The answer is make a
9 decision about what is before you. Not speculate on what
10 else is out there or may be out there.

11 Only a couple more. The next to the last
12 question that I have, if the PSC is chartered to look out
13 for the welfare of its customers, in this particular
14 situation, would the customers of Warren County Water &
15 Sewer like me be better off with the Warren County Water &
16 Sewer reverting back to Mr. Smith or would we be better off
17 if Missouri-American bought it? Because that's what we had
18 before. There's nothing else. There's no other alternative
19 that's out there. There are speculative options, but there
20 is nothing else out there.

21 If Missouri-American were to buy it, we would
22 have the PSC to oversee any potential rate increases. It's
23 my understanding that the next time that they would come
24 forward would be 2006. It takes up to
25 11 months for that to actually happen, and so we'd be

1 looking at four years out there before the next rate
2 increase. That may or may not be correct.

3 So customers, would we be better off reverting
4 back to Mr. Smith or having Missouri-American buy it? And
5 with the worst-case situation is that we might pay an
6 additional 15 percent, unless we can negotiate some
7 compromise.

8 Finally, what I haven't heard here today, in
9 some cases we seem to be putting the cart before the horse
10 here, because there have been a lot of questions about
11 testimony that's going to be given and what's in there
12 rather than let it happen first, is when will there be a
13 decision by the Commission? That's my question. And
14 hopefully, since we have four Commissioners here, I can get
15 an answer to that question.

16 Q. Actually, Mr. Jeannot, the Commissioners
17 aren't going to answer any of your questions, but I'm sure
18 they appreciate the rhetorical question you just asked them.
19 Is there anything you'd like to add?

20 A. I can't think of anything, but I think you get
21 the drift. It's important for us to get out from under this
22 building moratorium. It would be nice to keep this whole
23 process within four years. You know, I was hoping two, but
24 keeping it within four might be pretty nice.

25 MS. O'NEILL: I don't have any further

1 questions.

2 JUDGE DIPPELL: Is there cross-examination by
3 Missouri-American?

4 MR. ABERNATHY: No, no questions.

5 MS. O'NEILL: Warren County?

6 MR. SHORR: No.

7 JUDGE DIPPELL: Staff?

8 MR. KRUEGER: No questions.

9 JUDGE DIPPELL: All right. Are there
10 questions from the Bench, Chairman Gaw?

11 CHAIRMAN GAW: Yes, I have some questions for
12 you.

13 THE WITNESS: Sure.

14 QUESTIONS BY CHAIRMAN GAW:

15 Q. Let me ask you this: Do you want this sale to
16 proceed, regardless of whether or not the rates were
17 adjusted for the new amount that's being proposed as the
18 sale price?

19 A. If it were 50,000 or 335?

20 Q. If it's 335, do you want the sale to proceed?

21 A. You bet.

22 Q. All right.

23 A. Now, let me add --

24 Q. You can go ahead, if you have additional
25 comment. Go ahead.

1 A. I have an additional comment. I can't speak
2 to the other 310 homeowners. I'm speaking for myself and my
3 wife, who's back here.

4 Q. You talk to them on a regular basis. Have you
5 heard, is that --

6 A. We want improvements. We want improvements.
7 We want reliability. We want building to happen out there.
8 None of that will happen until there's a turnover of
9 ownership, so the answer is yes.

10 Q. And if Missouri-American believes that there's
11 additional improvements that need to be done that will add
12 to the cost over and above that amount, you personally, do
13 you think that's a good idea?

14 A. Of course.

15 Q. All right. That's what I'm looking for.

16 A. I mean, since the PSC will be an advocate and
17 will have oversight responsibility for any future increase.
18 Now, of course, what I would like to see is a compromise
19 number somewhere between 50,000 and 335. I don't know why
20 it has to be one of those two.

21 Q. I'm not sure that it does, but I want to see
22 from your standpoint, if the worst-case scenario was, as far
23 as the rate base was concerned, the company's position --
24 and I'm talking about from your perspective. I don't mean
25 to use that in a negative connotation -- but do you think --

1 do you still think this sale is a good idea?

2 A. You bet.

3 Q. All right. You understand the Commission has
4 a responsibility, according to the courts, to examine
5 whether or not this transaction is detrimental to the public
6 interest?

7 A. I certainly do.

8 Q. And that's why we're here today?

9 A. I understand.

10 CHAIRMAN GAW: All right. That's all I have.

11 THE WITNESS: Okay. I mean, and quite
12 honestly, if this sets precedent, I think it could be
13 written such that it probably doesn't set precedent, because
14 I understand the quandary that that puts you in. But, you
15 know, I can't be concerned about that. You have to be and I
16 don't.

17 BY CHAIRMAN GAW:

18 Q. But you have to be concerned about it, too,
19 because it's affecting your water rates and your service.
20 That's why I'm asking.

21 A. Okay.

22 Q. I want your perspective.

23 CHAIRMAN GAW: That's all I have.

24 JUDGE DIPPELL: Commissioner Murray?

25 COMMISSIONER MURRAY: Thank you, Judge.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good morning, Mr. Jeannot. I appreciate your
3 testimony here today, and I was just thinking, listening to
4 such a reasonable witness, that it's a shame we don't have
5 more lay witnesses.

6 But I wanted to ask you, first of all, are you
7 aware -- well, you said you pay \$40 a month; is that
8 correct?

9 A. Right.

10 Q. That's for water and sewer?

11 A. Yes.

12 Q. And did you pay anything initially to connect?

13 A. Yes.

14 Q. And do you recall what that was?

15 A. I should. It's changed. But I don't
16 remember.

17 Q. And you have lived in your present location
18 for four and a half years?

19 A. Four and a half years, right.

20 Q. And you indicated that you thought the
21 property values were being detrimentally impacted by this
22 water and sewer situation?

23 A. Yes.

24 Q. There are -- as I understand it, there are
25 lots that are currently not being developed because of the

1 construction moratorium?

2 A. Yes. There's a construction moratorium that
3 was implemented by Warren County Planning and Zoning at the
4 request of the Missouri Department of Natural Resources in
5 January of this -- of this year.

6 Q. And how many completed homes are there?

7 A. There are approximately 310 completed homes in
8 the village, which represents somewhere on the order of
9 about 8 or 900 people. There are, in addition, about
10 another 50 customers -- and Gary can -- Mr. Smith can
11 correct me if that's not right, but it's probably
12 ballpark -- of customers who live outside of the village.

13 Q. And do you know approximately how many vacant
14 lots there are?

15 A. There are approximately a total of 800 lots,
16 slightly less than that.

17 Q. And are those lots owned by various people?

18 A. They are owned by various people, yes,
19 including some being owned by the board of trustees of
20 Incline Village.

21 Q. And is it accurate to say that you feel that
22 you have been and are continuing to be detrimentally
23 impacted by the water and sewer situation as it currently
24 exists?

25 A. It's been our single biggest problem for

1 several years, there's no doubt. It's not only my opinion,
2 we had a meeting on this last Sunday at which a very
3 experienced real estate person who lives in our village
4 reiterated the sale things that I'm saying is that buying
5 and selling of lots and houses has been detrimentally --
6 we've been detrimentally affected. And the word on the
7 street is that there's a building moratorium, and there's --
8 there are just not turnover of lots or houses at prices
9 before as they previously were.

10 Q. And do you have any way to equate the
11 detriment that is created by the loss in real estate value,
12 the moratorium on construction in your area, those things
13 compared to a potential 15 percent rate increase? Do you
14 have any way to equate those?

15 A. Well, I mean, I don't have any hard numbers.
16 As I said, an experienced -- 25-year experienced real estate
17 person who happens to live in the village indicated that it
18 was his opinion that the -- the prices have been adversely
19 impacted and part of the reason, in fact, a big reason now
20 is that the building moratorium and the inadequate capacity
21 or at least, shall I say, the alleged inadequate capacity of
22 the water and sewer company is the primary reason.

23 Q. And do you think if you had safe and adequate
24 water service from a well-established company such as
25 Missouri-American Water Company, that -- and that you had

1 rates that were 15 percent more than you have now, do you
2 think that the property value would be affected?

3 A. I'm sure it would be to the positive, yes.

4 COMMISSIONER MURRAY: Thank you. I believe
5 that's all I have.

6 THE WITNESS: Thank you.

7 JUDGE DIPPELL: Commissioner Forbis?

8 COMMISSIONER FORBIS: No.

9 JUDGE DIPPELL: Commissioner Clayton?

10 COMMISSIONER CLAYTON: No.

11 JUDGE DIPPELL: I just have a couple questions
12 for you.

13 QUESTIONS BY JUDGE DIPPELL:

14 Q. First of all, could you give us your address?

15 A. Yeah. 2392 -- sorry, I forgot to do that.

16 2392 Village Drive East, the mail zone Foristell,

17 F-o-r-i-s-t-e-l-l, 63348.

18 Q. Are you the original owner of your lot in that
19 development?

20 A. Not of the lot. We are the original -- my
21 wife and I, Pamela, are the original -- we built the house
22 four and a half years ago, but we're not the original owner.

23 Q. And the sewer and water services were
24 developed before you bought or built your house?

25 A. Correct, but not, of course, the tie-ins or

1 any of that stuff.

2 Q. Do you know when you bought your house if you
3 paid any kind of a premium or specific fee for the water and
4 sewer development?

5 A. Only to tie in, but -- yeah, to tie in to the
6 service.

7 Q. Do you recall what the fee was to tie in?

8 A. Same question.

9 Q. I'm sorry.

10 A. That's okay. I should know it. The tie in, I
11 think it's currently \$1,500, but it was less than that when
12 I -- no, that's actually what gets paid to the village. I
13 don't know. Strike that.

14 JUDGE DIPPELL: Okay. That's fine. That's
15 all the questions I had for you. Let me ask if there's any
16 cross-examination based on questions from the Bench.
17 Anything from Staff?

18 MR. KRUEGER: No, your Honor.

19 JUDGE DIPPELL: Missouri-American?

20 MR. ABERNATHY: No questions.

21 JUDGE DIPPELL: Warren County?

22 MR. SHORR: No questions.

23 JUDGE DIPPELL: Is there any redirect?

24 MS. O'NEILL: No further questions. Thank
25 you, your Honor.

1 JUDGE DIPPELL: Thank you very much,
2 Mr. Jeannot. You may be excused.

3 Believe it or not, we've been going almost an
4 hour and a half. So it's time for us to take another break.
5 We're going to take a break until quarter 'til. That's
6 about 12 minutes, so we can go off the record.

7 Thank you.

8 (A BREAK WAS TAKEN.)

9 JUDGE DIPPELL: Ms. O'Neill, you have another
10 witness you wanted to call?

11 MS. O'NEILL: Yes. I would call James Walter.

12 (Witness sworn.)

13 JUDGE DIPPELL: Go ahead.

14 JAMES WALTER testified as follows:

15 DIRECT EXAMINATION BY MS. O'NEILL:

16 Q. Could you state your name for the record,
17 please.

18 A. James Walter.

19 Q. And, Mr. Walter, what brings you to this
20 hearing today?

21 A. I am the president of the board of trustees of
22 Incline Village. I'm not a resident. I do own a lot there.

23 Q. So you are not currently a customer of Warren
24 County Water & Sewer?

25 A. Not as an individual, but as a trustee, I am,

1 yes.

2 Q. And did you have some information that you
3 wanted the Commission to hear about regarding this case?

4 A. Well, I think it's important to understand
5 that at this point in time Incline Village, called by some
6 decline village, is at a crucial point because of the rapid
7 growth that is occurring around us. Lincoln County is one
8 of the fastest growing counties in the country. And as
9 people are moving west, you can see the subdivisions going
10 in, you can see that kind of thing taking place.

11 What's happening is that this delay in getting
12 this solution of the utility is having a very detrimental
13 effect on the future of the village, both in terms of what
14 it's worth, as well as the individuals. It has a very
15 attractive golf course right next to it. It's got a
16 225-acre lake. It is an ideal little jewel sitting in the
17 midst of this very rapid development. It is a desi-- it
18 could be a desirable place.

19 But under the current conditions with this
20 water and sewer issue not solved, they -- we basically have
21 gone flat. We were building at the rate of 30 to 40 homes a
22 year, and it came to a dead stop. The lots that the board
23 owns are declining in value. The lots that individuals own,
24 real estate people tell us, are declining in value. The
25 homes that have been built there are declining in value.

1 It's just very difficult to move anything at this point in
2 time.

3 And right now the situation is very
4 detrimental to what we are, what we would like to become and
5 where we would like to go. This needs to be resolved
6 quickly. We would be -- and I'm speaking now as on behalf
7 of the board; as well as individually, but primarily on
8 behalf of the board.

9 I am saying that we would be willing to --
10 very willing to have Missouri-American provide the service
11 for us so that the water pressure is sufficient in case of
12 emergencies, so that construction can begin.

13 We'll have clean water. It will not damage
14 the lake. The lake will be a safe place. Even though we
15 can't get a ruling under some current ruling that it's a
16 full contact body lake, in effect, what we'd like to do is
17 have the readings to be such that that could be, even though
18 there's some formal regulation that would allow it, that it
19 could be treated as such and considered as such.

20 That's very important to us, because of a lot
21 of people doing skiing, waterskiing, jet skiing and those
22 kind of things, little children swimming, et cetera. So we
23 need to have that.

24 And I believe that most people would be
25 willing to pay a premium increase in the -- in the monthly

1 payments by a company that is regulated by the PSC, because
2 if we have a problem, we have someplace to go. If we
3 have -- and if we don't like the rate increases being
4 proposed, we have a place that that can be heard. But if we
5 go to another company that is not regulated, then we don't
6 have that available to us, and we would be most reluctant to
7 put ourselves at that kind of risk and that kind of
8 circumstance.

9 JUDGE DIPPELL: Anything further, Ms. O'Neill?

10 BY MS. O'NEILL:

11 Q. Just is that all you wanted to tell the
12 Commission?

13 A. Basically that's it at this point.

14 MS. O'NEILL: All right. I don't have any
15 further questions.

16 JUDGE DIPPELL: Is there any cross-examination
17 from Staff?

18 CROSS-EXAMINATION BY MR. KRUEGER:

19 Q. Mr. Walter, when did you buy your lot?

20 A. 1982 or '83.

21 Q. So you were there at the time that Incline
22 Village -- that it was opened by the developer and prior to
23 the time that the Incline Village Utilities were formed?

24 A. That is correct.

25 Q. And you were promised water and sewer utility

1 services?

2 A. Yes.

3 Q. At the time that --

4 A. We were told that there would be a sewer, that
5 we would not have to put in a septic system, that there's a
6 sewer system and there's a water system.

7 Q. And that that was provided as part of the
8 development?

9 A. I don't know that. All I know is that it was
10 available to us. And I believe we were told that there
11 would be a hookup charge should we build at that point out
12 there. We bought the lot from a -- not from Shorewood, but
13 from an individual owner who was reselling.

14 MR. KRUEGER: Okay. Thank you.

15 JUDGE DIPPELL: Is there any cross from
16 Missouri-American?

17 MR. ABERNATHY: No questions.

18 JUDGE DIPPELL: Warren County?

19 MR. SHORR: No questions.

20 JUDGE DIPPELL: Questions from the Bench,
21 Chairman Gaw?

22 CHAIRMAN GAW: Yes. Thank you.

23 QUESTIONS BY CHAIRMAN GAW:

24 Q. Mr. Walter, thank you for coming today. I
25 want to just get a little bit of background for the record's

1 sake. Incline Village is -- is Incline Village within the
2 Warren County water system?

3 A. Incline Village is the largest primary user of
4 Warren County Water & Sewer system. We are it, basically.

5 Q. Yeah. And I'm asking that, I know that's been
6 established in other proceedings here, but just for purposes
7 of the record.

8 A. That's right. My understanding is I think the
9 same as Mr. Jeannot, is that it's, I think, some 50 other
10 people outside of village boundaries that are using it.

11 Q. And is every lot in Incline Village currently
12 hooked up to --

13 A. I don't know.

14 Q. -- Warren --

15 A. I can't say that they're hooked -- anybody who
16 has a house on there is hooked up, yes.

17 Q. Does your lot have a house on it?

18 A. No, it does not.

19 Q. So at the current time there is no service?

20 A. I am not -- no, we're not hooked up to it.

21 Q. And the moratorium that's been mentioned for
22 construction in Incline Village, when was that done?

23 A. My recollection is it was August of 2002 when
24 the board vote -- we were given an option of allowing people
25 to put in a holding tank and then have, I guess, what they

1 call honey wagon come in and drain it out every once in a
2 while. We declined to go in that direction and the board at
3 that time, I think it was August 2002 said, we will stop the
4 building.

5 Q. Were you a part of the board at that time?

6 A. I did not become a member of the board until
7 September of 2002.

8 Q. Okay. So it was right after that, then?

9 A. Right.

10 Q. And was that done at anyone's request? In
11 other words, did you have some instruction from Department
12 of Natural Resources or anyone else? Just kind of give me a
13 little background there.

14 A. The record that I am familiar with is that the
15 Department of Natural Resources took a reading on the
16 effluents from the two sewer plants and, based on that
17 reading, made a recommendation and Warren County Planning
18 and Zoning made a recommendation to us. So there were a
19 number of factors that came into that. And then the board
20 made a decision not to continue with any building and not to
21 take up the other option.

22 Q. So it was your understanding that it was based
23 upon some recommendations --

24 A. Right.

25 Q. -- that originated from the Department of

1 Natural Resources?

2 A. That's correct.

3 Q. And since that, that's continued up to the
4 present time?

5 A. That's correct.

6 Q. Do you know or do you have any -- from your
7 work with the board, do you know whether or not this sale
8 will result in any changes in that moratorium?

9 A. Yes. We would immediately open it up and
10 allow people to start building again. I can't -- I don't
11 know how many people have called and said when, when, when,
12 and I say, don't know, don't know, don't know. But it's
13 been a substantial number of people, and real estate agents
14 are also asking the same question.

15 Q. So it's your belief, based upon your work in
16 the board of trustees, that it would -- if this sale
17 concluded, that the moratorium will be lifted?

18 A. If you approve this sale today, I'd be more
19 than happy to go back, call a meeting of the board and say,
20 let's go.

21 Q. All right. Well, I don't know if it's going
22 to happen today or not.

23 A. I understand that, but I just want to tell you
24 this is the -- this is the eagerness with which we need to
25 get moving.

1 Q. And I think that this is an unusual proceeding
2 for us to have this with live testimony on direct. I know
3 you're not familiar with it, but we're trying to get this
4 resolved.

5 A. Given -- given where Incline Village is right
6 now and all of the building and construction and the change
7 all around us, it's important that we be able to move as
8 this movement is taking place.

9 Q. All right. Now, the issue in regard to the
10 amount or the value of these assets, I'm not going to ask
11 you whether you have an opinion about that unless you --
12 unless you want to venture down that road, but let's assume
13 that the value of the assets were determined or were at
14 least perhaps there was some statement by the Commission
15 that it would be no more than a certain amount and that
16 amount were the purchase price for the assets that's being
17 proposed in this transaction. Do you believe that that
18 would be detrimental to the consumers that are served by
19 Warren County?

20 A. It would be much more detrimental to delay the
21 decision to sell.

22 Q. Okay.

23 A. The -- the potential raise in monthly fee of
24 I think on the average of something less than \$6, I think
25 most people in the community would be willing to absorb that

1 readily.

2 Q. Okay. Do you believe that there are
3 improvements that need to be done to the system, both water
4 and sewer?

5 A. Yes.

6 Q. Both of them?

7 A. Both need improvements.

8 Q. All right. And you recognize the fact that
9 that may also cost money?

10 A. We recognize that. We are aware of that, yes.

11 Q. And that that could also add additional
12 amounts --

13 A. That is correct.

14 Q. -- down the road somewhere?

15 A. That is correct. We need to get the problem
16 solved.

17 Q. All right. And you think that, based upon
18 your knowledge of the board and of the community of Incline
19 Village, that this would be in the best interests of the
20 people in that?

21 A. Yes, I do, because I think once the
22 construction starts, then the costs and the increase in
23 rates gets spread out over a large number of people. So the
24 net effect on any one individual who's there now would be
25 less than some of the figures that have been projected.

1 Q. You made some reference in your testimony to
2 the point that you thought it would be better for a
3 regulated company to buy these assets?

4 A. Right.

5 Q. Is it your understanding that there may be
6 others in -- other entities that are interested that are not
7 regulated?

8 A. At this point in time, I don't know of others,
9 but a year or better -- or about a year or so ago, I was
10 contacted by Water District No. 2 and was told that they
11 had -- at that time were considering. Beyond that, I have
12 no knowledge.

13 Q. What is Water District No. 2?

14 A. It serves some portion that involves part of
15 St. Charles County. Its offices are on 40 -- Highway 40/61,
16 and I think it serves some other counties besides Warren
17 County. It goes all the way to Warrenton, I believe.

18 Q. They are not regulated by the Public Service
19 Commission?

20 A. That's right. They have a board.

21 Q. And is it your opinion -- and I'm trying to
22 make sure I'm clear about your earlier testimony -- that the
23 Village of Incline would be better served by this sale to
24 Missouri-American to another company, including that one?

25 A. That's correct.

1 Q. And --

2 A. We think it would be better because then
3 you're dealing with a known and you're dealing with an
4 oversight and you can participate in the process by which
5 the rates are set.

6 Q. And you're not -- are you saying that you're
7 not sure about whether you could do that with Water District
8 No. 2 or is there --

9 A. It is our understanding that other
10 non-regulated entities would not give us that kind of input
11 and attempt to influence.

12 CHAIRMAN GAW: I think that's all I have.
13 Thank you, Mr. Walter.

14 JUDGE DIPPELL: Commissioner Murray?

15 COMMISSIONER MURRAY: Thank you.

16 QUESTIONS BY COMMISSIONER MURRAY:

17 Q. Good morning.

18 A. Good morning.

19 Q. Does the board of trustees represent every
20 owner in Incline Village?

21 A. We are elected by the lot owners, that is
22 correct.

23 Q. And as the president of that board, you are
24 here to urge us to do whatever it takes to approve this
25 sale; is that correct?

1 A. I have been sent with that as a commission to
2 say, please approve this sale.

3 COMMISSIONER MURRAY: Thank you. I very much
4 appreciate you being here, and I apologize to you and all of
5 the other homeowners, consumers in the area that the wheels
6 of government grind so slowly.

7 JUDGE DIPPELL: Commissioner Clayton?

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. Sir, is there a difference in opinion to the
10 best of your knowledge between undeveloped lots and existing
11 homes? Is there a difference in people's opinions about
12 whether this should be approved or are the interests one and
13 the same, regardless of development?

14 A. My contact with other non-resident lot owners
15 is they would like to have this approved and settled because
16 many of them are interested in selling either now or later
17 that lot or potentially building on it. In fact, one of the
18 board members right now is -- another board member is a
19 non-resident lot owner. He would like to be able to build
20 because he is getting ready to move from his current place.
21 So we have a -- the feelings on both lot residents and
22 non-residents is equal.

23 Q. Okay. So it's the same. And that's
24 regardless of the proposed estimated 15 percent increase in
25 price?

1 A. That's correct.

2 Q. And that's also keeping in mind that there are
3 potential improvements that would have to be done on
4 facilities that could also cause an increase?

5 A. We want the improvements and we recognize that
6 there will likely be an increase because of the
7 improvements.

8 Q. So that's two increases?

9 A. That's right.

10 Q. And from your board's position, that's still
11 okay?

12 A. That's correct.

13 Q. Okay. You have no position regarding what the
14 value of the company would be?

15 A. No.

16 Q. Your residents did no study?

17 A. No, we did not. My only concern is because
18 I'm learning as I listen to the Staff's attorney speak this
19 morning and using historical figures, somewhere in that
20 formula it seems to me we need to be able to include the
21 value that is being -- the more subjective values being
22 added to all of these things as that area grows. And there
23 doesn't seem to be in that formula, as near as I can tell,
24 any way to build that kind of more subjective. And to go
25 only on the historical seems to me missing some very

1 important information.

2 COMMISSIONER CLAYTON: Okay. Thank you.

3 Judge, may I ask counsel for OPC a question?

4 Would that be appropriate?

5 JUDGE DIPPELL: Go ahead.

6 COMMISSIONER CLAYTON: Ms. O'Neill, I just
7 wanted to be clear. I asked when we started this, much to
8 the chagrin of some in this room, about where the testimony
9 was going to go in this case. And I want to ask you again,
10 the position of OPC is that we should not allow for the rate
11 base being set at the purchase price. Yet I want to be
12 clear it seems like the witnesses are -- have a different --
13 that the witnesses that OPC has put on have a different
14 opinion, and I want to reconcile this, if possible.

15 MS. O'NEILL: Certainly, Commissioner. My
16 office has sponsored the testimony of two members of the
17 public who wish to be heard. This is actually out of order
18 from where we are in the order of proceeding. Ms. Bolin is
19 going to have some testimony as well. We believe that it
20 was important for the Commissioners to hear the strong
21 feelings of actual customers and people who are
22 representative of the customers.

23 We, of course, in representing the interests
24 of the public, have concerns not only for the customers who
25 live in Incline Village, but for those other 50 customers or

1 so outside. We do believe that it was -- that in order for
2 these customers to voice their opinions, that they needed
3 someone to sponsor their testimony and I volunteered to do
4 that this morning. And that's why they're being taken out
5 of order.

6 COMMISSIONER CLAYTON: In spite of having a
7 position that's different than your own?

8 MS. O'NEILL: We believe that it was important
9 for the Commission to hear from the customers.

10 COMMISSIONER CLAYTON: I agree with that, but
11 I want to be sure that I understand clearly that their
12 position has been different than what you started with.

13 MS. O'NEILL: On the issue of the value of the
14 assets, yes.

15 COMMISSIONER CLAYTON: Sir, if you want to --

16 THE WITNESS: Yeah. I was just going to say,
17 we would appreciate having a reduced basis for rate.

18 BY COMMISSIONER CLAYTON:

19 Q. Well, there's somebody that called that
20 minutia, not very important. We consider rates very
21 important, and that's why I'm asking.

22 A. We would enjoy having a lower rate than what
23 is projected, but we can accept the higher rate, the
24 worst-case scenario, if you will.

25 Q. On the record, you understand that?

1 A. Yes.

2 COMMISSIONER CLAYTON: Thank you.

3 JUDGE DIPPELL: Commissioner Forbis, do you
4 have any questions?

5 COMMISSIONER FORBIS: No.

6 JUDGE DIPPELL: Is there any
7 recross-examination based on questions from the Bench from
8 Staff?

9 MR. KRUEGER: Yes, your Honor.

10 RE-CROSS-EXAMINATION BY MR. KRUEGER:

11 Q. Mr. Walter, you indicated that you would
12 prefer having a sale to Missouri-American to not having a
13 sale to Missouri-American. I want to ask you to compare two
14 other alternatives.

15 If there could be transfer of the assets to
16 Missouri-American without a rate increase or a transfer of
17 the assets to Missouri-American with a rate increase, would
18 you consider the transfer with a rate increase to be
19 detrimental, just comparing those two?

20 A. Please repeat the options.

21 Q. A transfer of the assets to Missouri-American
22 with no rate increase or transfer of the assets to
23 Missouri-American with a rate increase.

24 A. We would -- I think the board would be -- and
25 that's not the kind of question that we actually discuss,

1 but based on my reading of the discussions that we had about
2 this, I would say we'd be willing to accept a rate increase
3 in order to solve the problem and to get good service and
4 good equipment in place.

5 Q. So when comparing these two options, you
6 wouldn't consider a rate increase detrimental?

7 A. No. The current situation is more detrimental
8 than a rate increase.

9 Q. I'm not asking you to compare.

10 A. I understand, but I'm going to make that
11 statement.

12 Q. Okay. If the construction moratorium were
13 lifted, how many new homes do you think would be built
14 within the next 12 months?

15 A. 12 months is probably an unreasonable figure
16 because of the time it takes just to get things moving along
17 for people to get plans, but I imagine we could quickly get
18 back to that 30 to 40 houses a year rate. Probably within
19 18 months, we would have 30 to 40 houses.

20 It's going to take --- we've got some ready
21 now, but it will take a while for them to get their plans
22 and then to have the architectural control committee review
23 and accept the plans and then find a contractor and get in
24 line with that contractor. So given that, I would say
25 18 months would be more reasonable. We probably could get

1 back to that rate fairly quickly.

2 Q. Let's change the question then to 18 months
3 and just say construction starting within that period of
4 time, you think that within 18 months how many homes would
5 begin?

6 A. Over that 18-month period, we probably would
7 have somewhere close to 30 homes.

8 Q. And would you expect that trend to continue
9 for some period of time?

10 A. Yes, I do. I expect the demand to increase.

11 Q. And would you expect it to continue until all
12 of the homes -- all of the lots are developed?

13 A. Yes, I do.

14 MR. KRUEGER: Thank you.

15 JUDGE DIPPELL: Is there further
16 cross-examination from Missouri-American?

17 MR. ABERNATHY: No questions.

18 JUDGE DIPPELL: Warren County?

19 MR. SHORR: No questions.

20 JUDGE DIPPELL: Is there redirect from Public
21 Counsel?

22 MS. O'NEILL: No, there's not.

23 Your Honor, I believe this is the last public
24 witness that we would present and we'll go back into the
25 regular order at this time. Thank you.

1 JUDGE DIPPELL: Thank you, then. Thank you
2 for coming, You may be excused.

3 As Ms. O'Neill suggested, we're going to go
4 back into what we were going to do as the order in this
5 case, and we were going to begin with Missouri-American, so
6 I'll ask Mr. Abernathy if he'd like to call his first
7 witness.

8 MR. ABERNATHY: Thank you, your Honor, I'd
9 like to call Robert J. LeGrand to the stand.

10 (Witness sworn.)

11 JUDGE DIPPELL: Thank you. You can proceed,
12 Mr. Abernathy.

13 ROBERT J. LEGRAND testified as follows:

14 DIRECT EXAMINATION BY MR. ABERNATHY:

15 Q. Would you please state your name for the
16 record.

17 A. Robber J. LeGrand. That's L-e capital
18 G-r-a-n-d.

19 Q. Mr. LeGrand, where are you employed?

20 A. I'm employed with Missouri-American Water
21 Company at 525 North New Ballas Road.

22 Q. Would that be 535?

23 A. 535. I'm sorry. I don't think we moved yet.

24 Q. Would you give your position, please?

25 A. My position there is Director of Business

1 Development.

2 Q. How long have you been with Missouri-American?

3 A. With Missouri-American, I've been there for 30
4 years, just celebrated this year, and most of that has been
5 in Missouri.

6 Q. Have you always been the Director of Business
7 Development or have you held other jobs?

8 A. I've held other jobs. I've been in the
9 accounting side of the business, in the customer relations
10 business, customer service, and the management side as
11 business manager or business -- yeah, business manager. And
12 in 1998 I became the Director of Business Development.

13 Q. Have you held other jobs in the water industry
14 besides with Missouri-American?

15 A. Yes, Illinois-American.

16 Q. And what did you do for Illinois-American?

17 A. I was the accounting superintendent when I
18 first started working there, and from there I went to
19 customer service superintendent.

20 Q. What's your educational background, please?

21 A. Educational background is I graduated from
22 Southern Illinois University with a degree in management
23 science.

24 Q. When did you first become involved in the
25 Warren County Water & Sewer transaction for the company?

1 A. Well, it was really quite by accident. I
2 received a flier that came into my office. I'm not sure how
3 it came in, I guess via the mail, but it ended up on my
4 desk. And it was a sales flyer from Gary Smith, Mr. Smith,
5 the owner of Warren County Water & Sewer Company, and it was
6 a solicitation to see if I would be interested, or anybody
7 would be interested in buying his sewer -- water and sewer
8 system.

9 So with that, I made a call and set up a
10 meeting to have a very generic overview, kind of the
11 20,000-mile flyover of what he really had. And from there
12 we set up a meeting to do a site visit.

13 Q. And from your discussions with Mr. Smith and
14 from your investigation of the system and looking at the
15 transaction, have you had a chance to really kind of dig
16 into the system and understand what it's about and what it
17 entails?

18 A. Yes, we have. We've had numerous people from
19 Missouri-American out there doing visits on more than one
20 occasion. I've probably been out there myself at least a
21 half a dozen times.

22 Q. Can you give some background on the system,
23 where it's located and what it consists of?

24 A. Sure. The system is really mainly in Warren
25 County and Incline Village, as everybody has heard, but it

1 also touches two other counties. It touches Lincoln County
2 and St. Charles County. There's approximately right now --
3 well, we have -- when we actually started out there, there
4 were like 393 water customers, 374 sewer customers, of which
5 most of those again are Incline Village. There's probably
6 about 50 lies in the developments that are outside of that
7 village.

8 The water systems consists mainly of a well,
9 one deep well and a stand pipe which holds about 32,000
10 gallons of water, and they have some hydrants out there and
11 about 58,000 feet of various size PVC pipe.

12 On the sewer side, it's about 48,000 feet of
13 sewer laterals, and they have, like, four lift stations and
14 actually two treatment plants that they treat the water.
15 That's pretty much the basic plant.

16 Q. What's the age of the system, do you know?

17 A. Well, the development, the best we could find
18 out, it was started back in the mid '70s, and it went
19 through a couple ownerships. I have no real history on
20 those ownerships. I think Mr. Smith took over the system in
21 1991.

22 Q. How built out is that area? Is it halfway
23 built, three-quarters?

24 A. His actual service territory is quite large,
25 but if we really talk just the Incline Village itself, it's

1 not quite half built out. So there's at least 450 more lots
2 that can be built there. His other two or three little
3 adjoining developments, they're probably maybe a third to a
4 half built out also. But there's still a lot of other area
5 that can be developed in his certificated area.

6 Q. A lot of room for growth you're saying?

7 A. Absolutely.

8 Q. I assume before the transaction was
9 consummated with Warren County Water & Sewer that
10 Missouri-American did some due diligence in looking at the
11 system?

12 A. Yes, we did.

13 Q. You've already talked about that?

14 A. Yes.

15 Q. How was the due diligence performed?

16 A. Well, the initial due diligence was myself
17 going out there to search through any financial information
18 that I could come up with, and then John Harrison went out
19 there with me on the initial site visit. He is one of our
20 engineers. He pretty much looked at the sewer system and
21 the infrastructure, rehabilitation of that system, what it
22 needed, what we needed to do it.

23 And then Gary Durney, who is our manager at
24 our St. -- our St. Louis plant here, went out and looked at
25 the water side, and three of us got together and did a

1 pretty thorough early site visit. Later we had Cindy
2 Hebenstreet, who is our director of environmental, and she
3 went and looked at it from the environmental aspects.

4 Like I said, we've been out there on many
5 trips.

6 Q. Did you find any concerns or problems with the
7 system, things that need improving?

8 A. Yes, and most of those have been touched on,
9 but just to kind of recap, they obviously have inadequate
10 pressure out there, is the main thing. The water -- the
11 well itself actually is adequate to supply a lot more
12 customers. That's one of the few positives that we did
13 find.

14 The stand pipe is not nearly adequate for fire
15 protection or really much of anything. I'm surprised many
16 people can even water their yard out there. But with the
17 stand pipe, in a lot of areas in Incline Village they don't
18 even have 20 pounds of pressure, and 20 pounds of minimum
19 pressure, I believe, is AWWA standards. So the water
20 pressure is a major concern, and it's been recommended even
21 earlier that they put in an elevated tank.

22 And on the sewer side, they need a new plant.
23 They're at capacity at one plant, and that's the real issue
24 of why the building has really stopped. But more
25 importantly, it is not run properly, mainly because it's not

1 cleaned out as often as it needs to be cleaned out. There's
2 no flow meters there, so it's pretty difficult to determine
3 just really how bad the system is being operated.

4 There is no real controls out there, emergency
5 controls so if a lift station goes down, the light goes on,
6 alarm or horn on the lift station goes off, and hopefully a
7 neighbor will call an emergency number. But there's no --
8 no real oversight of the system, either water or sewer, to
9 indicate any emergencies unless one of the customers
10 actually call.

11 So recapping, that's pretty much what we
12 found.

13 Q. Along that same line, and I don't want to
14 repeat ourselves too much here, but what improvements does
15 Missouri-American believe need to be made on the system to
16 make it proper?

17 A. Well, we certainly want to get the building
18 started again, so sewer is a big concern, to make sure that
19 we get the plants running to their capacity. We're looking
20 at putting in a brand-new system there or at least replace
21 one of the sewer plants.

22 Elevated tank is our other big plan to put in.
23 It'll be about a 120-foot tank, about 200 to 250,000 gallon
24 tank, which would increase the pressure from less than 20 to
25 more like 60 pounds. So it would give certainly the

1 pressure that they would need to do a lot of things that
2 they can't do now.

3 We would put in a SCADA system, which is an
4 alarm system that is used by us. It's either tied in via
5 telephone lines or radio lines that would go directly to our
6 St. Louis County plant, and that way any emergency, if the
7 tank was draining, if one of the lift stations weren't
8 working properly, if the chemicals -- that was another thing
9 that I failed to mention, which is a big piece, that there
10 is hydrogen sulfide problem out there. He is not treating
11 any chemicals either for that or for disinfection, and we
12 would put in chemical feed equipment that would take care of
13 both of those problems. They would have disinfection.

14 We would treat the sanitary to make sure that
15 they would have a total body contact lake, so they could
16 enjoy the recreation out there and they wouldn't have fish
17 kill. So those are probably the major corrections that we
18 would see happen out there.

19 Q. Would there be a need for a new storage tank?
20 Did you mention that? I'm sorry.

21 A. I did. It would be an elevated tank. The
22 ground storage tank that they have, we would utilize it for
23 something else, most likely. As it stands now, it's not
24 really helping anything.

25 Q. This is kind of an obvious question, but what

1 benefits are provided by enhanced fire protection?

2 A. Well, it certainly should impact insurance
3 rates for the homeowners, so they can certainly save some
4 money there, probably more of them. We'd like to think we
5 could sell more water because they could actually water
6 their grass. We would provide pressure to be able to do
7 that.

8 Plus the storage, I guess one of the main
9 things on the storage that I don't want to forget, right now
10 if the well goes down, those poor customers are out of
11 water. If we can supply at least a day's worth of storage
12 or so, then we may be able to make repairs that are needed
13 to a well or some other emergency without putting any of the
14 customers out of water. So that would probably be really
15 significant to have that.

16 Q. Are property values enhanced by better --

17 A. I absolutely think so. They would now because
18 of everything I hear when I first went out there and did our
19 site visit and drove that whole area, I bet you I did not
20 see more than two or three for sale signs, lots or houses.
21 The last visit I was out there, it's got to be a dozen to 15
22 for sale signs out there. So it has to enhance the qual--
23 not only the quality, but certainly the value of the
24 property out there.

25 Q. By enhancing or improving the sewage system,

1 is it Missouri-American's intent to make that lake out there
2 now a full body contact?

3 A. It absolutely would, so they could do the jet
4 skis, the skiing. The kids could swim, fish, do whatever
5 they want. They certainly could swim in it.

6 Q. We've already mentioned here, probably not on
7 the record -- why don't we do it first. What's the purchase
8 price Missouri-American --

9 A. 335,000.

10 Q. How was that purchase price developed by
11 Missouri-American?

12 A. I almost hate to say market, but market was
13 certainly used as a factor in this. But more importantly,
14 when I go out and look at a system, I look at the growth of
15 the system, is there growth. If there is no growth, it
16 certainly has less value to us. So I look at the growth,
17 and it's considerable here, and we think it can even be
18 enhanced even greater. So that was a big factor.

19 Then we factor in what it's going to take to
20 bring the system up to speed, and in this case it's going to
21 be considerable capital requirements in there. That's
22 certainly a factor in considering what the price is.

23 And after we weigh all those, we take a look
24 at other properties that we purchased, not only in Missouri,
25 but around the American system, and this price was certainly

1 in line with the other things we have purchased. So we felt
2 it was a fair and reasonable price.

3 Q. In line you say with things we've purchased in
4 the state of Missouri even --

5 A. Yes.

6 Q. -- correct?

7 A. Yes.

8 Q. Was there also another bid or competitive
9 offer for the system?

10 A. Yes, there was. When I talked with Mr. Smith
11 originally, he told me that there was another entity that
12 was interested in purchasing this, and they actually had an
13 offer, but he didn't consider it a viable offer at that
14 time. But later that offer was certainly changed, and we
15 did base part of our offer on the fact that we knew there
16 was a competitive bid out there.

17 MR. ABERNATHY: Your Honor, can I approach the
18 witness?

19 JUDGE DIPPELL: Yes.

20 BY MR. ABERNATHY:

21 Q. I'm going to hand you, Mr. LeGrand, what's
22 marked as -- I'm not sure if it's just Exhibit 1 or if it's
23 Company's Exhibit 1.

24 JUDGE DIPPELL: Just Exhibit 1.

25 BY MR. ABERNATHY:

1 Q. Exhibit 1. Okay. Can you identify that for
2 me, please?

3 A. Yes. This is a letter to Gary Smith,
4 president of Warren County Water & Sewer, from the Public
5 Water Supply District No. 2 of St. Charles County.

6 Q. Can I stop you for a minute? Is there one
7 letter or two letters there?

8 A. There's actually -- let me look here. There
9 are actually two letters.

10 Q. Okay. Let's look at the first letter, then,
11 if we can.

12 A. Sure.

13 Q. Who's that from and to then again?

14 A. This is to Gary Smith, and it's from the
15 Public Water Supply District, and it's signed by Mike
16 Dougherty as general manager. And I believe Mike Dougherty
17 is actually general manager for Alliance.

18 Q. Which runs that water district?

19 A. Yes.

20 Q. And that district, what's the full name of
21 that water district?

22 A. Public Water Supply District No. 2 of
23 St. Charles County.

24 Q. And the date of this letter is?

25 A. April the 21st.

1 Q. Okay. Year?

2 A. I'm sorry. 2003.

3 Q. Okay. And is this letter part of

4 Missouri-American's files?

5 A. Yes, it is.

6 Q. Okay. And this came to you from where?

7 A. This was faxed to us from Mr. Smith.

8 Q. Okay. Would you briefly tell us what the

9 letter says, this first letter?

10 A. Well, it's briefly saying that they are

11 offering a purchase price of \$225,975, and it includes a lot

12 of the rehabilitation that we have talked about, some of the

13 things that they're going to do to the system.

14 Q. Then behind that is a second letter, I

15 believe?

16 A. The second letter is from the same entity,

17 also to Gary Smith as president, signed by Mike Dougherty,

18 and this letter is dated May the 7th, 2003.

19 Q. Okay. And what's changed that the second

20 letter was then sent?

21 A. The second letter, the price that they were

22 offering Gary, or Mr. Smith, has changed to \$300,000.

23 Q. Okay. And you as the Director of Business

24 Development for Missouri-American became aware of these

25 offers from the water district?

1 A. Yes.

2 Q. And that's from Mr. Smith you found out about
3 these offers?

4 A. Yes.

5 Q. These letters came from Mr. Smith, I believe?

6 A. Yes, they did.

7 Q. To you, and --

8 JUDGE DIPPELL: Mr. Abernathy, would you like
9 to offer those?

10 MR. ABERNATHY: Yes, I would. I was going to
11 do it in a minute, but I would offer those letters.

12 JUDGE DIPPELL: Would there be any objection
13 to Exhibit 1 coming in to the record?

14 MS. O'NEILL: No objection.

15 MR. KRUEGER: No objection, your Honor.

16 JUDGE DIPPELL: I'll admit Exhibit 1.

17 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE DIPPELL: Now it's probably appropriate
19 to give testimony about it.

20 MR. ABERNATHY: Just laying a foundation, your
21 Honor.

22 JUDGE DIPPELL: I appreciate that.

23 BY MR. ABERNATHY:

24 Q. And these are in your files at the company?

25 A. Yes, they are. If I could, I would like to

1 add just one more thing to these letters. There's actually
2 a third letter which Mr. Abernathy has not seen and I
3 received much earlier than this. It was actually a third
4 offer from the water district, much earlier offer than
5 these, which was the original offer, and that offer was
6 basically \$625 per customer was their offer at that time.

7 If you take -- I see Commissioner Gaw is doing
8 the math, and that would be about 250,000 at his current
9 customer level, which makes the March 21st offer actually
10 lower than what their original offer was. So there was
11 actually three offers out there by the water district.

12 Q. You're saying the original offer in March was
13 for \$250,000?

14 A. Well, no. It had no total amount. It was a
15 per customer amount, \$625.

16 Q. That was in March?

17 A. No. That -- that offer was September 27,
18 2002.

19 Q. Okay. So it preceded this April 21st letter?

20 A. Yes.

21 Q. Okay. Which then the offer went down a little
22 bit in value?

23 A. Correct.

24 Q. And then went back up again in May of 2003?

25 A. That is correct.

1 Q. Okay. Thank you. Are there any economies of
2 scale with Missouri-American potentially purchasing the
3 Warren County Water & Sewer Company?

4 A. Well, I think there certainly are, with our
5 national contracts that we have and just the sheer size of
6 not only Missouri-American but just American itself, and we
7 can -- we can buy pipes, meters, valves, all of the
8 appurtenances that you need to put into a water and sewer
9 system on average much cheaper than some other entity may
10 that's not near the size of ours.

11 We also think by having the purchasing power
12 that we have, that our upgrades would also end up being
13 cheaper because our material costs may very well be less to
14 put in the same infrastructure, that somebody else may have
15 to spend more money.

16 Q. Does Missouri-American have a lot of employees
17 available?

18 A. Yes, and that's probably one of the biggest
19 benefits, and we have so many of them right here in the
20 St. Louis area to where if we have a particular issue just
21 in water quality, we have a certified lab not only in our
22 office in St. Louis County, but we also have a Bellville lab
23 so we can handle any water quality issues.

24 We have a staff of engineers that are on
25 board. We have the legal counsel on staff to take care of

1 legal issues without having to go outside. We have the
2 ratemaking capability to where we don't have to outsource
3 any of these. Our staffing is probably a great value to
4 Warren County or any other smaller utility.

5 Q. Just one final question. You looked at the
6 purchase of Warren County Water & Sewer. Were there some
7 outstanding debts to be paid, assessments to be paid?

8 A. Yes.

9 Q. Do you know what those are?

10 A. Yes. Mr. Krueger mentioned one in his opening
11 testimony that the PSC had an outstanding assessment, I
12 believe it was almost \$16,000, 15,900 and some change. And
13 also in talking with the Missouri DNR, there are outstanding
14 fines that amount to about \$25,000.

15 MR. ABERNATHY: I have nothing further for
16 Mr. LeGrand at this time.

17 JUDGE DIPPELL: Thank you.

18 MR. ABERNATHY: Thanks.

19 JUDGE DIPPELL: Is there cross-examination
20 from Warren County?

21 MR. SHORR: No questions.

22 JUDGE DIPPELL: Staff?

23 MR. KRUEGER: Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. KRUEGER:

25 Good morning, Mr. LeGrand.

1 A. Good morning.

2 Q. In determining the amount that you would offer
3 to Warren County for the purchase price, did you attempt to
4 calculate the original cost of the assets that were in place
5 there?

6 A. Not the original cost, no. At that -- I mean,
7 the disarray of his records really didn't allow us at that
8 time.

9 Q. So you didn't use the original cost of the
10 assets in your evaluation of an offer at all?

11 A. That is correct.

12 Q. Did you make any attempt to determine what
13 Warren County's regulatory rate base was?

14 A. Yes, I did.

15 Q. What attempts did you make?

16 A. Well, when I first went there and did the
17 original due diligence, I asked Mr. Smith for his PSC report
18 filings at that time, and he said there were none available
19 or he hadn't filed any in a long time. Since then some had
20 been produced, and I think they're also in evidence now.
21 But on the initial visit I had none.

22 I also talked with the Commission Staff to see
23 if they had a rate base number, and they said they had
24 nothing conclusive at the time either. So I had no idea
25 what the real rate base was, or any actually for that

1 matter.

2 Q. Did you ask Mr. Smith about any rate case
3 filings?

4 A. Yes.

5 Q. Did he provide you any information about rate
6 cases that were --

7 A. Yes.

8 Q. -- that he had filed with the Commission?

9 A. Yes, he did.

10 Q. What information did he give you?

11 A. He supplied me with the numbers that the Staff
12 put together for the expenses, which covered the expenses
13 for the water and the sewer. So I did see expenses and
14 if -- subject to check, I would say that the recommendation
15 at that time was a decrease on the water side and an
16 increase on the sewer side. I may have that reversed. But
17 I did not see any rate base numbers. All I saw was expense
18 numbers.

19 Q. Did you ask him for rate base numbers?

20 A. Yes.

21 Q. And what was his response?

22 A. That he did not have any rate base numbers.

23 Q. Did he say that he had not received any
24 determination from the Staff about what rate base numbers
25 were?

1 A. I believe that's correct, yes. I do not
2 recall him saying that he had any.

3 Q. You mentioned that some improvements would be
4 needed if Missouri-American acquires these assets?

5 A. Yes.

6 Q. Are you able to estimate how much of an impact
7 those improvements would have on the rates for the
8 ratepayers there?

9 A. Well, I think it would be tough to estimate
10 it, especially in lieu of what we're hearing about growth,
11 which is going to play a very important part on what that
12 may very well be. But Mr. Jenkins, who is going to testify
13 later, I think will be addressing that issue.

14 Q. So you don't have an opinion on that?

15 A. Well, I mean, I have an opinion, but
16 Mr. Jenkins would be the expert. So I'd rather defer it to
17 him.

18 Q. Will Missouri-American need to hire additional
19 staff to operate the facilities there?

20 A. Not full-time staff, no, sir.

21 Q. You say not full-time staff.

22 A. Well, again, it would depend on what we find
23 when we actually go in there and start operating the system.
24 But with SCADA and some of the other equipment that we would
25 install in there may negate the fact of having need to have

1 a full-time employee there, and we may be able to just
2 absorb it in one of our other operations.

3 Our intent would be to use the current
4 employee they have and make a determination down the road to
5 see if we're going to have need for a full-time or if it's
6 just a part-time position.

7 Q. Did you hear the testimony of Mr. Walter in
8 regard to development that he expected at Incline Village --

9 A. Yes, I did.

10 Q. -- if Missouri-American acquires the property?

11 And I believe you testified that you'd like to
12 think that you could sell more water if improvements are
13 made?

14 A. Yes.

15 Q. Is that based upon the development that
16 Mr. Walter mentioned would occur?

17 A. In part, yes.

18 Q. Do you believe that Missouri-American is
19 paying an acquisition premium for this property?

20 A. Well, I mean, I don't really know, and for the
21 price we're paying, I don't think so. I mean, I think it's
22 a very reasonable price, and I have no idea if there's a
23 real premium there. We didn't base it on a premium.

24 Q. Do you believe that the growth in the customer
25 base would enable Missouri-American to recover the

1 difference between the \$335,000 contract price in your
2 agreement with Warren County and the \$53,000 figure that has
3 been mentioned as Staff's determination of rate base?

4 A. Could growth offset that?

5 Q. Would the growth that you expect in Incline
6 Village enable you to collect that, to recover that?

7 A. Well, I'm not a rate expert.

8 MR. ABERNATHY: Your Honor, can I interject?
9 We've got another witness that's going to testify to these
10 things, rather than Mr. LeGrand. It's kind of outside the
11 scope of what he testified to on direct. He can try to
12 answer it, but the answer you're going to need Mr. Jenkins
13 can provide.

14 JUDGE DIPPELL: I think if the witness can
15 answer, he should answer.

16 THE WITNESS: Well, again, I mean, I said
17 earlier that Mr. Jenkins was going to be testifying on this.
18 I certainly would prefer you direct those questions to him.
19 I mean, I did not put the rate cases together. That falls
20 under Mr. Jenkins' responsibility.

21 BY MR. KRUEGER:

22 Q. Did you make the determination of how much to
23 offer for the Warren County assets?

24 A. Yes, I did.

25 Q. In arriving at the number for how much to

1 offer, did you rely upon growth?

2 A. Yes, I did.

3 Q. Was that a significant part of it?

4 A. Not as significant as what I heard here this
5 morning, no. Growth was a factor, but I did not use the
6 growth numbers that Mr. Walter was alluding to.

7 Q. Okay. What I'll asking is, is whether the
8 growth that you expected was an important factor in enabling
9 you to decide how much to offer for those assets?

10 A. It did have a determination, yes.

11 Q. Was it the principal factor?

12 A. I don't know that it was the principal factor.
13 There's nothing that necessarily -- well, I guess let me
14 back up and say if there was no growth, I probably would
15 have no interest at all in it. So in that respect, I wanted
16 the growth, of course.

17 And then the other big factor was, what's it
18 going to take to get the system up to what it needs to be,
19 and that was one of the bigger pieces there, because if it
20 was so expensive or the capital portion was so great, then I
21 wouldn't have pursued the acquisition of it.

22 Q. In your due diligence investigation, did you
23 look into records pertaining to the systems prior to the
24 time that Mr. Smith became -- or Warren County Water & Sewer
25 became the owner of the systems?

1 A. No, I did not.

2 Q. You didn't review any information at all in
3 regard to Incline Village Water & Sewer?

4 A. No, not prior to Mr. Smith's ownership.

5 Q. And you didn't attempt to access the records
6 at the Commission regarding Incline Village?

7 A. I asked if there were any records, and -- or
8 at least what the rate base was later. I mean, it wasn't at
9 the initial due diligence.

10 Q. When did you ask about the company's rate
11 base?

12 A. Boy, I'm guessing. I would have to check my
13 records, but I'd say it was a couple months ago anyway.

14 Q. A couple of months ago?

15 A. Right.

16 Q. When did you -- when did Missouri-American
17 make the agreement with Warren County to purchase the assets
18 of Warren County?

19 A. I don't remember the exact date, but the whole
20 journey started in March, so I would say it was sometime in
21 April that we made the offer.

22 Q. So you made the offer to Warren County prior
23 to the time that you talked to Commission Staff about the
24 company's rate base; is that right?

25 A. Well, when I found out there was no Commission

1 reports out there, at that time I figured maybe I didn't
2 need to check any further at that time. But there was --
3 this acquisition was time sensitive for Gary to get -- or
4 for Mr. Smith to get something done. So I felt that it was
5 a reasonable price and that it may very well have been rate
6 base, but --

7 Q. Whom did you talk to at the Commission about
8 the company's rate base?

9 A. Well, actually, initially I talked with Jim
10 Merciel, which was very early in the process, about the
11 system and how it was operated, and then I had a meeting,
12 and that's what I'm alluding to, the meeting that I had,
13 with Jim Merciel to talk about a lot of the troubled water
14 and/or sewer systems.

15 And a lot of the field from the Staff were
16 there and we had kind of a round-table discussion, and I
17 asked about it then, and I believe you were in that meeting
18 (indicating).

19 Q. When you say you, you're referring to Greg
20 Meyer?

21 A. Yes. I'm sorry. Greg. Greg Meyer,
22 Mr. Meyer was there.

23 Q. And do you recall the date of that meeting?

24 A. No, I do not.

25 Q. Did you testify that it was a couple of months

1 ago?

2 A. Well, it could be a couple months ago. I said
3 I wasn't sure what the date was.

4 Q. In any event, it was after the time that --

5 A. Yes.

6 Q. -- the company made an offer to --

7 A. Right.

8 Q. -- Warren County?

9 A. Yes.

10 Q. So you made the offer to Warren County
11 regardless of what information you had about the company's
12 rate base?

13 A. That's correct.

14 Q. I believe you testified that you based the
15 offer on market and growth. Are those the two primary
16 factors?

17 A. Not necessarily. It's market growth, what we
18 paid for other systems, and what it was going to take to fix
19 this system up.

20 Q. Which was the principal thing?

21 A. Well, if I'm only going to pick one, like I
22 said, if there's no growth, that certainly is a big factor.
23 But even if I have growth, if the system is not going to
24 order -- or the need to upgrade the system is going to
25 negate the growth, I have no interest in growth.

1 In this case it all worked. But I don't
2 necessarily weigh one greater than the other. It's a
3 combination. They all have to dovetail together.

4 Q. Mr. LeGrand, if you were presented with
5 evidence that suggested that the customers of -- customers
6 of Warren County Water & Sewer Company or the homeowners in
7 the Incline Village subdivision had already paid for many of
8 the parts of the system, would you continue to recommend
9 that the customers pay for the rate base again?

10 A. Which customers are you talking about? Are
11 you talking about the ones that originally paid for it or
12 the ones that are living there now?

13 Q. If the people who bought homes or lots in
14 Incline Village paid for the Warren County Water & Sewer
15 Company system or if the ratepayers out there paid for it in
16 terms -- in the rate that they paid or if the people that
17 are there now or their predecessors in interest, the ones
18 they acquired the land from, if any of those people have
19 already paid for the rate base, would you suggest to the
20 Commission that the ratepayers should again pay for these
21 assets?

22 MR. ABERNATHY: Your Honor --

23 THE WITNESS: Well, in this --

24 MR. ABERNATHY: This seems to be a little bit
25 outside the scope of the direct examination. I don't think

1 Mr. LeGrand's an expert on ratemaking per se. I think we
2 should probably wait again and ask Mr. Jenkins, who's here
3 to answer those type of questions. I just don't think it's
4 within the scope of the direct. I asked him about the
5 system itself physically and what improvements need to be
6 done out there. I didn't ask him about the ratemaking
7 structure out there.

8 MR. KRUEGER: Your Honor, Mr. LeGrand
9 testified about the contract price that Missouri-American
10 agreed to pay, \$335,000. He said -- he testified, he said
11 that he was the one that made the decision on how much
12 should be offered for the system, and I think that the issue
13 of how that's to be recovered is an appropriate subject for
14 him to answer.

15 JUDGE DIPPELL: Mr. Krueger, your question was
16 a bit long. Can you kind of summarize again what your
17 question is?

18 MR. KRUEGER: If either the lot owners in
19 Incline Village or the ratepayers in Incline Village have
20 already paid for the assets of Warren County Water & Sewer,
21 is it appropriate for that to be included in -- for them to
22 pay for it again through the rates that they pay to
23 Missouri-American?

24 MR. ABERNATHY: I would reinstate my
25 objection, but I also point out that Mr. LeGrand directly

1 reports to Mr. Jenkins. So he has the suggestion for the
2 purchase price. He has to -- Mr. Jenkins has to look at it
3 to see on these questions of ratemaking. So it's kind of a
4 combination. I think it's outside Mr. LeGrand's purview.

5 JUDGE DIPPELL: Are you saying that
6 Mr. LeGrand did not make the recommendation about rate base?

7 MR. ABERNATHY: I'm saying he may not have,
8 yes. I wasn't in the conversation with he and Mr. Jenkins.
9 Mr. Jenkins can testify to what they talked about, who made
10 the decision as to rate base.

11 MR. KRUEGER: He testified that he did make
12 the determination as to what the offer should be.

13 JUDGE DIPPELL: I'm going to sustain the
14 objection, because I don't believe the witness did testify
15 about making recommendation as to rate base.

16 MR. KRUEGER: I believe that's all my
17 questions.

18 JUDGE DIPPELL: Is there cross-examination
19 from Public Counsel?

20 MS. O'NEILL: Just briefly, your Honor.

21 CROSS-EXAMINATION BY MS. O'NEILL:

22 Q. Good morning, Mr. LeGrand.

23 A. Good morning.

24 Q. Now, I'm going to try not to go through
25 everything again here, so I may jump around a little bit.

1 You've been involved in purchases and
2 acquisitions for Missouri-American other than the Warren
3 County Water & Sewer proposal; is that correct?

4 A. That is correct.

5 Q. And you testified that one of the things that
6 you considered in whether or not the company wanted to
7 purchase this -- your company wanted to purchase the assets
8 of Warren County Water & Sewer, which would include the
9 certificates, correct?

10 A. Correct.

11 Q. Was the growth potential?

12 A. Yes.

13 Q. And you said market was a factor. That's just
14 like -- can you clarify that for me a little bit?

15 A. The market is basically what -- what some of
16 these systems have been selling for across the, at least the
17 United States.

18 Q. Okay. So that's like a broader range of
19 market? That's not specifically what -- because this is a
20 specific entity, you don't necessarily know what the market
21 price for this would be other places except by comparing it
22 to the other offers; is that correct?

23 A. Well, no, not necessarily.

24 Q. Okay.

25 A. Since we have some other acquisitions that

1 have been made previous, we know what the price is in
2 Missouri.

3 Q. Has Missouri-American paid prices that turn
4 out to include an acquisition premium for any other
5 territories that they've purchased in this state?

6 A. Yes, they have.

7 Q. And was one of the reasons that those purchase
8 prices were higher because of growth potential, at least
9 some situations?

10 A. In some situations.

11 Q. And were there other business reasons that the
12 company evaluated in determining to make an offer that might
13 be higher and result in an acquisition premium?

14 A. Well, there's a lot of thought that goes into
15 it, and a lot of it's the synergy that we may be able to
16 bring by bringing on those customers.

17 Q. So it sounds like there's a lot of different
18 things that go into these offers that you make for a system;
19 is that right?

20 A. That is correct.

21 Q. And when you make an offer, you don't
22 necessarily know what the Public Service Commission's
23 eventually going to allow in rates, and you have to figure
24 that uncertainty into your offer as well; is that correct?

25 A. That would be correct.

1 Q. Now, in a situation like this one where
2 there's a potential for substantial growth in the area once
3 improvements are made, the likelihood that you could recover
4 that purchase price even without recognition of the full
5 purchase price is rate base is greater than if there was no
6 growth; is that correct?

7 A. That would be correct.

8 Q. I think I got a little confusing. I'm sorry.
9 Your company would not have made this offer if
10 they didn't think that it was a good business decision; is
11 that what your testimony is today?

12 A. That's my recommendation, that is correct.

13 Q. Okay. And that's despite the fact that
14 there's uncertainty regarding what the Commission would do
15 as far as an acquisition premium?

16 A. Correct.

17 MS. O'NEILL: No further questions.

18 JUDGE DIPPELL: Thank you. Are there
19 questions from the Bench, Chairman Gaw?

20 CHAIRMAN GAW: Thank you, Judge.

21 QUESTIONS BY CHAIRMAN GAW:

22 Q. Correct me if I'm wrong. I think earlier you
23 testified that you do not believe the company would have
24 been interested in purchasing this system if there had not
25 been a growth potential. Did I get that correct?

1 A. That's correct.

2 Q. Is that -- is that at all or is that at the
3 price that was -- that is on the table?

4 A. The price that's on the table.

5 Q. If there were no growth, do you have any idea
6 about what the company would be willing to give if growth
7 were not a factor for these assets?

8 A. No, not without running the numbers. I
9 couldn't -- I don't think I could even get a knee jerk on it
10 because I did not run any of the information, the financial
11 information based on no growth.

12 Q. And what would you be looking at with that,
13 what kinds of things?

14 A. If there was no growth?

15 Q. Yes.

16 A. Is it going to have some benefit to the
17 existing customers we have if we could capture some other
18 synergies, like it's a large operation or something. So
19 maybe it would help keep the rates down for the current
20 ratepayers and stuff.

21 If the system is small and as troubled as it
22 is, it's not exactly a real help to our current customers
23 until that growth becomes a real factor.

24 Q. So what would you be -- what other things
25 would you look at? Would you look at the value? Would you

1 come up with some sort of valuation of the hard assets that
2 are there, the easements and other things that were there?
3 What would be your normal way of looking at that?

4 A. I wouldn't look at the easements so much. I'd
5 certainly look at the operating expenses to see what the
6 current owner or the current company is spending in
7 operational costs, and if we can bring those operational
8 costs down to where we have those synergies, then it may be
9 attractive. There has to be a reason to do that, and most
10 likely it would be being able to do that a lot cheaper than
11 it's currently being operated.

12 Q. Is it your experience that in looking at the
13 value of a water company or its assets for purposes of
14 purchase, that there is often a difference between that
15 value and what might be the book value of those assets?

16 A. Yes.

17 Q. And what kind -- what accounts for that
18 difference in your experience?

19 A. Well, the real difference is if you -- I guess
20 let me just say, if you only look at rate base of a utility
21 and there's competition out there, it's going to be very
22 difficult, No. 1, for the customer or the owner to sell it
23 and maybe for us to purchase it.

24 We can't be competitive. It's less likely to
25 be competitive with, say, a water district or a municipality

1 because the premium is not a consideration. So it's very
2 difficult to be competitive, unless you can look at the
3 total picture and somehow figure out how to offset some of
4 that.

5 Q. When you say some of that, what is some of
6 that?

7 A. Well, if we're going to -- I don't really want
8 to get back into the premium issues, but if we can get
9 enough synergies, it may be worthwhile, and if it's
10 contiguous to the system, there may be a real reason for us
11 to make the purchase. But if there's not, then if the owner
12 is really looking for greater than what that rate base is,
13 we have to have a real reason why we have an interest in it.

14 Q. And in this case you believe you do?

15 A. That's correct.

16 Q. And that's because primarily of the growth
17 potential?

18 A. It is, but again, we haven't determined
19 whether or not that we're out of line on this price as far
20 as we don't feel there's a premium. So this was a different
21 circumstance, because normally I'm going to know if it's a
22 private company what that rate base is. This one I had -- I
23 didn't have that knowledge.

24 Q. You still don't have that knowledge; is that
25 true?

1 A. That is correct.

2 Q. You were talking earlier about what it would
3 take to bring the system up to speed in regard to repairs
4 and improvements. Do you have an opinion as to what the
5 cost of that will be?

6 A. Yes, I do.

7 CHAIRMAN GAW: All right. Now, I don't know
8 whether or not that's HC if I ask him.

9 JUDGE DIPPELL: I don't believe --

10 MR. ABERNATHY: No. It's fine. Go ahead and
11 ask that. I'm more worried about the structure of the
12 contract than I am about numbers.

13 JUDGE DIPPELL: Right now the only thing
14 that's been marked as HC is the contract itself.

15 BY CHAIRMAN GAW:

16 Q. All right. I just -- I want to ask before I
17 venture down the road here. If you have an opinion about
18 it, can you give it to us?

19 A. Yes. It is our estimate that it will run
20 somewhere in the neighborhood of \$550,000.

21 Q. All right. And what would that money be
22 invested in as far as the improvements and repairs are
23 concerned?

24 A. Well, it would certainly be the elevated tank.
25 It would be the new sewer treatment plant, the SCADA system,

1 which is the security system or the alarm system that we
2 would have put in there, and possibly a lift station. We're
3 hooking at a study to make sure that rainwater's not getting
4 in, because that causes some problems in sewer systems, and
5 put in the disinfection equipment so the water will be
6 treated properly.

7 Q. If the sale goes through, timeline-wise what
8 are we talking about on those improvements taking place?

9 A. Well, we feel that it would -- it could run a
10 span of about five years to get it all up to speed, a lot of
11 it. We have to get permitting on, and just to build an
12 elevated tank, it could take nine months to really get that
13 completed. So our goal would be five years.

14 Q. Would the company -- and again, if you know,
15 would the company be anticipating trying to do something to
16 recover those expenditures in rates before that time frame
17 elapsed that you just described, five-year time frame?

18 A. I believe Mr. Jenkins is going to talk to
19 that.

20 Q. All right. I'll leave that 'til later then.
21 You mentioned other properties that have been
22 purchased by Missouri-American, and I believe you said in
23 Missouri?

24 A. Correct.

25 Q. And again, if any of this is HC, please

1 somebody say that. But do you have any specific comparisons
2 that you would testify about or that you have in any of your
3 exhibits for the Commission to look at?

4 A. I don't believe there's any in the exhibits,
5 no.

6 Q. Do you have any that you could compare and
7 give us some -- something in the record that would -- that
8 would specifically deal with those purchases that you
9 mentioned in general?

10 A. You mean prepare something and introduce it?

11 Q. Or do you have -- can you testify about it
12 now? Do you know --

13 A. Well, I can tell you --

14 Q. When you're referring to that, can you give me
15 some specifics?

16 A. Well, I can tell you the ones that we
17 purchased.

18 Q. Yes, sir.

19 A. Valley Park is a small system. All of these
20 are water system. None are sewer systems.

21 Q. Okay.

22 A. But it was Valley Park, Florissant, City of
23 Florissant, City of Webster Groves are the three that are
24 close here in this area. Those were the three that I was
25 involved in.

1 Q. Were all of those purchases, did all of them
2 come before the Commission, this Commission?

3 A. I think they are just coming up before the
4 Commission in this current rate case.

5 MR. ABERNATHY: They are municipals, to
6 clarify, if I can interject, municipal purchases. So the
7 Commission didn't have jurisdiction to review, but they're
8 now going to be reviewed as part of the rate case
9 proceeding.

10 CHAIRMAN GAW: Thank you for that
11 clarification. I'm trying to see whether there's a case we
12 could look at.

13 BY CHAIRMAN GAW:

14 Q. The purchases -- first of all, let me ask you,
15 size of the system in those cases, how similar were they to
16 this one, Warren County?

17 A. Well, Valley Park is the smallest. That was
18 like 1,200-plus customers. That was the smallest one.

19 Q. How many is this case?

20 A. Total customers?

21 Q. Yes.

22 A. If you -- well, it depends on how you count
23 them. If you count the water and the sewer as the same
24 customers, it's just under 400, like 339.

25 Q. So this is even smaller than the smallest

1 purchase that you're describing as the three that you're
2 comparing to?

3 A. That is correct. However, if you split them,
4 you're almost buying -- you are buying two systems. So you
5 can almost say --

6 Q. Because it's water and sewer?

7 A. Right.

8 Q. Okay. And Florissant, how big?

9 A. Florissant was almost 15,000 customers.

10 Q. 15,000?

11 A. And Webster was 8,500 customers.

12 Q. 8,500. Okay. And those purchase prices, if
13 they are not HC, if you could tell me what they were?

14 A. 395,000 for Valley Park, 9 and a half million
15 for Webster, and I believe it was 14.5 for Florissant.

16 Q. 14.5 million?

17 A. 14 million 500.

18 COMMISSIONER CLAYTON: With a big M.

19 THE WITNESS: Right, big M.

20 BY CHAIRMAN GAW:

21 Q. If you were comparing the purchases other than
22 the size of the number of customers, how similar or
23 dissimilar were these purchases from this system that's in
24 front of us?

25 A. I think each system's unique, but I could give

1 you a range per customer cost. Valley Park is like \$301 per
2 customer, and this one's 400 -- if you count it similar,
3 it's like \$465 a customer.

4 Q. You're giving me -- and I appreciate the fact
5 that you're giving me a per-customer cost. What I'm asking
6 is, as far as the systems are compared, in comparing -- if
7 the Commission's looking at trying to compare apples to
8 apples here, how much difference is there in the way you
9 evaluate these purchases in these systems as compared to how
10 you evaluate this one?

11 The age of the system, the need for repair,
12 the growth factor, those things that you're looking at, can
13 you give me your perspective on how similar those systems
14 were in regard to your calculation of what's an appropriate
15 purchase price to the one that we have in front of us?

16 A. Well, I think the ones we're talking about
17 now, the three systems are probably not very similar at all,
18 because we were -- in some cases we were providing water or
19 part water. They were only water systems, so there was no
20 sewer involved.

21 And they were folded in to our existing
22 St. Louis County operations, so we were able to gain a lot
23 of synergies through not having to bring on the employees.
24 So the synergies that we gained from being able to bring
25 them on and then using the same pricing where the customers

1 would pay the same price as the rest of St. Louis County,
2 was the real driver to bring those on.

3 This one is quite a bit different. Since we
4 don't have single tariff pricing, Warren County would, in
5 effect, be a stand-alone system.

6 Q. So you think that there's significant amount
7 of dissimilarity in these systems as compared to Warren
8 County?

9 A. I think so.

10 Q. In your analysis of the appropriate amount to
11 give for the purchase of the system?

12 A. Correct.

13 Q. The St. Charles Public Water Supply District
14 offers that you testified about, the exhibits are on, I
15 think -- I think it's Exhibit 1. I'm interested in knowing
16 if you're familiar with a public water supply district's
17 ability to recover costs of acquisition in rates.

18 Do you know how that works from a -- from a
19 public water supply district standpoint?

20 A. I don't think it's the same issue. I think
21 that whatever they pay they can recover. At least that's my
22 understanding.

23 Q. They're not regulated by the Public Service
24 Commission, right?

25 A. That is correct.

1 Q. But in determining how their rates are set,
2 who sets the rates?

3 A. The water board does.

4 Q. And the water board, is it elected?

5 A. Yes, it is.

6 Q. So these are representatives of the area that
7 they serve?

8 A. Correct.

9 Q. And that's how the system works -- when you're
10 talking about a public water supply system, that is how the
11 oversight is handled is through elected representatives that
12 reside in the area of the service?

13 A. That's correct.

14 Q. So would you assume that in -- that if you --
15 that a public -- is it your belief that a public water
16 supply district board in reviewing and making some
17 calculation of how much to give for a water system would be
18 looking at how much, in addition to other things, what
19 their -- what their ratepayers would be willing to incur as
20 additional costs, if any, if they had to have their rates
21 raised as a result of the acquisition?

22 A. I would say that's accurate.

23 Q. There is potential, then, for there to be a
24 slightly different perspective in regard to how they review
25 the purchase of another system than a regulated company such

1 as Missouri-American Water, would there not be?

2 A. I would think so. We compete with that water
3 district now in our St. Charles operations. So they can do
4 a lot of things that we can't do.

5 Q. The area here in Warren County, how close is
6 that area to a water system that Missouri-American maintains
7 or owns today? What's the closest point to that?

8 A. For the water district?

9 Q. Yes.

10 A. Well, the water district is actually operating
11 a neighborhood inside the certificated area of Warren County
12 now. I believe the -- they were awarded a parcel of what
13 the certificated area is in Mr. Smith's certificated area
14 because they felt that, since he couldn't serve it, they
15 gave it to the water district. So they built the
16 neighborhood. So they are quite close there.

17 Q. Now, when you say they, you're going to have
18 to clarify who they is for me.

19 A. Well, I'm not sure who they really is, if it
20 was the PSC or if it was the Staff. I don't know who made
21 the award. It's just my understanding that Mr. Smith was
22 told, since he couldn't serve it, that they would allow the
23 water district to come in and take that parcel and serve it.

24 Q. The water district that you're referring to is
25 the St. Charles district?

1 A. Right.

2 Q. That's what I'm trying to clarify.

3 A. Water District No. 2. I'm sorry.

4 Q. And what I'm asking you is, how close is

5 Missouri-American's closest point of service to this water

6 district, not St. Charles, but --

7 A. Okay.

8 Q. -- to the Warren County water district?

9 A. Well, it's probably closest to our St. Charles

10 operation as opposed to our St. Louis County, and we're

11 talking, I don't know, 15 miles maybe.

12 Q. Okay. What kind of growth are you

13 anticipating when you're looking at the growth factor in

14 this purchase? What are you looking at as far as the

15 potential growth is concerned?

16 A. In this particular one?

17 Q. Yes.

18 A. Aside from the first year, since I felt the

19 same as Mr. Walter, that it could be insignificant on what

20 the growth was in the first year, I really looked at about

21 5 percent or so the remaining years.

22 Q. Is that 5 percent a year?

23 A. Yes.

24 Q. Give me an idea if you know when you're

25 looking at growth, do you translate that general concept

1 into specific numbers in calculating what that's worth in
2 the future?

3 A. I'll project the revenue for that growth, yes.

4 Q. And have you done that in this case?

5 A. Yes, I have.

6 Q. Is that a part of any of your exhibits?

7 A. No.

8 Q. Can you give me an idea of what your
9 calculations show and how the calculation was done?

10 A. Well, the average water/sewer customer there
11 is about \$425 a year based on a run that Mr. Smith provided
12 at the time, which was a revenue report for his billing, and
13 I used the numbers at that particular time and projected
14 that at \$425 a customer. That's water and sewer customers.

15 And then you would take that amount times the
16 growth, the 5 percent growth as added revenue, and then I
17 would also offset that then with additional operating costs,
18 chemical treatment, whatever else we would be adding.

19 Q. All right. What did you come up with with
20 numbers, if you recall?

21 A. Well, let me see. I may have that in here.
22 Well, if I look at the revenue from the first year, and at
23 that time the revenue was based on like \$180,000 from
24 Mr. Smith's printout, the growth would result in about
25 \$5,000 additional revenue the second year.

1 Q. All right. And then after that, what are you
2 looking at as you go forward?

3 A. Well, if you add the same 5 percent on, you'll
4 add roughly \$5,000 a year in additional revenue.

5 Q. Okay. If you also -- if you also do
6 improvements on growth that eventually is added into rates,
7 does this 5,000 count that potential revenue or is that even
8 a factor?

9 A. Well, I think I'll let Mr. Jenkins talk to how
10 they would do it in rate treatment.

11 CHAIRMAN GAW: Okay. I think that's all.
12 Thank you.

13 THE WITNESS: You're welcome.

14 JUDGE DIPPELL: Commissioner Murray, did you
15 have some questions?

16 COMMISSIONER MURRAY: Maybe a few. Thank you,
17 Judge.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Good morning.

20 A. Good morning.

21 Q. Or good afternoon, rather.

22 The systems that you said that
23 Missouri-American has purchased, Valley Park, Florissant and
24 Webster Groves, you said those were water only; is that
25 right?

1 A. Yes.

2 Q. So the rates per customer, I believe you only
3 spoke about one of them, Valley Park being -- averaging 301
4 per customer. That's for water only?

5 A. Oh, no. I'm sorry. That was the purchase
6 price per customer.

7 Q. Oh, purchase price.

8 A. Their water bill would be the same as any
9 St. Louis County customer.

10 Q. Okay. But that is the purchase price per
11 water customer compared to the purchase price per
12 water/sewer customer in Warren County?

13 A. Correct.

14 Q. And you mentioned that there were significant
15 differences between those systems and the Warren County
16 system. Would those differences make the systems of Warren
17 County less valuable or more valuable per customer?

18 A. I don't know that you can make any direct
19 correlation of it, because again the ones that -- the three
20 that we're talking about, our interest was in being able to
21 fold them into the St. Louis County operation. So we had
22 the operational synergies there as opposed to the major
23 growth or at least the growth factor of the other.

24 Q. The operational synergies would make them more
25 valuable, would they not?

1 A. Yes. Well, in some cases. I mean, it just
2 depends on the growth. But in this particular case or these
3 cases, the operational synergies were quite large.

4 Q. And I think most of my questions have been
5 answered. Just let me double check here.

6 Oh, the outstanding obligations that you
7 mentioned, the PSC assessment and the DNR fines, those --
8 your contract is not subject to those obligations, is it?

9 A. Well, I guess I'd have to direct that to
10 Mr. Abernathy, but normally liabilities are not part of our
11 contract. We're not buying liabilities. We're only buying
12 the assets.

13 Q. And as to the improvements that are needed,
14 will they have to be made for safe and adequate service
15 regardless of who purchases the system?

16 A. Yes, if they want to continue to grow the
17 system, and I think part of the fines have resulted from not
18 putting the elevated tank up.

19 Q. So even if you were not looking at more
20 customers, there would still be a need for improvements; is
21 that correct?

22 A. Exactly.

23 COMMISSIONER MURRAY: I think that's all I
24 have. Thank you.

25 JUDGE DIPPELL: Commissioner Forbis?

1 QUESTIONS BY COMMISSIONER FORBIS:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Afternoon now. A couple of questions, and if
5 you're not the guy to answer this, just let me know and
6 we'll wander around until we find somebody or I don't get an
7 answer, so whatever.

8 This has sort of been addressed, but I want to
9 make sure I've got it clear. There's a document, Response
10 to Staff Recommendation. I don't know if you've seen it.

11 A. Yes, I have.

12 Q. And in it you say, in other words, if the
13 Staff's approach were accepted, the Commission would design
14 the rates for the system to produce an annual profit of
15 \$,400. This is page 6. It says, therefore, it cannot be
16 operated profitably for that return, and certainly no level
17 of future investment could be agreed to with that rate base.

18 So there's some question here, even if it's
19 \$50,000, whether or not Missouri-American would still make
20 this purchase, still be interested in buying the company.
21 So if that's the case and that is the rate base, what would
22 happen then? Would Missouri-American not make any of the
23 improvements? Would it suffer an annual operating loss?
24 Would you just count on the growth to make up the
25 difference? You factored growth in before.

1 So I guess I want to know more about that
2 statement that you couldn't make any investment and you
3 couldn't have a profit or wouldn't make a profit.

4 MR. ABERNATHY: Your Honor, again, I was going
5 to cover that with Mr. Jenkins.

6 COMMISSIONER FORBIS: Okay. That's better
7 later?

8 MR. ABERNATHY: Yes, please.

9 COMMISSIONER FORBIS: I'm fine with dealing
10 with that later. You're probably fine with that, too.

11 THE WITNESS: Certainly.

12 MR. ABERNATHY: And I will ask him that
13 question.

14 QUESTIONS BY COMMISSIONER FORBIS:

15 Q. Okay. As far as developing the bid, then,
16 that's you, right?

17 A. That is correct.

18 Q. Okay. \$335,000, we've been throwing that
19 figure around. This question may not be appropriate. Can
20 you tell me what percent -- what percentage of that number
21 is attributable to the different factors, how much of that
22 came from growth, how much of that came from enhancements,
23 improvements needed, consistency with your other Missouri
24 purchases, or is that possible to break it down that way and
25 let -- and give me an idea of the 335,000, how much is here,

1 how much is here, how much is here?

2 A. I'm not saying it's not possible. I could not
3 sit here and give that to you, because it's all rolled in.
4 So it's pretty much rolled in all at one time. I don't take
5 a piece and put it in and get a result and then add another
6 piece. It's all done at one time.

7 So in order to make that determination, I'd
8 have to pull it apart and see what happens when you take
9 different pieces or different components away from it.

10 Q. That's doable, but you couldn't do it right
11 here?

12 A. That's correct.

13 Q. Have to have your calculator. Okay. I might
14 think about that, then.

15 You mentioned some other purchases that the
16 company's made. Were those under the bid process or were
17 they -- or not?

18 A. None that I know of. I don't know that any of
19 the other ones had any other offers out there.

20 Q. For your company, is this -- is this sort of
21 a -- there been other examples of buying a system through
22 this competitive, if you will, RFP process?

23 A. Well, it's becoming very competitive because I
24 am looking at three other sewer systems that we certainly
25 have an interest in, and all of them have more than one

1 other offer. So it's becoming quite competitive in this
2 area, at least on the smaller ones.

3 The larger ones, you know, it takes more out
4 of the market to do that or certainly more capital to do
5 that, but the smaller ones, there's beginning to be a lot of
6 competition.

7 Q. So you're looking at some. Let me ask, have
8 you successfully finished any of those in the past? Have
9 you had a bid process that resulted in picking up --
10 acquiring a system?

11 A. We're at the contract stage on two of them
12 now.

13 Q. Nothing done yet?

14 A. Correct.

15 Q. Okay. So you don't have a lot of history from
16 the company's perspective in dealing with bidding for
17 systems and folding that into rates and Commission approval
18 or no?

19 A. That's correct.

20 Q. So this is sort of new ground then for the
21 company?

22 A. Yes.

23 COMMISSIONER FORBIS: Okay. I think that then
24 answers the rest of my questions, so thank you.

25 THE WITNESS: Thank you.

1 JUDGE DIPPELL: We're going to take a very
2 short break and start -- we're just going to take a
3 five-minute break and we're going to start back at 25 after.
4 Go off the record.

5 MS. O'NEILL: We are quitting at one, right?

6 JUDGE DIPPELL: We are adjourning at one,
7 Ms. O'Neill.

8 MS. O'NEILL: All right. Thank you.

9 JUDGE DIPPELL: Go back off the record.

10 (A BREAK WAS TAKEN.)

11 JUDGE DIPPELL: I should make clear, when I'm
12 referring to time, I'm referring to the clock on the back of
13 the wall, which is a little fast. So you-all should set
14 your watches now so that you'll be on time in the morning,
15 because I won't change it tonight so that we're all on the
16 same time.

17 Okay. Let's go ahead and continue then with
18 Commissioner Clayton's questions.

19 QUESTIONS BY COMMISSIONER CLAYTON:

20 Q. Thank you. I just have a few questions that I
21 want to get cleared up on a few things.

22 You have no position or knowledge of any
23 issues relating to rate base, correct?

24 A. Correct.

25 Q. And we're going to hear from another witness

1 who does?
2 A. Correct.
3 Q. Okay. Your role in establishing an offer for
4 this property is based on market value; is that correct?
5 A. Correct.
6 Q. And you mentioned several things, and I want
7 to make sure that I have an inclusive list here. You
8 mentioned synergies in your business, perhaps economies of
9 scale?
10 A. Correct.
11 Q. Impact on existing customers, on your current
12 customers?
13 A. Yes.
14 Q. And potential for growth?
15 A. Yes.
16 Q. Are there other factors that I'm missing?
17 They may be tangible or intangible.
18 A. Well, I guess location certainly can be one of
19 them, but it would pretty much fit into some of those other
20 categories. If it's contiguous, we may look at it a little
21 different than if it's a hundred miles away or --
22 Q. Location, location, location?
23 A. Correct.
24 Q. First rule of real estate. Okay. Is there
25 anything else other than that that would be -- that would

1 significantly affect your company's level of offer for
2 property?

3 A. Not for my recommendation, no.

4 Q. So you don't take into consideration rate base
5 at all in your recommendation?

6 A. That's correct.

7 Q. So the market value and the rate base are two
8 different figures that could be completely different?

9 A. Yes.

10 Q. It could be the same?

11 A. Could be.

12 Q. Okay. I want to make sure that I have several
13 other accurate figures. The cost of improvements, including
14 the water tank, the sewage improvements, fire protection
15 improvements, chemical upgrades and treatment upgrades you
16 said would total approximately \$550,000?

17 A. That is correct.

18 Q. And taking into consideration the market
19 price, how does that affect your offer? Is it a straight
20 zero sum concept where it's a dollar for dollar swap? If
21 the improvements weren't needed, would the value of the
22 company be the purchase price plus 550,000? Do you follow
23 my question?

24 A. I'm not sure.

25 Q. If you didn't have to do the improvements, the

1 value of the property would go up; is that a fair statement?

2 A. It's possible, yes. That certainly could
3 happen if we don't have to make the improvements.

4 Q. Taking the purchase price of 335,000, plus
5 this approximate figure of 550, if the improvements were
6 already completed, then would the market value then be
7 \$885,000 in this instance?

8 A. I would think that would be reasonable. I
9 mean, you just put that investment in there. Somebody would
10 want that back.

11 Q. When you say want it back --

12 A. Well, if an individual owner invested
13 \$550,000, I think their intent would be to try to recover
14 that if they could.

15 Q. But would a buyer be willing to pay the full
16 freight for those improvements?

17 A. Depends on the other pieces of the market that
18 you're looking at. Again, the growth is going to factor in
19 there and whether or not they can run it cheaper than the
20 current owner.

21 Q. I understand. What I'm trying to get a handle
22 on is this market value, because we're not dealing with a
23 product that you purchase on E-Bay, unless you did buy it on
24 E-Bay. You don't have a number of these -- there are only a
25 handful of these properties that would be out there, and

1 there are only -- there are a limited number of buyers for
2 this type of property. You would agree with those two
3 statements?

4 A. Yes.

5 Q. So I'm trying to get a handle on how a market
6 value is achieved, how do you determine what a market value
7 is. And with regard to these improvements I'm trying to
8 find out, if you didn't have to do those, then the value of
9 the property would go up?

10 A. Uh-huh.

11 Q. You're saying, well, maybe in this case, not
12 an automatic yes?

13 A. Well, we would certainly do an original cost
14 study and see what the actual value of that system really
15 is, if we need to consider that piece of it to make sure
16 that -- you know, you may take a look at it and they may
17 have invested \$550,000 or whatever the amount is, but when
18 we looked at it, maybe that really didn't need to be spent.
19 So it may not have a value to us.

20 If they put something in that we didn't need,
21 the value of that certainly wouldn't be dollar for dollar.
22 It could be something a lot less.

23 Q. Let me ask the question in reverse order. Did
24 you discount the market value of this company based on the
25 improvements that are needed?

1 A. Yes.

2 Q. Can you quantify how much you discounted the
3 property?

4 A. Well, not off the cuff, no. I did not do
5 that.

6 Q. Okay. In your investigation on the value of
7 the property, did you do a lien search? Lien search? Is
8 that part of your role?

9 A. Eventually we do that, and we did look at all
10 the easements and see if there were possible liens or any
11 other legal issues out there.

12 Q. You mentioned earlier that you were not
13 assuming any debt; is that correct?

14 A. Correct.

15 Q. Did your investigation on liens find any
16 secured debt on the properties right now, on the property as
17 a whole?

18 A. No.

19 Q. So the property's free and clear?

20 A. Yes, as far as we know.

21 Q. As far as we know. Okay. When was the date
22 of your business' offer? Do you recall when you made the
23 offer?

24 A. It was sometime in April. I don't know the
25 exact date.

1 Q. And you made one offer?

2 A. That is correct.

3 Q. 335,000?

4 A. Yes.

5 Q. At the time you made the offer, were you aware
6 of the St. Charles County negotiations?

7 A. Yes, I was.

8 Q. If the offer by St. Charles County had not
9 been floating around out there, would the offer for the
10 company have been less -- from the company have been less?

11 A. I don't know. It would have been negotiated,
12 I guess, between us and the buyer at the time. I can't say
13 that the offer would have been more or less. I mean, it is
14 a negotiated piece of property.

15 When I made my offer, there was no
16 counteroffer by the owner. So would I have made a smaller
17 offer or less offer? I don't know.

18 Q. You made -- when you and your staff, your
19 company made the offer -- all I can see are your eyes. I
20 apologize.

21 When you and your staff put together this
22 offer, you had full knowledge of an existing offer that was
23 out there. So you made a higher bid to outbid the other
24 person; is that a fair statement?

25 A. That's a fair statement.

1 Q. Can you tell me, and this -- I already asked
2 you this, but can you tell me whether you would have made a
3 lesser offer to start?

4 A. Most likely I probably would have made a lower
5 offer initially.

6 Q. And when you make your determination of what a
7 market value is or what a purchase price should be on a
8 property, in your calculation you don't look at rate base or
9 what the ratepayers will pay in terms of rates at a later
10 time, do you?

11 A. Yes, I do.

12 Q. Since there's been discussion that your
13 expertise is not in what the rate base should be, what is
14 your role in looking at what ratepayers will pay later on in
15 helping the company recoup its purchase price?

16 A. Well, maybe I need to clarify. I don't look
17 to see what they may pay later on, but I look at --
18 actually, my request when I go in and look at a system is I
19 want three years, the last three years PSC report audited
20 financial statements as a starting point. So when I look at
21 those PSC reports, it'll tell me whether -- or not or what
22 their rate base is.

23 I did not have the luxury of getting the last
24 three years in this case. So I had to base it on other
25 factors, and those factors we discussed. But if I would

1 have had a known PSC report with a rate base number on
2 there, then the approach may have been different.

3 But again, we only assume that this may very
4 well be less than a known rate base. I don't know.

5 Q. How would -- if there were existing three-year
6 reports, how would they affect your decision-making in terms
7 of market value of the property? Do you look at revenues,
8 customer numbers? Tell me what you look at.

9 A. Certainly I look at -- I look at their income
10 statement, which is part of that report, to see what the
11 revenue numbers are and their operating expense, and then go
12 down and see how much cheaper or can we operate it
13 differently to get those synergies and factor in growth from
14 those known revenue numbers and start putting together some
15 financial information on it and then apply it to -- if the
16 customer, a lot of cases the owner has a price in mind, and
17 it may very well be greater, or in most cases, if they're
18 competitive.

19 And all the ones that I'm currently looking
20 at, there's only one that's actually willing to sell it for
21 their current rate base. I mean, they're wanting market.
22 So we have to make a determination, if we're going to pay a
23 premium, can we get some kind of recovery.

24 Q. Could you tell me again, refresh my memory on
25 how many existing customers are in this system right now?

1 A. 394 water -- or 393 water and 374 sewer
2 customers.

3 Q. What is the potential number of water and
4 sewer customers that you would see after a five-year period?

5 A. Well, if you take 5 percent of, say, 700, 35
6 customers a year times the five years, so 100-plus
7 customers. That's if you had that growth from year one,
8 which is not likely, at least not in this situation.

9 Q. This may be -- this may be outside the scope
10 of your testimony. So if you don't know, feel free to say
11 you don't know so we don't have to have an advisory that I
12 can ask this question later.

13 But if you have a free market or an open
14 market and negotiations on what a market value would be
15 between a willing seller and a willing buyer, are you aware
16 of what protections a ratepayer would have in making sure
17 that a value does not go up too high where a ratepayer would
18 be harmed? Do you understand my question?

19 A. Yes. Yes.

20 Q. Do you know what protections are there?

21 A. For the customer?

22 Q. Yes.

23 A. Public Service Commission is the protection.
24 I mean, I -- I mean, I know how you set rates based on rate
25 base, if that's what you're asking. I'm not sure what

1 you're -- maybe what you're actually looking for. But I
2 mean, I -- if that's the protection, that's -- I think I
3 understand that, but I don't look at all these systems just
4 based totally on that knowing that we may have to pay a
5 premium. And if it warrants it and we can justify it, then
6 we'll take a look at it.

7 Q. And it would be your testimony that you don't
8 think that there is a premium at this time, or do you have
9 an opinion, in this purchase?

10 A. I don't know that we have a premium in this
11 case. It hasn't been determined since we don't know what
12 the rate base is. I can only assume there's -- it could be
13 greater than the purchase price.

14 Q. Could be greater and it could be less.

15 COMMISSIONER CLAYTON: Okay. Thank you,
16 Judge.

17 JUDGE DIPPELL: Okay. Given the conflicts --
18 Commissioner Gaw?

19 CHAIRMAN GAW: Could I ask a couple of
20 questions real quick?

21 JUDGE DIPPELL: You were my conflict.

22 CHAIRMAN GAW: I know, and I'm causing you
23 more.

24 JUDGE DIPPELL: Go ahead.

25 FURTHER QUESTIONS BY CHAIRMAN GAW:

1 Q. Just very briefly, in the whole perspective of
2 looking at this acquisition from Missouri-American's
3 viewpoint, the purchase price here we're talking about is
4 300 and how much?

5 A. 35.

6 Q. 335,000?

7 A. Yes.

8 Q. And in looking at the assets of
9 Missouri-American, the company, have you got an estimate of
10 about what those assets are worth?

11 A. No, not really. Mr. Jenkins certainly could
12 tell you that.

13 Q. Would it be fair to say that this is fairly
14 insignificant in comparison to the assets that the company
15 already has?

16 A. Yes.

17 Q. And would it also be fair to say that the
18 likelihood of the acquisition price being of any detriment
19 to the remainder of your ratepayers or to your systems in
20 the state is fairly small or insignificant?

21 A. Yes.

22 Q. Even if the Commission at some point decided
23 that that total amount might not be appropriate in rates, is
24 that going to be a significant -- of significant impact to
25 the shareholders or the shareholder of your company?

1 A. I don't know that I can speak to the
2 shareholder, but if I couldn't get a return on my
3 investment, speaking for me personally, I don't care what
4 the size is, it's going to be a concern.

5 Q. Be a concern. It's not going to the same
6 thing as, say, talking about an acquisition that's worth
7 half of what your company is currently worth, is it?

8 A. Well, as an investor, I don't know that I
9 would use that correlation. I'm running something for a
10 return.

11 Q. Sure.

12 A. And maybe that's a small piece of it, but it
13 still is a piece of it.

14 Q. Is it a factor?

15 A. On whether or not I would invest or not
16 invest?

17 Q. Yes.

18 A. Might be for me, and again, I can only speak
19 personally.

20 Q. In the acquisitions of the other companies,
21 the municipals, did you come in front of the Commission and
22 request that this Commission give the company some
23 indication of how that would be treated in rate base before
24 you completed the acquisition?

25 A. Not me personally, no.

1 Q. Do you know that -- and isn't it true that the
2 company did not do that because, for one, they didn't have
3 to?

4 A. Correct.

5 Q. Also, they didn't do it at all to see whether
6 or not the Commission would award them a particular rate
7 treatment for that -- for those acquisitions?

8 A. Well, I would think you might want to ask
9 Mr. Jenkins that because he's the one that would actually
10 make that contact. So I'm sure he could answer that. And I
11 can't speak for him on that. Maybe he has asked that
12 question.

13 Q. That's okay. We can do that.

14 CHAIRMAN GAW: Thank you, Judge. Sorry.

15 JUDGE DIPPELL: Because there's a local public
16 hearing this evening in Joplin and many of the counsel and
17 the Commissioners have to leave to get there in time for
18 that to start, I'm going to go ahead and wrap things up
19 here.

20 Mr. LeGrand, you're going to have to come back
21 tomorrow.

22 THE WITNESS: Do I get a free room?

23 JUDGE DIPPELL: Talk to your company.

24 Because I have some additional questions for
25 you, and then we'll do recross and then we'll do redirect on

1 that, and then we'll continue on with the witnesses.

2 A couple of things I need from counsel for
3 tomorrow. I didn't get the address of Mr. James Walter, I
4 don't believe, on the record. So I'd just like if Public
5 Counsel could state that on the record tomorrow.

6 MS. O'NEILL: Yeah. I think I have it
7 upstairs, Judge. I'll bring it in the morning.

8 JUDGE DIPPELL: Thank you. When you're
9 preparing your closing arguments while you're driving to
10 Joplin tonight, if you could be sure to address the Ag
11 Processing case and the Commission's role as it relates to
12 that, that would be helpful.

13 There was a request to take notice of the
14 Commission's Report and Order in WC-2002-155. Are there any
15 objections to the Commission taking notice of that?

16 MR. KRUEGER: No, your Honor.

17 JUDGE DIPPELL: Then I will put that into the
18 record.

19 And there was also a request to take notice of
20 the Eastern District Court case that Mr. Shorr cited the
21 case number of earlier. Is there any objection to the
22 Commission taking notice of those official documents?

23 MS. O'NEILL: No objection.

24 MR. KRUEGER: No, your Honor.

25 JUDGE DIPPELL: I'll admit those into the

1 record.

2 One last thing I need from Missouri-American.
3 When I was reviewing the official file, the contract has
4 some attachments. Those attachments didn't actually get
5 filed. If you could submit those.

6 MR. ABERNATHY: I apologize. We'll get them
7 out and get them to you tomorrow.

8 JUDGE DIPPELL: And if they need to be kept
9 confidential, you'll need to mark them.

10 MR. ABERNATHY: As I recall, I think of them
11 was -- there was an Exhibit A and B. It think A was simply
12 a list of improvements we thought needed to be made to the
13 system.

14 JUDGE DIPPELL: Actually, it's just Exhibit A,
15 which is a list of the assets of the company --

16 MR. ABERNATHY: Okay.

17 JUDGE DIPPELL: -- that was not actually
18 attached.

19 And I believe that's it. I know it's a late
20 night for everyone, but I think given the conflicts we're
21 going to have with agenda tomorrow, that we're going to need
22 to go ahead and start early tomorrow. So we'll reconvene at
23 8:30 in the morning.

24 Thank you all. We can go off the record.

25 WHEREUPON, the hearing of this case was

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1 recessed until November 13, 2003.

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