

**BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI**

In the Matter of the Petition of Missouri-)	
American Water Company for Approval to)	
Change an Infrastructure System)	File No. WO-2019-0184
Replacement Surcharge (ISRS))	

**THE OFFICE OF THE PUBLIC COUNSEL’S REQUEST
THE COMMISSION INCLUDE THE TRANSCRIPT
FROM WO-2018-0373 IN THE RECORD IN THIS CASE**

COMES NOW the Office of the Public Counsel (Public Counsel or OPC) and requests the Commission include the transcript for the immediately preceding case, which is WO-2018-0373 and respectfully states:

1. At the end of the hearing Judge Hatcher inquired whether there was any part of the record from the last Missouri American Water Co. (MAWC) case, noted above, that anyone would like to have included in this case.
2. Public Counsel requests the transcript from WO-2018-0373 be included in this case and that it be marked as an Exhibit.
3. That transcript is attached to this pleading as Attachment 1.
4. The issues in these two most recent MAWC Infrastructure System Replacement Surcharge (ISRS) cases are closely related if not nearly identical.
5. Having the earlier transcript included in the evidence of this case will assist the Commission in reaching its decision here.
6. For the Commission’s convenience, Public Counsel will attach to its Brief in this case copies of all references to the WO-2018-0373 Transcript.

WHEREFORE Public Counsel requests the Commission attach the transcript from Case No. WO-2018-0373.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Lera Shemwell
Lera Shemwell (#43792)
Senior Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lera.shemwell@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 20th day of May, 2019.

/s/ Lera Shemwell

In the Matter of:

In the Matter of Petition of Missouri-American Water Company for Approval

WO-2018-0373 VOL 1

November 20, 2018



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
November 20, 2018
Jefferson City, Missouri
Volume 1

In the Matter of Petition of)
Missouri-American Water Company) File No.
for Approval to Establish an) WO-2018-0373
Infrastructure System Replacement) Tariff No.
Surcharge (ISRS)) YW-2019-0018

CHARLES HATCHER, Presiding
REGULATORY LAW JUDGE
RYAN A. SILVEY, Chairman,
DANIEL Y. HALL,
MAIDA J. COLEMAN,
COMMISSIONERS

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

DEAN COOPER, Attorney at Law
Brydon, Swearngen & England, P.C.
PO Box 456
Jefferson City, Missouri 65102-0456
573.635.7166
FOR: Missouri-American Water Company

LERA SHEMWELL, Senior Public Counsel
JOHN CLIZER, Associate Counsel
PO Box 2230
Jefferson City, Missouri 65102
573.751.5565
FOR: Office of the Public Counsel

MARK JOHNSON, Senior Counsel
RON IRVING, Legal Counsel
200 Madison Street, Suite 800
PO Box 360
Jefferson City, Missouri 65102-0360
573.751.7431
FOR: Staff of the Missouri Public Service Commission

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(EXHIBITS 1 THROUGH 9 WERE MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

JUDGE HATCHER: Let's bring this proceeding to order and go on the record. Good morning. Today is November 20, 2018. The time is 9:13 a.m. The Commission has set this time as an evidentiary hearing In The Matter of Petition of Missouri-American Water Company For Approval to Establish an Infrastructure System Replacement Surcharge. That is File No. WO-2018-0373, Tariff No. YW-2019-0018.

My name is Charles Hatcher and I am the Regulatory Law Judge presiding over this hearing. Let's go ahead and have counsel make their entries of appearance this morning.

MR. COOPER: Your Honor, Dean Cooper appearing for Missouri-American Water Company, and the court reporter has the address.

MR. JOHNSON: Judge, Mark Johnson and Ron Irving appearing on behalf of the Staff of the Missouri Public Service Commission, and the court reporter has our information.

JUDGE HATCHER: Thank you.

MS. SHEMWELL: Good morning and thank you. Lera Shemwell and John Clizer, C-l-i-z-e-r, representing

1 the public and the Office of the Public Counsel. Thank
2 you.

3 JUDGE HATCHER: At this point, I'd like to
4 advise everyone in the audience to please silence your
5 cell phones and any mobile devices and let's move to
6 preliminary matters. Do the parties have any
7 preliminary matters to address?

8 MR. COOPER: The only thing, Judge, is that I
9 would remind you, this was on the list of issues, but
10 our witness John Wilde will not arrive until
11 approximately 10:30. So depending upon how things sort
12 out between now and when he would appear, we may need to
13 have a discussion about whether to go off the record or
14 to do something in a different order at that point in
15 time.

16 JUDGE HATCHER: All right. Thank you. I did
17 see that. As noted, we'll go ahead and follow that same
18 order and we'll see where we get to at 10:30 and if Mr.
19 Wilde is here or not.

20 All right then. Let's go ahead and have the
21 parties offer the testimony and affidavits as exhibits,
22 please. I think they were premarked.

23 MR. COOPER: Judge, I guess we would commonly
24 I guess do that when the witnesses are on the stand. I
25 don't mind doing it differently.

1 JUDGE HATCHER: No, let's go ahead and do it
2 that way then. Let's go to opening statements. The
3 order of opening statements will be the same as in the
4 filings. That will be Missouri-American Water Company,
5 followed by Staff, followed by Office of Public Counsel.

6 MR. COOPER: Thank you, Your Honor. Morning.
7 Morning, Commissioners.

8 This hearing, of course, arises from a
9 Missouri-American Water Company Petition to Establish
10 Infrastructure System Replacement Surcharge that was
11 filed in August of this year. The issue today revolves
12 around Staff's proposal and OPC's support for removal of
13 what's called the accumulated deferred income tax asset,
14 which is also known and referred to in the case as net
15 operating loss from the calculation of appropriate
16 pretax revenues.

17 Section 393.1000(1)(a) in part defines
18 appropriate pretax revenues as including recognition of
19 accumulated deferred income taxes and accumulated
20 depreciation associated with eligible infrastructure
21 system replacements.

22 Staff's adjustment in the Company's opinion
23 would maintain recognition of the accumulated deferred
24 income tax liability while eliminating the corresponding
25 deferred income tax asset. The elimination of the asset

1 is not supported by statute and may have significant
2 adverse implications for the Company and ultimately its
3 customers as failure to include the deferred tax asset
4 resulting from net operating losses in MAWC's rate bases
5 inconsistent with the normalized method of accounting
6 and as such inconsistent with the tax normalization
7 rules.

8 It further impacts a consent agreement
9 American Waterworks entered into in order to allow the
10 utilization of the repairs deduction method. Now, it's
11 become apparent to MAWC that its reflection of this
12 repairs deduction in the ISRS filing has an impact on
13 the necessity of the reflection of the deferred tax
14 asset resulting from the net operating loss.

15 In fact, no other company using the Missouri
16 ISRS, and those would be gas utilities, of course,
17 because Missouri-American is the only water company that
18 utilizes the ISRS, no other company utilizing the
19 Missouri ISRS that we can locate reflects a repairs
20 deduction. It appears this is not required by statute.
21 That is, it's not depreciation. It doesn't fit the
22 investment that qualifies for ISRS treatment.
23 Thus, if the Commission chooses to not reflect the
24 accumulated income tax asset, the NOL, it also we
25 believe should not reflect the repairs deduction.

1 MAWC will have two witnesses today, Mr. John
2 Wilde, who is a tax professional with over 20 years of
3 tax and accounting experience serving multi-state
4 utilities. He will be our second witness today,
5 actually. He will address the tax issues. Our first
6 witness will be Mr. Brian LaGrand. Mr. LaGrand will
7 provide background information concerning
8 Missouri-American's ISRS filing. Thank you.

9 JUDGE HATCHER: Thank you, Mr. Cooper. Next
10 opening statements -- oh, I'm sorry. Commissioner?

11 COMMISSIONER HALL: Good morning. Looking at
12 393.1000 for the definition of appropriate pretax
13 revenues, are you interpreting that to mean that the
14 accumulated deferred income taxes and the accumulated
15 depreciation both have to be associated with eligible
16 infrastructure system replacements?

17 MR. COOPER: I believe we are, yes.

18 COMMISSIONER HALL: Okay. And then, and these
19 questions are perhaps better directed to your witnesses
20 and you can obviously let me know that, but the
21 deductions that are at issue with the net operating
22 losses, are those all deductions that are ISRS-eligible
23 deductions -- or ISRS-eligible expenses?

24 MR. COOPER: Well, we would say yes. There's
25 going to be a difference of opinion amongst the parties.

1 And I think, as you alluded to, I think Mr. Wilde is the
2 appropriate person to answer that question.

3 COMMISSIONER HALL: Okay. But from a legal
4 perspective in terms of interpreting the statute, you
5 would agree that any deduction that you were trying to
6 take advantage of related to net operating loss has to
7 be a deduction that is an ISRS-eligible expense?

8 MR. COOPER: Is associated with ISRS-eligible
9 plant anyway, yes.

10 COMMISSIONER HALL: Okay. So if a repair is
11 not an ISRS-eligible expense, then it would not be a
12 deduction that would be taken into account in
13 determining an NOL?

14 MR. COOPER: Well, and our argument is it's
15 also a deduction that shouldn't be reflected in the ISRS
16 calculation, but yes.

17 COMMISSIONER HALL: Okay. Thank you.

18 JUDGE HATCHER: Any other questions from the
19 bench? Thank you, Mr. Cooper.

20 We'll have opening statements now from Staff
21 counsel.

22 MR. JOHNSON: Good morning, Commissioners,
23 Judge. May it please the Commission. My name is Mark
24 Johnson, and I along with Ron Irving will be
25 representing the Staff before the Commission today. And
Page

1 this morning, as Mr. Cooper alluded to, we're here to
2 discuss taxes, accumulated deferred income taxes and how
3 they affect Missouri-American's ISRS revenues. More
4 specifically the issue before you is whether the ADIT
5 balance recognized in Missouri-American's ISRS should be
6 offset by a potential deferred tax asset caused by net
7 operating losses.

8 Now, in this case before you today Staff
9 believes the answer to that question is no. But before
10 I get into Staff's reasoning, I think it would be
11 beneficial to briefly discuss accumulated deferred taxes
12 in general. So what are they? Well, ADIT is
13 essentially the difference between the amount a utility
14 collects in rates for income taxes in a given year and
15 the amount it actually pays.

16 Now, this difference is caused by the fact
17 that utilities are able to deduct certain costs against
18 income for tax purposes at different times than when
19 they must reflect the same costs as a reduction to
20 income for financial reporting purposes. Now, an
21 example of this, and really at the heart of the issues
22 today, is accelerated depreciation deductions.

23 Utilities are able to deduct more depreciation
24 earlier for taxes than they are required to for
25 regulatory purposes. Now, it's not a difference in the

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1 actual amount of depreciation being deducted, but for
2 tax purposes they are essentially able to front load the
3 deductions causing an imbalance. Now, this is generally
4 referred to as a book tax timing difference, and it
5 creates a deferral of income tax expense to a future
6 period. Generally this provides a net benefit to
7 utilities.

8 For ratemaking purposes before this
9 Commission, those benefits are retained by the utility
10 for a period of time before being passed on to
11 ratepayers. This is where tax normalization comes into
12 play.

13 Now, in regard to the specific timing
14 differences associated with the use of accelerated
15 depreciation, for tax purposes the IRS Code basically
16 mandates that utility rates be set so that ratepayers do
17 not receive the tax benefit of accelerated depreciation
18 deductions any faster than over the estimated
19 straight-line book lives of the associated utility
20 assets.

21 Using this approach, ratepayers will in almost
22 every instance pay an amount of income tax in their
23 rates that is higher than what the utility will actually
24 incur. The amount that is in excess of the utility's
25 tax bill is then accumulated in deferred income tax

Page

1 expense accounts for later use, and this is effectively
2 an up-front payment of future taxes by ratepayers.

3 And the utility can use these funds as
4 interest-free capital. It's a benefit to the utility.
5 To recognize this contribution, the utility's rate base
6 is then offset by that amount of accumulated deferred
7 income taxes, which will ultimately reduce rates charged
8 to ratepayers.

9 Now, a determination of the level of ADIT for
10 a utility is made in a general rate case. Pursuant to
11 Section 393.1000 and the Commission's ISRS rules, ADIT
12 must also be taken into account in the determination of
13 necessary revenues in an ISRS case. And that brings us
14 to the issue at hand.

15 Both Staff and Missouri-American have
16 calculated a level of ADIT to offset ISRS revenues in
17 Missouri-American's filing and they've done it in a
18 similar manner. The only difference is
19 Missouri-American has taken an additional step to impute
20 a deferred tax asset relating to a hypothetical net
21 operating loss or an NOL.

22 This action results in an ISRS revenue
23 requirement difference between Staff and the Company of
24 about \$887,000. Now, an NOL occurs in a given tax year
25 when a taxpayer has more available deductions than it

Page

1 has taxable income. And when this occurs, the amount of
2 those unused deductions are referred to as an NOL, and
3 these amounts are booked in a deferred tax asset
4 account.

5 The NOLs don't just go away, though. They're
6 available to be carried forward to future tax years and
7 offset taxable income later. Now, in Missouri, and
8 really across the country, most utilities have been in a
9 net operating loss situation and have been for awhile
10 and it's really relating mostly in Staff's opinion to
11 the use of bonus depreciation, which is similar to
12 accelerated depreciation but even more so.

13 Typically utilities would be allowed to
14 utilize 50 percent of their available depreciation
15 deduction in the first year that plant went into
16 service. However, with the Tax Cuts and Jobs Act, bonus
17 depreciation is no longer available for use by utility
18 companies, and Staff believes this is going to result in
19 utilities moving away from net operating loss
20 situations.

21 However, the concept of offsetting deferred
22 tax liabilities with net operating loss assets is not
23 new, although it is relatively new in relation to ISRS
24 proceedings before this Commission. In general rate
25 cases, utilities have argued that rate-based reduction

Page

1 for ADIT must be offset by amounts related to incurred
2 NOLs. That's similar to Missouri-American's argument in
3 this case.

4 The reasoning for that is because due to the
5 NOL, the utility is not currently able to use all of its
6 available tax deductions and that should be reflected in
7 the balance of ADIT. Staff generally agrees with this
8 concept and it does this in general rate cases.
9 However, for this to make sense, the utility must show
10 that any NOL resulted from activity.

11 Now, in this case the period for
12 Missouri-American's ISRS application extends from
13 January 1 of this year to September 30, and only costs
14 directly associated with that qualifying ISRS plant that
15 came into service during that nine-month period should
16 be reflected in ISRS rates.

17 I said earlier that most utilities in Missouri
18 have been in net operating loss situations for the past
19 several years. This is true for Missouri-American as
20 well. However, according to the Company's own
21 estimates, they are no longer in a net operating loss
22 situation. They have a balance of net operating loss
23 carry-forward amounts that they are going to utilize in
24 future tax years, but they are no longer generating new
25 net operating losses.

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1 COMMISSIONER HALL: Why is that relevant?
2 Isn't what is relevant is what are those deductions and
3 are those deductions related to qualifying ISRS
4 projects, not whether the balance is going up or going
5 down?

6 MR. JOHNSON: It is relevant. However, in
7 Staff's opinion we are not able to calculate the exact
8 amount of an NOL associated with ISRS plant
9 specifically.

10 COMMISSIONER HALL: But that's the Company's
11 burden, that's not yours.

12 MR. JOHNSON: It is not. However, the fact
13 that their balance of NOL carry-forwards is being
14 reduced shows us that there is taxable income on their
15 books and that they have taxable income indicates that
16 they do not have a net operating loss associated with
17 those interest plant additions.

18 COMMISSIONER HALL: So you're essentially
19 using that as a surrogate because you're unable to draw
20 the connection between the deduction and whether it's
21 related to an ISRS-eligible expense. You're instead
22 looking at the overall balance and seeing that it's
23 going down and therefore determining that there's
24 nothing related to the ISRS-eligible expenses.

25 MR. JOHNSON: I believe that is an accurate
 Page

1 reflection, but you may want to direct that at one of
2 our technical witnesses when they're taking the stand.

3 COMMISSIONER HALL: Thank you.

4 MR. JOHNSON: Now, earlier I referred to
5 Missouri-American's inclusion of the NOL as
6 hypothetical. What I just covered is why. They are not
7 generating or they are not anticipating to generate
8 NOLs. However, Missouri-American is still recommending
9 an imputation of an amount to be utilized as an offset
10 to ADIT in this proceeding.

11 Now, the basis for this argument is the idea
12 that the addition of ISRS plant to Missouri-American's
13 rate base without immediate receipt of new revenues
14 reduces its taxable income below the level that would
15 result if the ISRS plant addition had not been made at
16 all.

17 Now, Missouri-American alleges that not
18 including this imputed NOL would violate the IRS
19 normalization guidelines. Staff disagrees with this.
20 Missouri-American's methodology for calculating this
21 hypothetical NOL, regardless of whether or not they are
22 generating NOLs in a given year, will always show the
23 existence of a net operating loss. This is because in
24 Missouri a utility must place investment in service
25 prior to obtaining recovery in rates.

Page

1 Now, Missouri-American engages in many
2 financial transactions over time that can result in
3 increases or decreases to its taxable income. For
4 example, Missouri-American makes non-ISRS plant
5 additions outside of a rate proceeding that will
6 theoretically reduce its taxable income in the exact
7 same manner that Missouri-American alleges ISRS plant
8 additions do.

9 Despite the theoretical reduction to taxable
10 income, Missouri-American still expects no new net
11 operating losses to be generated. Including a
12 hypothetical NOL, as Missouri-American suggests, staff
13 believes that this will result in an overstatement of
14 both ISRS rate base and ISRS customer rates and fail to
15 appropriately compensate customers for the capital they
16 provide to Missouri-American in rates on an ongoing
17 basis.

18 Now, Staff has reviewed both the relevant
19 sections of the IRS Code and the private letter rulings
20 provided to it by Missouri-American, and it does not
21 believe anything therein requires an imputation of an
22 NOL when no NOL is, in fact, being generated. Staff
23 believes its position on this issue to be fully
24 consistent with the intent of the accelerated
25 depreciation normalization requirements in the IRS Code
Page

1 and that should the Commission adopt Staff's proposed
2 treatment of ADIT that the tax benefits of accelerated
3 depreciation associated with ISRS plant additions will
4 not be passed on to customers prematurely in a manner
5 that violates the code.

6 In conclusion, Staff recommends the Commission
7 adopt its treatment of ADIT, recommends approval of its
8 recommended ISRS surcharge revenues in the incremental
9 pre-tax revenue amount of \$6,377,959 and to approve the
10 rates recommended in testimony of Staff witness Matthew
11 Barnes.

12 Now, I have with me today Staff witnesses Mark
13 Oligschlaeger and Lisa Ferguson to provide testimony
14 relating to net operating losses and ADIT and Matthew
15 Barnes to provide testimony related to Staff's
16 recommended rate design. Thank you very much, and I'd
17 be happy to answer any more questions to the best of my
18 ability.

19 COMMISSIONER HALL: I have no further
20 questions.

21 JUDGE HATCHER: Thank you. We'll move to
22 opening statements from Office of Public Counsel.

23 MS. SHEMWELL: Thank you, Judge. Good
24 morning. May it please the Commission. My name is Lera
25 Shemwell. I represent the Office of the Public Counsel

Page

1 and Mark Poston, the Acting Public Counsel.

2 Public Counsel's position in this case is that
3 a net operating loss is not an appropriate conclusion in
4 an ISRS case. ISRS is actually a revenue-producing
5 process which occurs outside of the normal cost of
6 service rate case.

7 The Company should not have any net operating
8 loss from a revenue-producing process. Net operating
9 losses are not asset specific and are not assignable to
10 any particular asset. So in this case the net operating
11 loss would not be assignable to any of the ISRS-eligible
12 plant or infrastructure included in this case.

13 Mr. Riley, our tax expert, explains that an
14 NOL is not a regulatory asset but a tax return item. An
15 NOL is an accounting fiction where for tax return
16 purposes a company reports deductions higher than its
17 reported revenues. And even if inclusion of an NOL here
18 were appropriate, which it is not, Missouri-American has
19 not had any net operating loss during the period of
20 January 1 through September 2018, which is the period
21 covered by this ISRS.

22 This is not a cost of service rate case where
23 an NOL may be considered. An ISRS case is an exception
24 to the mandated cost of service rate case procedure
25 which considers all revenues and all expenses. In this

Page

1 NOL case, all revenues and expenses are not considered
2 and it is very specific. It has been very specifically
3 limited by the Court. That's all I have. Thank you.

4 JUDGE HATCHER: Thank you. Now we'll move on
5 to witnesses, and according to the prefiled witness
6 testimony list we will start with Brian LaGrand.

7 MR. COOPER: Yes. Missouri-American will call
8 Mr. Brian LaGrand.

9 JUDGE HATCHER: Mr. LaGrand, before you sit
10 down.

11 (Witness sworn.)

12 JUDGE HATCHER: Thank you. Please be seated.
13 Mr. Cooper, go ahead.

14 MR. COOPER: Your Honor, I don't remember
15 whether we spoke about it earlier with you but I think
16 that counsel had some conversation about this. But
17 because of the shortness of the procedural schedule, the
18 parties made provision for some live rebuttal when
19 witnesses are on the stand. So my plan is to go through
20 the foundation for Mr. LaGrand's prefiled direct
21 testimony, do a few rebuttal testimony questions for him
22 and then tender him for cross unless someone has a
23 different opinion as to how we're going to do that.

24 JUDGE HATCHER: I'm seeing nods and no
25 differing opinions. Please, Mr. Cooper.

Page

1 BRIAN LaGRAND, being sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. COOPER:

3 Q. Please state your name.

4 A. My name is Brian W. LaGrand, L-a-G-r-a-n-d.

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

6 A. Missouri-American Water. I'm the rates
7 director for the state of Missouri.

8 Q. Have you caused to be prepared for the
9 purposes of this proceeding certain direct testimony in
10 question and answer form?

11 A. Yes, I have.

12 Q. Is it your understanding that that testimony
13 has been marked as Exhibit 1 for identification?

14 A. Yes.

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

17 A. No, I do not.

18 Q. If I ask you the questions which are contained
19 in Exhibit 1 today, would your answers be the same?

20 A. They would.

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

23 A. Yes.

24 MR. COOPER: Your Honor, at this time I would
25 offer Exhibit 1 into evidence.

Page

1 JUDGE HATCHER: Are there any objections?

2 MS. SHEMWELL: No.

3 MR. JOHNSON: No, Judge.

4 JUDGE HATCHER: So admitted. Go ahead.

5 (MAWC'S EXHIBIT 1 WAS RECEIVED INTO EVIDENCE
6 AND MADE A PART OF THIS RECORD.)

7 BY MR. COOPER:

8 Q. Mr. LaGrand, have you had a chance to review
9 the testimony of the Staff and the OPC in this case?

10 A. Yes, I have.

11 Q. You may recall I believe Staff Witness
12 Ferguson describes in her testimony that, let's see, she
13 describes the reflection of the deferred tax asset as an
14 extra step. Do you remember that?

15 A. I do. Can you point me to the page? I
16 believe it's page 3?

17 Q. Yeah, page 3, line 4, I believe.

18 A. Yes.

19 Q. Do you believe that there's another extra step
20 that's included in MAWC's ISRS filing?

21 A. Yes. One of the main drivers behind the extra
22 step of including the deferred -- the net operating loss
23 deferred tax asset was the inclusion of the repairs
24 deduction which our company is entitled to take under
25 IRS rules.

Page

1 Q. But is not necessarily reflected -- or related
2 to ISRS-eligible plant? Well, let me back up. Have you
3 done any review of other companies' filings to see how
4 that is treated in gas ISRS filings, for example?

5 A. Yes, yes, I have. I looked at the ISRS cases
6 that were filed over the last four years or so and did
7 not find any other utility that had included the repairs
8 deduction in their ISRS calculations.

9 Q. Have you had the opportunity to compute what
10 MAWC's revenue requirement for ISRS would be in this
11 case if neither the NOL or the asset nor the repairs
12 deduction were reflected in the filing?

13 A. Yes, I did.

14 Q. What would be the amount of the revenue
15 requirement in that situation?

16 A. Keeping all other calculations identical, if
17 we remove the repairs deduction and the net operating
18 loss from the calculation, the revenue requirement would
19 be \$7,202,462 on an annualized basis.

20 Q. Do you have a document that shows how you
21 arrived at that number?

22 A. Yes, I have an updated version of Appendix C
23 which was attached to our application and is, I believe,
24 included as Exhibit 1 to my testimony. It's an update
25 to those numbers.

Page

1 MR. COOPER: Your Honor, I'd like to mark an
2 exhibit. I believe it would be Exhibit No. 7 on our
3 list. This would be ISRS calculation without NOL or
4 repairs deduction.

5 MS. SHEMWELL: Dean, we've already marked some
6 of our exhibits as 7, 8 and 9. So perhaps the court
7 reporter --

8 MR. COOPER: I apologize.

9 MS. SHEMWELL: I just didn't know.

10 (EXHIBIT 10 WAS MARKED FOR IDENTIFICATION BY
11 THE COURT REPORTER.)

12 MR. COOPER: So I amend that, Your Honor. It
13 will be Exhibit No. 10.

14 JUDGE HATCHER: Can I ask what page
15 specifically or is it the entire additional Exhibit 1 or
16 Schedule BWL-1?

17 MR. COOPER: It will be -- It will be an
18 entire equivalent of that. So I'm going to hand out
19 copies here.

20 JUDGE HATCHER: Please go ahead.

21 BY MR. COOPER:

22 Q. Mr. LaGrand, you have before you what's been
23 marked as Exhibit 10?

24 A. Yes.

25 Q. Would you describe that to me?

Page

1 A. Sure. It is a calculation of the revenue
2 requirement for ISRS, and the only change from what is
3 included in our exhibits, or excuse me, in the
4 attachment to my direct testimony is this shows what the
5 revenue requirement would be if we removed the repairs
6 deduction and removed the net operating loss.

7 Q. Is this a document you prepared yourself?

8 A. Yes, I did.

9 MR. COOPER: Your Honor, I would offer into
10 evidence Exhibit No. 10.

11 JUDGE HATCHER: Are there any objections?

12 MS. SHEMWELL: No.

13 JUDGE HATCHER: So admitted.

14 (MAWC'S EXHIBIT 10 WAS RECEIVED INTO EVIDENCE
15 AND MADE A PART OF THIS RECORD.)

16 MR. COOPER: That's all the questions I have
17 at this time for Mr. LaGrand.

18 JUDGE HATCHER: Thank you. Chairman Silvey?

19 CHAIRMAN SILVEY: Thank you.

20 QUESTIONS BY CHAIRMAN SILVEY:

21 Q. Did I understand you to say that you have
22 reviewed the ISRS applications of the gas companies for
23 the last several years and none of them have included
24 what it is that you're asking for?

25 A. Based on my review, I could not identify that
Page

1 any of them had included the repairs deduction when
2 calculating their deferred taxes.

3 Q. Okay. And has Missouri-American ever included
4 them in past ISRS applications?

5 A. I would have -- I believe that we have. I
6 believe that we have included them, but we have not
7 previously included the deferred tax asset that results.

8 Q. Did your review of the gas ISRSs include the
9 deferred tax asset?

10 A. To the extent the applications included that
11 detail, I did look at that and they didn't all have the
12 same level of detail.

13 Q. So did they or did they not include that?

14 A. The ones that provided the detail, they showed
15 accelerated depreciation, bonus depreciation but did not
16 include the repairs in their deferred tax calculations.

17 Q. Okay. And you believe that Missouri-American
18 has made similar ISRS applications to this Commission in
19 the past, including what you're asking?

20 A. Yes.

21 Q. Okay.

22 A. May I ask a clarifying question?

23 Q. Sure.

24 A. When you say with what we're asking, do you
25 mean including the repairs deduction or including the

Page

1 NOL deferred tax asset?

2 Q. Either or both.

3 A. In the last ISRS application, we did include a
4 deferred tax asset.

5 Q. And the Commission awarded it?

6 A. That case was settled.

7 Q. Was it in the settlement?

8 A. It was a black box.

9 CHAIRMAN SILVEY: Okay. All right. Thank
10 you.

11 THE WITNESS: Sure.

12 JUDGE HATCHER: Any other questions from the
13 bench?

14 COMMISSIONER COLEMAN: No.

15 COMMISSIONER HALL: I'll have questions after
16 they do cross.

17 JUDGE HATCHER: Let's go ahead then to
18 cross-examination. The order I have filed was Office of
19 Public Counsel.

20 MS. SHEMWELL: Thank you.

21 CROSS-EXAMINATION BY MS. SHEMWELL:

22 Q. Good morning, Mr. LaGrand. I'm Lera Shemwell.

23 A. Good morning.

24 Q. Mr. LaGrand, could you explain to me perhaps
25 in a little more detail what Exhibit 10 replaces?

Page

1 A. Yes, it is a -- Exhibit 1, I believe it's
2 Exhibit 1 or Attachment 1 to my direct testimony, is the
3 Company's calculation of the revenue requirement after
4 Staff's evaluation and we removed some items that should
5 not have been included in the ISRS calculation. In the
6 Attachment 1 of my testimony, the only difference
7 between our calculation and Staff's calculation is the
8 inclusion of the net operating loss.

9 The only difference between this exhibit and
10 Staff's calculation is this removes the repairs
11 deduction to show what the revenue requirement would be
12 if the repairs deduction was not included in the
13 calculation. So that's the only difference between this
14 calculation and Staff's calculation.

15 MR. CLIZER: Good morning. Sorry.

16 MS. SHEMWELL: I'm sorry. We're a little --
17 Let me just finish.

18 MR. CLIZER: Apologies.

19 BY MS. SHEMWELL:

20 Q. I reviewed in EFIS the Company's ISRS filings
21 back through 2010 and did not see net operating loss
22 included when I reviewed that either in testimony or in
23 the Commission's order. Is it 2013 that you believe it
24 was included but then black boxed in a settlement?

25 A. No, it was in the most recent ISRS case that
 Page

1 the company had. I don't have the number off the top of
2 my head. It was the ISRS that took effect in December
3 of 2017.

4 Q. So since it was a black box, you have no
5 affirmative Commission decision that NOL was, in fact,
6 included in that black box?

7 A. Correct.

8 Q. And other than that, you have not claimed NOL
9 in prior ISRS cases?

10 A. Not to my knowledge.

11 Q. Is there any other type of case in which
12 you've asked the Commission to address NOL in a revenue
13 calculation?

14 A. Not to my knowledge.

15 Q. Do you agree with me that NOL does not attach
16 to any particular asset?

17 A. I would have to defer that question to John
18 Wilde who is our tax expert. I'm not a tax expert.

19 Q. Do you know whose responsibility it is if
20 there's an IRS normalization violation, whose
21 responsibility it is to report that?

22 A. Again, I would defer that to John Wilde.

23 Q. Do you know if Missouri-American Water has
24 reported a normalization violation to the IRS?

25 A. Excuse me. Again, I would have to defer that
Page

1 to Mr. Wilde.

2 Q. Does Missouri-American Water -- yes, does
3 Missouri-American Water file a separate tax return to
4 the IRS?

5 A. I believe so, but I would defer that to Mr.
6 Wilde who is much more familiar with how that all works.

7 Q. The Company had submitted its ISRS and
8 included in that ISRS, and this is covered in Staff's
9 memo, the Company removed lead line service replacements
10 from its filing; is that correct?

11 A. That is correct. There were some that were
12 included in error.

13 Q. And then the Staff discovered some other costs
14 that were not ISRS eligible, including repairs to
15 customer-owned appliances and equipment?

16 A. Yes.

17 Q. Duplicate charges of about \$25,000?

18 A. Yes.

19 Q. Installation of new service lines?

20 A. Yes.

21 Q. And then some additional customer lead service
22 line replacement costs and those have been removed from
23 Staff's calculation; is that your understanding?

24 A. Yes, and from the attachment to my direct
25 testimony.

Page

1 Q. That we just went through?

2 A. Yes.

3 MS. SHEMWELL: Okay. Thank you. That's all I
4 have. Thank you.

5 JUDGE HATCHER: Go ahead.

6 MR. JOHNSON: Thank you, Judge.

7 CROSS-EXAMINATION BY MR. JOHNSON:

8 Q. Good morning, Mr. LaGrand.

9 A. Morning.

10 Q. Does Missouri-American currently reflect an
11 NOL carry-forward on its books as a deferred tax asset?

12 A. I would have to defer to Mr. Wilde.

13 Q. Is Missouri-American able to break out an
14 amount of its current NOL carry-forward deferred tax
15 asset between items caused by ISRS plant additions or
16 non-ISRS plant additions?

17 A. Again, I would have to defer to Mr. Wilde on
18 that.

19 Q. Was Missouri-American's NOL carry-forward
20 deferred tax asset balance as of December 31, 2017
21 reflected in rate base in Missouri-American's last
22 general rate case?

23 A. Yes, I believe so.

24 Q. And did inclusion of this deferred tax asset
25 have the effect of increasing Missouri-American's rate
Page

1 base?

2 A. I don't have the numbers in front of me, but
3 in general the deferred tax would reduce the deduction
4 to rate base so would increase rate base.

5 Q. Has the overall balance of Missouri-American's
6 NOL carry-forward deferred tax asset declined since year
7 end 2017?

8 A. Yes.

9 Q. And is this decline projected to continue past
10 September 2018?

11 A. Yes.

12 Q. Do you know how long the Company expects this
13 balance to decline?

14 A. I would direct that to Mr. Wilde. He'll have
15 a better sense for the time when that NOL will be used
16 up entirely.

17 Q. Are you familiar with the calculations on
18 pages 12 and 13 of Mr. Wilde's direct testimony that
19 concern an asserted increase to Missouri-American's NOL
20 carry-forward?

21 A. I mean, I am not familiar with how they were
22 calculated. I would again direct that to Mr. Wilde.

23 Q. Do you agree with Mr. Wilde's calculation?

24 A. Well, yeah, he is our company's tax expert.
25 So yes, I would agree with his calculations.

Page

1 Q. Mr. Wilde projects approximately \$36.9 million
2 of an increase -- excuse me. Let me rephrase that. Mr.
3 Wilde's calculation shows an increase to
4 Missouri-American's NOLC of approximately \$36.9 million
5 during the ISRS period. Where can I find that 36.9
6 million recorded in Missouri-American's books during the
7 ISRS period?

8 A. I would direct that to Mr. Wilde.

9 Q. Has Missouri-American made non ISRS-eligible
10 plant additions so far in 2018?

11 A. Yes.

12 Q. Has Missouri-American generated additional
13 amounts of NOL carry-forward in 2018 on account of those
14 non-ISRS plant additions?

15 A. I would presume so, but I would confirm that
16 with Mr. Wilde.

17 Q. Do you know what amounts of NOLC is
18 attributable to those plant additions?

19 A. No, I do not.

20 Q. Do you know where I can find that amount of
21 additional NOLC attributable to those non-ISRS plant
22 additions in Missouri-American's books and records for
23 2018?

24 A. Again, I would defer to Mr. Wilde.

25 Q. Is it Missouri-American's position that it is
Page

1 improper to include its repairs allowance deduction in
2 an ISRS calculation?

3 A. I don't know that I would say that it's
4 improper. It is an incremental.

5 Q. Thank you, Mr. LaGrand. If the Commission
6 were to remove the repairs allowance from ISRS, is it
7 your opinion that this would make the NOL issue moot?

8 A. I would defer to Mr. Wilde on that.

9 Q. Is the repairs allowance deduction the only
10 driver of Missouri-American's NOL calculation in this
11 proceeding?

12 A. No. There would still be a very small NOL
13 resulting if you remove the repairs deduction.

14 Q. Would that small amount be associated with
15 accelerated depreciation deductions?

16 A. Yes.

17 MR. JOHNSON: I have no further questions.
18 Thank you.

19 JUDGE HATCHER: Questions from the bench?
20 Chairman?

21 COMMISSIONER HALL: Morning -- oh, I'm sorry.

22 QUESTIONS BY CHAIRMAN SILVEY:

23 Q. Just real quickly to touch on kind of my
24 previous line of questioning. If this is something that
25 has not been explicitly included in the previous

Page

1 applications and may not have been included in the black
2 box settlement, do you believe that this ISRS
3 application is the appropriate mechanism to address this
4 or would it be better addressed in a general rate case?

5 A. Well, I think in this ISRS application we were
6 trying to include all the incremental costs associated
7 with the ISRS investment and the repairs deduction
8 results in a larger tax increase, or excuse me, a tax
9 deduction that in our original application we were
10 trying to include. Yeah, I'm not sure what the best --

11 Q. I guess my question is why now and why not in
12 previous applications? What's the difference between
13 this ISRS application and why you haven't sought this in
14 previous applications?

15 A. So we have included the repairs deduction in
16 previous applications, but the deferred tax asset offset
17 resulting from those was included in the most recent
18 application. As far as why we have not included it in
19 prior applications, I would have to -- I think Mr. Wilde
20 would probably be in a better position to answer that
21 question than I can.

22 CHAIRMAN SILVEY: Okay. Thank you.

23 JUDGE HATCHER: Commissioner Hall?

24 QUESTIONS BY COMMISSIONER HALL:

25 Q. Good morning.

Page

1 A. Good morning.

2 Q. Exhibit 10, can you walk through the changes
3 that you made and why?

4 A. Sure. Give me just one moment.

5 Q. Okay.

6 A. So in Exhibit 10, and I think I would -- I'll
7 discuss the changes that went from Schedule 1 of my
8 testimony to Exhibit 10, if that's okay?

9 Q. Yes, that's what I'm asking.

10 A. So there really were only two changes that
11 were made. The amount of investment, everything is
12 depreciation expense, everything is all the same in both
13 cases.

14 In Exhibit 10, I had -- the two changes were,
15 one, I eliminated including any NOL from the
16 calculation.

17 Q. Okay. What line are you referring to?

18 A. You would actually -- You would see it on --
19 If you look at page 2 of Exhibit 10.

20 Q. Okay. I mean, the first number that is
21 different is on line 7, deferred taxes?

22 A. Yes.

23 Q. So if you could march me through Exhibit 10
24 and explain what you've done differently? Are you going
25 back to -- Okay. All right. Continue.

Page

1 A. Okay. So if you look at page 2 of both
2 Exhibit 10 and the Schedule 1 to my testimony, the two
3 changes you can see on line 14 I excluded the repairs
4 deduction. So that is one change and the most
5 substantial. And then on line 55, I have excluded an
6 NOL, and those two changes are what then results in the
7 lower amount of deferred income taxes.

8 Q. So it goes from 473,307 to a negative 185,031?

9 A. Correct.

10 Q. So that's like 650,000?

11 A. Approximately, yes.

12 Q. Okay. Is that the only change?

13 A. That's the only difference between the two
14 schedules.

15 Q. So why is your number different from Staff's
16 number after you make that change?

17 A. The only difference between our numbers is
18 that Staff is including the repairs deduction so they
19 have a much larger deferred tax liability or reduction
20 to rate base.

21 Q. I thought the repairs deduction is what
22 generates the NOL.

23 A. That contributes to the vast, vast majority of
24 the NOL or that causes the vast majority I should say.

25 Q. So why is it that getting rid of that repairs
 Page

1 deduction doesn't get you on the same page as Staff?

2 A. Because Staff's number is including the
3 repairs deduction and thus they have a large deferred
4 tax liability which reduces the rate base.

5 Q. Can you turn to the direct testimony of
6 Mr. Oligschlaeger. Do you have that in front of you?

7 A. I do, yes. Give me just one moment, sir.
8 Okay.

9 Q. On page 6 I want to know if you agree with
10 this language on 22 and 23 on page 6. Do you agree with
11 that?

12 A. Yes.

13 Q. So how are -- So would you say that repairs
14 are directly associated with qualifying ISRS plant?

15 A. I believe so, although I would suggest Mr.
16 Wilde has a much deeper understanding of the repairs
17 deductions specifically and could probably give you a
18 more thorough description of that than I can.

19 Q. Okay. And then turning to page 7, lines 23
20 and 24 and then on to page 8, line 1, this appears to me
21 to be Mr. Oligschlaeger's attempt to explain
22 Missouri-American's position. And I want to know if you
23 agree with his characterization of your position.

24 A. I would say generally, although I think we
25 would disagree that the reduction is theoretical, page
Page

1 8, line 2. Mr. Wilde I think will be addressing that.

2 Q. Okay. Okay. And then final line of
3 questioning and it's related to, I believe, the issue
4 that Chair Silvey was getting at. Is there something
5 going on related to the recent tax cut and its effect on
6 ADIT accounting that has caused this controversy? I'm
7 trying to understand better why it is that this issue is
8 coming to a head now.

9 A. I don't know that the Tax Cuts and Jobs Act
10 has specifically driven this issue, but again I would
11 recommend Mr. Wilde could answer that with more depth.

12 COMMISSIONER HALL: Thank you.

13 JUDGE HATCHER: All right. Then we move to
14 recross and I think that would go back to Public Counsel
15 first.

16 MS. SHEMWELL: Thank you.

17 RECROSS-EXAMINATION BY MS. SHEMWELL:

18 Q. Mr. LaGrand, when will Missouri-American Water
19 or American Water file its 2018 tax return?

20 A. I mean, I know sometime in 2019, but I don't
21 know specifically. Mr. Wilde could easily answer that
22 question.

23 Q. But you haven't filed anything for 2018?

24 A. Not to my knowledge.

25 Q. So can you explain how the NOL could be
Page

1 concrete as opposed to hypothetical when you haven't
2 filed your 2018 tax returns?

3 A. I would again direct that to Mr. Wilde.

4 Q. Because NOL is a tax return item?

5 A. I mean, yes, it does appear on the tax return,
6 yes.

7 MS. SHEMWELL: That's all I have. Thank you.

8 THE WITNESS: Okay.

9 JUDGE HATCHER: Mr. Johnson?

10 MR. JOHNSON: Thank you, Judge.

11 RECROSS-EXAMINATION BY MR. JOHNSON:

12 Q. Mr. LaGrand, did Missouri-American include the
13 repairs deduction in its initial application in this
14 proceeding?

15 A. Yes.

16 Q. Did Staff's recommendation agree with that
17 inclusion?

18 A. Yes.

19 Q. Did the Company respond to Staff's
20 recommendation?

21 A. We did.

22 Q. Did the Company allege that the inclusion of
23 the repairs deduction was improper at that time?

24 A. No.

25 Q. I believe just a short time ago I asked you
Page

1 whether it was your opinion if including the repairs
2 deduction was improper and you characterized it as not
3 improper; is that correct?

4 A. I don't recall exactly how I phrased it.

5 Q. Generally is that correct?

6 A. Yes.

7 Q. If the inclusion is not improper and the
8 Company included it in its initial position, Staff
9 agreed with that inclusion, why now would the Company
10 recommend removing it?

11 A. Well, we are presenting Exhibit 10 as an
12 alternative --

13 Q. Thank you, Mr. LaGrand. Is that essentially a
14 settlement offer?

15 A. I don't know that I'd characterize it as that.

16 Q. Thank you. Would you agree that the tax cut
17 -- well, excuse me. I believe Commissioner Hall asked
18 you a question regarding if there was anything in the
19 Tax Cuts and Jobs Act that may be causing the NOL issue.
20 Would you agree that the Tax Cuts and Jobs Act has
21 precluded the use of bonus depreciation by utility
22 companies?

23 A. That is my understanding, yes.

24 Q. Would you agree that the use of bonus
25 depreciation has been a large driver for utility

Page

1 companies to be in net operating loss situations?

2 A. That's my general understanding.

3 Q. Wouldn't you also agree that the exclusion of
4 bonus depreciation would have the opposite effect?

5 A. Yeah, yes.

6 MR. JOHNSON: I have no further questions.
7 Thank you.

8 JUDGE HATCHER: And redirect, Mr. Cooper?

9 MR. COOPER: Briefly, Your Honor.

10 REDIRECT EXAMINATION BY MR. COOPER:

11 Q. And you may have taken care of this a few
12 minutes ago. Early on Ms. Shemwell asked you, I
13 believe, whether Exhibit 10 was meant to replace
14 Schedule BWL-1. Does it replace that or does it provide
15 an alternative?

16 A. I would say it provides an alternative.

17 Q. I believe that Commissioner Hall asked you
18 about, you know, why your alternative wasn't on the same
19 page as Staff's number. Are those two numbers close,
20 your alternative and Staff's? Well, I'm sorry. Are the
21 numbers between the original proposal, including both
22 repairs deduction and the NOL, very close to your
23 alternative that reflects the removal of both repairs
24 deduction and the NOL?

25 A. Yes. The revenue requirement in the Exhibit 1
Page

1 -- Attachment 1 to my direct testimony and Exhibit 10
2 are relatively close.

3 Q. Ms. Shemwell asked you whether, again, whether
4 the NOL was a tax return item. Do you remember that?

5 A. I do.

6 Q. Is it your understanding that an NOL was also
7 reflected in Missouri-American's base rate or rate base
8 calculation in its last general rate case?

9 A. Yes.

10 MR. COOPER: That's all the questions I have.

11 JUDGE HATCHER: Thank you. And I notice the
12 time is just after 10:15. Again, I would reference the
13 note in filings that Mr. Wilde is expected to be here
14 after 10:30. Do we have any updates on that or any
15 requests to go to other witnesses? Why don't we go off
16 the record for a few minutes.

17 MR. COOPER: That would be great.

18 JUDGE HATCHER: Let's go off the record.

19 (Off the record.)

20 JUDGE HATCHER: All right. Let's go back on
21 the record. Mr. Cooper, call your next witness.

22 MR. COOPER: Thank you, Your Honor.
23 Missouri-American would call Mr. John Wilde to the
24 stand.

25 JUDGE HATCHER: Mr. Wilde, please raise your
Page

1 right hand.

2 (Witness sworn.)

3 JUDGE HATCHER: Thank you. Please be seated.

4 JOHN WILDE, being sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. COOPER:

6 Q. Please state your name.

7 A. John R. Wilde.

8 Q. And by whom are you employed and in what
9 capacity?

10 A. American-Water Service Company as Assistant
11 Vice President of Tax.

12 Q. Have you caused to be prepared for the
13 purposes of this proceeding certain direct testimony in
14 question and answer form?

15 A. Yes, I have.

16 Q. Is it your understanding that the testimony
17 has been marked as Exhibit 2 for identification?

18 A. Yes, it is.

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

21 A. No, I do not.

22 Q. If I asked you the questions which are
23 contained in Exhibit 2 today, would your answers be the
24 same?

25 A. Yes, they would.

Page

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

3 A. Yes, they are.

4 MR. COOPER: Your Honor, I would at this time
5 offer Exhibit 2 into evidence.

6 JUDGE HATCHER: Any objections?

7 MS. SHEMWELL: No.

8 MR. JOHNSON: No.

9 JUDGE HATCHER: So admitted. Go ahead.

10 (MAWC'S EXHIBIT 2 WAS RECEIVED INTO EVIDENCE
11 AND MADE A PART OF THIS RECORD.)

12 BY MR. COOPER:

13 Q. Mr. Wilde, have you had a chance to review the
14 direct testimony of both the Staff and the OPC in this
15 case?

16 A. Yes, I have.

17 Q. I believe that Staff's primary objection to
18 MAWC's claim that a net operating loss or a deferred tax
19 asset should be reflected is that that NOL is
20 hypothetical and not directly attributable to the ISRS
21 plant at issue. Do you agree with that allegation?

22 A. I do not.

23 Q. Why not?

24 A. The NOLC that American-Water is carrying --

25 Q. Why don't we start with --

Page

1 A. -- and Missouri-American Water and American
2 Water is carrying is real. It's stated on the tax
3 return, each of the previous years all the way back
4 before 2008. It won't be fully utilized based on
5 estimates today until 2019, 2020. If you look at the
6 2018 tax return, line 30 of that return will be zero.
7 If you take the ISRS into account, line 29 of that tax
8 return will be higher than it would be without. Line
9 29A net operating loss will decrease proportionately.
10 So therefore, there is an adjustment to the NOL that
11 occurs on the tax return as a result of these
12 expenditures.

13 Q. Let me ask you a few questions for
14 clarification. You referred early on to NOLC. That
15 stands for?

16 A. Net operating loss carryover.

17 Q. And then you referred to line 30 from the
18 federal tax return. What is line 30?

19 A. Taxable income, federal taxable income.

20 Q. And I believe you also mentioned line 29A.
21 Maybe you didn't.

22 A. Total deductions.

23 Q. Now, it's also alleged, and I think
24 particularly in Staff Witness Ferguson's direct
25 testimony she states that the existence of a

Page

1 hypothetical net operating loss will always result from
2 essentially the Company's calculation whether the
3 utility is actually recording an NOL amount on its books
4 or not. Do you agree with that assertion?

5 A. No. You have to be in an NOLC position of an
6 amount greater than the ISRS deductions in order for
7 that to occur on a with and without basis as required by
8 the IRS.

9 Q. It's also alleged that MAWC is not generating
10 or booking any actual NOL, net operating loss, during
11 this ISRS period. Do you agree with that?

12 A. No. As I described, we're -- that number is
13 in flux as to what it will be, the balance will be at
14 the end of the year, depending on what our expenditures
15 are, depending on what our income is during the given
16 year. So that NOLC will change. Now, on a vintaged
17 basis it's a vintaged calculation, but it still just
18 evolves over time. It's just on a first-in, first-out
19 basis that you kind of use it.

20 Q. But you believe that it's associated with the
21 plant that's been put in service between January 1 of
22 this year and September 30 of this year?

23 A. I believe when you look at it incrementally as
24 you should, and you look at whether you make a choice as
25 to whether you invest in ISRS or infrastructure or not,
Page

1 yes, it is associated with this particular property.

2 Q. There's been discussion of normalization rules
3 and applicability to a general rate case versus a
4 single-issue proceeding that might impact only a
5 surcharge such as the ISRS. In your opinion, do the
6 normalization rules apply to a single-issue proceeding
7 impacting only a surcharge such as this ISRS case?

8 A. I think prior to, I can't remember the year
9 that FERC made the ITC request, but there was a thought
10 that the normalization rules didn't have to be applied
11 in the context of a formula rate mechanism, but that was
12 kind of ruled out in the rulings related to the ITC
13 where bonus was considered as whether it was required, a
14 utility was required to take bonus or not in a formula
15 rate proceeding. And it was ruled -- I think that was
16 like two or three years ago where that was ruled that
17 formula rate mechanisms are treated just like a rate
18 case as a separate distinct rate proceeding.

19 Q. You say formula, but you would also apply that
20 to sort of a single-issue proceeding such as the ISRS?

21 A. Where it's a cost of service mechanism, yes.

22 MR. COOPER: That's all the questions I have
23 at this time.

24 JUDGE HATCHER: Thank you. We'll go ahead and
25 go with cross-examination, Office of Public Counsel?

Page

1 MS. SHEMWELL: Thank you.

2 CROSS-EXAMINATION BY MS. SHEMWELL:

3 Q. Mr. Wilde, I'm Lera Shemwell. I represent the
4 Public Counsel and the public. Good morning.

5 A. Nice to meet you.

6 Q. We heard from Mr. LaGrand that MAWC has only
7 included net operating loss in the 2017 ISRS. Is that
8 your understanding?

9 A. I believe so.

10 Q. If I say to you that I've looked through all
11 of the past ISRS to about 2000 and didn't see that in
12 there, would that make sense to you?

13 A. I wasn't with the Company prior to 2016. So
14 I'd have to go back and look at the exact facts, but I
15 also understand that not only Missouri-American Water
16 but other companies in the state of Missouri in their
17 ISRS calculation do not do repairs. So if you don't
18 have repairs in that calculation, there could be
19 situations where you don't need to account for the DTA
20 as well.

21 Q. DTA?

22 A. Deferred tax asset. I'm sorry. So that NOL
23 DTA.

24 Q. So you don't have any past Commission order in
25 an ISRS case affirmatively including a NOL -- or an NOL?

Page

1 A. No.

2 Q. Thank you. If the Company has a violation of
3 the IRS normalization rules, whose responsibility is it
4 to report that violation?

5 A. It would be the Company's.

6 Q. Have you made any such reports to the IRS?

7 A. No. There's also an inadvertent error
8 exception. So you wouldn't necessarily --

9 Q. I'm sorry. I don't know what that means.
10 Let's just move, on if that's all right with you. This
11 is not a formula rate proceeding, correct?

12 A. It's a formula calculation of an additional
13 incremental rate mechanism or surcharge. So would I
14 distinguish the two? No.

15 Q. You're saying that this is a formula rate
16 proceeding?

17 A. With respect to a single-issue item. So you
18 have a rate base component and you have a cost of
19 service component or revenue requirement component. So
20 it's not really distinguishable.

21 Q. Let's back up a little bit. The FERC formula
22 rate considers all revenues and expenses. The FERC
23 formula transmission rate considers all of those things?

24 A. Yes, and that's why I classified it just
25 slightly different as a single-issue item.

Page

1 Q. This is a single-issue item as you said, and
2 are you aware of any cases in Missouri that have made
3 the distinction of this being a single issue as opposed
4 to a full cost of service rate case?

5 A. In Missouri with respect to the Missouri
6 Commission?

7 Q. Or the Court rulings?

8 A. The IRS in -- not with respect to Missouri --

9 Q. No, I'm talking about Missouri courts.

10 A. I'm not aware of one.

11 Q. When is your 2018 tax return filed?

12 A. It will be in '19.

13 Q. Carryover means you're bringing forward from
14 year to year?

15 A. Correct.

16 Q. An NOL is not attached to any certain
17 infrastructure, any particular asset?

18 A. You're correct with that.

19 Q. Your NOL level is going to change. So it's
20 not certain what that amount will be today?

21 A. It's not certain.

22 Q. Is it your position that the Company needs an
23 incentive to invest in ISRS-eligible infrastructure?

24 A. I would say it's always a factor of how much
25 you invest or when you invest. I'm sure reliability and
Page

1 quality of the water and wastewater service is a
2 principal factor.

3 Q. You're saying quality of the water is a
4 principal factor of whether or not you invest in ISRS?

5 A. Whether we invest in our system, ISRS itself
6 at my understanding of it is an incentive mechanism to
7 carry those investments outside of the rate case and
8 simplify the ratemaking process.

9 Q. You believe that it -- let's see. We have
10 established, haven't we, that this is not a full rate
11 case?

12 A. This is not a full rate case.

13 Q. It's a single-issue rate case. Those were
14 your words?

15 A. Single-issue rate mechanism.

16 Q. You mention on page 6 the intent -- I'm sorry.
17 Line 3, 4, 5. Are you there, sir?

18 A. Page 6, yes, I am. Lines what?

19 Q. 3, 4, 5. It says the intent of Congress in
20 creating the normalization rules, is to provide the
21 utility an interest-free source of funds to invest in
22 utility property. What's your citation for that, the
23 intent of Congress?

24 A. Actually in some preceding words to the TCJA
25 that was mentioned but it's also in -- there's the

Page

1 Bluebook, Congressional Bluebook that would discuss that
2 from 1986.

3 Q. The TCJA? Tell the court reporter what that
4 means, please.

5 A. Tax Cuts and Jobs Act of 2017. I apologize
6 for the acronym.

7 Q. It just helps everybody to have an idea.

8 A. I gotcha. That's a pretty well known
9 stipulation as to why the tax normalization rules are
10 put in place.

11 Q. Sir, no question pending. Thank you. I'm on
12 page 8, line 10, 11 and 12. And you say as part of a
13 normalized method of accounting, and consistent with tax
14 normalization rules, the cumulative balance of
15 plant-related deferred taxes is treated as a zero
16 interest loan from the government, but the government
17 doesn't give you the money that goes into that zero
18 interest loan, it's the customers, right?

19 A. No. The customers pay the tax on their
20 operating cost or operating revenues to provide an
21 adequate return and the Company invests money. So the
22 shareholders invest money. The deductions are on the
23 shareholders' money.

24 Q. I'm sorry. I was talking about the
25 government. I'm not sure where shareholders came into

Page

1 this.

2 A. Because you get an incentive, you reduce your
3 tax burden that would otherwise exist. Customers don't
4 pay a different tax. You don't get a loan from a
5 customer. That's pretty well -- I'm not really --
6 That's not something I came up with. That's pretty much
7 outlined in --

8 Q. But the government doesn't put in any money
9 into this. That's all taxpayer funds that they have
10 paid for income taxes and then those moneys paid are
11 deferred under accumulated deferred income tax?

12 A. Again, what -- it's a tax incentive that you
13 get from the government. Not-- it doesn't come from a
14 customer. I don't pay the customer back interest. I
15 don't pay the government interest.

16 Q. But they just recognize that. The government
17 recognizes that. There's no taxpayer money. It's not
18 actually from the government. It is the money going in
19 there is from your ratepayers. It's not from the
20 Company, right? It's not Company money. It comes from
21 ratepayers who have paid the taxes?

22 A. We're using customer money from other income
23 from their normal operations and we're taking a tax
24 incentive from the government that we'll have to return
25 in the future, and so the incentive itself is from the

Page

1 government, not from the customer.

2 Q. The incentive is the government permitting you
3 to do that with your customers' money.

4 A. I guess we're going to have to disagree on
5 that. I don't know how else to answer it. I understand
6 that the customer is paying a cost of service for the
7 taxes, but the cost of service on the taxes that they're
8 paying is not related to this property. It's related to
9 --

10 Q. It's not related to the ISRS property?

11 A. If you would take away ISRS, they would have
12 the same tax burden and actually they would actually pay
13 the tax in today.

14 Q. Yes. Okay. But on page 15 you say that zero
15 interest loan is actually received from the government,
16 but that money is received from customers?

17 A. Again, I'm kind of citing typical tax wording.
18 You can find that in private letter rulings. You can
19 find that --

20 Q. Can you cite me to a private letter ruling?

21 A. We submitted some into the record. I'd have
22 to go back and look and find it exactly. Typically tax
23 folks cast an interest-free loan from the government,
24 not an interest-free loan from the customer. If you
25 give me time, I'll find it, I'll find the citation.

Page

1 Q. Can we agree that customers have put the money
2 in?

3 A. Customers paid their taxes on their
4 operations.

5 Q. Okay. On page 9, you indicate that a finding
6 by the IRS during an audit that the Company violated the
7 tax normalization rules or the consent decree could
8 cause the loss of significant tax benefits. However, we
9 have agreed earlier that for that to incur the Company
10 would have to report that tax normalization violation to
11 the IRS itself?

12 A. It would have to believe a normalization
13 violation occurred.

14 Q. The Company?

15 A. The Company. I believe also the Commission
16 could also self report.

17 Q. But the Commission doesn't have any tax
18 normalization violation to self report.

19 A. Yes. That's why it typically comes from the
20 taxpayer. I believe I've known that there's at least
21 one case, and I don't know which one it is, I'd have to
22 go back and look where the Commission actually reported.

23 MS. SHEMWELL: That's all I have. Thank you.

24 JUDGE HATCHER: Thank you. Mr. Johnson?

25 MR. JOHNSON: Thank you, Judge.

Page

1 CROSS-EXAMINATION BY MR. JOHNSON:

2 Q. Good morning, Mr. Wilde. I'm Mark Johnson. I
3 represent the Staff of the Commission.

4 A. Okay.

5 Q. On page 12 to 13 of your direct testimony you
6 calculate that the incremental ISRS-eligible investments
7 are estimated to generate a taxable loss of \$36.9
8 million. Where can I find this \$36.9 million recorded
9 on Missouri-American's books during this ISRS period?

10 A. It would be net within the deductions and it
11 would be incremental. If you took a with and without
12 view of the tax return --

13 Q. Thank you, Mr. Wilde. Where can I find this
14 deduction?

15 A. You really won't find any NOLC as a separate
16 item or deferred tax on a separate --

17 Q. Thank you, Mr. Wilde. Has Missouri-American
18 made non ISRS-eligible plant additions in 2018?

19 A. I don't know that. You'd have to ask Brian,
20 Mr. LaGrand.

21 Q. Well, assuming that Missouri-American has made
22 non ISRS-eligible plant additions, would
23 Missouri-American generate additional amounts of NOLC in
24 2018 on those non ISRS additions?

25 A. Yes.

Page

1 Q. Would you be able to calculate the amount of
2 the additional NOLC attributable to those non ISRS
3 additions?

4 A. If you were in the context of a rate
5 mechanism, yes, you would be able to separate that out.

6 Q. Where could I find these non ISRS plant
7 additions if they have occurred on the books and records
8 of Missouri-American?

9 A. They would be part of the difference between
10 the beginning and ending balance net of any kind of
11 retirements or transfers or adjustments in the plant and
12 service line.

13 Q. Would they be separated out from ISRS-eligible
14 plant additions or the NOLC related to ISRS-eligible
15 plant additions?

16 A. I'm not familiar with the book accounting
17 whether there's an indicator within the system that
18 accounts for it separately. Sometimes there is.
19 Sometimes there's not.

20 Q. Thank you, Mr. Wilde. On page 13 of your
21 direct testimony you indicate that the Company was
22 carrying an NOLC balance of \$148 million as of December
23 31, 2017 and based on your projections as of December
24 31, 2018 that balance would be reduced by \$92.1 million
25 -- or 2, 91 point -- excuse me.

Page

1 You indicate that the balance would be reduced
2 to \$92.1 million as of December 31, 2018; is that
3 correct?

4 A. Yes.

5 Q. So if the Company did not have a net operating
6 loss carry-forward from prior test years, does this
7 indicate that Missouri-American would have taxable
8 income?

9 A. Yes.

10 Q. The fact that but for those net operating loss
11 carry-forward amounts your estimate is that the Company
12 would have taxable income. Doesn't that not reflect
13 that all of the Company's net accelerated depreciation
14 benefits associated with new ISRS plant would not need
15 or would not generate a new offsetting net operating
16 loss?

17 A. Our position is that the 92 point --

18 Q. Thank you, Mr. Wilde. I am asking you if but
19 for prior net operating loss amounts the Company is
20 estimated to have positive taxable income, does that not
21 indicate that ISRS plant additions are not -- do not
22 need to record a new offsetting NOL amount?

23 A. No, it does not mean that.

24 Q. At this time does Missouri-American expect
25 that American Water will be able to reflect all of the
Page

1 available accelerated depreciation tax deductions
2 associated with the 2018 ISRS plant additions on
3 American Water's 2018 tax returns?

4 A. No, not on a with and without basis.

5 Q. How about in actuality?

6 A. On a first-in, first-out basis, yes.

7 Q. Is it accurate to state that Missouri-American
8 expects to be able to book as deferred income tax
9 expense all of its benefits from accelerated
10 depreciation in 2018 without booking any offset from
11 additional generation of an NOL?

12 A. Can you ask that question again?

13 Q. Certainly. Would it be accurate to state that
14 Missouri-American expects to be able to book as a
15 deferred income tax expense all of its benefits from
16 accelerated depreciation in 2018 without booking any
17 offset from additional generation of net operating
18 losses in 2018?

19 A. Not on a with and without basis.

20 Q. How about in an actual basis?

21 A. Yes, overall it would --

22 Q. Thank you, Mr. Wilde. Is the repairs
23 allowance deduction generally considered a protected tax
24 timing difference per the IRS Code?

25 A. Not per the code.

Page

1 Q. In the context of the Tax Cuts and Jobs Act,
2 can this Commission order any of Missouri-American's
3 excess ADIT associated with the repair allowance
4 deductions to be flowed back to customers over a period
5 set at the Commission's discretion?

6 A. Can you state the question in full again?

7 Q. Certainly. In the context of the Tax Cuts and
8 Jobs Act, can this Commission order any of
9 Missouri-American's excess ADIT associated with the
10 repair allowance deductions to be flowed back to
11 customers over a period set at the Commission's
12 discretion?

13 A. I want to make sure I understand your
14 question. I apologize for asking you to state it again.
15 Please, it's a long question. Could you say it again?

16 Q. Certainly. I'll try to reword it.
17 Considering that the repairs allowance deduction is not
18 generally considered protected, does the Commission have
19 the ability to order excess ADIT associated with that
20 deduction to be flowed back to customers over any
21 period?

22 A. So the first the Commission -- the tax code
23 doesn't bar the Commission from acting out of concert
24 with the tax normalization rules.

25 Q. Would you consider that answer to be yes?

Page

1 A. In the context of just simply the tax TCJA,
2 yes.

3 MR. JOHNSON: That's all the questions I have.
4 Thank you, Mr. Wilde.

5 JUDGE HATCHER: Commissioner Hall?

6 QUESTIONS BY COMMISSIONER HALL:

7 Q. Good morning. Are you familiar with Exhibit
8 10 that was introduced during Mr. LaGrand's testimony?

9 A. I wasn't here. So I wouldn't have it in front
10 of me.

11 Q. Are you familiar with this document?

12 A. I'm familiar with versions of it. I'm not
13 certain of what version -- I mean, is this the as-filed
14 version or is this an updated version?

15 Q. Well, if you're not familiar with the
16 document, then I'm not sure it's of any value for me to
17 ask questions about it.

18 A. You can try. I mean, I'm familiar with how
19 it's laid out and what it does. I just -- The numbers
20 could be different from what is in my testimony and then
21 I would be --

22 Q. It's my understanding that what this document
23 is is a modification of the Company's prior position on
24 the proper ISRS amount by backing out net operating
25 losses and the repairs deduction, and my question is,

Page

1 and if you can answer it, great; if you can't, it is
2 what it is, but I'm trying to understand how this bottom
3 line number differs from Staff's position and why.

4 A. I think I believe, as explained to me, the
5 reason why they wanted to show it this way is because
6 other Missouri utilities have filed without the repair
7 deduction in it and this just takes the repair deduction
8 out which then eliminates at least mostly the net
9 operating loss DTA that's required then to be put into
10 the calculation. It just basically gets you back to the
11 same answer as someone who actually didn't put it in in
12 the first place would be. It also gets you back to
13 where Missouri-American might have been with past
14 filings not including it.

15 Q. Do you have an understanding as to how this
16 number differs from Staff's position in this case and
17 why?

18 A. Yes. This position would take out both the
19 DTL from the repairs deduction and would take out the
20 NOL DTA. Staff only wants to take out the DTA and not
21 the DTL. Therefore, they're imputing an interest-free
22 loan from the government or from customers that doesn't
23 -- hasn't happened yet because of the NOLC.

24 Q. Imputing. Explain that to me.

25 A. They believe that the fact that when you
Page

1 spend, make the incremental spend, I believe -- I
2 shouldn't say. I can't speak for what exactly. It
3 appears what they believe is that the incremental spend
4 doesn't create any new NOL, therefore it shouldn't cause
5 a carryover to DTL. But what really occurs by making a
6 decision to incrementally spend in ISRS, you actually
7 delay the use of the NOL that would have been used by
8 normal operations. So therefore the net, when I talk
9 about the with and without test and the balance of the
10 interest-free loan remains unchanged in our thinking.
11 Staff would say that there's an interest-free loan
12 that's occurring that's not really occurring.

13 Q. Okay. So I think what you're getting at is --
14 Do you have the direct testimony of Mr. Oligschlaeger in
15 front of you?

16 A. No, I do not.

17 Q. Have you read this testimony before?

18 A. Yes.

19 Q. Could you turn to page 7.

20 A. I'm there.

21 Q. Lines 23, 24 and then on to line 1 of page 8.
22 Is this -- This is Mr. Oligschlaeger's characterization
23 of your position and I think it's the position that you
24 just reiterated a moment ago. I want to make sure that
25 I'm tracking.

Page

1 A. Yes, I think he captured my position.

2 Q. So would you say that this is the issue, has
3 nothing to do with the repairs deduction. The
4 difference between Staff and OPC and the Company is
5 whether or not the expenditure for ISRS-eligible plant
6 without immediately putting those costs into rates has
7 an impact on the taxable income and that is what is
8 reflected in ISRS or should be reflected in ISRS? I'm
9 sure I mangled that description.

10 A. I would state it a little differently. I
11 would say that our position is that the interest-free
12 loan that should be in rate base should be the net of
13 all DTLs and DTAs.

14 Q. DTEs, DTLs?

15 A. Sorry about that. Deferred tax assets and
16 deferred tax liabilities. Deferred taxes represent an
17 interest-free loan. Okay. That's a zero cost of
18 capital available to shareholders to invest in property.
19 If they don't have that zero cost of capital, they're
20 going out and borrowing or they're going out and getting
21 equity. So if you put a DTL in or deferred tax
22 liability in for the actual deduction when you're
23 actually having then on an incremental basis looking at
24 what happened in your regular rate case, on an
25 incremental basis doing that spend you just delayed

Page

1 getting that money from the government or getting that
2 benefit in reduced taxes. You can only reduce your
3 taxes to zero. Once you're to zero, you can't do
4 anything more. If you haven't perfected that loan.
5 That's what the normalization rules are about. They say
6 if you have not perfected that loan, you can't give the
7 benefit of that loan to the customers, otherwise you're
8 in violation of the normalization rules or you're not
9 following the normalized method of accounting. I don't
10 know if I helped you or not.

11 Q. I think we're getting there. Does the repairs
12 deduction play a role in the ISRS calculation other than
13 its connection to net operating losses?

14 A. Say that again.

15 Q. I'll try. Does the repairs deduction play a
16 role in the ISRS calculation other than its relation to
17 net operating losses?

18 A. In any kind of incremental spend formula or
19 calculation where you're trying to measure the cost to
20 the customers of adding that, a repair deduction for tax
21 purposes would generally generate a DTL, a deferred tax
22 liability, therefore it would generally if you had
23 taxable income to match it against would create a
24 balance of interest-free loans. When that balance of
25 that DTL is offset by a DTA in the deferred tax

Page

1 calculation for that ISRS, then the interest-free loan
2 doesn't perfect and therefore you're basically not
3 getting the benefit of those deductions until you have
4 taxable income to use them against. You can only --
5 again, you can only take your taxable income to zero.
6 They're not going to give you more money back than what
7 you would otherwise pay.

8 COMMISSIONER HALL: Okay. Thank you.

9 JUDGE HATCHER: All right. Let's go to
10 recross and we'll start with Office of Public Counsel?

11 MS. SHEMWELL: We have no recross. Thank you.

12 JUDGE HATCHER: And Mr. Johnson?

13 MR. JOHNSON: Thank you, Judge.

14 RECROSS-EXAMINATION BY MR. JOHNSON:

15 Q. Mr. Wilde, Commissioner Hall asked you a
16 series of questions regarding normalization. We
17 discussed earlier that but for NOLs from prior tax years
18 the Company would estimate that it would have taxable
19 income for 2018; is that correct? Is that what we
20 discussed earlier?

21 A. It's taxable income -- That's not really what
22 you asked. It would have -- but for those NOLCs, you're
23 correct.

24 Q. Thank you, Mr. Wilde. Can a company utilize
25 an NOLC prior to exhausting all of the deductions for
Page

1 the current tax year?

2 A. No.

3 MR. JOHNSON: Thank you, Mr. Wilde. I have no
4 further questions.

5 JUDGE HATCHER: Mr. Cooper, redirect?

6 MR. COOPER: Thank you, Your Honor.

7 REDIRECT EXAMINATION BY MR. COOPER:

8 Q. Mr. Wilde, you still have your testimony in
9 front of you?

10 A. I do.

11 Q. Could you turn to page 12.

12 A. I'm there.

13 Q. I believe that Mr. Johnson -- well, let me
14 back up. Mr. Johnson had asked you the origin of some
15 of your numbers there, maybe the 36.9 million and then
16 you got cut off before you were able to explain the
17 origin of that number. Would you do so now or where
18 that number comes from?

19 A. Sure. Part of this Appendix C that the
20 Commissioner gave me with our original filings, so it's
21 a tax calc, that's within that particular schedule.

22 Q. But what -- So let me point you to line 18 and
23 line 19 of page 12. It talks about the incremental
24 ISRS-eligible investments are estimated to generate a
25 taxable loss of 36.9 million during the measurement

Page

1 period for this case. Where does that 36.9 million come
2 from? How is that calculated?

3 A. Sure. It's calculated in the same manner that
4 we would calculate an estimate of what our tax return
5 deductions would be. So we'll look at, for example, for
6 tax repairs we used a 10-year average of what our
7 repairs came from from that particular kind of spend and
8 calculated the deduction that way for tax -- Then we
9 calculated tax depreciation based on what those rates
10 are for the eligible property. And so it's really an
11 estimate of the tax deductions that would occur plus any
12 other like, for example, I believe there's interest
13 expense in that calculation and there's book
14 depreciation deductions that offset that to come to that
15 \$36 million.

16 Q. When you referred to a 10-year average on the
17 repairs, I assume that's an average of all plant, all
18 investment; it's not specific to ISRS, is it?

19 A. No. We haven't separated out to ISRS. It's
20 ISRS like property. So it's the same types of property.
21 So it would be like mains and distribution and
22 transmission kinds of mains that are typically billed
23 under ISRS.

24 Q. You define, though, the repairs qualifications
25 in your testimony, correct?

Page

1 A. Yes.

2 Q. Okay. On page 13 of your testimony, it was
3 pointed out that there's a reduction, I think it's line
4 7 to line 10 there Mr. Johnson pointed out the reduction
5 of the NOLC balance from the end of 2017 to the end of
6 2018. Do you remember that?

7 A. Yes.

8 Q. And I think he asked you if that meant that no
9 NOL was required and you said no but didn't explain.
10 Would you explain that now?

11 A. I think line 12 -- actually 11 through 14 kind
12 of explained that. Said without including the ISRS
13 investments, the Company and the Consolidated group
14 would have been able to utilize more NOL and would have
15 a projected NOLC for 2018 of 36.9 million less or, 55
16 million and 651 million respectively. Essentially the
17 NOLC that was I want to call it delayed or recreated as
18 a result of engaging in these ISRS expenditures caused
19 additional NOL that wouldn't have been there had you not
20 made these deductions. So incrementally they did drive
21 NOL.

22 Q. Elsewhere there's an estimate of when the
23 Company will no longer be in an NOLC position. I think
24 that's by the end of 2020; is that correct?

25 A. Yes. It will likely be at a situation where
Page

1 its NOL will be less than the ISRS deductions that are
2 being created. So it will in part generate less of an
3 NOL DTA starting in '19 and probably no NOL DTA by the
4 end of 2020.

5 Q. But for the ISRS investment, would you expect
6 the Company to be out of the NOLC position earlier
7 perhaps than 2020?

8 A. Yes, absolutely.

9 Q. You were asked some questions by Mr. Johnson
10 where I believe your answer referred to a with or
11 without basis and then he specified an actual basis.
12 Let's start with this. What's significant about the
13 with or without basis? What are you referring to when
14 you talk about that?

15 A. The with and without basis is a means that
16 taxpayers have generally used to ask the IRS for
17 normalization rules, and the IRS has come back that --
18 The regulations don't spell out a specific method. So
19 you actually have to go to the IRS to find out whether
20 your method is acceptable or not. The with or without
21 method or the last deduction taken method combined with
22 that with and without is the method that taxpayers
23 normally have used and the IRS has said yes, because we
24 know doing any -- I think the words are paraphrased, if
25 you did anything else you'd have a normalization

Page

1 violation.

2 MR. COOPER: That's all the questions I have,
3 Your Honor. Thank you.

4 JUDGE HATCHER: All right. Then I believe the
5 next witness is Office of Public Counsel's.

6 MS. SHEMWELL: Public Counsel calls Mr. John
7 Riley to the stand.

8 JUDGE HATCHER: Mr. Riley, please raise your
9 right hand.

10 (Witness sworn.)

11 JUDGE HATCHER: Please be seated.

12 JOHN RILEY, being sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. SHEMWELL:

14 Q. Mr. Riley, would you state your name?

15 A. John S. Riley, R-i-l-e-y.

16 Q. Mr. Riley, where do you work and what do you
17 do there?

18 A. I work for the Office of Public Counsel. I'm
19 a Public Utility Accountant III.

20 Q. Have you prepared testimony in this case that
21 has been marked as Exhibit No. 6?

22 A. Yes, ma'am.

23 Q. Do you have any corrections or additions?

24 A. No, I do not.

25 Q. Is your testimony true and correct, to the
Page

1 best of your knowledge and belief?

2 A. Yes, ma'am.

3 Q. I have a few rebuttal questions for Mr. Riley.
4 Mr. Riley, to begin, do you have any general comments
5 about Mr. Wilde's testimony?

6 A. Mr. Wilde generally talks about how not
7 including net operating loss is going to cause a
8 normalization penalty with the Internal Revenue Service,
9 and I think the logic is flawed because normalization
10 actually is the difference between accelerated
11 depreciation and straight-line depreciation in
12 regulatory revenues. So what you have is the deferred
13 tax which represents the difference between those two.
14 So the flow of that back happens over the life of the
15 asset that you've assigned it to. So a net operating
16 loss isn't something you really need to consider when
17 you're talking about normalization violations.

18 Q. Do you have Mr. Wilde's testimony in front of
19 you?

20 A. Yes, ma'am.

21 Q. I need my copy. Pardon me just a moment.
22 Does Mr. Wilde claim there's a benefit to customers for
23 not making use of a net operating loss?

24 A. Mr. Wilde makes that claim on page 6, line 5
25 through 9, to the extent that the utility does not

Page

1 receive this interest-free source of funds because
2 taking the accelerated depreciation deduction causes a
3 taxable loss, that taxable loss needs to be included in
4 the numbers so that the customers are not benefiting
5 before the utility company receives the benefits. He's
6 claiming somehow not being able to use a net operating
7 loss somehow benefits the customer, which I disagree
8 with because the income tax expense built into rates is
9 essentially constant. So the ratepayer is putting money
10 in whereas the Company is not paying any tax. Even
11 though they don't get to use a net operating loss, they
12 aren't paying tax, but they are getting taxed through
13 rates. To say that the ratepayer is benefiting is I
14 think false.

15 Q. Is the Company harmed?

16 A. No, not in any way.

17 Q. Mr. Wilde mentions the with and without method
18 on page 7. Do you agree with his analysis of the with
19 and without method?

20 A. What Mr. Wilde says there is a new or
21 additional net operating loss generated with accelerated
22 depreciation, then the NOL generated is clearly related
23 to accelerated depreciation and needs to be included.
24 However, if you look at some of their records, the
25 accelerated depreciation on its own does not create a

Page

1 net operating loss.

2 Q. Do you have an example of some of those
3 records?

4 A. Yes, I do.

5 Q. I think we need to get an exhibit marked.
6 It's been premarked as Exhibit No. 8.

7 JUDGE HATCHER: Before we do that, have you
8 introduced the direct testimony?

9 MS. SHEMWELL: I have not. I was going to do
10 that at the end of rebuttal.

11 JUDGE HATCHER: Then we're on to No. 8.

12 MS. SHEMWELL: Yes, we are. Thank you.

13 BY MS. SHEMWELL:

14 Q. So how does Exhibit 8 support the comments
15 that you were making?

16 A. Exhibit 8 is a filing from Missouri-American
17 Water with its annual report to the Commission.

18 Q. Let me stop you there for just a minute. This
19 is a copy of the annual report to the Commission?

20 A. Page from the annual report, yes, ma'am.

21 Q. You have added the highlighting?

22 A. Yes, I have.

23 Q. Thank you.

24 A. Several lines on here. So it's a little hard
25 to keep track of. This is page F-29 Attachment A from
Page

1 Missouri-American Water Company basically breaking down
2 the financial income of the Company and then also
3 showing all of the deductions that it is allowed to take
4 through Internal Revenue rules and regulations and then
5 comes up with a taxable income down towards the bottom.

6 Now, the point I'm trying to make is that
7 there's -- in this particular file, the financial
8 taxable income is \$75 million. However, when you add
9 all of the temporary differences in the middle, you come
10 up with a taxable income of negative 15,971,209. So the
11 point I want to make is that we had \$75 million. If you
12 go down to the highlighted depreciation and
13 amortization, which would be your accelerated
14 depreciation on line 26, that's only \$26 million,
15 26,615,215. So to actually say that your accelerated
16 depreciation is causing your loss, well, it's a portion
17 of it, but it in itself does not cause the loss.

18 Q. Anything else on that?

19 A. Excuse me?

20 Q. Anything else you want to add on that? We
21 were talking about the with and without argument.

22 A. I'm sorry. To say the with or without and
23 saying that the depreciation is my point is the
24 accelerated depreciation that he talks about in his
25 testimony is not necessarily the driving force of net

Page

1 operating loss.

2 Q. Thank you. Mr. Wilde has pointed out on page
3 4 and on page 11 that recognition of accumulated
4 deferred income taxes typically referred to as ADIT or
5 ADIT requires recognition of both the deferred income
6 tax liabilities and the deferred income tax assets. Do
7 you agree with that?

8 A. Well, those terms are kind of loosely defined.
9 However, in a strict regulatory accounting format, you
10 don't really have a deferred tax asset because the
11 Uniform System of Accounts does not have an asset title
12 deferred tax asset. So to say that you have to combine
13 these two is a little bit of a stretch because I contend
14 that a net operating loss is a tax item and not a
15 regulatory item.

16 Q. Would a copy of Exhibit 9 assist in your
17 explanation, what's been marked as Exhibit 9?

18 A. Yes, ma'am.

19 MS. SHEMWELL: I'd like to introduce Exhibit
20 9.

21 JUDGE HATCHER: Ms. Shemwell, I just want to
22 make sure for my notes, did you offer into the record
23 Exhibit 8?

24 MS. SHEMWELL: I'd like to do that, and I will
25 get to Exhibit 7.

Page

1 JUDGE HATCHER: Not a problem. On Exhibit 8,
2 before we move on, are there any objections to the
3 admission of Exhibit 8 onto the record? Hearing none,
4 it is so admitted.

5 (OPC EXHIBIT 9 WAS RECEIVED INTO EVIDENCE AND
6 MADE A PART OF THIS RECORD.)

7 JUDGE HATCHER: And Exhibit 9, Ms. Shemwell,
8 if you would please describe that for us.

9 MS. SHEMWELL: We're calling it the
10 accumulated deferred tax exhibit.

11 BY MS. SHEMWELL:

12 Q. Mr. Riley, do you have something more
13 specific?

14 A. No.

15 Q. Can you explain how this exhibit supports your
16 testimony?

17 A. Well, I started to review the chart of
18 accounts in order to understand how this might be
19 interpreted and how you would record it and I never
20 found an asset that is titled accumulated deferred
21 income tax. Accumulated deferred income tax in the
22 Uniform System of Accounts is a 200, what is known as a
23 200 account which is a liability account.

24 Specifically the accumulated deferred income
25 tax in the Uniform System of Accounts is Account No.

Page

1 281, 282 and 283.

2 Q. Those numbers that you're listing, how are
3 those used?

4 A. Well, that would be the account code that you
5 would book your deferred income tax to.

6 Q. That's where the Company would actually book
7 on its records --

8 A. Right.

9 Q. -- the accumulated deferred income tax?

10 A. Yes, ma'am.

11 Q. What was your point about it does not?

12 A. The point there was that --

13 Q. Excuse me.

14 A. -- you have a deferred tax which is a
15 liability. However, Mr. Wilde claims that you need to
16 add your deferred tax asset with your deferred tax
17 liability and technically there isn't an asset in the
18 Uniform System of Accounts.

19 Q. There's not a place to book that?

20 A. No, there is not.

21 Q. Mr. Wilde mentioned several letter rulings,
22 IRS letter rulings in his testimony. Are you familiar
23 with IRS letter rulings?

24 A. In testimony for a prior case Kansas City
25 Power & Light, I entered a private letter ruling as
Page

1 evidence in that case in my testimony.

2 Q. And what was the purpose for you entering that
3 into your testimony?

4 A. The topic I was reviewing was net operating
5 losses for GMO and KCPL. So I started to look at
6 private letter rulings and I came across one that I feel
7 is very similar to how the Commission operates and
8 reviews things and put that in testimony to demonstrate
9 how the Internal Revenue Service treated the net
10 operating loss in that particular letter ruling.

11 MS. SHEMWELL: I would like to introduce
12 Exhibit No. 7 which is the IRS private letter ruling
13 that Mr. Riley had entered into evidence.

14 BY MS. SHEMWELL:

15 Q. Was that the last KCPL rate case, Mr. Riley?

16 A. Yes. That was ER-2018-0145 and 146, I
17 believe.

18 Q. Does the Company have itself an IRS private
19 letter ruling for its use of net operating loss? Are
20 you aware of that?

21 A. No, I'm not aware that they have -- They
22 requested a private letter ruling back in 2010. It
23 wasn't for net operating losses. It was a change in
24 accounting rules, change in accounting methods.

25 Q. In the private letter ruling in Kansas City
Page

1 Power & Light, how does that apply in this case?

2 A. Well, the company that submits the information
3 to the Internal Revenue Service requesting a ruling from
4 them had sent in information about net operating losses
5 and whether they should be included in the deferred tax
6 balance in order to set rates. It was asking should it
7 offset deferred income tax with a net operating loss,
8 and in short basically the Internal Revenue Service in
9 this letter ruling said that the NOLC was taken into
10 account and was not included and did not need to be
11 included in the deferred tax balance.

12 Q. I had a discussion with Mr. Wilde about who
13 pays into the accumulated deferred income taxes. Who
14 puts -- Who pays money for that?

15 A. Well, the ratepayer is always the one that
16 foots any bill. So when rates are set and tax amount is
17 calculated for the case, then that's built into the
18 rates. So the ratepayer is always the one that pays the
19 taxes.

20 MS. SHEMWELL: Does that conclude your
21 rebuttal testimony?

22 THE WITNESS: Yes, ma'am.

23 MS. SHEMWELL: Judge, I'd like to offer
24 Exhibits 6, 7, 8 and 9 into evidence.

25 JUDGE HATCHER: I don't have 6 marked down.
Page

1 MS. SHEMWELL: 6 is the direct testimony of
2 Mr. Riley.

3 JUDGE HATCHER: Sure that's not 3?

4 MS. SHEMWELL: I'm pretty sure it's not 3.

5 JUDGE HATCHER: Okay. I will take those up
6 one at a time. Exhibit 6, the direct testimony of
7 Mr. Riley, are there any objections to that admission on
8 the record? It is so admitted.

9 (OPC'S EXHIBIT 6 WAS RECEIVED INTO EVIDENCE
10 AND MADE A PART OF THIS RECORD.)

11 JUDGE HATCHER: Exhibit 7 is the IRS letter
12 rulings offered by the Office of Public Counsel. Are
13 there any objections to that exhibit being admitted onto
14 the record? Not hearing any, it is so admitted.

15 (OPC'S EXHIBIT 7 WAS RECEIVED INTO EVIDENCE
16 AND MADE A PART OF THIS RECORD.)

17 JUDGE HATCHER: And also Exhibit 8, Ms.
18 Shemwell?

19 MS. SHEMWELL: Yes, please.

20 JUDGE HATCHER: Exhibit 8, this is the page
21 from the Annual Report. Are there any objections to
22 that exhibit onto the hearing record? Without seeing
23 any, it is so admitted.

24 JUDGE HATCHER: And Exhibit 9, which is the
25 accumulated deferred tax exhibit, are there any
Page

1 objections to Exhibit 9 being admitted onto the hearing
2 record? Seeing none, it is so admitted.

3 (OPC'S EXHIBIT 9 WAS RECEIVED INTO EVIDENCE
4 AND MADE A PART OF THIS RECORD.)

5 MS. SHEMWELL: Thank you, Judge. I tender the
6 witness for cross-examination.

7 JUDGE HATCHER: Thank you. And our pre-agreed
8 upon order, Mr. Cooper?

9 MR. COOPER: I think I go after Mr. Johnson.

10 JUDGE HATCHER: I'm sorry. I'm looking at the
11 person Mr. Johnson.

12 MR. JOHNSON: I think we're going to have Mr.
13 Irving handle this witness.

14 JUDGE HATCHER: All right. Please go ahead.

15 MR. IRVING: Actually I don't have any
16 questions for this witness at this time.

17 JUDGE HATCHER: That brings us to Mr. Cooper.

18 MR. COOPER: And in that case I have no
19 questions for this witness.

20 JUDGE HATCHER: Okay. Well, that leaves you
21 with no redirect.

22 MS. SHEMWELL: Commissioner questions?

23 JUDGE HATCHER: Commissioners, any questions
24 from the bench?

25 COMMISSIONER COLEMAN: No questions.
Page

1 JUDGE HATCHER: Thank you. Then we will move
2 on to the next witness and that will be from
3 Mr. Johnson. Please go ahead.

4 MS. SHEMWELL: Judge, may Mr. Riley be
5 excused?

6 JUDGE HATCHER: I have not been doing that all
7 day. Mr. Riley, thank you for your testimony. You're
8 excused.

9 (Witness excused.)

10 MR. JOHNSON: Staff calls to the stand Mark
11 Oligschlaeger.

12 JUDGE HATCHER: Mr. Oligschlaeger, please
13 raise your right hand.

14 (Witness sworn.)

15 JUDGE HATCHER: Thank you. Please be seated.

16 MARK OLIGSCHLAEGER, being sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. JOHNSON:

18 Q. It is still morning, Mr. Oligschlaeger. So
19 good morning.

20 A. Good morning.

21 Q. Would you please state and spell your last
22 name for the record?

23 A. My name is Mark L. Oligschlaeger. My last
24 name is spelled O-l-i-g-s-c-h-l-a-e-g-e-r.

25 Q. And by whom are you employed and in what
Page

1 capacity?

2 A. I'm employed as the manager of the auditing
3 department for the Missouri Public Service Commission.

4 Q. Are you the same Mark L. Oligschlaeger who
5 caused to be prepared direct testimony which has been
6 marked as Exhibit No. 3?

7 A. I am.

8 Q. Do you have any changes or corrections to your
9 testimony?

10 A. I do not.

11 Q. If I were to ask you the same questions today,
12 would your testimony be true and correct to the best of
13 your belief and knowledge?

14 A. It would.

15 MR. JOHNSON: Judge, at this time I would
16 offer Exhibit No. 3 into the record.

17 JUDGE HATCHER: So offered. Are there any
18 objections to the admission of the direct testimony of
19 Mr. Oligschlaeger? No objections, it is so admitted.
20 Please continue.

21 (STAFF'S EXHIBIT 3 WAS RECEIVED INTO EVIDENCE
22 AND MADE A PART OF THIS RECORD.)

23 BY MR. JOHNSON:

24 Q. Mr. Oligschlaeger, have you read the direct
25 testimony of Missouri-American witnesses Brian LaGrand
Page

1 and John R. Wilde in this matter?

2 A. I have.

3 Q. And do you agree with the testimony of
4 Mr. LaGrand and Mr. Wilde concerning the NOL issue in
5 this ISRS case?

6 A. I do not. Their proposed inclusion of a
7 hypothetical NOL deferred tax asset and ISRS rate base
8 is not reasonable on its own terms and that treatment is
9 not in any way mandated by the IRS tax normalization
10 rules.

11 Q. As a preliminary matter, is there currently an
12 NOL deferred tax asset on Missouri-American's books?

13 A. Yes, there is. An NOL was generated by
14 Missouri-American for a period of time through the end
15 of 2017. However, this NOL amount was reflected in rate
16 base in Missouri-American's last general rate case, Case
17 No. WR-2017-0285. That rate case had a true-up cutoff
18 date of December 31, 2017. Because the NOL deferred tax
19 asset balance as of year end 2017 is currently reflected
20 in MAWC's base rates, no further rate treatment of that
21 amount is appropriate in this ISRS proceeding.

22 The only NOL amounts potentially relevant to
23 this case would be if any additional NOL amount was
24 generated by Missouri-American from January through
25 September 2018, the ISRS period in this proceeding.

Page

1 Q. Has Missouri-American generated any NOL during
2 this ISRS period?

3 A. No. As clearly shown in the response to Staff
4 Data Request No. 4, the balance of Missouri-American's
5 NOL deferred tax asset has been declining at a steady
6 rate so far in 2018. The response also indicates that
7 this reduction is expected to continue until at least
8 the end of 2019. This means that MAWC is expected to
9 use its prior NOL to offset taxable income in 2018 and
10 2019 and that the Company is not projecting any
11 additional generation of NOL in the aggregate for the
12 ongoing future.

13 Q. Mr. Oligschlaeger, when a utility is able to
14 use prior amounts of net operating losses to offset
15 taxable income on a going-forward basis as
16 Missouri-American projects it can do now and in the
17 future, what does that mean in relation to tax
18 normalization accounting and ratemaking?

19 A. A utility that is in the position of using
20 prior NOL to offset taxable income by mathematical
21 necessity is able to reflect all of its current
22 accelerated depreciation tax deductions on its tax
23 returns going forward. And as a result, it will receive
24 the full financial benefit of such deductions. Because
25 these benefits are provided to the utility in customer

Page

1 rates through collection of deferred income taxes, the
2 resulting accumulated deferred income tax balance must
3 be included in rate base without offset in order to
4 provide ratepayers a return on capital they provide to
5 the utility.

6 Q. That is rebuttal -- excuse me. In his direct
7 testimony, Mr. Wilde claims that failure to reflect a
8 rate-based offset for a hypothetical NOL in this case
9 could or would lead to an IRS Code tax normalization
10 violation. Do you agree with that statement?

11 A. No. Staff has not found any support for this
12 contention in either the IRS Code or in the private
13 letter rulings cited by Mr. Wilde.

14 Q. Why is it do you say the IRS Code does not
15 support Missouri-American's position?

16 A. The tax normalization rules embedded within
17 the IRS Code clearly state that the existence of NOLs
18 can be a relevant consideration in assessing whether a
19 utility is in compliance with the rules. However, the
20 Code specifies that NOLs may be relevant in two specific
21 situations. First, when the utility is unable to
22 reflect all of its accelerated depreciation tax
23 deductions on its tax returns, thus creating a new NOL.
24 And second, when a utility's balance of an already
25 existing NOL deferred tax asset increases due to the

Page

1 Company's continuing inability to reflect all available
2 tax deductions on its returns.

3 However, neither situation applies to
4 Missouri-American during this particular ISRS period.
5 So far in 2018, MAWC has not generated any new NOL in
6 the aggregate and as a result its existing NOL balance
7 has been decreasing, not increasing. Since MAWC is not
8 currently generating any additional amount of NOL in
9 aggregate, no violation of the tax normalization rules
10 is at risk in this case.

11 Q. Now, why do you say that the private letter
12 rulings referred to by Mr. Wilde did not support the
13 Company's position?

14 A. None of the PLRs attached to Mr. Wilde's
15 testimony or otherwise provided to Staff by
16 Missouri-American are relevant to Missouri-American's
17 current financial and taxable positions. Without
18 exception, all of the PLRs cited by Mr. Wilde address
19 time periods in which the utility in question was
20 generating NOL amounts. Again, MAWC is not currently
21 generating any NOL. It is using prior amounts instead.

22 Mr. Wilde has not provided any citations to
23 PLRs that might address tax normalization consequences
24 in the situation which a utility is using and not
25 generating NOL amounts.

Page

1 Q. In his testimony Mr. Wilde makes several
2 references to the with and without method applicable to
3 tax treatment of NOLs for utilities that allegedly
4 mandates its recommended treatment of NOLs in this case.
5 Does Staff agree with his characterization of the with
6 and without method?

7 A. No. The PLRs that Staff has reviewed make it
8 clear that the with and without method is intended to
9 allow a utility to determine how much of a generated NOL
10 should be considered attributable to accelerated
11 depreciation deductions and how much of the NOL should
12 be attributable to other categories of tax deductions
13 for purposes of compliance with the code. However, in
14 this proceeding MAWC is actually proposing to apply the
15 with and without method for an entirely different
16 purpose which is to determine how much of a hypothetical
17 NOL should be assigned to a single-issue rate element of
18 ISRS plant additions in lieu of attributing the NOL to
19 other MAWC cost components not at issue here.

20 None of the PLRs provided to Staff by MAWC
21 seem to give guidance on how to make assignments to NOL
22 to separate rate elements and the PLRs certainly do not
23 specify that the with and without method must be used
24 for this purpose.

25 Q. At pages 12 and 13 of his rebuttal, or excuse
Page

1 me, his direct testimony, Mr. Wilde presents a
2 calculation of an alleged increase in
3 Missouri-American's NOL balance during the ISRS period.
4 What does his calculation actually show?

5 A. All that Mr. Wilde demonstrates with his
6 calculation is that MAWC would be using even more of its
7 NOL to offset taxable income from January 1, 2018
8 forward under the hypothetical scenario that if MAWC
9 would have made no ISRS plant additions during that
10 period. However, in reality a calculation of a lesser
11 actual decrease in an NOL balance in comparison to the
12 decrease that might have resulted from a what if
13 situation cannot in any way reasonably consider to be an
14 increase in NOL.

15 As I previously testified, it is only when an
16 NOL is increasing that tax normalization rules
17 violations may come into play for utilities in this
18 situation.

19 Q. Do you believe that Missouri-American's
20 position on NOL ratemaking in this case is consistent
21 with the intent and the theory behind the IRS tax
22 normalization rules?

23 A. No. Missouri-American's position if adopted
24 would lead to customers not being compensated for
25 capital provided to them -- provided by them to MAWC in
Page

1 the form of deferred income taxes. That's a result
2 squarely inconsistent with proper ratemaking principles
3 and is not mandated in any fashion by the IRS Code.

4 Q. Mr. Oligschlaeger, do you have any further
5 rebuttal testimony?

6 A. I do not.

7 MR. JOHNSON: Thank you. Judge, at this point
8 I tender the witness for cross.

9 JUDGE HATCHER: Thank you. And going with the
10 already agreed upon order for cross-examination, Office
11 of Public Counsel?

12 MS. SHEMWELL: We have no questions. Thank
13 you.

14 JUDGE HATCHER: Mr. Cooper?

15 MR. COOPER: No questions as well.

16 JUDGE HATCHER: Thank you. Any questions from
17 the bench? All right. And that takes care of recross
18 and redirect also. Mr. Oligschlaeger, you are excused.
19 Thank you.

20 (Witness excused.)

21 JUDGE HATCHER: Looking at the attorneys for
22 the case, I would note that it is ten till noon and we
23 have two witnesses left. If I can see a shake of heads
24 who would like to take a break, who would like to push
25 through?

Page

1 MS. SHEMWELL: Let us confer just a moment.

2 (Off the record.)

3 MR. JOHNSON: Judge, I think we will continue
4 the proceeding.

5 JUDGE HATCHER: Excellent. We will be calling
6 our next witness. Mr. Johnson, please go ahead.

7 MR. JOHNSON: Staff calls to the stand Lisa
8 Ferguson.

9 JUDGE HATCHER: Thank you. Ms. Ferguson,
10 please raise your right hand.

11 (Witness sworn.)

12 JUDGE HATCHER: Thank you. Please be seated.
13 Mr. Johnson?

14 MR. JOHNSON: Thank you, Judge.

15 LISA FERGUSON, being sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. JOHNSON:

17 Q. Would you please state your name and spell
18 your last name for the record?

19 A. My name is Lisa M. Ferguson. Last name is
20 spelled F-e-r-g-u-s-o-n.

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

22 A. I'm employed by the Missouri Public Service
23 Commission as a utility regulatory auditor.

24 Q. Are you the same Lisa M. Ferguson who caused
25 to be prepared direct testimony which has been marked as
Page

1 Exhibit No. 4?

2 A. Yes.

3 Q. Do you have any changes or corrections to your
4 testimony?

5 A. I do not.

6 Q. Is your testimony true and correct to the best
7 of your belief and knowledge?

8 A. Yes.

9 Q. If I asked you those same questions today,
10 would you give the same answers?

11 A. Yes.

12 MR. JOHNSON: Judge, I would offer Exhibit 4
13 as evidence into the record.

14 JUDGE HATCHER: Thank you. The Exhibit 4, the
15 direct testimony of Ms. Ferguson, do I have any
16 objections? Seeing no objections, it is so admitted.

17 (STAFF'S EXHIBIT 4 WAS RECEIVED INTO EVIDENCE
18 AND MADE A PART OF THIS RECORD.)

19 JUDGE HATCHER: Go ahead, Mr. Johnson.

20 BY MS. JOHNSON:

21 Q. Ms. Ferguson, have you read the direct
22 testimony of Missouri-American witnesses Mr. LaGrand and
23 Mr. Wilde?

24 A. I have.

25 Q. Do you have any rebuttal testimony you would
Page

1 like to provide?

2 A. I do.

3 Q. Does Staff agree that accumulated deferred
4 income taxes include both deferred tax liabilities and
5 deferred tax assets?

6 A. Generally, yes. As long as the deferred tax
7 liabilities and deferred tax assets are related to
8 regulated deductions that are included in the utility's
9 cost of service. However, in this ISRS petition, Staff
10 does not believe that there is actually any generation
11 of a deferred tax asset in the form of an NOL associated
12 with this particular ISRS investment. The TCJA, or the
13 tax reform that was changed in December of 2017, changed
14 the tax law to eliminate the availability of bonus
15 depreciation deductions which has historically been the
16 main cause of NOLs by utilities.

17 Q. Thank you, Ms. Ferguson. Just to clarify, the
18 TCJA is the Tax Cuts and Jobs Act of 2017?

19 A. That's correct.

20 Q. Does Missouri-American -- Does
21 Missouri-American's proposed calculation of the NOL make
22 sense to you?

23 A. No. Especially in this proceeding. In
24 Missouri, direct rate recovery of investment by a
25 utility can only occur after that investment is in

Page

1 service. If you subtract the incremental tax deductions
2 associated with the new ISRS plant investment from the
3 level of zero, which is what the Company is stating is
4 incremental revenue associated with that investment, a
5 hypothetical net operating loss will occur each time you
6 do that calculation whether the utility is actually
7 generating incremental NOL or not. There could be a
8 situation in the future maybe when or if bonus
9 depreciation returns where an NOL is generated due to
10 ISRS investment, but I believe a different method of
11 calculation needs to be considered in order to
12 appropriately assign an NOL to incremental ISRS
13 investment. If it's determined in the future that an
14 NOL may be appropriate to include in the ISRS rate
15 calculation, then a pro rata ratio of ISRS plant to non
16 ISRS plants would need to be developed to calculate the
17 portion of the NOL reasonably attributable to ISRS plant
18 additions.

19 Q. On page 9, lines 1 through 9 of Mr. Wilde's
20 direct testimony he represents that a normalization
21 violation will occur if the benefits from tax timing
22 differences are deducted and included in rates faster
23 than the NOL is reflected. Does Staff believe a
24 normalization violation will occur if an NOL deferred
25 tax asset is not included in this case?

Page

1 A. No. Staff does not believe there is even a
2 deferred tax asset in the form of an NOL in this case.
3 And we can tell that by looking at the NOL balances that
4 are declining over time that's in my direct testimony.
5 However, even if MAWC does inadvertently commit a
6 normalization violation, Revenue Procedure 2017-47 that
7 was released in September of 2017 creates a safe harbor
8 for utilities to correct their unintentional
9 normalization violations regarding the Section 168
10 accelerated depreciation deductions on a going-forward
11 basis without penalty.

12 Q. Is it possible to determine what specific item
13 gave rise to an NOL?

14 A. No. NOLs are calculated on an overall basis
15 and they're not split out for accounting purposes based
16 on what tax deductions gave rise to that NOL.

17 Q. Ms. Ferguson, what is the repairs deduction
18 and associated consent agreement that Mr. Wilde
19 mentioned on page 8, lines 20 through 23 of his direct
20 testimony and is this deduction appropriate for
21 inclusion in an ISRS case?

22 A. In 2010, American Waterworks and its
23 subsidiaries requested permission to change their method
24 of accounting for costs associated with routine repair
25 and maintenance of tangible property. The deferred tax

Page

1 liability associated with the repair allowance deduction
2 is appropriate to include in ISRS rates because the
3 costs associated with this deduction are incurred to
4 keep the taxpayer's property in ordinary efficient
5 operating condition and does not materially increase the
6 value of the property or increase the useful life.

7 I like to think that this type of deduction is
8 akin to the definition of ISRS-eligible property and is
9 thus appropriate.

10 Q. Mr. Wilde discusses the consent agreement
11 related to the tax repairs deduction that
12 Missouri-American was able to begin taking. Does Staff
13 believe that its recommendation in this case would cause
14 a normalization violation in regards specifically to the
15 repairs deduction?

16 A. No. Staff agrees that the consent agreement
17 by the IRS does require MAWC to follow normalization
18 accounting in regard to its repairs deduction. That's
19 why Staff accepted the repairs deduction and has
20 included the deferred tax liability relating to it in
21 the ISRS calculation.

22 If Staff believed a deferred tax asset had
23 been generated in the form of an NOL and was actually
24 related to this deduction and this specific ISRS
25 investment, then Staff would have considered inclusion

Page

1 of any NOL associated deferred tax asset in this case,
2 but no such generation of an incremental NOL has
3 actually occurred that's attributable to this repairs
4 allowance or any other deduction. MAWC, in fact,
5 proposed this deduction, but I believe now that it has
6 been established that there's no generation of a net
7 operating loss the deduction is being proposed to be
8 removed.

9 Q. On page 11, lines 20 through 23, Mr. Wilde
10 states that Staff only attributes the term hypothetical
11 to the NOL deferred tax asset that they suggest should
12 be excluded from the ISRS rate base, yet this amount is
13 no more or less an estimate and hypothetical than the
14 deferred tax liability generated in claiming tax
15 depreciation and tax repairs. Do you agree with this
16 assessment?

17 A. No, I do not. Staff understands that MAWC
18 uses accrual accounting to record their deferred tax
19 assets and deferred tax liabilities on their financial
20 reporting books and may later true up these amounts with
21 updated information. When Staff called the deferred tax
22 asset hypothetical, it meant that an NOL was being
23 calculated for purposes of this ISRS while no such NOL
24 deferred tax asset was actually being booked by MAWC.

25 Assuming the existence of an NOL when no such

1 amount at all is recorded on a utility's books is very
2 different than relying on actual book information for
3 the amount of accelerated depreciation deferred tax
4 liabilities even if the amounts may be subject to change
5 later. The deferred tax liability is recorded on the
6 MAWC's books. There is no new deferred tax asset or NOL
7 that's recorded on its books.

8 Q. Thank you, Ms. Ferguson. Do you have any
9 further rebuttal testimony you wish to provide?

10 A. I do not.

11 MR. JOHNSON: Judge, at this time I would
12 tender the witness for cross-examination.

13 JUDGE HATCHER: Thank you. Ms. Shemwell?

14 MS. SHEM WELL: Thank you.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q. Good morning, Ms. Ferguson. How are you?

17 A. I'm good.

18 Q. Good. In your rebuttal close to the end you
19 said that something was proposed to be removed. I think
20 it was about your third question from the end. Are you
21 finding that?

22 A. Oh, about the repairs deduction?

23 Q. That's what I was going to ask you. You were
24 referring to the repairs deduction?

25 A. I think there's some confusion this morning

1 about what the true issue is here. The true issue is is
2 Missouri-American experiencing a net operating loss.
3 Now, what can cause that net operating loss, the repairs
4 deduction that they're taking in their calculation could
5 be one factor in that. We don't believe there is an
6 NOL, but what has occurred since this as this case has
7 progressed is we have shown, I believe, that there is no
8 support for an NOL deferred tax asset included. The
9 Company has now come back and proposed to remove the
10 repairs deduction. They have proposed that deduction in
11 prior ISRS cases and I believe we're still in support of
12 that, the Staff is.

13 Q. So it was the Company that proposed the
14 removal and now Staff agrees?

15 A. No, Staff does not agree to remove the
16 deduction. Staff is only -- has only had the position
17 to remove the net operating loss. That's all.

18 Q. So the Company proposed to remove it, but you
19 don't agree?

20 A. The Company proposed to remove the NOL, what I
21 understand, as long as the repairs deduction is also
22 removed. Staff does not agree with both removals, only
23 the NOL.

24 Q. That's very helpful. Thank you.

25 A. Yes.

1 MS. SHEMWELL: That's all I have, Judge.

2 JUDGE HATCHER: Mr. Cooper?

3 MR. COOPER: Yes. Thank you.

4 CROSS-EXAMINATION BY MR. COOPER:

5 Q. Ms. Ferguson, repairs, the repairs deduction
6 is not depreciation, is it?

7 A. No, it's not.

8 Q. Now, you also made a statement, I believe,
9 that Staff believes it's appropriate to include the
10 repairs deduction in an ISRS; is that correct?

11 A. Yes.

12 Q. Has Staff taken that position in any other
13 ISRS case?

14 A. I will say there's a difference between the
15 repairs deduction in a gas case than what is being
16 proposed here. I believe back in 2004, Staff had
17 proposed in a Laclede Gas Company ISRS case to include a
18 263(a) repairs deduction. Now, I believe that was
19 settled and we might have split that 50/50. I'd have to
20 clarify that.

21 Now, moving forward, I don't believe that
22 deduction has been included, but the 263(a) deduction is
23 different than what is being proposed here, because the
24 263(a) deduction has to do with indirect and direct
25 costs that are related to the resale of gas. I don't

1 know if Missouri-American is eligible to take this
2 deduction, but what this deduction is is the 162 general
3 business deduction. So yes, it has been proposed.

4 Q. And it's your belief that the gas companies do
5 not have the 162 deduction that you're talking about?

6 A. I don't believe that's true. I can't say
7 either way.

8 Q. You just don't know, right?

9 A. Right, I don't.

10 Q. The end result of all that is you just don't
11 know?

12 A. I don't know if they have access to both, no.

13 MR. COOPER: That's all the questions I have,
14 Your Honor.

15 JUDGE HATCHER: All right. And any questions
16 from the bench? We'll move to recross. Any questions
17 on recross?

18 MS. SHEMWELL: No.

19 MR. COOPER: I was going to say we ought to be
20 redirect, shouldn't we, here?

21 JUDGE HATCHER: All right. Redirect.

22 MR. JOHNSON: Thank you, Judge. Just very
23 briefly.

24 REDIRECT EXAMINATION BY MR. JOHNSON:

25 Q. And just to further clarify, Ms. Ferguson, the

1 Company proposed in its initial application to include
2 the repairs deduction in its ISRS filing?

3 A. Yes, that's correct.

4 Q. And Staff agrees with that practice?

5 A. Yes.

6 Q. Mr. Cooper was asking you about other
7 utilities taking repairs deductions and you mentioned a
8 gas utility that has taken a repair deduction in the
9 past or at least it was proposed. Maybe not the same
10 deduction. Do you happen to know the case number for
11 that case?

12 A. I do. The case number is GO-2004-0443. And
13 it was a similar, you know, proposal. It might not have
14 been the same exact repairs deduction but it was a
15 repairs deduction.

16 MR. JOHNSON: Judge, I would request that the
17 Commission take notice of that case file. And it was
18 GO-2004-0443.

19 JUDGE HATCHER: All right. I've seen this in
20 a hearing before and it is the decision of the
21 Commission, but I'll go ahead and ask if there's any
22 objections to the Commission taking note of its own
23 decision?

24 MS. SHEMWELL: No.

25 JUDGE HATCHER: All right. We will so take

1 note. Go ahead.

2 MS. JOHNSON: I have no further questions.

3 Thank you, Ms. Ferguson.

4 JUDGE HATCHER: Any recross after that?

5 MS. SHEMWELL: No, thank you.

6 JUDGE HATCHER: Ms. Ferguson, you're excused.

7 Thank you.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 JUDGE HATCHER: Mr. Johnson, go ahead.

11 MR. IRVING: Yes, Staff would like to call

12 Matthew Barnes to the stand.

13 JUDGE HATCHER: Mr. Barnes, please raise your

14 right hand.

15 (Witness sworn.)

16 JUDGE HATCHER: Thank you. Please sit.

17 MATTHEW BARNES, being sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. IRVING:

19 Q. Mr. Barnes, please state your name and spell
20 your last name for the court reporter.

21 A. My name is Matthew J. Barnes. Last name is
22 B-a-r-n-e-s.

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

24 A. I'm employed by the Missouri Public Service
25 Commission as a utility regulatory auditor in the water

1 and sewer department.

2 Q. Did you prepare or cause to be prepared direct
3 testimony that has been marked as Exhibit 5?

4 A. Yes.

5 Q. Do you have any corrections to that testimony?

6 A. I do not.

7 Q. Is that testimony true and accurate to the
8 best of your knowledge and belief?

9 A. Yes, it is.

10 Q. If I were to ask you the same questions today,
11 would your answers be the same?

12 A. Yes, they would.

13 MR. IRVING: At this time I would move to
14 admit Exhibit 5.

15 JUDGE HATCHER: All right. Any objections to
16 the admission of the direct testimony of Mr. Barnes?

17 MS. SHEMWELL: No, thank you.

18 JUDGE HATCHER: Hearing none, it is so
19 admitted. Go ahead.

20 (STAFF'S EXHIBIT 5 WAS RECEIVED INTO EVIDENCE
21 AND MADE A PART OF THIS RECORD.)

22 BY MR. IRVING:

23 Q. Do you have any rebuttal testimony at this
24 point?

25 A. I do not.

1 MR. IRVING: Your Honor, I would like to
2 tender the witness for cross-examination.

3 JUDGE HATCHER: Thank you. And again, we turn
4 to the Office of Public Counsel.

5 MS. SHEMWELL: We have no questions. Thank
6 you.

7 MR. COOPER: No questions, Your Honor.

8 JUDGE HATCHER: Thank you. Any questions from
9 the bench?

10 COMMISSIONER COLEMAN: No.

11 JUDGE HATCHER: Thank you. And that will, of
12 course, take care of redirect and recross. Mr. Barnes,
13 you're excused. Thank you very much.

14 (Witness excused.)

15 JUDGE HATCHER: All right. Are there any
16 other witnesses that were not on the witness list?
17 Okay. Then let's move on to any final matters that need
18 discussing.

19 MS. SHEMWELL: Do we need to discuss on the
20 record the transcript availability?

21 JUDGE HATCHER: Let's go ahead. The
22 transcript I've been informed will be available tomorrow
23 and that will be as soon as it is possibly made
24 available will be the exact time. Any other questions
25 or issues regarding the transcript? I see shaking of

1 heads.

2 Let's get back to the exhibits. Mr. Cooper,
3 if you would be so kind, you may have done this but I
4 failed to mark it down, would you please move to offer
5 Exhibit 10 onto the record?

6 MR. COOPER: Yes, yes, Your Honor.

7 JUDGE HATCHER: Would there be any objections?
8 Exhibit 10, just reminder, is the ISRS recalculation
9 that was offered for Mr. LaGrand's attachment to his
10 testimony. Not hearing any objections, it is so
11 admitted. Thank you all.

12 Are there any other exhibits? I have all 10
13 admitted. Are there any others to be offered?

14 THE COURT REPORTER: Judge, I can safely say
15 it will be before noon.

16 JUDGE HATCHER: Excellent. Just in case
17 anyone didn't hear, the transcript will be available
18 before noon.

19 Let's talk about late-filed exhibits just real
20 quickly. I don't know if anyone anticipates any
21 late-filing exhibits, but let's go ahead and we'll just
22 put a due date of -- we're right into Thanksgiving.
23 Let's say Monday, close of business Monday, and I don't
24 have a date.

25 MR. COOPER: Be the 26th, I believe.

1 JUDGE HATCHER: 26th, close of business Monday
2 the 26th for any late-filed exhibits. They will be
3 filed by -- filing it with EFIS and simultaneously
4 providing a copy to all parties.

5 MS. SHEMWELL: Judge, are the briefs then due
6 on the 27th? That's a little late for exhibits if the
7 brief is due on the 27th.

8 MR. JOHNSON: Judge, I can state that from
9 Staff's perspective we do not anticipate filing any late
10 exhibits.

11 MS. SHEMWELL: We do not either.

12 MR. COOPER: Nor would I.

13 JUDGE HATCHER: Excellent. I love it when we
14 all agree.

15 MR. COOPER: Unless the Commission asks for
16 one.

17 JUDGE HATCHER: I'm not aware of any. So we
18 will scratch the late-filed exhibits instruction. We
19 will move right to the 27th briefs being due, and all of
20 those dates are on the already approved schedule. Last
21 call any other issues?

22 Thank you all. Let's adjourn the proceeding
23 and go off the record.

24 (Off the record.)

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