

In the Matter of:

THE APPLICATION OF CONFLUENCE RIVERS UTILITY OPERATING COMPANY, INC., etc.

WA-2019-0299 VOL. IV

October 08, 2019



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

October 8, 2019

Jefferson City, Missouri

Volume 4

In the Matter of:
The Application of Confluence)
Rivers Utility Operating)
Company, Inc. for Authority)
To Acquire Certain Water and) File No. WA-2019-0299
Sewer Assets And For A)
Certificate of Convenience)
and Necessity)

CHARLES HATCHER, Presiding
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,
WILLIAM P. KENNEY,
DANIEL Y. HALL,
MAIDA J. COLEMAN,
COMMISSIONERS

REPORTED BY:
Shelley L. Mayer, CCR
TIGER COURT REPORTING, LLC

1 APPEARANCES:

2 MS. KAREN BRETZ
3 MR. MARK JOHNSON
4 Department of Economic Development
5 Public Service Commission
6 200 Madison Street
7 P.O. Box 360
8 Jefferson City, Missouri 65102-0360
9 573.751.4140
10 For: Staff of the Missouri Public Service
11 Commission

12 MR. JOHN CLIZER
13 Department of Economic Development
14 Office of the Public Counsel
15 200 Madison Street
16 P.O. Box 2230
17 Jefferson City, Missouri 65102
18 573.751.5324
19 For: Office of the Public Counsel

20 MR. DEAN COOPER
21 MS. JENNIFER L. HERNANDEZ
22 Brydon, Swearngen & England
23 P.O. Box 456
24 Jefferson City, Missouri 65102
25 573.635.7166
For: Confluence Rivers Utility

MR. DAVID LINTON
McCarthy, Leonard & Kaemmerer
825 Maryville Centre Drive, Suite 300
Town and Country, Missouri 63017
314.341.5769
For: Lake Perry Lot Owners Association

PROCEEDINGS

1
2 JUDGE HATCHER: Let's go back on the
3 record. Good morning. Today is October 8th
4 at 9:00 a.m. Again we are continuing the hearing
5 that is titled In the Matter of the Application of
6 Confluence Rivers Utility Operating Company, Inc. for
7 Authority to Acquire Certain Water and Sewer Assets
8 and for a Certificate of Convenience and Necessity.
9 This is File No. WA-2019-0299 which has also been
10 consolidated with File No. SA-2019-0300.

11 Again, my name is Charles Hatcher, and I
12 am the regulatory law judge presiding over this
13 hearing. We had everybody make their entries of
14 appearance yesterday, and we have an outstanding
15 request from Confluence Rivers.

16 Confluence Rivers, would you restate your
17 request one more time just to make sure that I have
18 it correct.

19 MR. COOPER: I'll see if I can do that.

20 JUDGE HATCHER: Let me try it this way.
21 You want to recall one of your witnesses, Mr. Thomas
22 or Mr. Cox, to introduce pictures that they took five
23 days ago.

24 MR. COOPER: Correct. In response to the
25 new testimony that was offered yesterday by the lot

1 owners association.

2 JUDGE HATCHER: Tell me how that was new.

3 MR. COOPER: Well, your -- the
4 Commission's order of course ruling on the motions to
5 strike certain surrebuttal testimony from the
6 Company's testimony found that the surrebuttal was
7 appropriate and in accordance with the Commission's
8 rules, but provided the Association the opportunity
9 to provide live responsive testimony to that
10 surrebuttal during this hearing.

11 Our position is is that it's been stated
12 before, that the Applicant has the burden in these
13 cases. I think the Commission's rules are set up to
14 acknowledge that through the fact that normally in
15 the testimony process, the applicant gets sort of the
16 last word with surrebuttal. And so I think in this
17 situation, given the new live testimony that was
18 provided -- or the live testimony that was provided
19 yesterday, that the Company would like the
20 opportunity to respond to that in kind.

21 JUDGE HATCHER: The pictures that he was
22 referencing wasn't new testimony though. Correct?
23 It was already an addendum to prefiled testimony.
24 The sealed and the unsealed engineering reports, are
25 those the pictures that you're referencing as being

1 new?

2 MR. COOPER: No. No. It was Mr. Sayre's
3 testimony as to the condition of the system in regard
4 to --

5 JUDGE HATCHER: That he --

6 MR. COOPER: Yes. In violations of or
7 nonviolations in his testimony I guess is the way
8 he -- he said it was completely in compliance with
9 permit and design standards. And so it's those --
10 those -- that testimony that we would like to respond
11 to.

12 JUDGE HATCHER: Can you tell me, you've
13 had the pictures for five days, why they weren't
14 introduced earlier?

15 MR. COOPER: I don't think we had the
16 opportunity to introduce anything earlier. Testimony
17 was filed quite -- quite some time -- well, some time
18 ago.

19 JUDGE HATCHER: Mr. Linton, could you
20 please rephrase your objections again.

21 MR. LINTON: Yes. And I guess there's
22 some confusion about pictures; we did not introduce
23 any pictures.

24 But to back up and give you the context
25 for the situation is during surrebuttal testimony,

1 Confluence Rivers introduced new testimony that
2 should have been in their direct testimony, their
3 case in chief. I requested a motion to strike that
4 new information because it was new information and
5 should have been included in the case in chief. I
6 asked for, in lieu of that, more time to do some
7 discovery to be able to cross-examine the witnesses
8 on that new information. Your order said no, I won't
9 strike and I won't give more time for the -- for
10 discovery, but I will allow you to introduce evidence
11 in response thereto with your witnesses.

12 I carefully followed your order in
13 limiting my questions to the prior surrebuttal
14 testimony, the new surrebuttal testimony that you
15 identified was appropriate for additional
16 information.

17 And the pictures I think that we're
18 talking about were the pictures that were in that
19 surrebuttal testimony and part of the surrebuttal
20 testimony that was appropriate to respond to.

21 So I carefully limited my questions to
22 that part of the surrebuttal testimony. If we're now
23 going to introduce more new testimony in the form of
24 pictures, I guess I would -- I would ask limit that,
25 give me time to do some discovery on that as well.

1 JUDGE HATCHER: I have been very
2 conflicted about this decision because the first
3 thought in my mind was we have new information and
4 the Commission needs information, the commissioners
5 need information in order to make their best informed
6 decision. So how could I keep information from the
7 commissioners. But I am very aware of Mr. Linton's
8 claimed issue with allowing more new testimony. He's
9 going to be prejudiced. He's going to have to be
10 allowed to do his own investigation on this. And
11 he's quite right in that the order trying to cure --
12 trying to make sure that the playing field is level,
13 giving him and all parties extra time during live
14 testimony --

15 MR. COOPER: Judge --

16 JUDGE HATCHER: Yes.

17 MR. COOPER: And that's the problem. I
18 think we're in the same problem or in the same place
19 that you just described for Mr. Linton. I mean, it's
20 sort of -- the Commission generally has wanted to
21 avoid sort of the litigation by surprise, and that's
22 the reason for the prefiled testimony. And it's
23 difficult as soon as we start to branch out into live
24 testimony like this for everyone. I mean, we're sort
25 of in the same situation. We had to react yesterday

1 to live testimony that we heard for the first time
2 yesterday. So again, I think the -- I think the
3 problem you describe is true for us as well.

4 JUDGE HATCHER: I'm going to sustain the
5 objection.

6 We have two witnesses for today. We have
7 Keri Roth and we have Mr. DeWilde. OPC, public
8 counsel, you were in order coming up first yesterday.
9 Did you want to go ahead and call Ms. Roth first?

10 MR. CLIZER: I have no preference. I
11 will defer to the Commission's decision.

12 JUDGE HATCHER: Let's go ahead and take
13 Ms. Roth first.

14 MR. CLIZER: Absolutely.

15 (Witness sworn.)

16 JUDGE HATCHER: Thank you. Be seated.
17 Public Counsel, go ahead.

18 MR. CLIZER: Thank you, your Honor.

19 KERI ROTH, being sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. CLIZER:

21 Q. Ms. Roth, can you please state and spell
22 your last name for the court reporter. Sorry. State
23 your full name and spell your last name for the court
24 reporter.

25 A. Keri Roth, K-e-r-i, last name Roth,

1 R-o-t-h.

2 Q. And by who are you employed and in what
3 capacity?

4 A. I am employed by the Missouri Office of
5 the Public Counsel as a public utility accountant.

6 Q. Okay. And have you prepared or caused to
7 be prepared certain testimony that has been premarked
8 in this hearing as Exhibit 300P and C?

9 A. 200?

10 Q. 200, you're right.

11 A. Yes.

12 Q. I apologize. If I were to ask you the
13 same questions that were asked of you in those
14 testimony, would your answers today be the same or
15 substantially the same?

16 A. I do --

17 Q. Actually --

18 A. -- have one correction.

19 Q. Yeah. I was going to -- sorry. I'm
20 getting ahead of myself.

21 Do you have any corrections to make to
22 that testimony?

23 A. I do.

24 Q. All right. What was that correction?

25 A. On page 9, line 1, it says, Association

1 witness, Mr. Sayre. It should be Mr. Justis to match
2 the footnote down below. And I believe that's all I
3 have for corrections.

4 Q. All right. Notwithstanding that one
5 correction, if I were to ask you the same questions
6 that were asked of you in that testimony, would your
7 answers today be the same or substantially the same?

8 A. Yes.

9 Q. All right. And those answers are true and
10 correct to the best of your knowledge and belief?

11 A. Yes.

12 MR. CLIZER: In that case I offer OPC
13 Exhibits 200P and C and tender the witness for cross.

14 JUDGE HATCHER: Thank you. Do we have
15 any objections to the admission of Exhibit 200?

16 MR. COOPER: Yes, your Honor. We've got
17 some objections to primarily some schedules, and I've
18 got a list of those I'll provide to the parties and
19 to you. I think it'll make it simpler to go through
20 okay.

21 JUDGE HATCHER: Okay.

22 MS. BRETZ: Judge, we have an objection
23 also. Yesterday Mr. Francis withdrew -- or OPC
24 withdrew Mr. Francis's testimony, and to the extent
25 that Ms. Roth is responding to Mr. Francis'

1 testimony, we're going to ask for it to be redacted.

2 I can give you the pages and line numbers.

3 JUDGE HATCHER: Mr. Clizer, on Staff's
4 objection first.

5 MR. CLIZER: A witness can rely on
6 hearsay evidence for the development of her own
7 opinions. The fact that Mr. Francis's testimony was
8 withdrawn does not mean it was filed. She used it to
9 develop her testimony. She should be able to rely on
10 those statements for the development of her opinion.

11 MS. BRETZ: It simply doesn't make sense
12 for her to be referring to testimony that hasn't been
13 entered into evidence and so it should be -- it
14 should be redacted; it should be withdrawn.

15 JUDGE HATCHER: Mr. Linton?

16 MR. LINTON: I agree with Mr. Clizer
17 that Mr. Francis did file testimony. It was
18 supported by affidavit. It is evidence. While the
19 Commission cannot take that evidence into account in
20 this case, I think Ms. Roth may in that she can take
21 statements by others in forming her opinion.

22 JUDGE HATCHER: Confluence Rivers, do you
23 want to weigh in?

24 MR. COOPER: Well --

25 JUDGE HATCHER: On Staff's objection.

1 MR. COOPER: Yeah. Well, certainly we
2 think Staff's objection is appropriate and as we get
3 into our objections, at least one of ours is going to
4 be similar to that I think, so.

5 JUDGE HATCHER: I will --

6 MR. CLIZER: I will point out, your
7 Honor, that the same objection was raised in the
8 Osage case and was permitted to stay in. Confluence
9 attempted -- well, not Confluence, I apologize.
10 Osage Utility Operating Company objected to the
11 inclusion of testimony that cited to statements made
12 by Great Southern Bank I believe, and it was
13 permitted, included.

14 JUDGE HATCHER: Then I feel in good
15 company. Objection overruled. Your testimony can
16 come in without any redactions relevant to
17 Mr. Francis's testimony.

18 On to Confluence Rivers' objections.

19 MR. COOPER: Yes, your Honor. The first
20 one would be as to Schedule KNR-2 which is a --
21 photocopies of several what purports to be petitions.
22 Ms. Roth doesn't claim to have collected those or
23 overseen the process nor could verify the accuracy.
24 And it just seems like those sort of nontestimonial
25 expressions and members of the public are more

1 appropriate in the comment file for the case than
2 they are in evidence.

3 JUDGE HATCHER: I'm going to check to see
4 if they are already in the comments section. I
5 believe that they are. If they are, Staff, could you
6 help me out? I took the sheets that were provided at
7 the local public hearing, the same sheets that are
8 being objected to currently and had them submitted, I
9 believe, as public comments.

10 MS. BRETZ: Yes. They were entered into
11 the public comments.

12 JUDGE HATCHER: Okay. So then the
13 Commission already has access to those. So,
14 Mr. Cooper, it seems to be your choice if you want me
15 to strike those or not because they're already
16 entered as public comments.

17 MR. COOPER: I think they should be
18 stricken from the testimony.

19 JUDGE HATCHER: All right.

20 MR. CLIZER: Just for clarification,
21 being entered into the public comments, are they part
22 of the evidentiary record? Can they be cited -- can
23 the existence of these comments be cited to?

24 JUDGE HATCHER: I believe historically
25 the Commission has treated public comments as

1 informing the Commission of the public's view, but
2 not as citable evidence. Go ahead.

3 MR. CLIZER: Okay. Well, again, the
4 OPC's position in this case is that the interest of
5 the public requires an examination of the actual
6 expressed desire and interest of the public.
7 Therefore, we are citing to these comments as
8 evidence of that effect.

9 I mean, if the Commission just wants to
10 take administrative notice of its own comments
11 section such that it can be cited to as part of the
12 evidentiary record, then I don't see a problem with
13 not including it as a schedule. The point is I just
14 want to be able to cite to the comments themselves as
15 I believe that that is an exceptionally relevant
16 point in this case.

17 MR. COOPER: I don't think the comments
18 section has ever been viewed as evidence. There's
19 just no foundation for them.

20 JUDGE HATCHER: But Mr. Clizer is
21 correct, this does weigh in the Commission's
22 decision. And just the fact of the collection of
23 signatures he's wanting to cite and I think that
24 should be citable. So I am going to overrule your
25 first objection for page 4, line 5, KNR -- Schedule

1 KNR-2.

2 MR. COOPER: The second item on there
3 concerns KNR-3 and -- which is two pages of the
4 hearing script or hearing transcript from an
5 evidentiary hearing of an unknown date; there's no
6 representation on the pages. And we would argue that
7 there's no relevance to the case. There's no
8 evidence of the financing arrangement described that
9 reflects or represents current financing plans. And,
10 in fact, testimony yesterday indicated that it does
11 not.

12 JUDGE HATCHER: Sorry. I'm still getting
13 to KNR-3. Okay. KNR-3, I'm seeing it just begins
14 mid-transcript it appears and the caption which
15 appears at the top of the page, I'm -- this is a
16 question, Mr. Cooper, does it say, In the matter of
17 the water rate increase request of Hillcrest Utility
18 Operating Company?

19 MR. COOPER: It does indeed.

20 JUDGE HATCHER: Okay.

21 MR. CLIZER: Your Honor, a little
22 bit more information is also found in the
23 addressing footnote too. Page 4, footnote 6. It is
24 Case WR-2016-0064, hearing transcript volume 2,
25 pages 113, lines 23 through 25 that Ms. Roth is

1 specifically citing to.

2 These documents are part of the
3 commission record in a different case, and she is
4 just citing to them to support the position or
5 statement that she's made in her testimony that
6 Confluence has been unable to find traditional bank
7 financing in the past, which goes directly towards
8 the question of Confluence's financial abilities in
9 this case.

10 Now, I understand the argument that
11 Mr. Cooper has made, but that goes to the weight of
12 the evidence. It is still relevant that they have
13 been unable to find traditional bank financing in the
14 past.

15 JUDGE HATCHER: How is that relevant if
16 they've promised or if they've stated that they're
17 going to buy the utility with cash or equity?

18 MR. CLIZER: It goes to the general state
19 of Confluence's overall financial capabilities.
20 Again, the Commission is free to consider the weight
21 of that evidence and it may determine that there is
22 very little weight to that evidence, but as to the
23 question of relevance, it's simply just is this more
24 or less likely to address the issue of Confluence's
25 financial ability. And I would argue that yes, it

1 clearly addresses that issue.

2 JUDGE HATCHER: Mr. Linton, would you
3 like to weigh in?

4 MR. LINTON: I have nothing to add. I
5 think Mr. Clizer's made a good point, and I support
6 his position.

7 JUDGE HATCHER: Would Staff like to weigh
8 in?

9 MS. BRETZ: Staff agrees with Confluence
10 for all the reasons stated.

11 JUDGE HATCHER: I do as well. That was
12 from a previous case. The request by Confluence to
13 strike -- I don't -- I want to state this correctly,
14 Mr. Cooper, KNR -- Schedule KNR-3 and page 4,
15 footnote 6?

16 MR. COOPER: Correct.

17 JUDGE HATCHER: It is so ordered to
18 strike that.

19 Your next objection, Mr. Cooper.

20 MR. COOPER: Yes. Concerns Schedule
21 KNR-4 which is a copy of an OPC brief before the
22 Court of Appeals in an appeal WD 81661. And
23 certainly our -- to say that a brief is argument, it
24 should not be evidence in a case.

25 MR. CLIZER: I don't want to cut off

1 Mr. Cooper here, but I'm actually going to say I'll
2 withdraw that schedule.

3 JUDGE HATCHER: Okay. Problem solved.
4 KNR-4 and page 4, footnote 7 are struck from
5 Ms. Roth's testimony. And --

6 MR. CLIZER: Oh, the whole page?

7 JUDGE HATCHER: I hope I did not say
8 that. I mean page 4, footnote 7.

9 MR. CLIZER: Oh, okay.

10 JUDGE HATCHER: And just footnote 7 on
11 page 4 and schedule KNR-4.

12 MR. CLIZER: All right.

13 MR. COOPER: You weren't withdrawing the
14 whole page then?

15 JUDGE HATCHER: Good catch. Thank you.
16 Okay. Mr. Cooper, on to your next
17 request.

18 MR. COOPER: Okay. So Schedule KNR-5
19 which is -- again, it's a -- it's similar to our
20 earlier situation. It's an excerpt from a -- from a
21 prior hearing transcript, again, without any evidence
22 that it reflects or represents financing plans for
23 Confluence Rivers.

24 MR. CLIZER: Well, at the risk of being
25 overturned again, I would raise the exact same

1 argument I did previously. She is citing to this to
2 support the statement made in her testimony and it is
3 record that has been included in past cases and I see
4 no reason why she should not be able to cite to it to
5 show that what she's saying is accurate.

6 JUDGE HATCHER: Can you point me to the
7 line on Schedule KNR-5 that's at issue, or lines?

8 MR. CLIZER: According to the footnote,
9 it would be lines 1 through 6 of page 426.

10 JUDGE HATCHER: Okay. This is from a
11 case from two years ago? Can you briefly summarize
12 why it's relevant?

13 MR. CLIZER: Well, the statement made in
14 the testimony that's being supported is that the
15 owners of CSWR have been willing to put on -- put up
16 personal collateral to secure traditional bank
17 financing.

18 MR. COOPER: And, your Honor, there's
19 been testimony that the owners identified there are
20 not the owners of the company today.

21 JUDGE HATCHER: I have a problem with the
22 partial transcript and a problem with it being from
23 another case from a couple years ago. I find that
24 hard to bootstrap that relevance. I'm sorry, I'm
25 going to sustain Mr. Cooper's objection and strike

1 Schedule KNR-5.

2 MR. CLIZER: It's --

3 JUDGE HATCHER: And footnote 8 on page 4.

4 MR. CLIZER: Would the Commission be
5 willing to just take administrative notice of the
6 entire transcript from that case? I mean, the
7 transcript speaks for itself. Again, they're more
8 than willing to argue what they want about it, but
9 it's just commission records.

10 JUDGE HATCHER: To summarize, you want to
11 put evidence from several years ago that the
12 then-owners of one or more of these utilities either
13 weren't willing to put their personal assets up or
14 otherwise had some type of financial difficulty?

15 MR. CLIZER: I would argue that goes to
16 the determination of Confluence's ability to meet the
17 financing criteria. Again, others might disagree
18 with that and the Commission can interpret the weight
19 of that evidence through the briefs. I'm just asking
20 for the evidence to be presented, and this is, as I
21 said before, commission records.

22 JUDGE HATCHER: We're still on the fourth
23 request by Mr. Cooper?

24 MR. CLIZER: Page 4, footnote 8 I
25 believe --

1 JUDGE HATCHER: Okay.

2 MR. CLIZER: -- unless -- somebody
3 correct me.

4 MR. JOHNSON: That's correct.

5 MR. CLIZER: That's what I thought.

6 JUDGE HATCHER: I'm sorry, I'm going to
7 sustain Mr. Cooper's objection. If I did not already
8 state, then Schedule KNR-5 and footnote 8 of page 4
9 of Ms. Roth's surrebuttal testimony is struck.

10 MR. COOPER: Judge, the last item has to
11 do with a piece of prefiled testimony that was
12 offered in a different case, WA-2019-0185. It was
13 not admitted into evidence into that case because the
14 witness was not there to stand cross-examination.
15 And now it's being offered I assume as evidence as a
16 schedule to Ms. Roth's testimony in a different case,
17 in this case, along with as you can see -- really
18 there's probably -- yeah. Along with lines 1
19 through 16 on page 9 of the testimony.

20 We just don't believe that again,
21 testimony from a different case, testimony that was
22 never admitted into evidence in that case should now
23 be evidence in this case without the witness
24 appearing.

25 MR. CLIZER: Excuse me. Once again, I'd

1 start off by simply saying that Ms. Roth was free to
2 make her determination or form her opinion based on
3 the testimony that's been offered. And as for --
4 we're not actually offering it to prove the truth of
5 the matter asserted either. We are merely offering
6 it to show that there's a similarity of behavior
7 that's been exhibited across multiple cases.

8 While I can't cite to specific case law,
9 I believe that that is generally recognized exception
10 to hearsay rule, at least as far as -- well, I'm
11 fairly certain it is in at least criminal cases, kind
12 of pattern of behavior. I can't say that I've seen
13 that extended to civil cases necessarily.

14 MR. COOPER: Whether that is or isn't the
15 case, what we have here is not testimony from the
16 prior case.

17 JUDGE HATCHER: Would Staff like to weigh
18 in?

19 MS. BRETZ: Well, we believe that
20 Mr. Francis' testimony -- or the referrals to
21 Mr. Francis should be admitted, and we agree with
22 Confluence that we have no opportunity to
23 cross-examine Mr. Soukenik. It should be -- it
24 should be taken out too.

25 JUDGE HATCHER: Mr. Linton?

1 MR. LINTON: Yeah. This objection
2 strikes me as very similar to Staff's prior objection
3 regarding Mr. Francis in which the judge overruled
4 the objection. Ms. Ross -- Roth is capable of using
5 testimony that apparently has an affidavit with it as
6 supporting her opinion.

7 MS. BRETZ: Judge, if I might add, this
8 is a -- Mr. Soukenik's testimony is in a different
9 case and it seems perhaps that it's more similar to
10 your -- to your rulings on the other two, the
11 transcript rulings.

12 JUDGE HATCHER: I would have to agree.
13 We have rules just as I was -- I was talking with
14 Mr. Cooper earlier on his request to bring back
15 Mr. Cox. We have rules setting out all of this
16 testimony prefiled and rebuttal in order to try and
17 get as much information to the commissioners as
18 possible but in an orderly manner.

19 I'm going to have to sustain Mr. Cooper's
20 objection and strike Schedule KNR-8 as well as
21 lines 1 through 16 of page 9 of Ms. Roth's
22 surrebuttal testimony.

23 Okay. I think we are now back to the
24 original question. With Staff's and Confluence
25 Rivers' five objections handled, does anyone have any

1 other objections to the admission of Exhibit 200,
2 both public and confidential versions?

3 Okay. As so amended, it -- seeing no
4 objections, as so amended, it is admitted on to the
5 hearing record.

6 (OPC Exhibits 200 and 200C were received
7 into evidence and made a part of this record.)

8 Mr. Clizer, the witness is yours.

9 MR. CLIZER: I believe I already tendered
10 the witness for cross, but just in case, I tender the
11 witness for cross.

12 JUDGE HATCHER: My mistake then. Cross.
13 We are continuing with the pre-agreed-to order and we
14 will turn first to the Lake Perry Lot Owners.

15 MR. LINTON: I have no questions, your
16 Honor.

17 JUDGE HATCHER: And Staff?

18 CROSS-EXAMINATION BY MS. BRETZ:

19 Q. Good morning, Ms. Roth.

20 A. Morning.

21 Q. Would you please describe OP-- OPC's
22 investigation of the Confluence application.

23 A. Can you be more specific?

24 Q. Well, let's just speak generally. What
25 was your process in writing your surrebuttal

1 testimony?

2 A. My surrebuttal testimony is in response to
3 the rebuttal testimony of the Association witnesses.

4 Q. Who did you speak with?

5 A. In regards to?

6 Q. In preparation of your surrebuttal
7 testimony, did you speak with anybody?

8 A. Specific--

9 Q. Speak with anybody at Confluence?

10 A. At Confluence?

11 Q. Uh-huh.

12 A. About --

13 Q. About this --

14 A. -- the association testimony?

15 Q. Yes.

16 A. No.

17 Q. Did you speak -- did you speak with
18 Mr. Francis?

19 A. No.

20 Q. Did you speak with Mr. Justis?

21 A. No.

22 Q. Mr. DeWilde?

23 A. No.

24 Q. Mr. Sayre?

25 A. No.

1 Q. Mr. Cox, Mr. Thomas?

2 A. No.

3 Q. Did you speak with anybody on staff?

4 A. No.

5 Q. Did you visit the site?

6 A. No.

7 Q. Did you attend the local public hearing in
8 Perryville?

9 A. I did.

10 Q. You were there?

11 A. Uh-huh.

12 Q. Okay. What kind of investigation did you
13 do of the lot owners' proposal?

14 A. I just read through what they had filed.

15 Q. Did you do any investigation of the
16 Confluence application?

17 A. I've just read what's been filed in
18 testimony.

19 Q. Are you familiar with the term "desk
20 review"?

21 A. No.

22 Q. You've never heard that term?

23 A. I have not. Sorry.

24 Q. Okay. If I represented that that means
25 that you relied totally on previous research, there

1 was no independent data collection or investigation
2 of your own, does that -- does that sound like a
3 reasonable definition of it, considering what the
4 term is?

5 A. I wrote my testimony based on what has
6 been filed in the case. That's what I reviewed.

7 Q. So you did no independent investigation?

8 A. I did my own reading; I think that's
9 independent and my own analysis based on what I read.

10 Q. Okay. In making your recommendation did
11 you consider the property rights of the owners?

12 A. Can you clarify what you mean by that.

13 Q. Well, the owners, sellers of this system
14 clearly had property rights in their utilities,
15 wouldn't you say?

16 A. State that one more time, I'm sorry.

17 Q. The sellers of the utilities.

18 A. Yes.

19 Q. They have property rights in their
20 systems?

21 A. Correct.

22 Q. So what would you say those property
23 rights include?

24 A. Are you asking me if they have the right
25 to sell their system?

1 Q. I guess in a roundabout way.

2 A. I believe that they do, yes.

3 Q. So did you consider that right when you
4 were preparing your testimony?

5 A. Yes. But it's also been stated I think
6 that if the sale does not go through, they don't have
7 to sell. They will continue operating the system
8 based on some statements and a motion to strike at
9 the town hall meeting that was held.

10 Q. What consideration did you give of the
11 property owners rights to sell the system?

12 A. I don't know what you mean by that
13 question.

14 Q. Well, did you weigh it against other
15 aspects like the local control issue or the financing
16 issue?

17 A. I think it's very important that the lot
18 owners association has done a tremendous amount of
19 work and has shown interest in also purchasing.
20 Whether they succeed in that if this does not go
21 through is another story, but I just think that
22 that's something that should be considered.

23 Q. The lot owners you're talking about?

24 A. Yeah.

25 Q. Their interest should be considered?

1 A. Uh-huh.

2 Q. And the property rights of the seller
3 should be considered too?

4 A. (Witness nodded head.)

5 Q. Okay.

6 A. Yes.

7 Q. To you, what is the purpose of the not
8 detrimental to the public interest standard? What
9 does that mean to you?

10 A. Not detrimental. If there's a cheaper
11 option available or -- clearly the public has stated
12 that they do not want Confluence to purchase the
13 system, I think that's, right there, stands up to
14 that.

15 Q. So to you, cheaper means better?

16 A. No, not necessarily, but I think that
17 they've shown that they're very capable. They have
18 individuals who currently help out with the current
19 owners, so.

20 Q. But you're aware that the lot owners do
21 not have a contract to purchase the system?

22 A. They have submitted an offer, but no, I
23 don't believe there's a signed contract between the
24 parties, no.

25 Q. Okay. Would you agree that the purpose of

1 that standard, I'm speaking of the not detrimental to
2 the public interest standard, is to ensure the
3 continuation of adequate service to the public?

4 A. Yes. And I think the lot owners have
5 shown that they can probably do that too.

6 Q. Do you believe that Confluence doesn't
7 have the ability to run the systems?

8 A. I think that they have do the ability, but
9 I think the public has stated what they want.

10 Q. So that's the overriding concern for you
11 is what the public has stated?

12 A. I think that they have stated that, they
13 have put a tremendous amount of work together to show
14 a business plan and what their intentions are, and I
15 think that they will be capable of running it
16 themselves.

17 Q. Were you involved in a prior case with
18 Confluence; it's a case number WM-2018-0116 which
19 involved the transfer of about nine CCNs to
20 Confluence?

21 A. I reviewed stuff on that case, yes.

22 Q. Okay. Did you provide testimony in that
23 case?

24 A. That's what I'm trying remember. I don't
25 think that I did on that case.

1 Q. But you're aware of the case generally?

2 A. Yes.

3 Q. And you're aware that OPC entered into a
4 stipulation in that case?

5 A. Yes.

6 Q. And you're aware that in that case OPC
7 basically stated that Confluence has the -- the TMF,
8 the technical, managerial, and financial facilities
9 to operate these systems?

10 A. Yes. But none of those systems also had
11 other interested parties I don't believe in
12 purchasing them and who have intervened in the case
13 such as the lot owners in this case.

14 Q. And so you believe that the lot owners
15 intervening in this case makes it a different
16 situation in that their voice should be heard?

17 A. I do.

18 Q. One moment please. So is it OPC's
19 position that if another interested party is
20 interested in purchasing the systems and is going to
21 pay probably less than the contracted price, that
22 those -- that the Commission should award the system
23 to the other -- I'm stating this very -- let me start
24 over on that.

25 A. Sure.

1 Q. So is it OPC's position that if another
2 interested party other than the applicant is
3 interested in the systems and is offering less than
4 the applicant, that the Commission should consider
5 awarding CCNs to the other party, not the applicant?

6 A. I think that all parties should be
7 considered and reviewed, not just -- even if it is
8 just a lower offer, I -- I think that everyone should
9 be considered. I think that's fair and it is in the
10 public interest, that's the whole standard, and the
11 public wants to purchase the systems.

12 MS. BRETZ: That's all we have. Thank
13 you.

14 JUDGE HATCHER: Thank you. And
15 Confluence Rivers?

16 MR. COOPER: Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. COOPER:

18 Q. Ms. Roth, in your testimony you describe
19 the bank financing commitment that you believe that
20 the association or the Lake Perry Service Company has
21 to be at a possible fixed rate of 3.65 or 4.45.
22 Correct?

23 A. Yes. That's what I restated based on the
24 letter.

25 Q. And what you're referring to then, again

1 based upon the letter, is a \$300,000 loan that would
2 be secured by a \$300,000 CD that would be placed with
3 the same bank. Correct?

4 MR. CLIZER: Just where exactly in her
5 testimony, just so I can follow along.

6 MR. COOPER: Sure. It's surrebuttal,
7 page 4, lines 6 to 11.

8 MR. CLIZER: Thank you. Sorry to
9 interrupt.

10 THE WITNESS: Sorry. Can you repeat your
11 question?

12 BY MR. COOPER:

13 Q. Sure. And do you have that testimony in
14 front of you?

15 A. I do.

16 Q. So in line 7 through 11 you talk about
17 First State Community Bank provided a commitment
18 letter on May 3rd of 2019. And by the way, I take it
19 you looked at that commitment letter. Right?

20 A. I did look at that, yes.

21 Q. And it was a commitment for 60 days. Is
22 that correct?

23 A. Subject to check. I am not positive on
24 that.

25 Q. But the letter is in evidence already,

1 isn't it? It's attached --

2 A. I believe.

3 Q. -- to your testimony?

4 A. Yeah.

5 Q. So while we're there, so you're talking
6 about a \$300,000 loan that's secured by a \$300,000
7 certificate of deposit that would be placed at the
8 same bank. Correct? And then you reference, you say
9 fixed interest rates of 3.65 and 4.45 percent were
10 provided by the bank at the time of the letter.
11 Correct?

12 A. Correct.

13 Q. Now, would you agree with me that in order
14 to get the money for the CD, the Lake Perry Service
15 Company is promising to pay interest to their
16 investors. Correct?

17 A. I believe that's correct.

18 Q. And Mr. Justis says that the average
19 rate of return to be paid to those investors is
20 about 7.5 percent. Correct?

21 A. Can you point me to where that is?

22 Q. I can. Do you have his testimony there
23 with you?

24 A. I do.

25 Q. Okay.

1 JUDGE HATCHER: You're referencing the
2 Justis testimony?

3 MR. COOPER: This will be the Justis
4 testimony, rebuttal testimony, page 10, lines 7 to 8.

5 THE WITNESS: Yes, that's what he states.

6 BY MR. COOPER:

7 Q. Okay. So in order to get this loan, the
8 Lake Perry Service Company's not only going to pay
9 interest to the bank, the 3.65 or 4.45 that you
10 mentioned, but they're also going to pay about 7.5
11 percent to the investors that provide the CD dollars.
12 Correct?

13 A. And I also believe it states that they
14 expect the CD to return, produce a return of two and
15 a half percent.

16 Q. Correct. So that'll offset a little bit.
17 Right?

18 A. Correct.

19 Q. But ultimately would you agree with
20 Mr. Justis that the effective interest rate for
21 that \$300,000 loan is 8.65 percent?

22 A. Considering the percentages that we just
23 discussed, yes.

24 Q. Okay. And to get to 8.65, you have to
25 take into account the return on the CD, correct, as

1 you just mentioned?

2 A. Correct.

3 Q. Otherwise the interest rate would be
4 something over 10. Correct?

5 A. Right.

6 Q. Now, it was kind of mentioned in our
7 earlier discussions about the objections, but you
8 indicate that the owners of CSWR have never been
9 willing to put up personal collateral to secure bank
10 financing. Correct?

11 A. That was what I had in testimony, yes.

12 Q. And is it your understanding that under
13 the current ownership, Confluence Rivers' owners have
14 utilized equity to make the purchases of the nine
15 water and nine sewers systems that the company
16 currently owns?

17 A. That's my understanding.

18 Q. And is it your understanding that
19 Confluence Rivers plans to purchase the assets of
20 Port Perry using equity as well?

21 A. That's my understanding.

22 Q. And within the commission ratemaking
23 process, is there any guaranteed return on equity?

24 A. State that one more time.

25 Q. Within the Public Service Commission

1 ratemaking process --

2 A. Uh-huh.

3 Q. -- is there ever a guaranteed return on
4 equity provided by the Commission?

5 A. No guarantee.

6 Q. Right. So within the - within the case we
7 may set a target amount for equity, but ultimately
8 whether the shareholders earn that or not depends
9 upon events. Correct?

10 A. I think that's fair, yes.

11 Q. And they don't have an opportunity to go
12 back and collect more if they have a lower return on
13 equity in practice than was targeted in the case.
14 Correct?

15 A. Correct.

16 Q. Now, in talking about past financing, you
17 also recount some past rate cases and interest rates
18 I believe within your testimony itself. And the last
19 case for a CSWR affiliate was the Indian Hills rate
20 case. Correct?

21 A. Can you flip me back to my testimony
22 please.

23 Q. Sure.

24 A. Page 4 and 5?

25 Q. Correct.

1 A. Yes. The last one that I discuss is
2 Indian Hills.

3 Q. And I believe you state in your testimony
4 that the company's proposal was rejected by the
5 Commission. Correct?

6 A. Correct.

7 Q. And would you agree with me that in place
8 of the company's proposal, what the Commission used
9 was an interest rates of 6 percent?

10 A. I have 6.75 in my footnote.

11 Q. Okay. We'll go with that.

12 A. Okay.

13 Q. Now, in terms of rates for past affiliates
14 or affiliates of CSWR, did you compare the amount of
15 investment in those rate cases per customer as to the
16 amount of investment or repairs that are being
17 estimated by the company in this case per customer?

18 A. I haven't compared that, no.

19 Q. And if you were going to look at or
20 project rates, that would be -- that would be
21 important to know, wouldn't it?

22 A. Yes.

23 Q. Now, and I think you said this already,
24 you acknowledge that the Lake Perry Service Company
25 has no contract to purchase the Port Perry assets

1 today. Correct?

2 A. No. I don't believe there's a signed
3 contract.

4 Q. And maybe you got to this with the staff
5 questions, but you haven't inspected yourself the
6 Port Perry water and sewer facilities, have you?

7 A. I did not go on site and look at
8 facilities, no.

9 Q. So you personally don't have an opinion as
10 to the current condition of those facilities.
11 Correct?

12 A. No. It's my understanding they're in
13 compliance from what I've read.

14 Q. Now, again in your testimony, I believe
15 you express an opinion that a purchase price greater
16 than the net original cost might be detrimental to
17 the public interest. Correct?

18 A. Can you point me to my testimony?

19 Q. Yeah. Pages 5 and 6.

20 A. Yes. I state that I was concerned with
21 the purchase price being excessive compared to
22 staff's rate base.

23 Q. Right. Now, it's not uncommon for
24 purchases of utility assets to be at prices greater
25 than net original cost, is it?

1 A. No.

2 Q. And you would agree with me that
3 ultimately in a rate case, the rate base would likely
4 be set at a net original cost amount?

5 A. Yes.

6 Q. And there's no proposal in this case to do
7 anything different. Correct?

8 A. Correct.

9 Q. So there's no proposal under the new
10 nonviable utility rule to do anything other than net
11 original cost. Correct?

12 A. Not under the nonviable utility rule, no.

13 Q. Are you familiar with any rate case in the
14 past where recovery of an acquisition premium was
15 allowed by the Commission?

16 A. Not off the top of my head.

17 Q. So ultimately, regardless of the purchase
18 price, it's likely that the net original cost would
19 be used in a future rate case, correct, to set rates?

20 A. It's possible.

21 Q. Just possible?

22 A. Can you --

23 Q. Not likely?

24 A. -- re-- restate your question for me
25 please.

1 Q. Yeah. Would you agree that it's at least
2 likely that in a future rate case, that the net
3 original cost would be used for the purpose of
4 setting rates as opposed to the purchase price?

5 A. Typically in the past that's been Staff's
6 position. And as I stated here, my concern was that
7 Staff had not made a recommendation at the time that
8 I wrote my testimony. So that was my major concern
9 with the purchase price being so high over, that the
10 utility could come back in a future rate case and
11 request an acquisition premium, not necessarily to
12 the nonviable utility standard statute.

13 Q. Now, let's see. You also state in your
14 testimony, I think this is on page 8, that the Port
15 Perry water and sewer systems do need improvement,
16 but if they were purchased by the association or --
17 or the Lake Perry Service Company, they would be done
18 at a much lower cost. Is that correct?

19 A. That's what the association has indicated
20 is my understanding, yes.

21 Q. But, and I don't believe you were here
22 late in the afternoon, but I think Mr. Sayre
23 acknowledged that his report projects the possible of
24 the \$670,000 of improvements. Is that consistent
25 with your understanding from his testimony?

1 A. Can you point me to his testimony?

2 Q. I'm not sure that I can. Let's start with
3 this. In making your statement, what amount of
4 improvements did you think were being proposed or
5 estimated by the Lake Perry Service Company?

6 A. My understanding is that they have the
7 initial money set aside for the initial improvements.
8 I'm not sure if that's an HC number, so I don't want
9 to --

10 Q. That's okay.

11 A. -- state the dollar amount, but in --
12 within five years they had planned to invest more
13 money which considered larger dollar amounts in the
14 business plan.

15 Q. Right. Do you have Mr. Sayre's testimony
16 in front you?

17 A. I do.

18 MR. CLIZER: While she's getting there,
19 Judge, for the sake of the record --

20 MR. LINTON: Nothing.

21 MR. CLIZER: -- nothing in the Sayre's
22 report is confidential, just if that helps answer.

23 THE WITNESS: Thank you.

24 BY MR. COOPER:

25 Q. If you'll turn to, let's see, Schedule

1 CWS-1 in that testimony.

2 A. You said CWS-1?

3 Q. Uh-huh.

4 A. Okay.

5 Q. And then a few pages back you'll see
6 preliminary engineering report summary.

7 A. I did not print that copy.

8 Q. Okay.

9 A. I didn't print the full schedule I don't
10 believe. Sorry.

11 MR. COOPER: May I approach the witness,
12 your Honor?

13 JUDGE HATCHER: Yes.

14 THE WITNESS: Thank you.

15 JUDGE HATCHER: Mr. Cooper, remind me
16 which schedule we're on.

17 MR. COOPER: We're on CWS-1 and within
18 that, the preliminary report.

19 BY MR. COOPER:

20 Q. And do you have before you the page that
21 starts with 4.0, Estimates of Probable Cost and
22 Timing?

23 A. I do.

24 Q. And you'll see down there estimates
25 numbers. Right? 30,000; 450; 100; 10,000; 30,000,

1 and then if you flip that page over, you'll
2 see 50,000. Correct?

3 A. Correct.

4 Q. And would you agree with me that those
5 estimates add up to 670,000, or if you have a
6 better --

7 A. Approximately.

8 Q. Approximately. And is this the first time
9 you've looked at those numbers?

10 A. I may have seen them in the business plan.
11 Excuse me. I'm sure I've skimmed through the
12 preliminary engineering report, but I can't say for
13 sure that I read it specifically on this page.

14 Q. And are you aware that the company's
15 estimate of repairs is \$295,000?

16 A. Can you point me to where that is?

17 Q. Well, let's just start with this. I take
18 it you're not aware of that?

19 A. No. I know I've read it, but I want to
20 look at it.

21 Q. Do you have Mr. Cox's surrebuttal
22 testimony in front of you?

23 A. I do.

24 Q. Could you turn to page 10 of that
25 testimony.

1 A. Yes.

2 Q. And at line 22 to 23 and then flipping
3 over really just to the first part of the line 1 of
4 the next page.

5 A. And also included on the schedules JC-1C
6 and 2C?

7 Q. Correct.

8 A. I do, but I have a concern about that.

9 Q. But here's my -- here's my question. So
10 obviously you're not terribly familiar with these
11 numbers. We've had to work our way through them --

12 A. No. I just want to verify what I'm
13 looking at before I answer.

14 Q. But your testimony says I think that they
15 would be done -- improvements would be done at a much
16 lower cost by the Lake Perry Sewer -- or Service
17 Company. From the evidence it doesn't look like
18 they'll be at a lower cost, does it?

19 A. I also am aware that there was another
20 seven -- much higher figure originally from
21 Confluence, so. I wasn't here for the testimony
22 yesterday afternoon, so I can't speak too much to the
23 engineering and everything. And I'm not an engineer,
24 so.

25 Q. Okay. And it sounds like you haven't

1 really taken a detailed look at either one of these
2 proposals for improvements. Correct?

3 A. I have looked at them. I'm not saying I
4 haven't looked at them. I have concerns regarding
5 the water estimated cost of the numbers listed here.

6 Q. But -- but you haven't -- as you said,
7 you're not an engineer.

8 A. I am not an engineer.

9 Q. You haven't looked at the facilities.

10 A. I have not looked at the facilities.

11 Q. Did you say you had no opinion, personal
12 opinion as to the condition of the facilities.

13 Correct?

14 A. I am under the understanding that they are
15 in compliance.

16 Q. But -- but you haven't looked at them.
17 Correct?

18 A. No. I have not looked at them.

19 Q. So you have no opinion as to whether
20 they're in compliance or not. Correct?

21 A. I guess not from looking at them, just
22 from what I've read.

23 Q. Now, in your testimony you discuss the
24 issue as to whether other utilities are available to
25 provide similar service within the Port Perry service

1 area. Correct?

2 A. Can you state that one more time.

3 Q. I said in your testimony you discuss the
4 issue as to whether other utilities are available to
5 provide similar service within the Port Perry service
6 area. Is that correct?

7 A. Are you referring to where I'm discussing
8 Staff's review?

9 Q. Yes.

10 A. Yes.

11 JUDGE HATCHER: Would you state the page.

12 MR. COOPER: Page -- page 10, lines 8
13 to 21.

14 BY MR. COOPER:

15 Q. Actually that may -- well, where are we
16 here. Yeah. So you found that spot in your
17 testimony?

18 A. Yes.

19 Q. Okay. Now, there's currently only one
20 utility available to provide water and sewer service
21 in the Port Perry service area. Correct? That's the
22 Port Perry Service Company?

23 A. That's who's providing service, yes.

24 Q. And so currently there's no other utility
25 available to provide similar service. Correct?

1 A. That is who has the CCNs to provide the
2 service, yes, that's my understanding.

3 Q. Right. But if you tried to contract with
4 someone to provide you water and sewer service, it
5 would have to be the Port Perry Service Company.
6 Correct?

7 A. Correct.

8 Q. And you would agree that having a water
9 and sewer system in the Port Perry service area
10 promotes the public interest. Correct?

11 A. Correct.

12 Q. So you wouldn't suggest that the public
13 would be better off without a water and sewer system.
14 Correct?

15 A. Correct.

16 Q. Now, you say that Staff seems to ignore
17 that there is another available utility to provide
18 similar service. Is that right?

19 A. I am explaining that Staff is ignoring, in
20 my opinion, that the lot owners association is also
21 an interested party and that has intervened in this
22 case, and that they are only looking at the
23 applicant. They state that they look at whether
24 other utilities are available. And the lot owners
25 association has formed the Lake Perry Service

1 Company, so I believe that they are other -- they are
2 another option to purchase the system to operate
3 them. That's what I'm stating there.

4 Q. But you refer to them as a utility,
5 correct, another available utility?

6 A. Correct.

7 Q. And they're not a utility today, are they?

8 MR. CLIZER: I'm going to object for
9 calling for a legal conclusion. I mean, are we
10 getting into the definition of what a utility is and
11 whether or not --

12 MR. COOPER: Well, we can do -- we can do
13 this differently, your Honor.

14 BY MR. COOPER:

15 Q. How about this. Does the Lake Perry
16 Service Company own any water or sewer system assets
17 today?

18 A. No.

19 Q. And you'd agree they don't operate any
20 today either. Correct?

21 A. Correct.

22 Q. Now, you also make some allegations as to
23 why the Port Perry owners wouldn't talk to the
24 association about the sale of the Port Perry assets
25 and talk about them having been advised by BCSWR

1 attorney. What attorney are you referring to?

2 A. Can you point me to the line on my
3 testimony?

4 Q. Sure.

5 JUDGE HATCHER: Line 17 and 18 --

6 MR. COOPER: Yeah.

7 JUDGE HATCHER: -- page 10.

8 THE WITNESS: Hold on just a second
9 please. On page 13 of my testimony I also kind of
10 summarize that I know there was a letter from
11 Mr. James Beckemeier, attorney for CSWR, sending a
12 letter to Mr. DeWilde ordering him to stop
13 interfering with CSWR's contractual agreement with
14 Port Perry.

15 BY MR. COOPER:

16 Q. Your reference to an attorney at that
17 point is just to the Beckemeier letter?

18 A. That there, yes.

19 Q. Okay. And that's what you're referring to
20 on page 10 then in lines 16 to 18 as well?

21 A. I am restating what has been previously
22 said.

23 Q. So you don't have any -- any personal
24 knowledge beyond what's been previously said?

25 A. No. I'm just stating concerns that have

1 been brought up in the case.

2 Q. Are you aware that the Port Perry owners
3 are represented by Mike Pendergast?

4 A. That's my understanding, yes.

5 Q. Okay. And in your experience is
6 Mr. Pendergast shy about expressing his opinion about
7 things?

8 A. No.

9 Q. Okay. Now, moving forward, you also quote
10 to Mr. Dr. DeWilde's statements that denial would
11 reward citizens for their efforts by maintaining
12 their water and sewer services within their control.
13 Correct? I think that's on page 13 of your
14 testimony.

15 A. Are you referring to lines 11 through 14?

16 Q. Yes.

17 A. I state, as Mr. DeWilde states in his
18 rebuttal testimony, the Commission will gain
19 experience in this alternatives for making judgements
20 in future cases, and the citizens will be rewarded
21 for their efforts by maintaining their water and
22 sewer services within their control.

23 Q. I'm curious about your use of the phrase
24 "maintaining their control." You'd agree with me,
25 wouldn't you, that neither the Lake Perry Lot Owners

1 Association nor the Lake Perry Service Company own
2 those Port Perry Service Company assets today?

3 A. They do not own those assets.

4 Q. And the company, the entity, Port Perry
5 Service Company, has apparently owned those assets
6 since 1973 or so?

7 A. That's my understanding, correct.

8 Q. And presumably the Port Perry Service
9 Company has had control over those assets since 1973.
10 Correct?

11 A. Correct.

12 Q. Subject to the regulation of the Public
13 Service Commission?

14 A. Correct.

15 Q. And you would agree with me, if Confluence
16 Rivers were to purchase those assets, they would
17 continue to be owned and operated subject to the
18 regulation of the Public Service Commission?

19 A. Correct.

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

22 JUDGE HATCHER: Thank you. Are there any
23 questions from the bench?

24 COMMISSIONER HALL: None here.

25 COMMISSIONER KENNEY: I have none.

1 Sorry.

2 JUDGE HATCHER: Then I believe that will
3 take care of the testimony for Ms. Roth. Yes? Oh,
4 I'm sorry. Redirect.

5 MR. CLIZER: Thank you, your Honor.

6 MR. COOPER: Your Honor, one point.

7 Ms. Hernandez tells me that the preliminary report
8 that I referenced earlier, I had referenced as CWS-1
9 and apparently I don't think there's a mark on the
10 page, but it's CWS-2, so I apologize for that.

11 JUDGE HATCHER: Mr. Clizer.

12 MR. CLIZER: All right. Thank you.

13 REDIRECT EXAMINATION BY MR. CLIZER:

14 Q. All right. I have very little redirect,
15 so don't worry.

16 A. Okay.

17 Q. We were kind of -- you had a conversation
18 with Mr. Cooper just now regarding the competing cost
19 estimates that have been put forward in the various
20 engineering reports. And I'm going to try and make
21 an effort here to make sure I don't say anything
22 confidential, but just to kind of walk through the
23 timeline here, when you were filing your surrebuttal
24 testimony describing that the Confluence -- sorry --
25 the lot owners could perform engineering cheaper, you

1 were relying on the cost estimates in the rebuttal
2 testimony of, I believe, Chad Sayre. Is that right?

3 A. Correct.

4 Q. Okay. And then Josiah Cox filed
5 surrebuttal testimony that had a different number?

6 A. Yes.

7 Q. Okay.

8 MR. COOPER: I object to the
9 characterization of that question. I don't think
10 Mr. Sayre has any estimate -- well, never mind.

11 I apologize, Mr. Clizer; I should not have done
12 that.

13 BY MR. CLIZER:

14 Q. Is there any reason to assume that
15 Mr. Sayre's number or rather the estimates provided
16 in Mr. Sayre's preliminary engineering report would
17 necessarily be the costs if the lot owners were to --
18 sorry -- the cost to rehab the system if the lot
19 owners were to take control?

20 A. I think the numbers could change.

21 Q. That's all. All right. There was also
22 extended bit of discussion regarding the bank
23 financing, the testimony you had regarding
24 Confluence's bank financing and comparing that to the
25 financing that the lot owners had talked about. And

1 I think at some point they established that the lot
2 owners ultimate weighted average cost of capital
3 according to Mr. Justis's was something in the nature
4 of 7 or 8 percent. Do you recall that?

5 A. Yes.

6 Q. Okay. And we've already established that
7 Confluence is purchasing the system with an infusion
8 of equity?

9 A. Correct.

10 Q. In your experience dealing with water
11 cases, is the cost of equity usually higher or lower
12 than the cost of debt?

13 A. Usually it's higher.

14 Q. Do you have happen to know off the top of
15 your head what Confluence has sought with regard to
16 cost of equity in past cases?

17 A. I believe they've been awarded anywhere
18 from 11 to 12 percent in other cases.

19 Q. All right.

20 A. On -- on rate cases.

21 MR. CLIZER: Thank you. And then
22 finally, -- you know what, I don't even need to ask
23 that question. I have no further questions. Thank
24 you.

25 JUDGE HATCHER: Thank you, Mr. Clizer.

1 Ms. Roth, you are excused.

2 THE WITNESS: Thank you.

3 JUDGE HATCHER: And our last witness is
4 Richard DeWilde. Please come to the witness box.

5 (Witness sworn.)

6 JUDGE HATCHER: Thank you. Please be
7 seated. Lake Perry Lot Owners, your witness.

8 RICHARD DeWILDE, being sworn, testified as follow:

9 DIRECT EXAMINATION BY MR. LINTON:

10 Q. Good morning, Mr. DeWilde.

11 A. Good morning.

12 Q. Please state your name for the record.

13 A. Richard DeWilde.

14 Q. And by whom are you employed?

15 A. I'm actually self-employed. I'm a
16 certified public accountant in Perryville, Missouri.
17 I'm -- so I'm self-employed.

18 Q. And who are you here on behalf of?

19 A. The Lake Perry Lot Owners Association.

20 Q. Did you prepare or cause to be prepared
21 what has been marked as Exhibit No. 308 for this
22 case?

23 A. I have.

24 Q. Do you have any changes to make to that?

25 A. I do not.

1 Q. If I were to ask you those questions
2 today, would your answers be the same?

3 A. Yes, they would.

4 Q. Do you believe that the testimony
5 questions and answers as well as the schedules are
6 true and accurate to the best of your understanding,
7 knowledge, and belief?

8 A. I do.

9 MR. LINTON: With that I would offer
10 Exhibit 308 into evidence and tender the witness for
11 cross-examination.

12 JUDGE HATCHER: Are there any objections
13 to the admission of Exhibit 308?

14 MR. COOPER: No objections. Just a
15 question. Was Mr. Sayre, what was his exhibit
16 number? We had that as 308, but we may be in error.
17 Okay.

18 MR. LINTON: The court reporter gave
19 me 308.

20 JUDGE HATCHER: I also have 308. 309 --

21 MR. LINTON: We need to make this 309.

22 JUDGE HATCHER: Let the record reflect
23 and the court reporter to please note that Richard
24 DeWilde's rebuttal testimony being offered as an
25 exhibit will be marked Exhibit 309.

1 Thank you, Mr. Cooper. Are there any
2 objections to the admission of Exhibit 309 on to the
3 hearing record? Hearing no objections, it is so
4 admitted.

5 (Lake Perry Lot Owners Association
6 Exhibit 309 was received into evidence and made a
7 part of this record.)

8 JUDGE HATCHER: Please continue.
9 Mr. Linton, go ahead.

10 MR. LINTON: I believe I've already --

11 JUDGE HATCHER: Oh, I'm sorry. You
12 tendered the witness.

13 MR. LINTON: Yeah.

14 JUDGE HATCHER: I got caught up making
15 sure we were on the right number.

16 We'll continue with our predetermined
17 list for cross-examination. Public Counsel,
18 Mr. Clizer, you're up.

19 MR. CLIZER: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. CLIZER:

21 Q. Good morning, Mr. DeWilde. Did I
22 pronounce that correctly?

23 A. Yes, thank you. Good morning.

24 Q. Okay. You have a copy of the surrebuttal
25 testimony of Mr. Josiah Cox in front of you?

1 A. The surrebuttal?

2 Q. Yeah.

3 A. Yes, I do.

4 Q. Can you turn to page 6 if you find it,
5 when you find it.

6 A. I have it.

7 Q. All right. There's a table on page 6 and
8 I am focused on the third row as it appears on that
9 table, the first column of which reads, Deemed by
10 Missouri Department of Natural Resources to have
11 technical, managerial, and financial ability to
12 operate Missouri water and sewer systems.

13 Do you see where I'm referring to?

14 A. I do.

15 Q. In the far right column, the third column
16 it says, Neither LPOA, LOA, nor LPOC holding permits
17 to provide water or sewer services in the state of
18 Missouri. Right?

19 A. That is correct.

20 Q. Now, the lot owners have received
21 authorization from MDNR to provide water services.
22 Correct?

23 A. We have.

24 Q. Okay. And in that same table, the
25 immediate next row, Organization and experience

1 constructing and maintaining and operating Missouri
2 water and sewer systems. In the far right column it
3 says, Neither LP-- LPOA nor the Lake Perry Service
4 Company currently or in the past have owned or
5 operated water or sewer systems. Correct?

6 A. That is correct.

7 Q. You do however have commitments from
8 individuals who have operated systems and, in fact,
9 have operated this system?

10 A. You are correct.

11 Q. All right. Has the Lake Perry Service
12 Company or the lot owners association, I'm not
13 sure which technically a party would be
14 responsible for this, secured the necessary financing
15 for the \$300,000 CD that was going to be used to
16 initially fund the purchase of the Port Perry system?

17 A. Have we secured -- have we secured it, is
18 that your question?

19 Q. Yes.

20 A. We have a commitment letter from the bank.
21 I personally have gone to the bank to discuss whether
22 or not we could obtain some financing to purchase
23 this Port Perry Service Company. And in the
24 conversation with the individuals that are at the
25 home office at First State Community Bank, they

1 mentioned to me that they would get me a commitment
2 letter at that time that would state that if we could
3 raise \$300,000 within our organization, our lot
4 owners, and then use that as security on a CD or buy
5 a CD and then use the CD as security, that they would
6 continue with that.

7 Now, I do -- I am aware that that's
8 a 60-day commitment that was at the time that we
9 initially put that together.

10 Q. And have you been able to secure
11 commitments with any organization to fund
12 that \$300,000?

13 A. Currently have \$252,000 worth of
14 individuals that have agreed. I also -- I also had a
15 conversation with several others that are interested.
16 The total amount that they're interested in
17 contributing, I don't have the numbers yet. But I do
18 have one other individual that is a lot owner that
19 has mentioned whatever the shortfall is, that he will
20 make that up.

21 Q. Have you reviewed the testimony provided
22 by the commission staff in this case?

23 A. I have.

24 Q. Do you agree that commission staff have
25 carefully considered the proposal to purchase this

1 system that has been made by the Lake Perry Lot
2 Owners Association?

3 A. I do not believe they gave careful
4 consideration to our proposal. I do know that we do
5 not have a signed contract, I'm aware of that, but I
6 do believe we're a viable option and I do not believe
7 that they've taken that seriously.

8 Q. You just mentioned the not having a signed
9 contract. I believe in the testimony of -- sorry.
10 Hang on one moment. Do you have an understanding of
11 why -- or do you have -- do you have an opinion as to
12 why there is not a signed contract at this point?

13 A. I do have an opinion. I know Michael
14 Yamnitz very, very well and we've had discussions at
15 various times on different items. He had come to me
16 to let me know that there was a signed contract on
17 this. And at the time I mentioned that, you know, we
18 may be interested in purchasing also, and he acted as
19 though that would be great.

20 Then he came back later and said, I'm
21 sorry, I cannot talk to you. I've been told that I'm
22 not able to discuss anything with you, that I have a
23 signed contract, therefore, I'm not willing to sign
24 anything at that point.

25 So basically those are the facts. We did

1 send an asset purchase agreement to him asking for
2 him to sign the asset purchase agreement. Basically
3 says if the Commission does not allow Confluence to
4 go through with this process, that we would be an
5 alternative to that and we'd be interested in
6 purchasing.

7 Q. Were you given a reason for why
8 Mr. Yamnitz would no longer speak to you regarding
9 the proposed sale?

10 A. His reason was that his attorney told --
11 told him not to talk to us about this.

12 Q. And do you know who that attorney was?

13 A. I do not. I did ask him if he would
14 please let me know who that attorney was if he didn't
15 mind. And he hesitated a second and then he said,
16 Yes, our attorney is the same attorney as Confluence.
17 And that was what he had mentioned to me.

18 Q. All right. This is a bit of a weird
19 question. I just noticed that you're wearing a nice
20 red tie. I think it's the second time in a row I've
21 seen it in there. Is there a reason for that?

22 A. Yes. We tried to show some sort of, I
23 don't know what the word is exactly, but cohesion
24 among all the people at the lake. We have a number
25 of people here, lot owners from the lake that have

1 come and they're wearing red. At our public hearing
2 we wore red. It just is something to kind of show
3 that we are all in this together, and so that's what
4 the red is all about.

5 MR. CLIZER: I have no further questions.
6 Thank you.

7 JUDGE HATCHER: Thank you, Mr. Clizer.
8 Staff.

9 MS. BRETZ: Thank you.

10 CROSS-EXAMINATION BY MS. BRETZ:

11 Q. Good morning, Mr. DeWilde.

12 A. Good morning.

13 Q. Could you please -- well, first of all,
14 you said that you received a permit from the Missouri
15 Department of Natural Resources.

16 A. Yes, ma'am.

17 Q. What did you have to do to get that
18 authorization?

19 A. Our attorney had filed with them and
20 gotten the authorization, so actually I can defer to
21 him that it was -- came through his office.

22 Q. Do you know what was filed?

23 A. I think I have a copy of it if I can look
24 here a second. Bear with me here a little.

25 Q. Sure.

1 A. Yes. It's a letter from Missouri
2 Department of Natural Resources signed by a Chris
3 Wieberg dated March 20th of 2019.

4 Q. You're looking at schedule RD-6?

5 A. Yes, ma'am.

6 Q. Okay. Could you read or start reading at
7 least the middle paragraph of that letter?

8 A. I will.

9 The Department has reviewed Lake Perry
10 Service Company's articles of incorporation and
11 bylaws and finds they meet the requirements set in
12 Section 393.825 to 393.861 for not-profit sewer
13 companies and the requirements set forth in
14 Section 393.900 to 393.951 for non-profit water
15 companies.

16 Should I continue?

17 Q. That's fine. So from that sentence does
18 it sound like your attorney only submitted Lake Perry
19 Service Company's articles of incorporation and
20 bylaws in order to get this letter?

21 A. I can only assume that you're correct on
22 that.

23 Q. That's not a very onerous thing to do, is
24 it?

25 A. I don't know the -- I don't know the

1 technicality of all that, so I -- I can't give you an
2 answer on that.

3 Q. So the lot owners have certification from
4 the Missouri Department of Natural Resources to
5 operate a utility. Isn't that correct?

6 A. Yes.

7 Q. But they have no permit to operate the
8 utility?

9 A. No, we do not.

10 Q. You told Mr. Clizer that you do not -- the
11 lot owners do not have a signed contract with the
12 sellers to purchase the utilities?

13 A. That is a correct statement.

14 Q. Have the lot owners filed an application
15 for a CCN for those utilities?

16 A. I don't know the answer to that, ma'am. I
17 don't know.

18 Q. Have you -- or are you aware of whether
19 the lot owners have made an application to get
20 permission to purchase the utilities?

21 A. Again, I would -- I would defer to the
22 attorney. I don't know the answer to that.

23 Q. Okay. I'm curious about the commitments
24 that you were discussing with Mr. Clizer for the
25 initial cash.

1 A. Yes.

2 Q. So you or the lot owners have no cash in
3 the bank so to speak. Right?

4 A. They do not.

5 Q. Could you please turn to Schedule RD-3C in
6 your testimony.

7 JUDGE HATCHER: I would just like to
8 interject that this is marked Confidential and does
9 include people's names and amounts.

10 BY MS. BRETZ:

11 Q. You just told Mr. Clizer that so far you
12 have commitments of \$252,000 --

13 A. Yes, ma'am.

14 Q. -- to purchase the system?

15 And this letter, Schedule RD-3C, it's
16 dated as of July 8th, 2019, that you had 252,000?

17 A. Yes, ma'am.

18 Q. And then you wrote in your testimony that
19 there was \$252,000 committed?

20 A. Yes.

21 Q. How long has that balance been there?

22 A. Continually since that date that you've
23 seen. I've not pursued additional financing or extra
24 money since that date, so it's not changed.

25 Q. The July 8th date?

1 A. Yes.

2 Q. Okay. And you told Mr. Clizer that you
3 expect a person to come through with the shortfall if
4 there is a shortfall?

5 A. That is correct.

6 Q. So the shortfall is almost \$50,000?

7 A. Yes.

8 Q. And I'm not going to speak to the actual
9 commitments or the people, but looking at your
10 Schedule RD-3C, wouldn't you say that there's quite a
11 range in the amount of the commitments?

12 A. I would say there's a very big range, yes,
13 ma'am.

14 Q. And if this person follows through with
15 that final payment, that would be the largest
16 commitment of all, isn't it?

17 A. No. It would not be.

18 Q. Oh, not quite. Not quite. But it would
19 be in the top?

20 A. Yes, ma'am.

21 Q. What does it mean for this project to have
22 made a commitment to it, a financial commitment?

23 A. Well, basically what it means is that our
24 lot owners are very committed to what they want to
25 do. And doing that, they put their money where their

1 mouth is. We've told them that we're going to need
2 some sort of a way to finance this. To go straight
3 to a bank and ask them for a loan when you have no
4 prior history is virtually impossible; you're not
5 going to get money.

6 So the hope is, and what we discussed with
7 the bank is, that we would have a track record of
8 three years to develop a plan for them to show that
9 we'd be profitable and could -- could move forward.
10 And at that time, then actually try to secure
11 commercial financing.

12 Q. So these people that have committed --
13 made the commitments, are they obligated to
14 contribute the money if this project comes to
15 fruition?

16 A. Yes, ma'am.

17 Q. So what is binding upon them to contribute
18 the money?

19 A. You know, there's no real binding. We
20 don't have a commitment letter; we don't have
21 anything signed. We work off of trust and we -- we
22 have a lot of trust in our individuals out there and
23 our lot owners. I suspect that maybe or one or two
24 of these might have some other things happen in their
25 life that would preclude them from contributing to

1 this, but yet I would have others that would step up
2 once they know that this is going.

3 I -- as I said, I have other names at my
4 office that have said, you know, Once this goes
5 through, let me know and I'll be more than willing to
6 commit. I don't have the numbers, I don't have
7 anything, but I do trust that when these people say
8 they're going to do it, that it'll happen.

9 Q. So are there any sanctions if a person
10 changes their mind and decides not to contribute?

11 A. Oh, no.

12 Q. Is anybody going to enforce this
13 commitment?

14 A. In what sense do you mean enforcement?

15 Q. Well, I mean, there's no contract to make
16 the -- to follow through with the commitment, is
17 there?

18 A. No. We'll have a note between us and them
19 that will actually have an interest-bearing amount so
20 that we can pay them their interest on a quarterly
21 basis, which is what we plan on doing. And
22 therefore, you know, like any other note, you know,
23 it's -- it's set up to where we'll pay them off after
24 that three-year period.

25 Q. But there's no penalty and there's not

1 going to be any enforcement if some of these people
2 decide they don't want to contribute?

3 A. Oh, no.

4 MS. BRETZ: Okay. Thank you. I have
5 nothing else.

6 JUDGE HATCHER: Thank you. And
7 Confluence Rivers.

8 MR. COOPER: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. COOPER:

10 Q. Sir, your -- I think your testimony says
11 you're president of the Lake Perry Lot Owners
12 Association.

13 A. I am, sir, thank you.

14 Q. And I see also from your testimony that
15 Lake Perry Lot Owners Association bills lot owners
16 for an annual assessment. Is that correct?

17 A. That is correct.

18 Q. And I think your testimony says that the
19 annual assessments are transferred to the Perry
20 County Land Company. Correct?

21 A. That is correct.

22 Q. And an annual assessment for the lot
23 owners association total for a year, 440,000 or so?

24 A. Not quite that much. 380,000 maybe. Some
25 years we have larger sales of lots and stuff which

1 increases our amount, but assessments alone is
2 probably more like 380.

3 Q. So your financial statements might show a
4 greater amount, but that would be more than just the
5 assessments; it would be also some lot sales. Is
6 that what you're saying?

7 A. Yeah. We have lot sales. We also have
8 marina rentals. We have some other things that
9 generate additional income.

10 Q. Okay. In your financial statements, I see
11 an amount for rent. Is that what's turned over to
12 the Perry County Land Company?

13 A. It is. It's the transfer from one
14 corporation to the other.

15 Q. And as of April this year I think you were
16 still the president -- you were the president of
17 Perry County Land Company. Is that correct?

18 A. Yes.

19 Q. And are you still the president of Perry
20 County Land Company?

21 A. I am.

22 Q. Okay. And Perry County Land Company is a
23 general business, for-profit company. Correct?

24 A. It is.

25 Q. And are you a shareholder in that company?

1 A. I am not.

2 Q. Who are the shareholders in that company?

3 A. The shareholders of the Perry County Land
4 Company are actually the lot owners themselves, so
5 there is no individual shareholder.

6 Q. Now, you're a, you mentioned earlier, a
7 certified public accountant. Correct?

8 A. Yes, sir.

9 Q. And you currently perform work for the lot
10 owners association?

11 A. I do.

12 Q. In the capacity of a CPA?

13 A. Yes. And also manage the operation from
14 our office.

15 Q. And do you do that work for Perry County
16 Land Company as well?

17 A. I do.

18 Q. And I suppose, it looks like from your
19 proposal that you would also do that work for Lake
20 Perry Service Company. Correct?

21 A. Yes. To get it started, that would be
22 the -- that would be the plan.

23 Q. Okay. And you've been paid for your work
24 on this intervention as well, haven't you?

25 A. I have.

1 Q. And that amount would be 7-- well, tell me
2 what that amount is as of today.

3 A. Seventeen, eighteen thousand, somewhere in
4 that neighborhood.

5 Q. I think in your responses maybe to
6 Mr. Clizer's questions, but I could be wrong about
7 this, but I think that you pointed out that the
8 commitment letter that has been referred to in this
9 case for the \$300,000 had a 60-day fuse on it.

10 Correct?

11 A. It did.

12 Q. And do you remember what that letter was
13 dated?

14 A. Can I check?

15 Q. Certainly.

16 A. I believe it was in May of 2019, but I
17 don't know the exact date, sir.

18 Q. I think it's, if it helps, it's Schedule
19 RD-2C.

20 A. RD-2C. Thank you. Yes. May 3rd of 2019.

21 Q. So it would have -- the 60 days would have
22 run early July. Correct?

23 A. Yes.

24 Q. Now, there had been some discussion about
25 the issue of local control over these water and sewer

1 assets. Correct?

2 A. Yes.

3 Q. And those are the assets that are owned by
4 Port Perry Service Company. Correct?

5 A. Yes.

6 Q. Are you familiar with Missouri American
7 Water Company?

8 A. Vaguely. I'm not highly familiar with
9 them, no.

10 Q. That's kind of two things. Let's start
11 with that. Vaguely, what's your familiarity?

12 A. I just, I know who they are, but I don't
13 know a lot about their operation.

14 Q. Okay. But let me ask you this: If
15 Missouri American Water Company would you -- would
16 purchase the Port Perry Service Company assets, would
17 you have the same concern about loss of local
18 control?

19 A. I think we would have to evaluate that at
20 the time that that would potentially occur.

21 Q. If I were to tell you that their parent
22 company were -- is based in New Jersey, would you
23 still have the same concern about local control over
24 the water and sewer?

25 A. I think my -- my answer is the same. I

1 think we would have to look at that at the time and
2 see what we -- what -- how we would evaluate that.

3 Q. How about, are you familiar with an entity
4 called Liberty Utilities?

5 A. I am not.

6 Q. Okay. Will the -- will the Lake Perry
7 Service Company owe the lot owners association for
8 the costs that the association has expended in this
9 intervention?

10 A. They will.

11 Q. And I take it from your DR responses that
12 you don't know how much those costs will eventually
13 be, do you?

14 A. That's correct. It's still ongoing.

15 Q. And, but in terms of just yourself,
16 Experience on Demand, and Allstate Consultants, the
17 number is greater than \$50,000. Correct?

18 A. You are correct.

19 Q. And that doesn't include whatever you
20 might spend for Mr. Linton. Correct?

21 A. You're correct.

22 Q. Okay. And I take it from your response,
23 there's no ultimate budget; there's no top end to
24 what might be expended. Is that correct?

25 A. That is correct.

1 Q. Now, the association, the lake -- the lot
2 owners association, it doesn't own the Lake Perry
3 Service Company, does it?

4 A. It does not.

5 Q. And today, the Lake Perry Service Company
6 has no members. Correct?

7 A. That's correct.

8 Q. And I think we've talked about it a little
9 bit. The Lake Perry Service Company doesn't own any
10 water or sewer system assets today. Correct?

11 A. Correct.

12 Q. And has no permits to operate water or
13 sewer?

14 A. Correct.

15 Q. And again, doesn't have a contract to
16 purchase any water or sewer assets as of today, does
17 did?

18 A. Correct.

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

21 JUDGE HATCHER: Thank you, Mr. Cooper.
22 Any questions from the bench?

23 COMMISSIONER KENNEY: I have none.

24 COMMISSIONER HALL: No questions, thank
25 you.

1 JUDGE HATCHER: I don't have any.

2 Redirect from Mr. Linton?

3 MR. LINTON: Yes, your Honor.

4 REDIRECT EXAMINATION BY MR. LINTON:

5 Q. Just one question, Mr. DeWilde. You had a
6 question for -- from Staff Counsel Bretz, regarding
7 your schedule RD-6.

8 A. Yes.

9 Q. Would you go on and read that last
10 sentence of that middle paragraph?

11 A. I will. The Department hereby authorizes
12 Lake Perry Service Company to provide sewer and water
13 services within the service area defined in Exhibit A
14 of the articles of incorporation.

15 Q. So you would agree that you do have the
16 authorization of the Missouri Department of Natural
17 Resources to provide water and sewer services in that
18 service area. Correct?

19 A. I do.

20 MR. LINTON: No further questions.

21 JUDGE HATCHER: Thank you. Mr. DeWilde,
22 you are excused.

23 That concludes all of our witnesses for
24 this case. Are there any final matters? I'll ask
25 that one more time before we officially close our

1 hearing.

2 MR. LINTON: Yes, your Honor. There
3 was a discussion about professional engineers
4 registration seals. I would just request that
5 the Commission take administrative notice
6 of 20 CSR 2030-3.010 and 3.060. That's -- those are
7 the rules of the Department of Insurance, Financial
8 Institutions, and Professional Registrations.

9 JUDGE HATCHER: Are there any objections?
10 The Commission will so take administrative notice.

11 MR. LINTON: Thank you, your Honor.

12 JUDGE HATCHER: Counsel, are all of your
13 exhibits entered?

14 MS. BRETZ: Yes.

15 JUDGE HATCHER: Just for your own
16 references. Initial briefs are due October 24th.

17 MR. CLIZER: Your Honor?

18 JUDGE HATCHER: Yes.

19 MR. CLIZER: I was going to ask for a
20 one-week extension to both briefs. I attempted to
21 communicate this with all of counsel, some have not
22 gotten back to me, but I would like to make a request
23 for a one week-extension to both briefs.

24 JUDGE HATCHER: Can you find the exact
25 dates that you want while I ask the other counsel if

1 they have an objection to your request?

2 MR. COOPER: Your Honor, if -- I'm one of
3 the counsel that hasn't gotten back to Mr. Clizer
4 yet. If we could have a few minutes just to talk
5 about this off the record, we may be able to clear it
6 up.

7 JUDGE HATCHER: Let's go ahead and take
8 a --

9 MR. COOPER: Well, I -- how about -- how
10 about this, yeah, because I don't -- I don't really
11 want you to have to go off the record and come back
12 on, but would it be possible for us to get together
13 and talk and file today what we're going to do with
14 the extension or?

15 JUDGE HATCHER: I like that. Perfect
16 answer. All right. Okay. Right now the initial
17 briefs are due October 24th. Reply briefs are due
18 October 31st by 10:00 a.m. Whatever date you all
19 agree to, please keep that 10:00 a.m. or noon,
20 because I still need to write for the commissioners
21 before their next agenda meeting.

22 MR. CLIZER: So is that just for the
23 reply brief that's due by 10:00 a.m.?

24 JUDGE HATCHER: Yeah. Just the very
25 final one.

1 MR. CLIZER: Okay.

2 JUDGE HATCHER: On reply briefs. Just
3 make that sometime before 3:00 in the afternoon, so.
4 We're all attorneys and I assume that means 2:59.
5 That's fine.

6 Last call, any other matters before I
7 adjourn? Hearing none, we are adjourned. We're off
8 the record.

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CERTIFICATE

I, Shelley L. Mayer, a Certified Court Reporter, CCR No. 679, the officer before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Shelley L. Mayer, CCR

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20
21
22
23
24
25

INDEX

PAGE

Office of the Public Counsel Witness:

KERI ROTH

Direct Examination by Mr. Clizer	243
Cross-Examination by Ms. Bretz	259
Cross-Examination by Mr. Cooper	267
Redirect Examination by Mr. Clizer	288

Lake Perry Lot Owners Association Witness:

RICHARD DeWILDE

Direct Examination by Mr. Linton	291
Cross-Examination by Mr. Clizer	293
Cross-Examination by Ms. Bretz	299
Cross-Examination by Mr. Cooper	306
Redirect Examination by Mr. Linton	313

EXHIBIT INDEX

RECEIVED

Office of the Public Counsel Exhibits:

200 Surrebuttal Testimony of Keri Roth	259
200C Surrebuttal Testimony of Keri Roth	259

Lake Perry Lot Owners Association Exhibit:

309 Rebuttal Testimony of Richard DeWilde	309
---	-----

<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$252,000 296:13 302:12,19</p> <p>\$295,000 279:15</p> <p>\$300,000 268:1,2 269:6 270:21 295:15 296:3,12 309:9</p> <p>\$50,000 303:6 311:17</p> <p>\$670,000 276:24</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 244:25 254:9 256:18 258:21 280:3</p> <p>10 270:4 271:4 279:24 282:12 285:7,20</p> <p>10,000 278:25</p> <p>100 278:25</p> <p>10:00 315:18,19,23</p> <p>11 268:7,16 286:15 290:18</p> <p>113 250:25</p> <p>12 290:18</p> <p>13 285:9 286:13</p> <p>14 286:15</p> <p>16 256:19 258:21 285:20</p> <p>17 285:5</p> <p>18 285:5,20</p> <p>1973 287:6,9</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 250:24</p> <p>20 314:6</p> <p>200 244:9,10 245:15 259:1,6</p> <p>200C 259:6</p>	<p>200P 245:13</p> <p>2019 268:18 300:3 302:16 309:16,20</p> <p>2030-3.010 314:6</p> <p>20th 300:3</p> <p>21 282:13</p> <p>22 280:2</p> <p>23 250:25 280:2</p> <p>24th 314:16 315:17</p> <p>25 250:25</p> <p>252,000 302:16</p> <p>2C 280:6</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3.060 314:6</p> <p>3.65 267:21 269:9 270:9</p> <p>30,000 278:25</p> <p>300P 244:8</p> <p>308 291:21 292:10,13, 16,19,20</p> <p>309 292:20,21,25 293:2,6</p> <p>31st 315:18</p> <p>380 307:2</p> <p>380,000 306:24</p> <p>393.825 300:12</p> <p>393.861 300:12</p> <p>393.900 300:14</p> <p>393.951 300:14</p> <p>3rd 268:18 309:20</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 249:25 250:23 252:14 253:4,8,11 255:3,24 256:8 268:7 272:24</p>	<p>4.0 278:21</p> <p>4.45 267:21 269:9 270:9</p> <p>426 254:9</p> <p>440,000 306:23</p> <p>450 278:25</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 249:25 272:24 274:19</p> <p>50,000 279:2</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 250:23 252:15 254:9 268:7 273:9 274:19 294:4,7</p> <p>6.75 273:10</p> <p>60 268:21 309:21</p> <p>60-day 296:8 309:9</p> <p>670,000 279:5</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 253:4,8,10 268:16 270:4 290:4</p> <p>7-- 309:1</p> <p>7.5 269:20 270:10</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 255:3,24 256:8 270:4 276:14 282:12 290:4</p> <p>8.65 270:21,24</p> <p>81661 252:22</p> <p>8th 238:3 302:16,25</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 244:25 256:19</p>	<p>258:21</p> <p>9:00 238:4</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 238:4 315:18,19, 23</p> <p>abilities 251:8</p> <p>ability 251:25 255:16 265:7,8 294:11</p> <p>Absolutely 243:14</p> <p>access 248:13</p> <p>accordance 239:7</p> <p>account 246:19 270:25</p> <p>accountant 244:5 291:16 308:7</p> <p>accuracy 247:23</p> <p>accurate 254:5 292:6</p> <p>acknowledge 239:14 273:24</p> <p>acknowledged 276:23</p> <p>Acquire 238:7</p> <p>acquisition 275:14 276:11</p> <p>acted 297:18</p> <p>actual 249:5 303:8</p> <p>add 252:4 258:7 279:5</p> <p>addendum 239:23</p> <p>additional 241:15 302:23 307:9</p> <p>address 251:24</p> <p>addresses 252:1</p> <p>addressing 250:23</p> <p>adequate 265:3</p> <p>administrative 249:10 255:5 314:5,10</p>
---	--	--	--

<p>admission 245:15 259:1 292:13 293:2</p> <p>admitted 256:13,22 257:21 259:4 293:4</p> <p>advised 284:25</p> <p>affidavit 246:18 258:5</p> <p>affiliate 272:19</p> <p>affiliates 273:13,14</p> <p>afternoon 276:22 280:22</p> <p>agenda 315:21</p> <p>agree 246:16 257:21 258:12 264:25 269:13 270:19 273:7 275:2 276:1 279:4 283:8 284:19 286:24 287:15 296:24 313:15 315:19</p> <p>agreed 296:14</p> <p>agreement 285:13 298:1,2</p> <p>agrees 252:9</p> <p>ahead 243:9,12,17 244:20 249:2 293:9 315:7</p> <p>allegations 284:22</p> <p>allowed 242:10 275:15</p> <p>allowing 242:8</p> <p>Allstate 311:16</p> <p>alternative 298:5</p> <p>alternatives 286:19</p> <p>amended 259:3,4</p> <p>American 310:6,15</p> <p>amount 263:18 265:13 272:7 273:14, 16 275:4 277:3,11 296:16 303:11 305:19 307:1,4,11 309:1,2</p> <p>amounts 277:13 302:9</p>	<p>analysis 262:9</p> <p>annual 306:16,19,22</p> <p>answers 244:14 245:7,9 292:2,5</p> <p>apologize 244:12 247:9 288:10 289:11</p> <p>apparently 258:5 287:5 288:9</p> <p>appeal 252:22</p> <p>Appeals 252:22</p> <p>appearance 238:14</p> <p>appearing 256:24</p> <p>appears 250:14,15 294:8</p> <p>applicant 239:12,15 267:2,4,5 283:23</p> <p>application 238:5 259:22 261:16 301:14, 19</p> <p>approach 278:11</p> <p>Approximately 279:7,8</p> <p>April 307:15</p> <p>area 282:1,6,21 283:9 313:13,18</p> <p>argue 250:6 251:25 255:8,15</p> <p>argument 251:10 252:23 254:1</p> <p>arrangement 250:8</p> <p>articles 300:10,19 313:14</p> <p>aspects 263:15</p> <p>asserted 257:5</p> <p>assessment 306:16, 22</p> <p>assessments 306:19 307:1,5</p> <p>asset 298:1,2</p>	<p>assets 238:7 255:13 271:19 273:25 274:24 284:16,24 287:2,3,5,9, 16 310:1,3,16 312:10, 16</p> <p>association 239:1,8 244:25 260:3,14 263:18 267:20 276:16, 19 283:20,25 284:24 287:1 291:19 293:5 295:12 297:2 306:12, 15,23 308:10 311:7,8 312:1,2</p> <p>assume 256:15 289:14 300:21</p> <p>attached 269:1</p> <p>attempted 247:9 314:20</p> <p>attend 261:7</p> <p>attorney 285:1,11,16 298:10,12,14,16 299:19 300:18 301:22</p> <p>Authority 238:7</p> <p>authorization 294:21 299:18,20 313:16</p> <p>authorizes 313:11</p> <p>average 269:18 290:2</p> <p>avoid 242:21</p> <p>award 266:22</p> <p>awarded 290:17</p> <p>awarding 267:5</p> <p>aware 242:7 264:20 266:1,3,6 279:14,18 280:19 286:2 296:7 297:5 301:18</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 238:2 240:24 258:14,23 272:12,21 276:10 278:5 297:20 314:22 315:3,11</p> <p>balance 302:21</p>	<p>bank 247:12 251:6,13 254:16 267:19 268:3, 17 269:8,10 270:9 271:9 289:22,24 295:20,21,25 302:3 304:3,7</p> <p>base 274:22 275:3</p> <p>based 257:2 262:5,9 263:8 267:23 268:1 310:22</p> <p>basically 266:7 297:25 298:2 303:23</p> <p>basis 305:21</p> <p>BCSWR 284:25</p> <p>Bear 299:24</p> <p>Beckemeier 285:11, 17</p> <p>begins 250:13</p> <p>behalf 291:18</p> <p>behavior 257:6,12</p> <p>belief 245:10 292:7</p> <p>bench 287:23 312:22</p> <p>big 303:12</p> <p>bills 306:15</p> <p>binding 304:17,19</p> <p>bit 250:22 270:16 289:22 298:18 312:9</p> <p>bootstrap 254:24</p> <p>box 291:4</p> <p>branch 242:23</p> <p>Bretz 245:22 246:11 248:10 252:9 257:19 258:7 259:18 267:12 299:9,10 302:10 306:4 313:6 314:14</p> <p>briefly 254:11</p> <p>briefs 255:19 314:16, 20,23 315:17</p> <p>bring 258:14</p>
--	--	---	---

brought 286:1	cash 251:17 301:25 302:2	claim 247:22	Commission's 239:4,7,13 243:11 249:21
budget 311:23	catch 253:15	claimed 242:8	COMMISSIONER 287:24,25 312:23,24
burden 239:12	caught 293:14	clarification 248:20	commissioners 242:4,7 258:17 315:20
business 265:14 277:14 279:10 307:23	caused 244:6	clarify 262:12	commit 305:6
buy 251:17 296:4	CCN 301:15	clear 315:5	commitment 267:19 268:17,19,21 295:20 296:1,8 303:16,22 304:20 305:13,16 309:8
bylaws 300:11,20	CCNS 265:19 267:5 283:1	Clizer 243:10,14,18, 20 245:12 246:3,5,16 247:6 248:20 249:3,20 250:21 251:18 252:25 253:6,9,12,24 254:8, 13 255:2,4,15,24 256:2,5,25 259:8,9 268:4,8 277:18,21 284:8 288:5,11,12,13 289:11,13 290:21,25 293:18,19,20 299:5,7 301:10,24 302:11 303:2 314:17,19 315:3,22	committed 302:19 303:24 304:12
C	CD 268:2 269:14 270:11,14,25 295:15 296:4,5	Clizer's 252:5 309:6	communicate 314:21
call 243:9	certificate 238:8 269:7	close 313:25	Community 268:17 295:25
called 311:4	certification 301:3	cohesion 298:23	companies 300:13, 15
calling 284:9	certified 291:16 308:7	collateral 254:16 271:9	company 238:6 239:19 247:10,15 250:18 254:20 267:20 269:15 271:15 273:17, 24 276:17 277:5 280:17 282:22 283:5 284:1,16 287:1,2,4,5,9 295:4,12,23 306:20 307:12,17,20,22,23,25 308:2,4,16,20 310:4,7, 15,16,22 311:7 312:3, 5,9 313:12
capabilities 251:19	Chad 289:2	collect 272:12	company's 239:6 270:8 273:4,8 279:14 300:10,19
capable 258:4 264:17 265:15	change 289:20	collected 247:22	compare 273:14
capacity 244:3 308:12	changed 302:24	collection 249:22 262:1	compared 273:18 274:21
capital 290:2	characterization 289:9	column 294:9,15 295:2	comparing 289:24
caption 250:14	Charles 238:11	comment 248:1	competing 288:18
care 288:3	cheaper 264:10,15 288:25	comments 248:4,9, 11,16,21,23,25 249:7, 10,14,17	
careful 297:3	check 248:3 268:23 309:14	commercial 304:11	
carefully 241:12,21 296:25	chief 241:3,5	commission 242:4, 20 246:19 248:13,25 249:1,9 251:3,20 255:4,9,18,21 266:22 267:4 271:22,25 272:4 273:5,8 275:15 286:18 287:13,18 296:22,24 298:3 314:5,10	
case 241:3,5 245:12 246:20 247:8 248:1 249:4,16 250:7,24 251:3,9 252:12,24 254:11,23 255:6 256:12,13,16,17,21, 22,23 257:8,15,16 258:9 259:10 262:6 265:17,18,21,23,25 266:1,4,6,12,13,15 272:6,13,19,20 273:17 275:3,6,13,19 276:2, 10 283:22 286:1 291:22 296:22 309:9 313:24	choice 248:14		
cases 239:13 254:3 257:7,11,13 272:17 273:15 286:20 290:11, 16,18,20	Chris 300:2		
	citable 249:2,24		
	cite 249:14,23 254:4 257:8		
	cited 247:11 248:22, 23 249:11		
	citing 249:7 251:1,4 254:1		
	citizens 286:11,20		
	civil 257:13		

completely 240:8	continuation 265:3	correct 238:18,24 239:22 245:10 249:21 252:16 256:3,4 262:21 267:22 268:3,22 269:8,11,12,16,17,20 270:12,16,18,25 271:2,4,10 272:9,14, 15,20,25 273:5,6 274:1,11,17 275:7,8, 11,19 276:18 279:2,3 280:7 281:2,13,17,20 282:1,6,21,25 283:6,7, 10,11,14,15 284:5,6, 20,21 286:13 287:7, 10,11,14,19 289:3 290:9 294:19,22 295:5,6,10 300:21 301:5,13 303:5 306:16,17,20,21 307:17,23 308:7,20 309:10,22 310:1,4 311:14,17,18,20,21, 24,25 312:6,7,10,11, 14,18 313:18	261:1 289:4 293:25
compliance 240:8 274:13 281:15,20	continue 263:7 287:17 293:8,16 296:6 300:16	Cox's 279:21	
concern 265:10 276:6,8 280:8 310:17, 23	continuing 238:4 259:13	CPA 308:12	
concerned 274:20	contract 264:21,23 273:25 274:3 283:3 297:5,9,12,16,23 301:11 305:15 312:15	criminal 257:11	
concerns 250:3 252:20 281:4 285:25	contracted 266:21	criteria 255:17	
concludes 313:23	contractual 285:13	cross 245:13 259:10, 11,12	
conclusion 284:9	contribute 304:14,17 305:10 306:2	cross-examination 256:14 259:18 267:17 292:11 293:17,20 299:10 306:9	
condition 240:3 274:10 281:12	contributing 296:17 304:25	cross-examine 241:7 257:23	
confidential 259:2 277:22 288:22 302:8	control 263:15 286:12,22,24 287:9 289:19 309:25 310:18, 23	CSR 314:6	
conflicted 242:2	Convenience 238:8	CSWR 254:15 271:8 272:19 273:14 285:11	
Confluence 238:6, 15,16 241:1 246:22 247:8,9,18 251:6 252:9,12 253:23 257:22 258:24 259:22 260:9,10 261:16 264:12 265:6,18,20 266:7 267:15 271:13, 19 280:21 287:15 288:24 290:7,15 298:3,16 306:7	conversation 288:17 295:24 296:15	CSWR's 285:13	
Confluence's 251:8, 19,24 255:16 289:24	Cooper 238:19,24 239:3 240:2,6,15 242:15,17 245:16 246:24 247:1,19 248:14,17 249:17 250:2,16,19 251:11 252:14,16,19,20 253:1,13,16,18 254:18 255:23 256:10 257:14 258:14 267:16,17 268:6,12 270:3,6 277:24 278:11,15,17, 19 282:12,14 284:12, 14 285:6,15 287:20 288:6,18 289:8 292:14 293:1 306:8,9 312:19, 21 315:2,9	cure 242:11	
confusion 240:22	Cooper's 254:25 256:7 258:19	curious 286:23 301:23	
consideration 263:10 297:4	copy 252:21 278:7 293:24 299:23	current 250:9 264:18 271:13 274:10	
considered 263:22, 25 264:3 267:7,9 277:13 296:25	corporation 307:14	customer 273:15,17	
consistent 276:24		cut 252:25	
consolidated 238:10		CWS-1 278:1,2,17 288:8	
constructing 295:1		CWS-2 288:10	
Consultants 311:16			
context 240:24		D	
Continually 302:22		data 262:1	
		date 250:5 302:22,24, 25 309:17 315:18	
		dated 300:3 302:16 309:13	
		dates 314:25	
		days 238:23 240:13 268:21 309:21	
		dealing 290:10	

debt 290:12	differently 284:13	enforce 305:12	exact 253:25 309:17 314:24
decide 306:2	difficult 242:23	enforcement 305:14 306:1	examination 243:20 249:5 288:13 291:9 313:4
decides 305:10	difficulty 255:14	engineer 280:23 281:7,8	exception 257:9
decision 242:2,6 243:11 249:22	direct 241:2 243:20 291:9	engineering 239:24 278:6 279:12 280:23 288:20,25 289:16	exceptionally 249:15
Deemed 294:9	directly 251:7	engineers 314:3	excerpt 253:20
defer 243:11 299:20 301:21	disagree 255:17	ensure 265:2	excessive 274:21
defined 313:13	discovery 241:7,10, 25	entered 246:13 248:10,16,21 266:3 314:13	Excuse 256:25 279:11
definition 262:3 284:10	discuss 273:1 281:23 282:3 295:21 297:22	entire 255:6	excused 291:1 313:22
Demand 311:16	discussed 270:23 304:6	entity 287:4 311:3	exhibit 244:8 245:15 259:1 291:21 292:10, 13,15,25 293:2,6 313:13
denial 286:10	discussing 282:7 301:24	entries 238:13	exhibited 257:7
Department 294:10 299:15 300:2,9 301:4 313:11,16 314:7	discussion 289:22 309:24 314:3	equity 251:17 271:14, 20,23 272:4,7,13 290:8,11,16	exhibits 245:13 259:6 314:13
depends 272:8	discussions 271:7 297:14	error 292:16	existence 248:23
deposit 269:7	documents 251:2	established 290:1,6	expect 270:14 303:3
describe 243:3 259:21 267:18	dollar 277:11,13	estimate 279:15 289:10	expended 311:8,24
describing 288:24	dollars 270:11	estimated 273:17 277:5 281:5	experience 286:5,19 290:10 294:25 311:16
design 240:9	due 314:16 315:17,23	estimates 278:21,24 279:5 288:19 289:1,15	explaining 283:19
desire 249:6	<hr/> E <hr/>	evaluate 310:19 311:2	express 274:15
desk 261:19	earlier 240:14,16 253:20 258:14 271:7 288:8 308:6	events 272:9	expressed 249:6
detailed 281:1	early 309:22	eventually 311:12	expressing 286:6
determination 255:16 257:2	earn 272:8	evidence 241:10 246:6,13,18,19 248:2 249:2,8,18 250:8 251:12,21,22 252:24 253:21 255:11,19,20 256:13,15,22,23 259:7 268:25 280:17 292:10 293:6	expressions 247:25
determine 251:21	effect 249:8	evidentiary 248:22 249:12 250:5	extended 257:13 289:22
detrimental 264:8,10 265:1 274:16	effective 270:20		extension 314:20 315:14
develop 246:9 304:8	effort 288:21		extent 245:24
development 246:6, 10	efforts 286:11,21		extra 242:13 302:23
Dewilde 243:7 260:22 285:12 286:17 291:4, 8,10,13 293:21 299:11 313:5,21	eighteen 309:3		<hr/> F <hr/>
Dewilde's 286:10 292:24	employed 244:2,4 291:14		facilities 266:8 274:6,
	end 311:23		

8,10 281:9,10,12	focused 294:8	generally 242:20 257:9 259:24 266:1	291:3,6 292:12,20,22 293:8,11,14 299:7 302:7 306:6 312:21 313:1,21 314:9,12,15, 18,24 315:7,15,24
fact 239:14 246:7 249:22 250:10 295:8	follow 268:5 291:8 305:16	generate 307:9	HC 277:8
facts 297:25	footnote 245:2 250:23 252:15 253:4, 8,10 254:8 255:3,24 256:8 273:10	give 240:24 241:9,25 246:2 263:10 301:1	head 264:4 275:16 290:15
fair 267:9 272:10	for-profit 307:23	giving 242:13	heard 243:1 261:22 266:16
fairly 257:11	form 241:23 257:2	good 238:3 247:14 252:5 253:15 259:19 291:10,11 293:21,23 299:11,12	hearing 238:4,13 239:10 244:8 248:7 250:4,5,24 253:21 259:5 261:7 293:3 299:1 314:1
familiar 261:19 275:13 280:10 310:6,8 311:3	formed 283:25	great 247:12 297:19	hearsay 246:6 257:10
familiarity 310:11	forming 246:21	greater 274:15,24 307:4 311:17	held 263:9
feel 247:14	forward 286:9 288:19 304:9	guarantee 272:5	helps 277:22 309:18
field 242:12	found 239:6 250:22 282:16	guaranteed 271:23 272:3	Hernandez 288:7
figure 280:20	foundation 249:19	guess 240:7,21 241:24 263:1 281:21	hesitated 298:15
file 238:9,10 246:17 248:1 315:13	fourth 255:22	H	high 276:9
filed 240:17 246:8 261:14,17 262:6 289:4 299:19,22 301:14	Francis 245:23 246:17 257:21 258:3 260:18	half 270:15	higher 280:20 290:11, 13
filing 288:23	Francis' 245:25 257:20	hall 263:9 287:24 312:24	highly 310:8
final 303:15 313:24 315:25	Francis's 245:24 246:7 247:17	handled 258:25	Hillcrest 250:17
finally 290:22	free 251:20 257:1	Hang 297:10	Hills 272:19 273:2
finance 304:2	front 268:14 277:16 279:22 293:25	happen 290:14 304:24 305:8	historically 248:24
financial 251:8,19,25 255:14 266:8 294:11 303:22 307:3,10 314:7	fruition 304:15	hard 254:24	history 304:4
financing 250:8,9 251:7,13 253:22 254:17 255:17 263:15 267:19 271:10 272:16 289:23,24,25 295:14, 22 302:23 304:11	full 243:23 278:9	Hatcher 238:2,11,20 239:2,21 240:5,12,19 242:1,16 243:4,12,16 245:14,21 246:3,15, 22,25 247:5,14 248:3, 12,19,24 249:20 250:12,20 251:15 252:2,7,11,17 253:3,7, 10,15 254:6,10,21 255:3,10,22 256:1,6 257:17,25 258:12 259:12,17 267:14 270:1 278:13,15 282:11 285:5,7 287:22 288:2,11 290:25	Hold 285:8
find 251:6,13 254:23 294:4,5 314:24	fund 295:16 296:11		holding 294:16
finds 300:11	fuse 309:9	G	home 295:25
fine 300:17	future 275:19 276:2, 10 286:20	gain 286:18	Honor 243:18 245:16 247:7,19 250:21 254:18 259:16 267:16 278:12 284:13 288:5,6 293:19 306:8 313:3 314:2,11,17 315:2
fixed 267:21 269:9	gave 292:18 297:3	gave 292:18 297:3	hope 253:7 304:6
flip 272:21 279:1	general 251:18 307:23		
flipping 280:2			

<p style="text-align: center;">I</p> <p>identified 241:15 254:19</p> <p>ignore 283:16</p> <p>ignoring 283:19</p> <p>important 263:17 273:21</p> <p>impossible 304:4</p> <p>improvement 276:15</p> <p>improvements 276:24 277:4,7 280:15 281:2</p> <p>include 262:23 302:9 311:19</p> <p>included 241:5 247:13 254:3 280:5</p> <p>including 249:13</p> <p>inclusion 247:11</p> <p>income 307:9</p> <p>incorporation 300:10,19 313:14</p> <p>increase 250:17</p> <p>increases 307:1</p> <p>independent 262:1, 7,9</p> <p>Indian 272:19 273:2</p> <p>individual 296:18 308:5</p> <p>individuals 264:18 295:8,24 296:14 304:22</p> <p>information 241:4,8, 16 242:3,4,5,6 250:22 258:17</p> <p>informed 242:5</p> <p>informing 249:1</p> <p>infusion 290:7</p> <p>initial 277:7 301:25</p>	<p>314:16 315:16</p> <p>initially 295:16 296:9</p> <p>inspected 274:5</p> <p>Institutions 314:8</p> <p>Insurance 314:7</p> <p>intentions 265:14</p> <p>interest 249:4,6 263:19,25 264:8 265:2 267:10 269:9,15 270:9,20 271:3 272:17 273:9 274:17 283:10 305:20</p> <p>interest-bearing 305:19</p> <p>interested 266:11,19, 20 267:2,3 283:21 296:15,16 297:18 298:5</p> <p>interfering 285:13</p> <p>interject 302:8</p> <p>interpret 255:18</p> <p>interrupt 268:9</p> <p>intervened 266:12 283:21</p> <p>intervening 266:15</p> <p>intervention 308:24 311:9</p> <p>introduce 238:22 240:16,22 241:10,23</p> <p>introduced 240:14 241:1</p> <p>invest 277:12</p> <p>investigation 242:10 259:22 261:12,15 262:1,7</p> <p>investment 273:15, 16</p> <p>investors 269:16,19 270:11</p> <p>involved 265:17,19</p>	<p>issue 242:8 251:24 252:1 254:7 263:15,16 281:24 282:4 309:25</p> <p>item 250:2 256:10</p> <p>items 297:15</p> <p style="text-align: center;">J</p> <p>James 285:11</p> <p>JC-1C 280:5</p> <p>Jersey 310:22</p> <p>JOHNSON 256:4</p> <p>Josiah 289:4 293:25</p> <p>judge 238:2,12,20 239:2,21 240:5,12,19 242:1,15,16 243:4,12, 16 245:14,21,22 246:3,15,22,25 247:5, 14 248:3,12,19,24 249:20 250:12,20 251:15 252:2,7,11,17 253:3,7,10,15 254:6, 10,21 255:3,10,22 256:1,6,10 257:17,25 258:3,7,12 259:12,17 267:14 270:1 277:19 278:13,15 282:11 285:5,7 287:22 288:2, 11 290:25 291:3,6 292:12,20,22 293:8, 11,14 299:7 302:7 306:6 312:21 313:1,21 314:9,12,15,18,24 315:7,15,24</p> <p>judgements 286:19</p> <p>July 302:16,25 309:22</p> <p>Justis 245:1 260:20 269:18 270:2,3,20</p> <p>Justis's 290:3</p> <p style="text-align: center;">K</p> <p>K-E-R-I 243:25</p> <p>KENNEY 287:25 312:23</p>	<p>Keri 243:7,19,25</p> <p>kind 239:20 257:11 261:12 271:6 285:9 288:17,22 299:2 310:10</p> <p>knowledge 245:10 285:24 292:7</p> <p>KNR 249:25 252:14</p> <p>KNR-2 247:20 250:1</p> <p>KNR-3 250:3,13 252:14</p> <p>KNR-4 252:21 253:4, 11</p> <p>KNR-5 253:18 254:7 255:1 256:8</p> <p>KNR-8 258:20</p> <p style="text-align: center;">L</p> <p>lake 259:14 267:20 269:14 270:8 273:24 276:17 277:5 280:16 283:25 284:15 286:25 287:1 291:7,19 293:5 295:3,11 297:1 298:24,25 300:9,18 306:11,15 308:19 311:6 312:1,2,5,9 313:12</p> <p>Land 306:20 307:12, 17,20,22 308:3,16</p> <p>larger 277:13 306:25</p> <p>largest 303:15</p> <p>late 276:22</p> <p>law 238:12 257:8</p> <p>legal 284:9</p> <p>letter 267:24 268:1, 18,19,25 269:10 285:10,12,17 295:20 296:2 300:1,7,20 302:15 304:20 309:8, 12</p> <p>level 242:12</p>
---	--	--	--

Liberty 311:4	301:3,11,14,19 302:2 303:24 304:22,23 306:11,15,22 307:5,7 308:4,9 310:13 311:7 312:1	matter 238:5 250:16 257:5	multiple 257:7
lieu 241:6		matters 313:24	
life 304:25		MDNR 294:21	<hr/> N <hr/>
limit 241:24		means 261:24 264:15 303:23	names 302:9 305:3
limited 241:21	lots 306:25	meet 255:16 300:11	Natural 294:10 299:15 300:2 301:4 313:16
limiting 241:13	lower 267:8 272:12 276:18 280:16,18 290:11	meeting 263:9 315:21	nature 290:3
lines 250:25 254:7,9 256:18 258:21 268:7 270:4 282:12 285:20 286:15	LP-- 295:3	members 247:25 312:6	necessarily 257:13 264:16 276:11 289:17
Linton 240:19,21 242:19 246:15,16 252:2,4 257:25 258:1 259:15 277:20 291:9 292:9,18,21 293:9,10, 13 311:20 313:2,3,4, 20 314:2,11	LPOA 294:16 295:3	mentioned 270:10 271:1,6 296:1,19 297:8,17 298:17 308:6	Necessity 238:8
Linton's 242:7	LPOC 294:16	Michael 297:13	neighborhood 309:4
list 245:18 293:17	<hr/> M <hr/>	mid-transcript 250:14	net 274:16,25 275:4, 10,18 276:2
listed 281:5	made 247:11 251:5, 11 252:5 254:2,13 259:7 276:7 293:6 297:1 301:19 303:22 304:13	middle 300:7 313:10	nice 298:19
litigation 242:21	maintaining 286:11, 21,24 295:1	Mike 286:3	nodded 264:4
live 239:9,17,18 242:13,23 243:1	major 276:8	mind 242:3 289:10 298:15 305:10	non-profit 300:14
LOA 294:16	make 238:13,17 242:5,12 244:21 245:19 246:11 257:2 271:14 284:22 288:20, 21 291:24 292:21 296:20 305:15 314:22	minutes 315:4	nontestimonial 247:24
loan 268:1 269:6 270:7,21 304:3	makes 266:15	Missouri 244:4 291:16 294:10,12,18 295:1 299:14 300:1 301:4 310:6,15 313:16	nonviable 275:10,12 276:12
local 248:7 261:7 263:15 309:25 310:17, 23	making 262:10 277:3 286:19 293:14	mistake 259:12	nonviolations 240:7
long 302:21	manage 308:13	moment 266:18 297:10	noon 315:19
longer 298:8	managerial 266:8 294:11	money 269:14 277:7, 13 302:24 303:25 304:5,14,18	not-profit 300:12
looked 268:19 279:9 281:3,4,9,10,16,18	manner 258:18	morning 238:3 259:19,20 291:10,11 293:21,23 299:11,12	note 292:23 305:18, 22
loss 310:17	March 300:3	motion 241:3 263:8	notice 249:10 255:5 314:5,10
lot 238:25 259:14 261:13 263:17,23 264:20 265:4 266:13, 14 283:20,24 286:25 288:25 289:17,18,25 290:1 291:7,19 293:5 294:20 295:12 296:3, 18 297:1 298:25	marina 307:8	motions 239:4	noticed 298:19
	mark 288:9	mouth 304:1	Notwithstanding 245:4
	marked 291:21 292:25 302:8	move 304:9	number 265:18 277:8 289:5,15 292:16 293:15 298:24 311:17
	match 245:1	moving 286:9	numbers 246:2 278:25 279:9 280:11 281:5 289:20 296:17 305:6

<p style="text-align: center;">O</p> <p>object 284:8 289:8</p> <p>objected 247:10 248:8</p> <p>objection 243:5 245:22 246:4,25 247:2,7,15 249:25 252:19 254:25 256:7 258:1,2,4,20 315:1</p> <p>objections 240:20 245:15,17 247:3,18 258:25 259:1,4 271:7 292:12,14 293:2,3 314:9</p> <p>obligated 304:13</p> <p>obtain 295:22</p> <p>occur 310:20</p> <p>October 238:3 314:16 315:17,18</p> <p>offer 245:12 264:22 267:8 292:9</p> <p>offered 238:25 256:12,15 257:3 292:24</p> <p>offering 257:4,5 267:3</p> <p>office 244:4 295:25 299:21 305:4 308:14</p> <p>officially 313:25</p> <p>offset 270:16</p> <p>one-week 314:20</p> <p>onerous 300:23</p> <p>ongoing 311:14</p> <p>OP-- 259:21</p> <p>OPC 243:7 245:12,23 252:21 259:6 266:3,6</p> <p>OPC's 249:4 259:21 266:18 267:1</p> <p>operate 266:9 284:2, 19 294:12 301:5,7</p>	<p>312:12</p> <p>operated 287:17 295:5,8,9</p> <p>operating 238:6 247:10 250:18 263:7 295:1</p> <p>operation 308:13 310:13</p> <p>opinion 246:10,21 257:2 258:6 274:9,15 281:11,12,19 283:20 286:6 297:11,13</p> <p>opinions 246:7</p> <p>opportunity 239:8,20 240:16 257:22 272:11</p> <p>opposed 276:4</p> <p>option 264:11 284:2 297:6</p> <p>order 239:4 241:8,12 242:5,11 243:8 258:16 259:13 269:13 270:7 300:20</p> <p>ordered 252:17</p> <p>ordering 285:12</p> <p>orderly 258:18</p> <p>organization 294:25 296:3,11</p> <p>original 258:24 274:16,25 275:4,11,18 276:3</p> <p>originally 280:20</p> <p>Osage 247:8,10</p> <p>outstanding 238:14</p> <p>overriding 265:10</p> <p>overrule 249:24</p> <p>overruled 247:15 258:3</p> <p>overseen 247:23</p> <p>overturned 253:25</p> <p>owe 311:7</p>	<p>owned 287:5,17 295:4 310:3</p> <p>owner 296:18</p> <p>owners 239:1 254:15, 19,20 259:14 262:11, 13 263:11,18,23 264:19,20 265:4 266:13,14 271:8,13 283:20,24 284:23 286:2,25 288:25 289:17,19,25 290:2 291:7,19 293:5 294:20 295:12 296:4 297:2 298:25 301:3,11,14,19 302:2 303:24 304:23 306:11,15,23 308:4,10 311:7 312:2</p> <p>owners' 261:13</p> <p>ownership 271:13</p> <p>owns 271:16</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pages 246:2 250:3,6, 25 274:19 278:5</p> <p>paid 269:19 308:23</p> <p>paragraph 300:7 313:10</p> <p>parent 310:21</p> <p>part 241:19,22 248:21 249:11 251:2 259:7 280:3 293:7</p> <p>partial 254:22</p> <p>parties 242:13 245:18 264:24 266:11 267:6</p> <p>party 266:19 267:2,5 283:21 295:13</p> <p>past 251:7,14 254:3 272:16,17 273:13 275:14 276:5 290:16 295:4</p> <p>pattern 257:12</p> <p>pay 266:21 269:15 270:8,10 305:20,23</p>	<p>payment 303:15</p> <p>penalty 305:25</p> <p>Pendergast 286:3,6</p> <p>people 298:24,25 303:9 304:12 305:7 306:1</p> <p>people's 302:9</p> <p>percent 269:9,20 270:11,15,21 273:9 290:4,18</p> <p>percentages 270:22</p> <p>Perfect 315:15</p> <p>perform 288:25 308:9</p> <p>period 305:24</p> <p>permission 301:20</p> <p>permit 240:9 299:14 301:7</p> <p>permits 294:16 312:12</p> <p>permitted 247:8,13</p> <p>Perry 259:14 267:20 269:14 270:8 271:20 273:24,25 274:6 276:15,17 277:5 280:16 281:25 282:5, 21,22 283:5,9,25 284:15,23,24 285:14 286:2,25 287:1,2,4,8 291:7,19 293:5 295:3, 11,16,23 297:1 300:9, 18 306:11,15,19 307:12,17,19,22 308:3,15,20 310:4,16 311:6 312:2,5,9 313:12</p> <p>Perryville 261:8 291:16</p> <p>person 303:3,14 305:9</p> <p>personal 254:16 255:13 271:9 281:11 285:23</p> <p>personally 274:9</p>
---	---	--	---

295:21	prefiled 239:23 242:22 256:11 258:16	professional 314:3,8	purchased 276:16
petitions 247:21	prejudiced 242:9	profitable 304:9	purchases 271:14 274:24
photocopies 247:21	preliminary 278:6,18 279:12 288:7 289:16	project 273:20 303:21 304:14	purchasing 263:19 266:12,20 290:7 297:18 298:6
phrase 286:23	premarked 244:7	projects 276:23	purports 247:21
pictures 238:22 239:21,25 240:13,22, 23 241:17,18,24	premium 275:14 276:11	promised 251:16	purpose 264:7,25 276:3
piece 256:11	preparation 260:6	promising 269:15	pursued 302:23
place 242:18 273:7	prepare 291:20	promotes 283:10	put 254:15 255:11,13 265:13 271:9 288:19 296:9 303:25
plan 265:14 277:14 279:10 304:8 305:21 308:22	prepared 244:6,7 291:20	pronounce 293:22	
planned 277:12	preparing 263:4	proposal 261:13 273:4,8 275:6,9 296:25 297:4 308:19	<hr/> Q <hr/>
plans 250:9 253:22 271:19	presented 255:20	proposals 281:2	quarterly 305:20
playing 242:12	president 306:11 307:16,19	proposed 277:4 298:9	question 250:16 251:8,23 258:24 263:13 268:11 275:24 280:9 289:9 290:23 292:15 295:18 298:19 313:5,6
point 247:6 249:13,16 252:5 254:6 269:21 274:18 277:1 279:16 285:2,17 288:6 290:1 297:12,24	presiding 238:12	prove 257:4	questions 241:13,21 244:13 245:5 259:15 274:5 287:20,23 290:23 292:1,5 299:5 309:6 312:19,22,24 313:20
pointed 309:7	previous 252:12 261:25	provide 239:9 245:18 265:22 270:11 281:25 282:5,20,25 283:1,4, 17 294:17,21 313:12, 17	quote 286:9
Port 271:20 273:25 274:6 276:14 281:25 282:5,21,22 283:5,9 284:23,24 285:14 286:2 287:2,4,8 295:16,23 310:4,16	previously 254:1 285:21,24	provided 239:8,18 248:6 268:17 269:10 272:4 289:15 296:21	<hr/> R <hr/>
position 239:11 249:4 251:4 252:6 266:19 267:1 276:6	price 266:21 274:15, 21 275:18 276:4,9	providing 282:23	R-O-T-H 244:1
positive 268:23	prices 274:24	public 243:7,17 244:5 247:25 248:7,9,11,16, 21,25 249:5,6 259:2 261:7 264:8,11 265:2, 3,9,11 267:10,11 271:25 274:17 283:10, 12 287:12,18 291:16 293:17 299:1 308:7	raise 253:25 296:3
potentially 310:20	primarily 245:17	public's 249:1	raised 247:7
practice 272:13	print 278:7,9	purchase 264:12,21 267:11 271:19 273:25 274:15,21 275:17 276:4,9 284:2 287:16 295:16,22 296:25 298:1,2 301:12,20 302:14 310:16 312:16	range 303:11,12
pre-agreed-to 259:13	prior 241:13 253:21 257:16 258:2 265:17 304:4		rate 250:17 267:21 269:19 270:20 271:3 272:17,19 273:15 274:22 275:3,13,19 276:2,10 290:20
preclude 304:25	Probable 278:21		ratemaking 271:22 272:1
predetermined 293:16	problem 242:17,18 243:3 249:12 253:3 254:21,22		
preference 243:10	PROCEEDINGS 238:1		
	process 239:15 247:23 259:25 271:23 272:1 298:4		
	produce 270:14		

rates 269:9 272:17 273:9,13,20 275:19 276:4	redirect 288:4,13,14 313:2,4	repeat 268:10	return 269:19 270:14, 25 271:23 272:3,12
RD-2C 309:19,20	refer 284:4	rephrase 240:20	review 261:20 282:8
RD-3C 302:5,15 303:10	reference 269:8 285:16	reply 315:17,23	reviewed 262:6 265:21 267:7 296:21 300:9
RD-6 300:4 313:7	referenced 288:8	report 276:23 277:22 278:6,18 279:12 288:7 289:16	reward 286:11
re-- 275:24	references 314:16	reporter 243:22,24 292:18,23	rewarded 286:20
react 242:25	referencing 239:22, 25 270:1	reports 239:24 288:20	Richard 291:4,8,13 292:23
read 261:14,17 262:9 274:13 279:13,19 281:22 300:6 313:9	referrals 257:20	representation 250:6	rights 262:11,14,19, 23 263:11 264:2
reading 262:8 300:6	referred 309:8	represented 261:24 286:3	risk 253:24
reads 294:9	referring 246:12 267:25 282:7 285:1,19 286:15 294:13	represents 250:9 253:22	Rivers 238:6,15,16 241:1 246:22 253:23 267:15 271:19 287:16 306:7
real 304:19	reflect 292:22	request 238:15,17 250:17 252:12 253:17 255:23 258:14 276:11 314:4,22 315:1	Rivers' 247:18 258:25 271:13
reason 242:22 254:4 289:14 298:7,10,21	reflects 250:9 253:22	requested 241:3	Ross 258:4
reasonable 262:3	regard 240:3 290:15	requirements 300:11,13	Roth 243:7,9,13,19, 21,25 245:25 246:20 247:22 250:25 257:1 258:4 259:19 267:18 288:3 291:1
reasons 252:10	registration 314:4	requires 249:5	Roth's 253:5 256:9, 16 258:21
rebuttal 258:16 260:3 270:4 286:18 289:1 292:24	Registrations 314:8	research 261:25	roundabout 263:1
recall 238:21 290:4	regulation 287:12,18	Resources 294:10 299:15 300:2 301:4 313:17	row 294:8,25 298:20
received 259:6 293:6 294:20 299:14	regulatory 238:12	respond 239:20 240:10 241:20	rule 257:10 275:10,12
recognized 257:9	rehab 289:18	responding 245:25	rules 239:8,13 258:13,15 314:7
recommendation 262:10 276:7	rejected 273:4	response 238:24 241:11 260:2 311:22	ruling 239:4
record 238:3 248:22 249:12 251:3 254:3 259:5,7 277:19 291:12 292:22 293:3,7 304:7 315:5,11	relevance 250:7 251:23 254:24	responses 309:5 311:11	rulings 258:10,11
records 255:9,21	relevant 247:16 249:15 251:12,15 254:12	responsible 295:14	run 265:7 309:22
recount 272:17	relied 261:25	responsive 239:9	running 265:15
recovery 275:14	rely 246:5,9	restate 238:16 275:24	
red 298:20 299:1,2,4	relying 289:1	restated 267:23	
redacted 246:1,14	remember 265:24 309:12	restating 285:21	
redactions 247:16	remind 278:15		
	rent 307:11		
	rentals 307:8		
	repairs 273:16 279:15		
			S
			SA-2019-0300 238:10

sake 277:19	313:10	300:2 301:11 304:21	274:4 276:7 283:16,19 296:22,24 299:8 313:6
sale 263:6 284:24 298:9	service 265:3 267:20 269:14 270:8 271:25 273:24 276:17 277:5 280:16 281:25 282:5, 20,21,22,23,25 283:2, 4,5,9,18,25 284:16 287:1,2,5,8,13,18 295:3,11,23 300:10,19 308:20 310:4,16 311:7 312:3,5,9 313:12,13, 18	similar 247:4 253:19 258:2,9 281:25 282:5, 25 283:18	staff's 246:3,25 247:2 258:2,24 274:22 276:5 282:8
sales 306:25 307:5,7	services 286:12,22 294:17,21 313:13,17	similarity 257:6	stand 256:14
sanctions 305:9	set 239:13 272:7 275:4,19 277:7 300:11,13 305:23	simpler 245:19	standard 264:8 265:1,2 267:10 276:12
Sayre 245:1 260:24 276:22 289:2,10 292:15	setting 258:15 276:4	simply 246:11 251:23 257:1	standards 240:9
Sayre's 240:2 277:15, 21 289:15,16	Seventeen 309:3	sir 306:10,13 308:8 309:17	stands 264:13
schedule 247:20 249:13,25 252:14,20 253:2,11,18 254:7 255:1 256:8,16 258:20 277:25 278:9,16 300:4 302:5,15 303:10 309:18 313:7	sewer 238:7 274:6 276:15 280:16 282:20 283:4,9,13 284:16 286:12,22 294:12,17 295:2,5 300:12 309:25 310:24 312:10,13,16 313:12,17	site 261:5 274:7	start 242:23 257:1 266:23 277:2 279:17 300:6 310:10
schedules 245:17 280:5 292:5	sewers 271:15	situation 239:17 240:25 242:25 253:20 266:16	started 308:21
script 250:4	shareholder 307:25 308:5	skimmed 279:11	starts 278:21
sealed 239:24	shareholders 272:8 308:2,3	solved 253:3	state 243:21,22 251:18 252:13 256:8 262:16 268:17 271:24 273:3 274:20 276:13 277:11 282:2,11 283:23 286:17 291:12 294:17 295:25 296:2
seals 314:4	sheets 248:6,7	sort 239:15 242:20, 21,24 247:24 298:22 304:2	stated 239:11 251:16 252:10 263:5 264:11 265:9,11,12 266:7 276:6
seated 243:16 291:7	shortfall 296:19 303:3,4,6	sought 290:15	statement 251:5 254:2,13 277:3 301:13
section 248:4 249:11, 18 300:12,14	show 254:5 257:6 265:13 298:22 299:2 304:8 307:3	Soukenik 257:23	statements 246:10, 21 247:11 263:8 286:10 307:3,10
secure 254:16 271:9 296:10 304:10	shown 263:19 264:17 265:5	Soukenik's 258:8	states 270:5,13 286:17
secured 268:2 269:6 295:14,17	shy 286:6	sound 262:2 300:18	stating 266:23 284:3 285:25
security 296:4,5	sign 297:23 298:2	sounds 280:25	statute 276:12
self-employed 291:15,17	signatures 249:23	Southern 247:12	stay 247:8
sell 262:25 263:7,11	signed 264:23 274:2 297:5,8,12,16,23	speak 259:24 260:4,7, 9,17,20 261:3 280:22 298:8 302:3 303:8	step 305:1
seller 264:2		speaking 265:1	stipulation 266:4
sellers 262:13,17 301:12		speaks 255:7	stop 285:12
send 298:1		specific 257:8 259:23	story 263:21
sending 285:11		Specific-- 260:8	
sense 246:11 305:14		specifically 251:1 279:13	
sentence 300:17		spell 243:21,23	
		spend 311:20	
		spot 282:16	
		staff 248:5 252:7,9 257:17 259:17 261:3	

<p>straight 304:2</p> <p>stricken 248:18</p> <p>strike 239:5 241:3,9 248:15 252:13,18 254:25 258:20 263:8</p> <p>strikes 258:2</p> <p>struck 253:4 256:9</p> <p>stuff 265:21 306:25</p> <p>subject 268:23 287:12,17</p> <p>submitted 248:8 264:22 300:18</p> <p>substantially 244:15 245:7</p> <p>succeed 263:20</p> <p>suggest 283:12</p> <p>summarize 254:11 255:10 285:10</p> <p>summary 278:6</p> <p>support 251:4 252:5 254:2</p> <p>supported 246:18 254:14</p> <p>supporting 258:6</p> <p>suppose 308:18</p> <p>surprise 242:21</p> <p>surrebuttal 239:5,6, 10,16 240:25 241:13, 14,19,22 256:9 258:22 259:25 260:2,6 268:6 279:21 288:23 289:5 293:24 294:1</p> <p>suspect 304:23</p> <p>sustain 243:4 254:25 256:7 258:19</p> <p>sworn 243:15,19 291:5,8</p> <p>system 240:3 262:13, 25 263:7,11 264:13,21 266:22 283:9,13 284:2,16 289:18 290:7</p>	<p>295:9,16 297:1 302:14 312:10</p> <p>systems 262:20 265:7 266:9,10,20 267:3,11 271:15 276:15 294:12 295:2, 5,8</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 294:7,9,24</p> <p>talk 268:16 284:23,25 297:21 298:11 315:4, 13</p> <p>talked 289:25 312:8</p> <p>talking 241:18 258:13 263:23 269:5 272:16</p> <p>target 272:7</p> <p>targeted 272:13</p> <p>technical 266:8 294:11</p> <p>technicality 301:1</p> <p>technically 295:13</p> <p>tells 288:7</p> <p>tender 245:13 259:10 292:10</p> <p>tendered 259:9 293:12</p> <p>term 261:19,22 262:4</p> <p>terms 273:13 311:15</p> <p>terribly 280:10</p> <p>testified 243:19 291:8</p> <p>testimony 238:25 239:5,6,9,15,17,18,22, 23 240:3,7,10,16,25 241:1,2,14,19,20,22, 23 242:8,14,22,24 243:1 244:7,14,22 245:6,24 246:1,7,9,12, 17 247:11,15,17 248:18 250:10 251:5 253:5 254:2,14,19 256:9,11,16,19,21</p>	<p>257:3,15,20 258:5,8, 16,22 260:1,2,3,7,14 261:18 262:5 263:4 265:22 267:18 268:5, 13 269:3,22 270:2,4 271:11 272:18,21 273:3 274:14,18 276:8,14,25 277:1,15 278:1 279:22,25 280:14,21 281:23 282:3,17 285:3,9 286:14,18 288:3,24 289:2,5,23 292:4,24 293:25 296:21 297:9 302:6,18 306:10,14,18</p> <p>that'll 270:16</p> <p>then-owners 255:12</p> <p>thereto 241:11</p> <p>thing 300:23</p> <p>things 286:7 304:24 307:8 310:10</p> <p>Thomas 238:21 261:1</p> <p>thought 242:3 256:5</p> <p>thousand 309:3</p> <p>three-year 305:24</p> <p>tie 298:20</p> <p>time 238:17 240:17 241:6,9,25 242:13 243:1 262:16 269:10 271:24 276:7 279:8 282:2 296:2,8 297:17 298:20 304:10 310:20 311:1 313:25</p> <p>timeline 288:23</p> <p>times 297:15</p> <p>Timing 278:22</p> <p>titled 238:5</p> <p>TMF 266:7</p> <p>today 238:3 243:6 244:14 245:7 254:20 274:1 284:7,17,20 287:2 292:2 309:2 312:5,10,16 315:13</p>	<p>told 297:21 298:10,11 301:10 302:11 303:2 304:1</p> <p>top 250:15 275:16 290:14 303:19 311:23</p> <p>total 296:16 306:23</p> <p>totally 261:25</p> <p>town 263:9</p> <p>track 304:7</p> <p>traditional 251:6,13 254:16</p> <p>transcript 250:4,24 253:21 254:22 255:6,7 258:11</p> <p>transfer 265:19 307:13</p> <p>transferred 306:19</p> <p>treated 248:25</p> <p>tremendous 263:18 265:13</p> <p>true 243:3 245:9 292:6</p> <p>trust 304:21,22 305:7</p> <p>truth 257:4</p> <p>turn 259:14 277:25 279:24 294:4 302:5</p> <p>turned 307:11</p> <p>type 255:14</p> <p>Typically 276:5</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Uh-huh 260:11 261:11 264:1 272:2 278:3</p> <p>ultimate 290:2 311:23</p> <p>ultimately 270:19 272:7 275:3,17</p> <p>unable 251:6,13</p> <p>uncommon 274:23</p>
--	--	--	--

<p>understand 251:10</p> <p>understanding 271:12,17,18,21 274:12 276:20,25 277:6 281:14 283:2 286:4 287:7 292:6 297:10</p> <p>unknown 250:5</p> <p>unsealed 239:24</p> <p>utilities 255:12 262:14,17 281:24 282:4 283:24 301:12, 15,20 311:4</p> <p>utility 238:6 244:5 247:10 250:17 251:17 274:24 275:10,12 276:10,12 282:20,24 283:17 284:4,5,7,10 301:5,8</p> <p>utilized 271:14</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>Vaguely 310:8,11</p> <p>verify 247:23 280:12</p> <p>versions 259:2</p> <p>viable 297:6</p> <p>view 249:1</p> <p>viewed 249:18</p> <p>violations 240:6</p> <p>virtually 304:4</p> <p>visit 261:5</p> <p>voice 266:16</p> <p>volume 250:24</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>WA-2019-0185 256:12</p> <p>WA-2019-0299 238:9</p> <p>walk 288:22</p>	<p>wanted 242:20</p> <p>wanting 249:23</p> <p>water 238:7 250:17 271:15 274:6 276:15 281:5 282:20 283:4,8, 13 284:16 286:12,21 290:10 294:12,17,21 295:2,5 300:14 309:25 310:7,15,24 312:10, 12,16 313:12,17</p> <p>WD 252:22</p> <p>wearing 298:19 299:1</p> <p>week-extension 314:23</p> <p>weigh 246:23 249:21 252:3,7 257:17 263:14</p> <p>weight 251:11,20,22 255:18</p> <p>weighted 290:2</p> <p>weird 298:18</p> <p>Wieberg 300:3</p> <p>withdraw 253:2</p> <p>withdrawing 253:13</p> <p>withdrawn 246:8,14</p> <p>withdrew 245:23,24</p> <p>witnesses 238:21 241:7,11 243:6 260:3 313:23</p> <p>WM-2018-0116 265:18</p> <p>word 239:16 298:23</p> <p>wore 299:2</p> <p>work 263:19 265:13 280:11 304:21 308:9, 15,19,23</p> <p>worry 288:15</p> <p>worth 296:13</p> <p>WR-2016-0064 250:24</p> <p>write 315:20</p>	<p>writing 259:25</p> <p>wrong 309:6</p> <p>wrote 262:5 276:8 302:18</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yamnitz 297:14 298:8</p> <p>year 306:23 307:15</p> <p>years 254:11,23 255:11 277:12 304:8 306:25</p> <p>yesterday 238:14,25 239:19 242:25 243:2,8 245:23 250:10 280:22</p>
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