

1 BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

2

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

10

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

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A P P E A R A N C E S

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

6 * * * * *

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

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

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

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

17 JUDGE SEYER: Public Counsel?

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

21 JUDGE SEYER: Okay. And the Staff of the
22 Commission?

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

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

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

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

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

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

24 JUDGE SEYER: Right. As long as the -- if
25 they are not already entered into EFIS, as long as

1 they are e-mailed to the exhibits@psc.Mo.gov e-mail
2 address. Okay. Are there any changes to the joint
3 order of witnesses and cross examination filed on
4 Wednesday, May 4th? Okay.

5 MR. SILVEY: This is Chairman Silvey.

6 JUDGE SEYER: Yes.

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

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

12 MR. SILVEY: I believe Commissioner Coleman
13 and Commissioner Holsman are also present.

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

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

25 So, Ms. Bretz, would you like to make an

1 opening statement on behalf of the Staff?

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

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

12 MS. BRETZ: Yes.

13 JUDGE SEYER: I just want to make sure.

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

1 constructing the water system. The CID is authorized
2 to levy these assessments for up to 32 years from the
3 date the City of Eureka ordinance was passed. So
4 potentially Arbors residents will be paying these
5 assessments until 2048. Staff's opinion is that
6 residents of the Arbors will pay twice for the water
7 system serving their subdivision if the sale to
8 Missouri-American goes through. Through their CID
9 assessments residents are currently paying the
10 developers costs of installing the water system.
11 Documents filed in EFIS from the state auditor's
12 office and St. Louis County Department of Revenue show
13 that Arbors residents have been paying these
14 assessments since 2018. On their real estate tax
15 receipts these assessments are listed as other
16 charges. This is one time that the Arbors residents
17 will be paying for their water system. If the sale to
18 Missouri-American is completed, the appraised value of
19 the water system will be included in Missouri
20 American's rate base. Therefore, all Missouri
21 American customers including residents in the Arbors
22 will pay for this appraised value through their rates.
23 This is a second time that Arbors ratepayers are paying
24 for their water system. Brian LaGrand of
25 Missouri-American states in his testimony that Arbors

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

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

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

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

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

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

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

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

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

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

1 MS. SILVEY: And did the ballot language
2 include the sales price of \$26 million.

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

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

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

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

1 of that are specifically related to the water
2 treatment center?

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

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

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

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

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

25 MR. SILVEY: 500 and some change. How many

1 lots are there in Eureka at large?

2 MS. BRETZ: I'm not sure entirely. I
3 recall testimony from, I think, it was from Mayor
4 Flower that he stated that the people living in the
5 Arbors development is approximately ten percent of the
6 population of the number of homes that are would be
7 potentially Missouri-American customers.

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

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

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

24 MS. BRETZ: Yes. Yes, of course.
25 Missouri-American is free to come back and submit

1 another application.

2 MR. SILVEY: How long would that take?

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

7 MR. SILVEY: Okay. Thank you, Ms. Bretz.
8 Thank you, Judge. No further questions.

9 MS. BRETZ: Thank you.

10 JUDGE SEYER: Are there any questions from
11 the other commissioners?

12 COMMISSIONER: No questions, Judge.

13 COMMISSIONER: No question.

14 JUDGE SEYER: Thank you. Then Ms. Van
15 Gerpen.

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

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

24 JUDGE SEYER: Any questions from the
25 commissioners?

1 MR. SILVEY: Thank you, Judge, this is
2 Chairman Silvey. I have a question. Thank you for
3 your opening statement. So since you mentioned in the
4 opening statement, you're contending Missouri-American
5 is paying too much for the system?

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

7 MR. SILVEY: And they are paying it to the
8 City of Eureka, correct, not to an individual
9 developer?

10 MS. VAN GERPIN: That is correct.

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

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

23 MR. SILVEY: But you also agree that they
24 participated in the election which stated the amount
25 of the sale?

1 MS. VAN GERPEN: Yes.

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

5 MS. VAN GERPEN: Yes.

6 MR. SILVEY: Okay. Thank you. Thank you,
7 Judge.

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

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

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

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

1 lesser of the purchase price or appraised or fair
2 market value together with the reasonable and prudent
3 transaction closing and transition cost incurred by
4 Missouri-American shall constitute the rate making
5 rate base for Eureka's system being acquired by
6 Missouri-American. Assets referenced by Staff are
7 owned by Eureka are currently in service and are used
8 and useful for the provision of water services to
9 Eureka residents. Nothing in section 393.320
10 references or creates an exception for contributed
11 property in the case of a municipal system. Now, this
12 does not mean that the concept of net book value is
13 completely ignored by section 393.320. If the small
14 water utility is a public utility subject to chapter
15 386 and small water utility completed a rate case
16 prior to the acquisition, the Commission may utilize
17 the net book value determined by the Commission in its
18 decision as to the rate making rate base. However,
19 again, that provision is not available where the small
20 water utility is a municipal system. That different
21 approach could be for one or all of several good
22 reasons. It could be because of the difficulty in
23 establishing a net original cost for unregulated
24 system. Because the consolidation of small water and
25 sewer systems with large systems should be encouraged

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

1 Now, I would also like to talk a little bit
2 about the sort of the perspective proportions involved
3 here in regard to the size of the Arbors. Arbors
4 subdivision, there are, as Ms. Bretz said, about 405
5 water customers currently in the Arbors area. This
6 compares to approximately 4100 total Eureka water
7 customers and approximately 340,000 Missouri-American
8 water customers in St. Louis County, the district of
9 which Eureka water customers would become a part. The
10 \$2.9 million construction cost associated with the
11 Arbors water system assets that we're talking about
12 today compares to a water rate base for the St. Louis
13 County district of approximately \$1.2 billion as of
14 December 31st of 2020. The portion of any revenue
15 requirement associated with that \$2.9 million that one
16 could even argue would be recovered from the Arbor
17 water customers through MAWC rates would be extremely
18 small.

19 Finally, I leave you with a couple of
20 questions. Staff's argument, again, is its position
21 that the 405 water customers in the Arbors development
22 could pay twice for the Arbors water system. As
23 discussed before, MAWC believes this concept is not
24 applicable to a municipal system. However, even if it
25 were, if the sale does not go through, the assets stay

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

1 conditions described by Staff, and establish the rate
2 making rate base for the systems acquired in amount
3 equal to the fair market value. Thank you.

4 JUDGE SEYER: All right, Chairman Silvey,
5 do you have questions?

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

7 EXAMINATION

8 QUESTIONS BY MR. SILVEY:

9 Q. Thank you for your opening. So you
10 reference the 405 customers in the subdivision, roughly
11 4100 customers total in Eureka, and 340,000 in St.
12 Louis County at large?

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

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

19 A. The number of customers in the St. Louis
20 County district for water would be approximately
21 344,000, correct.

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

23 A. Well, within that number of customers there
24 are, I can't remember the rate designation, but there
25 would be some differentiation. There is Rate A, there

1 is rate J for industrial. Mr. LaGrand could probably
2 give a better rundown. I know he can give better
3 rundown than I for the different rates.

4 Q. Let me rephrase.

5 A. Go ahead.

6 Q. So, yes, respective of different rate
7 classes, would the \$2.9 million that's at issue today
8 be spread across 340,000 some thousands people as
9 opposed to just the 4100 people in Eureka?

10 A. Correct. Yes, Chairman. (Inaudible)

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

15 A. That's correct, yes.

16 Q. Okay. Thank you. Thank you, Judge.

17 JUDGE SEYER: Do any of the other
18 commissioners have questions?

19 COMMISSIONER: No questions, Judge.

20 JUDGE SEYER: All right. Thank you, Mr.
21 Cooper.

22 Q. (By Mr. Silvey) I apologize. I do have
23 one additional question. So we have the election that
24 occurred, is the record -- does the record show what
25 the results of the election were specifically or just

1 that it was majority that approved the sale?

2 A. No, I believe, Chairman, that our -- I
3 don't remember exact count, but I believe our direct
4 testimony provides the exact count -- our direct
5 testimony in the first part of this case. And I'm
6 sure we can come up with that pretty quickly.

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

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

15 Q. Okay. Thank you. Thank you, Judge.

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

18 MS. BRETZ: Our first witness is Craig
19 Sabo.

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

22 MS. BRETZ: That's my understanding.

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

24 THE WITNESS: I'm present.

25 JUDGE SEYER: Thank you. Would you raise

1 your right hand to be sworn in please. Thank you. Do
2 you solemnly swear or affirm that the testimony you
3 give in this hearing shall be the truth, the whole
4 truth, and nothing but the truth.

5 THE WITNESS: I do.

6 JUDGE SEYER: All right. Thank you. Go
7 ahead, Ms. Bretz.

8 EXAMINATION

9 QUESTIONS BY MS. BRETZ:

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

11 A. Good morning.

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

16 A. Yes.

17 Q. And what's your title?

18 A. City administrator.

19 Q. And what's your job responsibility in a
20 nutshell?

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

23 Q. And you're also a board member of the
24 Arbors of Rockwood community improvement district; is
25 that correct?

1 A. Yes.

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

3 A. Since its formation roughly five years ago.

4 Q. If I said 2016, does that sound about
5 right?

6 A. Yes.

7 Q. Do you have an official position in the
8 CID?

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

10 Q. You're currently secretary treasurer of the
11 CID?

12 A. Yes.

13 Q. Is Barb Flint also an employee of the City
14 of Eureka?

15 A. Yes. She is our finance director.

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

17 A. Yes.

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

20 A. No.

21 Q. Okay. Staff subpoenaed you to be present
22 today, correct?

23 A. Yes.

24 Q. And Staff asked you to bring some documents
25 with you?

1 A. Yes. Which were provided.

2 Q. Correct. We found out you were going to be
3 appearing WebEx and you were gracious enough to
4 provide these documents and you made those available
5 to Staff, right?

6 A. Yes.

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

13 A. Yes.

14 Q. You're familiar with that ordinance?

15 A. I am.

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

18 A. Yes.

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

21 A. Yes.

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

23 A. Yes.

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

1 A. Yes.

2 Q. And what you marked as document three is
3 the development agreement between the City of Eureka,
4 the developer, and Arbors CID?

5 A. Yes.

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

7 A. Yes.

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

10 A. Yes.

11 Q. Staff also asked you to bring the receipts
12 and financial records related to the water system at
13 the Arbors; is that correct?

14 A. Yes.

15 Q. And you wrote to me that that information
16 was contained in what you marked as document 2U,
17 correct?

18 A. Yes.

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

22 JUDGE SEYER: I would suggest that we make
23 that Exhibit 110, which I think is the next available
24 exhibit number.

25 MS. BRETZ: Sure.

1 JUDGE SEYER: So all three of those, all of
2 those documents or just document one?

3 MS. BRETZ: All the documents.

4 JUDGE SEYER: Okay. So what's essentially
5 document one, two and three, that collection would be
6 Exhibit 110. Are there any objections to that? All
7 right. Exhibit 110 is admitted.

8 MS. BRETZ: We don't have any other
9 questions, Judge.

10 JUDGE SEYER: All right. Ms. Van Gerpen,
11 do you have any questions.

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

13 JUDGE SEYER: All right. Mr. Cooper?

14 MR. COOPER: No questions, Your Honor.

15 JUDGE SEYER: All right. Are there any
16 questions from the commissioners? Hearing none, I do
17 have some questions myself.

18 EXAMINATION

19 QUESTIONS BY JUDGE SEYER:

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

22 A. Yes.

23 Q. And as you testified here today, are you
24 representing the district, the city or some
25 combination of both?

1 A. Presumably both.

2 Q. Okay. This community improvement district,
3 did the development of that area start before the
4 creation of that CID?

5 A. Legislative consideration preceded it for
6 the zoning.

7 Q. But actual shovel in the ground not before
8 the creation of it?

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

11 Q. Okay.

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

14 Q. Has that subdivision -- has that
15 development been completed?

16 A. No.

17 Q. Are there still lots for sale?

18 A. There is approximately 80 percent
19 developed, with lots for sale, yes.

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

22 A. Correct.

23 Q. Okay. We have what has been filed in the
24 EFIS document system as document 2U, 2 and the letter
25 "U", are receipts for the development. So I'd like to

1 draw your attention to that document.

2 A. I have it available.

3 Q. Okay. Are any of the projects that were
4 developed under the CID, have they been sold or are
5 they to be sold to Missouri-American water?

6 A. Well, the water and sanitary sewer
7 component including infrastructure, located on site,
8 which is well and tank and various appurtenances,
9 softening equipment, and the like.

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

12 A. Upon completion and service being provided
13 by them, yes.

14 Q. And logistically, how was that done? Was
15 it done by resolution?

16 A. No. It would have been inspection by Staff
17 and any consulting engineers. Same with any other
18 subdivision.

19 Q. So you mentioned the subdivision is roughly
20 80 percent completed. So has there been a certificate
21 of substantial completion submitted to the city?

22 A. I don't know. Just those components would
23 have been accepted. I generally view substantial
24 completion as the entire development, including all
25 other forms of infrastructure such as streets. And

1 that would not be the case in light of subdivision
2 still being under development.

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

6 A. Which --

7 UNKNOWN SPEAKER: Do you have a document
8 number for that?

9 JUDGE SEYER: I'm sorry.

10 UNKNOWN SPEAKER: Do you have a document
11 number for that?

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

15 A. I apologize. One moment please. Okay. I
16 have it.

17 Q. Okay. On the third page of that amended
18 petition it states there is a section for the
19 estimates of costs and improvements. And it states
20 that the estimated costs are approximately \$3,413,574.
21 In the annual report that was submitted to the State
22 Auditor's office, it also lists obligations roughly in
23 that amount for the fiscal year ending June 30th,
24 2021. So can you tell me when those obligations were
25 issued, what particular date?

1 A. One moment please. I apologize. Many
2 documents.

3 Q. Of course.

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

6 Q. So not issued all at one time?

7 A. Submitted -- they were submitted in April
8 of 2017, but not incurred all at the same time of
9 course.

10 Q. And what form were those obligations issued
11 -- in what form were those obligations issued?

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

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

15 A. Rooster Road LLC, the entity, the developer
16 formed in connection with the project.

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

19 A. Okay.

20 Q. At the top of that page it is headed
21 Parcfront Group LP, and then next line HTV CID
22 reimbursable project costs.

23 A. I see that. I'm not familiar with that
24 entity.

25 Q. If you can take a look at that page, would

1 you agree that this is essentially what those debt
2 obligations paid for, the \$3.4 million?

3 A. Yes.

4 Q. And so it amounts to roughly half a dozen
5 companies that contributed to the project and majority
6 of it was for water service, would you agree?

7 A. Yes.

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

10 A. Yes.

11 Q. Okay. So were there -- so cost, and I know
12 the ordinance talks about lawns, trees, other
13 landscape, traffic signs, signals, drainage, et
14 cetera, storm and sewer systems. At least out of this
15 \$3.4 million, none of that was spent on lawns and
16 trees and so forth, correct?

17 A. Correct.

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

21 MS. VAN GERPEN: Nothing, Your Honor.

22 JUDGE SEYER: Or the commissioners,
23 questions? All right. Mr. Cooper?

24 MR. COOPER: Just a couple for
25 clarification, Your Honor.

EXAMINATION

QUESTIONS BY MR. COOPER:

Q. Mr. Sabo, you were asked some questions about the status of the subdivision and I think you mentioned that it was about 80/20. About 80 percent of the lots sold and about 20 percent, I guess, have not yet been sold; is that correct?

A. Yes.

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

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

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

A. Yes.

Q. That's all the questions I have.

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

MS. BRETZ: Nothing. Thank you.

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

1 excused.

2 THE WITNESS: Thank you.

3 JUDGE SEYER: All right, Ms. Bretz, call
4 your next witness.

5 MS. BRETZ: Staff's next witness is Curt
6 Gateley

7 JUDGE SEYER: Mr. Gateley, would you raise
8 your right hand please? Thank you. Do you swear or
9 affirm that the testimony you give in this hearing
10 shall be the truth, the whole truth, and nothing but
11 the truth?

12 THE WITNESS: Yes.

13 JUDGE SEYER: Thank you. Go ahead, Ms.
14 Bretz.

15 EXAMINATION

16 QUESTIONS BY MS. BRETZ:

17 Q. Mr. Gateley, would you please state and
18 spell your name?

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

20 Q. Where do you work and what's your job
21 title?

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

24 Q. Are you the same Curt Gateley who prepared
25 testimony -- it's called direct testimony of Curt G.

1 Gateley with exhibits attached?

2 A. Yes.

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

5 A. I do not.

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

8 A. Yes.

9 Q. And your testimony is true and correct to
10 the best of your knowledge?

11 A. Yes.

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

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

18 MS. BRETZ: We tender the witness for cross
19 examination.

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

21 MS. VAN GERPIN: Nothing from OPC.

22 JUDGE SEYER: All right. Mr. Cooper?

23 MR. COOPER: Nothing at this time, Your
24 Honor.

25 JUDGE SEYER: All right. Are there any

1 questions from the commissioners?

2 MR. SILVEY: No questions, Judge.

3 JUDGE SEYER: All right. Mr. Gateley, I
4 have a couple questions.

5 EXAMINATION

6 QUESTIONS BY JUDGE SEYER:

7 Q. For this particular subdivision, why is it
8 staff's position that the residents in that
9 subdivision will be paying twice for their water
10 system?

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

23 Q. If those purchasers of the lots in that
24 subdivision rather than pay the assessment over the
25 years had paid for those developer costs upfront as

1 part of the purchase of the lot, would Staff still
2 have that same position?

3 A. No. The typical development situation,
4 developers, of course, are trying to maximize their
5 profit. They are trying to recover any of their
6 expenses through the sale of lots and development.
7 They are subject to market forces. They may not be
8 able to recover as much as they would like or all of
9 it, but it is expected that folks who are purchasing a
10 lot that aren't subject to a special district like
11 this, that, yeah, they will have already had to pay
12 for some portion of it in the purchase of the lot.
13 Our position would be different if it was an average
14 situation, yeah. These assets being contributed to
15 Eureka and then sold to Missouri-American is a unique
16 situation for me. I have never encountered it. And
17 Staff members I have talked to haven't encountered one
18 in this particular situation before.

19 Q. Is it common for developers to construct
20 assets that are then donated to the city, to the
21 municipal water or sewer system?

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

24 Q. All right. I don't have any further
25 questions. Ms. Van Gerpen, do you have any follow-up

1 questions?

2 MS. VAN GERPEN: Nothing, Your Honor.

3 JUDGE SEYER: All right. Mr. Cooper?

4 MR. COOPER: Yes.

5 EXAMINATION

6 QUESTIONS BY MR. COOPER:

7 Q. Mr. Gateley, I think I heard you say that
8 in a situation where there was no CID where a
9 developer constructed a system, tried to, maybe did,
10 maybe didn't recover costs through the sale of the
11 lots or lot prices, that Staff would view that
12 differently than the CID situation. Is that what you
13 said?

14 A. Yes.

15 Q. So in that situation where the assets were
16 contributed and there is no CID -- contributed by a
17 developer and there is no CID, you would not view that
18 as a contributed plant?

19 A. I'm not an auditor so I'm not -- I don't
20 calculate such things. That refinement of that kind
21 of question would probably be better for Amanda
22 McMellen.

23 Q. Okay. What causes my confusion is in this
24 case Staff suggested that it didn't know about the CID
25 at the time it did its recommendation, and yet it did

1 view the Arbors construction costs as a contributed
2 plant, correct?

3 A. When we initially asked Missouri-American
4 and DRs for what the contributed plant was the response
5 indicated there was none. It's my understanding the
6 Staff found out about the contributed plant for the
7 Arbors when they made the effort to go to the city and
8 review the records and discuss the situation with the
9 city. Again, I wasn't in that particular portion of
10 the investigation so I'm speaking to my understanding
11 of it.

12 Q. But it was still identified as contributed
13 plant, wasn't it?

14 A. Yes. In our recommendation it was.

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

23 A. Rates would be determined at the next rate
24 case. So I can't answer that question for sure, but
25 at this point I know Staff is not making that

1 contention.

2 Q. And Staff, in fact, has recommended in this
3 case that if the transition proceeds that all of
4 Eureka's customers should be become a part of the St.
5 Louis County water rate making district, correct?

6 A. I would have to look back at my testimony
7 for sponsoring of the Staff rec.

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

12 A. Yes. The total amount of the purchase of
13 Eureka in addition to the money spent to remediate
14 Eureka's assets would be spread amongst all the
15 customers in that rate district including the assets
16 of Arbors.

17 Q. Which is several hundred thousand customers
18 or at least a couple hundred?

19 A. Yeah. More than that, yes.

20 Q. Okay. Thank you.

21 JUDGE SEYER: All right. Ms. Bretz, do
22 you have redirect?

23 MS. BRETZ: No.

24 JUDGE SEYER: All right. Thank you. Ms.
25 Bretz, call your next witness.

1 MS. BRETZ: Our next witness is Amanda
2 McMellen.

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

8 THE WITNESS: I do.

9 JUDGE SEYER: Go ahead.

10 EXAMINATION

11 QUESTIONS BY MS. BRETZ:

12 Q. Ms. McMellen, would you please state and
13 spell your name?

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

16 Q. Where are you employed and what's your job
17 title?

18 A. I'm employed by Missouri Public Service
19 Commission as utility regulatory audit unit
20 supervisor.

21 Q. Are you the same Amanda McMellen who caused
22 to be prepared testimony titled direct testimony of
23 Amanda McMellen?

24 A. Yes.

25 Q. Do you have any changes or corrections to

1 your testimony?

2 A. I do have one correction.

3 Q. What is it?

4 A. On page 2, line 15, I want to strike "and
5 Mayor Sean Flower" and change "were" to "was" because
6 he was not present at that meeting. That's my
7 mistake.

8 Q. With this change is your testimony true and
9 direct to your knowledge?

10 A. Yes, it is.

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

13 A. Yes.

14 Q. Judge, we offer Ms. McMellen's testimony as
15 Exhibit 112.

16 JUDGE SEYER: All right. Are there any
17 objection? All right. Exhibit 112 is admitted.

18 MS. BRETZ: And Staff tenders the witness
19 for cross examination.

20 JUDGE SEYER: Ms. Van Gerpen, do you have
21 any questions?

22 MS. VAN GERPEN: Nothing, Your Honor.

23 JUDGE SEYER: Mr. Cooper?

24 MR. COOPER: Yes, Your Honor.

25 EXAMINATION

1 QUESTIONS BY MR. COOPER:

2 Q. Ms. McMellen, do you agree with Mr. Gateley
3 that generally properties that are contributed or
4 given to the utility or city by a developer where
5 there is no CID would be included in rate base or in
6 your experience would you identify that as a
7 contributed plant?

8 A. Yes, we would.

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

17 A. As an estimation, typically about ten
18 percent.

19 Q. So for 2.9 million that would be about
20 290,000 would be annual revenue requirement associated
21 with that sort of rate base?

22 A. For Arbors rate base, correct.

23 Q. And I suppose from rate case to rate case
24 that would also reduce, wouldn't it, as depreciation,
25 reduce the amount of plant on which the company was

1 receiving a return?

2 A. Yes. That's correct.

3 Q. But in your -- let's say it's 290,000,
4 given the size of St. Louis County district for
5 Missouri-American for water, something perhaps less
6 than a dollar per customer across the district, is
7 that the sort of magnitude that we're talking about?

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

10 Q. Right. Just isolating this Arbors piece?

11 A. Correct.

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

13 JUDGE SEYER: All right. Thank you. Are
14 there any questions from the commissioners? All
15 right.

16 EXAMINATION

17 QUESTIONS BY JUDGE SEYER:

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

25 A. In my opinion, they wouldn't be paying

1 double, but the Staff calculation would remain
2 unchanged.

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

5 MS. VAN GERPEN: Nothing, Your Honor.

6 JUDGE SEYER: Mr. Cooper?

7 MR. COOPER: Nothing, Your Honor.

8 JUDGE SEYER: Any redirect?

9 MS. BRETZ: Nothing.

10 JUDGE SEYER: All right. Thank you, Ms.
11 McMellen.

12 THE WITNESS: Thank you.

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

15 MS. BRETZ: We don't have any further
16 witnesses. We do have two other exhibits that have
17 been filed in EFIS. I would like to have them
18 admitted. The first is the certificate of the State
19 Auditor and some attached documents. We would ask
20 that to be entered as Exhibit 113.

21 JUDGE SEYER: Are there any objections to
22 that? Exhibit 113 is admitted.

23 MS. BRETZ: And then the other exhibit is
24 the affidavit of Sneha Darsi. She is with the County
25 Department of Revenue and attached documents. We ask

1 that to be entered as Exhibit 114.

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

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

5 JUDGE SEYER: Is it there any objection to
6 that? Do we need to take a break here?

7 MR. COOPER: Just a short one.

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

10 (Whereupon, a break was taken.)

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

13 MR. COOPER: Thank you, Your Honor. We
14 call Sean Flower.

15 JUDGE SEYER: Good morning. Would you
16 raise your right hand please? Thank you. Do you
17 swear or affirm that the testimony you will give in
18 this hearing shall be the truth, the whole truth, and
19 nothing but the truth?

20 THE WITNESS: I do.

21 JUDGE SEYER: All right. Thank you. Go
22 ahead, Mr. Cooper.

23 EXAMINATION

24 QUESTIONS BY MR. COOPER:

25 Q. Please state your name.

1 A. Sean Flower.

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

4 A. Yes.

5 Q. And what is that capacity?

6 A. I'm the mayor of Eureka.

7 Q. And you testified in this case previously,
8 correct?

9 A. Yes.

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

13 A. Yes.

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

16 JUDGE SEYER: All right.

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

20 A. No. It's accurate.

21 Q. And thus if I were to ask you those
22 questions and your answers as reflected therein would
23 be true and correct to the best of your information,
24 knowledge, and believe?

25 A. Yes.

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

3 JUDGE SEYER: All right. Are there any
4 objections to the admission of Exhibit 14? All right.
5 Exhibit 14 is admitted. Ms. Van Gerpen, do you have
6 any questions?

7 MS. VAN GERPEN: Nothing, Your Honor.

8 JUDGE SEYER: Ms. Bretz?

9 MS. BRETZ: Nothing, Your Honor.

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

13 EXAMINATION

14 QUESTIONS BY JUDGE SEYER:

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

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

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

23 A. Yes. This is the schedule of basically the
24 developer was authorized to have certain classes of
25 reimbursement, and this was their actual request to be

1 reimbursed from the CID, the district.

2 Q. And so would you agree that all of that,
3 all of those assets that were constructed are part of
4 the water and sewer assets that are to be sold to
5 Missouri-American water?

6 A. On the schedule that's attached?

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

8 A. It's the one titled Parcfront Group LP.
9 Am I on the right page?

10 Q. Uh-huh.

11 A. These are not all water assets.

12 Q. So -- and I understand what you're saying,
13 there is the asphalt trail and also streets and what
14 have you?

15 A. Yeah. It looks to me on this there was
16 about \$590,000 for the street and paving and then
17 there was another paving and trail that's shown as
18 \$48,000. So there was \$640,000 or so that was
19 non-water assets that were allowed to be reimbursed.

20 Q. Okay. And water system assets are what is
21 being sold to Missouri-American Water?

22 A. Yes. The rest of the costs were all
23 associated with the water system.

24 Q. Was there -- so was there any part -- is
25 there any part of the sewer system that's in the

1 Arbors subdivision that's also part of the sale?

2 A. Yes.

3 Q. What is that?

4 A. Well, there would be in conjunction with
5 the Arbors subdivision a large section of sewer was
6 constructed to tie in -- there was a big line running
7 underneath Highway 44, and then there is all
8 transmission system for sewer within the subdivision.
9 So there are all sorts of sewer improvements. Some
10 are directly related to the individual homes in the
11 Arbors and zoom are related to hooking that
12 subdivision up to the actual overall system that takes
13 it back to our treatment plant.

14 Q. And also were there any lift stations
15 constructed for that subdivision?

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

18 Q. And when those water and sewer system
19 additions were completed, how were they transferred to
20 the city?

21 A. Generally, what's done is on water and
22 sewer we'll go out -- the city will inspect after
23 they are complete and make sure those systems are
24 properly built, we'll get as-built plans that shows
25 they have been built as designed. And generally, they

1 are accepted at that point on plat by plat basis.
2 Sometimes a large development might have phases, but
3 as it stands now as soon as it's done they tell us
4 it's done, we inspect it and accept it.

5 Q. How is it that you accept it? What's the
6 procedure?

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

11 Q. Not a formal resolution?

12 A. There is not a formal resolution. There is
13 not one specific just to that.

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

17 MS. BRETZ: It is at the end of the
18 document.

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

23 A. I'd have to really look and see. There is
24 so many different certifications that go in and things
25 that go on with this, I'm not sure. I'd have to read

1 that one to give you a good answer.

2 Q. At the risk of getting off on a tangent --
3 I hope I'm not. But you're familiar with the
4 engineering report that was used as part of the
5 appraisal?

6 A. Yes.

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

10 A. You could be correct. That may be and it
11 could be oversight of my knowledge of lift station
12 there in that subdivision. I could rephrase what I'm
13 saying. I'm not familiar with that in there, but if
14 that's in the engineering report it very well could be
15 accurate and it's an omission by me.

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

18 MS. VAN GERPEN: Nothing, Your Honor.

19 JUDGE SEYER: Ms. Bretz, any --

20 MS. BRETZ: No, thank you.

21 JUDGE SEYER: Mr. Cooper, do you have any
22 redirect?

23 MR. COOPER: No questions.

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

1 MR. COOPER: Thank you, Your Honor. We
2 call Brian LaGrand.

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

8 THE WITNESS: I do.

9 JUDGE SEYER: Thank you. Go ahead, Mr.
10 Cooper.

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

14 JUDGE SEYER: All right.

15 EXAMINATION

16 QUESTIONS BY MR. COOPER:

17 Q. Please state your name.

18 A. Brian W. LaGrand.

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

20 A. Missouri-American Water. I'm director of
21 rates for Missouri.

22 Q. And you have previously testified in this
23 case?

24 A. I have.

25 Q. Did you prepare for purposes of today's

1 proceeding testimony rebuttal testimony concerning the
2 Arbors in question and answer format?

3 A. Yes, I did.

4 Q. If I were to ask you the questions
5 contained in that exhibit today would your answers as
6 reflected therein be true and correct to the best of
7 your information, knowledge, and belief?

8 A. Yes.

9 Q. Your Honor, at this time I would offer
10 Exhibit 15 into evidence and tender Mr. LaGrand for
11 cross examination.

12 JUDGE SEYER: Any objection? Exhibit 15
13 is admitted. Ms. Van Gerpen, do you have any
14 questions?

15 MS. VAN GERPEN: Nothing, Your Honor.

16 JUDGE SEYER: Ms. Bretz?

17 MS. BRETZ: Briefly. Thank you.

18 EXAMINATION

19 QUESTIONS BY MS. BRETZ:

20 Q. Good morning, Mr. LaGrand.

21 A. Good morning.

22 Q. Do you have your testimony in front of you
23 there?

24 A. I do.

25 Q. Perhaps you don't have to refer to it, but

1 do you remember writing in your testimony that Mr.
2 Gateley's statement that the Arbors residents will pay
3 for the water system twice, that that's incorrect?

4 A. I do.

5 Q. Okay. And that's on page 8 going over to
6 page 9?

7 A. Yes, I see that.

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

9 A. Sure.

10 Q. So residents of the Arbors are paying CID
11 assessments, right?

12 A. That's my understanding, yes.

13 Q. And are you aware of how much CID
14 assessments are?

15 A. I believe it depends on the size of the
16 home or maybe size of the lot. Maybe \$500 to \$700
17 annually.

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

20 A. Yes.

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

23 A. I'm not.

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

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

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

5 A. Yes.

6 Q. Are you aware what these assessments pay
7 for generally?

8 A. Yes.

9 Q. What do they pay for?

10 A. My understanding is that is to reimburse
11 the developer for costs associated with some water
12 infrastructure as well as some roads and other
13 non-water infrastructure.

14 Q. Sure. Sure. So the residents of Arbors
15 will be paying for the developer's costs of the water
16 system; is that correct?

17 A. Yes.

18 Q. Okay. And then if Missouri-American
19 purchases the Eureka sewer and water system at \$28
20 million, that \$28 million will be incorporated in
21 Missouri American's rate base; is that correct?

22 A. Yes.

23 Q. And as part of that rate base is it
24 accurate to say that the ratepayers are paying for the
25 water system?

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

2 Q. Okay. So they'll be paying twice for the
3 water system; first through their CID assessment and
4 second time through their American American rates; is
5 that correct?

6 A. No. I disagree with that.

7 Q. What's your reason for that?

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

21 Q. But residents of the Arbors will pay same
22 rates as their other neighbors in Eureka, isn't that
23 correct?

24 A. Under Missouri-American ownership?

25 Q. Right.

1 A. Yes. As they do today under the city's
2 ownership.

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

5 A. Yes.

6 Q. Okay. So they will be paying through the
7 CID and then through Missouri-American rates twice?

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

9 Q. Okay. I don't have any other questions.
10 Thank you.

11 A. Okay.

12 JUDGE SEYER: Any questions from the
13 commissioners?

14 MR. SILVEY: No questions, Judge.

15 JUDGE SEYER: Thank you. I have got a
16 question.

17 EXAMINATION

18 QUESTIONS BY JUDGE SEYER:

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

22 A. Yes.

23 Q. And in that engineering report there was a
24 City of Eureka asset value report depreciated value
25 assets in insurance list. Does that sound familiar?

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

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

7 A. Yes. Yes.

8 Q. A 500,000 gallon storage tank, water
9 storage tank, and a building that included water
10 treatment mechanisms for lack of a better word. Does
11 that sound familiar?

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

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

16 A. Yes. Again, without reviewing it --
17 subject to check, yes.

18 Q. Mr. Cooper, those tables were not -- have
19 not been previously included in the exhibit that was
20 the engineering report. Would you have any objection
21 to those two tables being admitted as a Commission
22 Exhibit?

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

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

3 (Whereupon, a short break was taken.)

4 JUDGE SEYER: After some investigation off
5 record, those tables are in the record as part of Mr.
6 LaGrand's direct testimony, which is Exhibit 11. So
7 Exhibit 11, schedule BWL-3 pages 17 and 18, so there
8 is no need to resubmit it as an exhibit. So Ms. Van
9 Gerpen, do you have any follow-up questions?

10 MS. VAN GERPEN: Nothing, Your Honor.

11 JUDGE SEYER: Ms. Bretz?

12 MS. BRETZ: Nothing.

13 JUDGE SEYER: Any redirect?

14 MR. COOPER: Very briefly, Your Honor.

15 EXAMINATION

16 QUESTIONS BY MR. COOPER:

17 Q. Mr. LaGrand, you were asked by Staff
18 counsel, Ms. Bretz, about why you say that the Arbors
19 customers will not be paying twice for the water
20 system. Were you here earlier when Ms. McMellen
21 testified?

22 A. Yes, I was.

23 Q. And did you listen to her testimony
24 concerning kind of a high level estimate of what
25 impact \$2.9 million of rate base would have on the

1 rates for the Arbors customers?

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

5 Q. So something less than a dollar, would you
6 agree with that kind of order of magnitude assessment
7 of what impact this could have at worst on an Arbors
8 customer?

9 A. Yes.

10 Q. That's all the questions I have, Your
11 Honor.

12 JUDGE SEYER: All right. Anything further
13 for this witness?

14 MR. COOPER: No, Your Honor.

15 JUDGE SEYER: You may be excused.

16 THE WITNESS: Thank you.

17 MR. COOPER: Your Honor, I have -- I'll
18 let Mr. LaGrand clear here. I was asked during
19 opening statements about the overall vote for the
20 Eureka resolution, and that can be found in Mayor
21 Flower's direct testimony, page 7, which is Exhibit 1
22 in the case, and reflects that there were 2289 yes
23 votes, which is approximately 67 percent yes, to 1127
24 no votes, which is approximately 33 percent. And we
25 have since then located the precinct-specific

1 information which we can file pretty quickly, probably
2 by this afternoon if you would like us to do that.

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

5 MR. COOPER: I think we can make it
6 obvious. I think there is a map that identifies the
7 precinct and then by that you can tell that is the
8 precinct that encompasses the Arbors.

9 JUDGE SEYER: Okay.

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

12 JUDGE SEYER: I believe we're up to
13 Exhibit 16.

14 MR. COOPER: Yeah.

15 JUDGE SEYER: So Exhibit 16 would be the
16 results of the election broken down by precinct.
17 And are there any objections to that coming into
18 evidence? All right. Then once that is submitted it
19 will be admitted into evidence.

20 MR. COOPER: Thanks, Your Honor.

21 JUDGE SEYER: Do you have further
22 witnesses?

23 MR. COOPER: I do not.

24 JUDGE SEYER: Do the parties need a break
25 before closing arguments?

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

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

4 (Whereupon, a short break was taken.)

5 JUDGE SEYER: I'll take closing arguments
6 beginning with the Staff, Ms. Bretz.

7 MS. BRETZ: Thank you, Your Honor. I would
8 like to briefly remind the Commission of the larger
9 picture here. Sure, the people of Eureka voted to
10 sell their systems to Missouri-American according to
11 the testimony of Mayor Flower. 2289 people in the
12 city of Eureka voted to sell the systems. The bigger
13 picture is that the approximately 340,000
14 Missouri-American customers of St. Louis County did not
15 have that opportunity. They did not have the
16 opportunity to examine the appraisals. They didn't
17 have the opportunity to go to town hall meetings. They
18 probably didn't think of looking at FAQs on the city of
19 Eureka's website. They didn't have the opportunity to
20 ask Mr. Flower questions. They had really no
21 opportunity to make a decision whether
22 paying more for the system's value was in their best
23 interest. So 2289 voters compared to the larger
24 picture of 340,000 people -- customers is really a
25 drop in the bucket. It's miniscule. And of course,

1 it's pure speculation, but if given the choice whether
2 to pay more than net book value for the system, pay
3 more for the system than they are worth, I would
4 imagine a large number of 340,000 people would say no,
5 I don't want to do that even if it's a dollar a year,
6 a month, there is no value to us there. The appraisal
7 statute creates the potential of perverse incentives.
8 Of course, Eureka's voter voted to sell their systems
9 for \$28 million. \$28 million, \$40 million, \$50
10 million, it doesn't make any difference. They were
11 unhappy with the quality of the water. They knew
12 their sewer system was failing. They wanted to unload
13 it. The more the better, and that's what they got.
14 What they are potentially being paid is more than what
15 the system is worth. It also creates perverse
16 incentive for Missouri-American. The stockholders in
17 Missouri-American are not going to pay for that added
18 -- for the increased value. In fact, they get
19 rewarded for it because the increased value will be
20 reflected in in their rate of return. Sure, in the
21 bigger scope of things this purchase -- potential
22 purchase will have a small burden on all ratepayers,
23 but there is also a slippery slope argument here.
24 Allowing Missouri-American to purchase for \$28
25 million, which is substantially more than what Staff

1 computed net book value to be which has been, of
2 course, traditional way of basing rates will encourage
3 Missouri-American to purchase more systems at inflated
4 prices. This clearly does not created fair, just, and
5 reasonable rates. And we ask for the Commission to
6 deny the application entirely.

7 JUDGE SEYER: All right. Thank you. Ms.
8 Van Gerpen, would you like to make a closing argument?

9 MS. VAN GERPEN: Yes. Just briefly, Your
10 Honor. Again, the OPC would like to remind the
11 Commission of its position that the Commission should
12 deny Missouri-American Water Company's application for
13 CCN to acquire the city of Eureka's water and sewer
14 systems because the acquisition simply is not in the
15 public interest. In making its decision the
16 Commission must bear in mind that it is the Commission
17 itself, not Missouri-American Water Company, who must
18 determine whether the requested CCNs are necessary or
19 convenient for the public service. Missouri-American
20 Water Company's decision to proceed under the
21 appraisal statute does not change this fact. Here if
22 Missouri-American Water Company acquires the Eureka
23 systems as it proposes to do, the resident of Arbors
24 subdivision will pay twice for parts of their water
25 system; once through the Arbors of Rockwood community

1 improvement special assessment and once through their
2 Missouri-American Water rates. Today we learned the
3 cost or reimbursement through the CID are mostly for
4 the water system which will be sold to
5 Missouri-American Water Company. The residents of the
6 Arbors will continue to pay their special assessment
7 through approximately 2048. We also learned that
8 Missouri-American Water Company will place the system
9 into rate base, which directly affects these customers'
10 rates for their water service. Therefore, the citizens
11 will likely pay twice for part of their water system.
12 For this and the reasons addressed in the OPC's initial
13 and post-hearing brief, it simply cannot be that under
14 these circumstances the acquisition is necessary or
15 convenient for the public service. Therefore, OPC
16 requests that the Commission deny the requested CCN.

17 JUDGE SEYER: All right. Thank you. All
18 right. Mr. Cooper, would you like to make a closing
19 argument on behalf of Missouri-American Water Company?

20 MR. COOPER I would. Thank you, Your
21 Honor. There is argument that St. Louis County
22 customers had no opportunity to approve or not approve
23 this transaction. I don't think there is anything
24 unique
25 or unusual about that. That's true of every

1 situation. Having said that, we addressed in our
2 previous briefs potential rate impact on those
3 existing customers. We think that to use Ms. Bretz's
4 word, any impact on existing water customers from this
5 acquisition would be miniscule, and in fact, on the
6 sewer side there is likely benefits for the existing
7 sewer customers. In regards to the process of
8 arriving at the fair market value, it certainly is
9 what has been used as a process identified in section
10 393.320, the appraisal process itself. The use of
11 certified appraisers, the use of more than one
12 appraiser, I believe, continues to be a buffer and a
13 good judge of what the fair market value of water and
14 sewer assets are in this case. I think therein kind
15 of lies the fundamental disagreement that we have with
16 Staff. In its closing it again mentioned comparison
17 of the net book value, which is purely regulatory rate
18 making term to the fair market value. These things
19 are two different things. We've talked about that
20 before in this matter and in our briefs and would ask
21 the Commission it keep that in mind as it moves
22 forward. I think the one additional fact that we did
23 not have quite as specifically at the start of the day
24 as we have now through testimony is that even if --
25 and we don't agree with this -- but even if one wants

1 to view the Arbors residents as paying twice for
2 assets because of the Missouri-American rate, the
3 amount of or the annual revenue requirement associated
4 with \$2.9 million of Missouri-American rate base is
5 likely to be less than a dollar per year those Arbors
6 residents would end up paying. So it is an extremely
7 small amount at worst even if one wants to look at it
8 in that fashion. Beyond that, Your Honor, I would
9 just refer you to my opening statement. I don't think
10 anything would change from my opening statement based
11 upon the evidence that was taken today. And I very
12 much thank you for your time.

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

17 (Whereupon, the hearing was adjourned at
18 10:41.)

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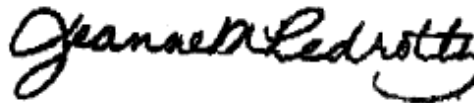
CERTIFICATE OF REPORTER

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) Ss.

CITY OF ST. LOUIS)

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



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

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