

11 it would require change in statute or --

12 A. Well, I think it would certainly require a
13 change in policy.

14 Q. Change in policy. Okay.

15 A. I think depending upon where you would want to
16 go policy-wise, it might very well require statutory changes
17 as well, and I think --

18 Q. Might where?

19 A. Well, my understanding is that, you know, the
20 Commission sets rates based on the theory of original cost
21 less depreciation. If we are going to stray from that, we
22 may very well need statutory changes to be able to do so.
23 I'm not sure.

24 Q. But --

25 A. But we --

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382

1 Q. -- that might be a possibility?

2 A. Yes. I think that's something that we would
3 definitely need to research and review and determine that to
4 go there. I don't know that it can be done simply by a
5 policy change. It may very well require statutory changes.

6 Q. And, say, for -- for example, this sale does
7 not happen and a receiver takes over. You mentioned earlier
8 that the receiver might only be dealing with one entity to
9 sell pieces of this system. But isn't the responsibility of
10 the receiver to try to get the best possible purchase price?

11 I mean, couldn't we be dealing with -- if it was a receiver,
12 that the receiver, whoever that person might be, is trying
13 to maximize what they can get for the system and as a result
14 you might then be dealing with an acquisition premium again?

15 A. That could be possible, yes. And quite
16 honestly, the experience that -- that I have with situations
17 that have gone clear through the receivership process, if
18 you will, one or two in particular, it got to the point
19 where they were sold for a buck on the courthouse step.
20 Potentially we might be facing the same question, if it was
21 a receiver that was liquidating the assets versus being here
22 before that -- we get to that point. I don't know. I mean,
23 it's certainly possible.

24 Q. If you had a receiver, too, do you think it's
25 possible that the system would be sold in its entirety or

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383

1 could pieces of it be sold off? And if it it's pieces, is
2 that good or bad?

3 A. Well, I think this particular situation you're
4 talking about, the system, even though it serves two or
5 three different developments, it's an integrated system and
6 it's a system.

7 Q. You couldn't sell off a bid here and bid
8 there --

9 A. No.

10 Q. -- to different purchasers?

11 A. Correct.

12 Q. And not having any value, in other words?

13 A. Right. In this particular situation, for
14 example, because I mentioned earlier the Shady Oaks
15 subdivision that was served outside of the original
16 development, the water supply comes from Incline Village.
17 The sewer goes to Incline Village for treatment. It's --
18 it's a separate subdivision from a platting standpoint, but
19 it's part of an integrated water/sewer system. So this
20 particular situation, that would not happen.

21 Q. Not likely.

22 You mentioned that you see room now to revisit
23 your original estimate of rate base and you're seeing that
24 that could likely be changed?

25 A. Correct.

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384

1 Q. And we're at 170, I think, somewhere in that
2 neighborhood?

3 A. That's a round number that -- yeah.

4 Q. I think Staff is of the opinion that
5 whoever -- a purchaser of the system can run it and make the
6 improvements for the rate base, for the rates that are
7 currently being charged and for the -- maybe now the amended
8 rate base number is doable?

9 A. Yes.

10 Q. Okay.

11 A. Well, I think you have to keep in mind that as

12 improvements are made to the system, those will also be
13 reflected in rates at some point in the future.

14 Q. At some point?

15 A. Yeah.

16 Q. But there'll be some time in there?

17 A. Right. There's going to be some lag, yes.

18 Q. So the company would have to bear that cost
19 until they can get it back.

20 COMMISSIONER FORBIS: Okay. That's all I've
21 got. Thank you.

22 JUDGE DIPPELL: Commissioner Clayton?

23 COMMISSIONER CLAYTON: Quickly or briefly or
24 whatever. I don't want to take up too much time.

25 QUESTIONS BY COMMISSIONER CLAYTON:

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385

1 Q. Can you spell out to me briefly how many
2 options you think we have here today? I know you have a
3 Staff proposal, but in your opinion how many options do we
4 have here today?

5 A. Well, the way I see it, there's three
6 proposals, if you will, in front of you, two of which may
7 essentially be the same. The application, as it stands,
8 with the request by Missouri-American is specifically to
9 value the assets being purchased at the purchase price for
10 ratemaking purposes in the future.

11 Q. Right. That's No. 1.

12 A. That's a specific request. That's No. 1.

13 The Staff's recommendation is that the
14 Commission approve the sale, but not approve
15 Missouri-American's request for special ratemaking
16 treatment. Now, I think we've, in essence, gone maybe not
17 beyond that, we still believe that's appropriate, but I
18 think we're now dealing with a different number, if you
19 will, as to what that would be.

20 And I would not have a problem at all
21 stipulating with the company or having the Commission set
22 out in an Order that for purposes of Missouri-American's net
23 rate case, we recognize X, Y and Z for ratemaking purposes,
24 that being the rate base that we believe is currently there
25 for Warren County Water & Sewer, the additional items that

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386

1 we've been discussing. I think that would be appropriate
2 for that to be memorialized either in a stipulation amongst
3 the parties or by the Commission in its Order.

4 Q. Is that part of Staff's recommendation, that
5 you set certain criteria to study in the future?

6 A. Well --

7 Q. Or is that an additional idea that you have
8 here today?

9 A. Well, I think basically what our
10 recommendation was that --

11 Q. You approve the sale?

12 A. Approve the sale.

13 Q. And then set the rate base at 50,000?

14 A. Well, I don't think we were that specific. I
15 don't have it in front of me. But, in essence, it was this:
16 Approve the sale, but for future ratemaking purposes the
17 rate base would be established as it has been historically
18 on original cost basis. That's the bottom line.

19 What that results in is that the Staff
20 believes there is an acquisition premium out there. We
21 don't believe the Commission should approve an acquisition
22 premium.

23 Q. Okay.

24 A. Now, we started out with the potential of that
25 acquisition premium for round numbers being the difference

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387

1 between \$50,000 and \$335,000. I think with what we're
2 talking about today, that differential has shrunk. It
3 obviously has, as far as we're concerned, because of these
4 additional items that we know are not in rates today and
5 that, with proper verification, should be in rates the next
6 time Missouri-American comes in as the owner. So that
7 differential has obviously shrunk.

8 Q. Are there any other alternatives, in your
9 opinion?

10 A. Well, the third one I was going to mention, I
11 think Public Counsel's recommendation was essentially the
12 same as the Staff's, maybe worded a little differently. So
13 I don't know that I would actually consider that a third

14 option. I think we're still at the two options.

15 Q. Okay. You don't see going to receivership as
16 being a viable option?

17 A. Well, if this sale does not take place, or
18 if -- well, let me put it this way. If this system is not
19 sold, there will be a receiver appointed. We will be there.
20 The court has already basically said and Mr. Smith actually
21 has agreed to a receiver being appointed without further
22 hearing at the circuit court if the system is not sold. So
23 we will be there.

24 Q. Have you ever been through a receivership in
25 your time with the PSC?

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388

1 A. Yes.

2 Q. You have. How long ago was that,
3 approximately?

4 A. Well, I can actually get you real close.

5 Q. Our court reporter's going to have to leave,
6 so if it's going to take a long time --

7 A. I started here in June of '95 in my current
8 position, and I walked right in the middle of one.

9 Q. Lucky you.

10 A. First day on the job. So it was '95, is the
11 one that we have the most recent experience.

12 Q. And did it have a -- was it a positive or a
13 negative experience for the ratepayers that were involved in

14 that?

15 A. Well, that was a situation where there was
16 true abandonment. The owner of the system literally packed
17 up his house and moved out of state and was gone.
18 Commission was successful in going to the circuit court,
19 getting a receiver appointed.

20 And it took some time, but over time that
21 system was sold and I think overall it was -- it was a
22 positive experience for the ratepayers, for the customers,
23 because during the term of the receivership they continued
24 to receive service. The process worked as it was intended.
25 The system was eventually transferred to a new owner.

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389

1 COMMISSIONER CLAYTON: Okay. Judge, I don't
2 think I have any other questions.

3 JUDGE DIPPELL: Okay.

4 COMMISSIONER CLAYTON: Thank you.

5 JUDGE DIPPELL: Go ahead, Commissioner Murray.

6 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

7 Q. Mr. Johansen, when you said that you would be
8 willing to stipulate that X, Y and Z are recognized for rate
9 base treatment in the future rate case, are you saying that
10 you would be willing to stipulate that, at a minimum, those
11 would be recognized, and then anything that isn't stipulated
12 as recognized is still subject to consideration?

13 A. Oh, I would not -- I guess to clarify that,
14 these are three items that I know today are not in our

15 number today, and that on a going-forward basis, you know,
16 with the assumptions I mentioned earlier, that that land
17 actually has been bought and it actually is going to be used
18 by Missouri-American, that the pump has actually been
19 replaced, and all that being verified. I know those are
20 three things that are not in our number today that would be
21 there going forward for Missouri-American.

22 Q. And then your number that is there today you
23 would be willing to recognize for rate base treatment?

24 A. Correct. Yes. That's our starting point, and
25 we believe that's the appropriate starting point. We've got

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390

1 these three items. There would be additions to that. If
2 there are other items out there like those three that we
3 don't know about today but we find out about tomorrow, they
4 would certainly be given similar consideration.

5 Q. All right. But you would be willing at this
6 point to say that, yes, it is appropriate at the next rate
7 case to recognize this amount as a starting point in rate
8 base?

9 A. Yes.

10 Q. Okay. Thank you. And then I had one more
11 question. What was it? Oh, the receivership you talked
12 about earlier, you said that eventually that was a positive
13 experience for the ratepayers or the customers. Who was
14 appointed the receiver in that case?

15 A. The Commission.

16 Q. Was that a positive experience for the
17 Commission?

18 A. I said the ratepayers. I didn't say the
19 Commission.

20 Q. Thank you.

21 A. I could go into some detail about what that
22 entailed, if you want me to.

23 COMMISSIONER MURRAY: Thank you, Judge.

24 JUDGE DIPPELL: I have just a couple questions
25 for you, Mr. Johansen.

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391

1 QUESTIONS BY JUDGE DIPPELL:

2 Q. As head of the water department, you're pretty
3 familiar with rates for small water companies and sewer
4 companies?

5 A. Yes.

6 Q. Are the rates for Warren County Water & Sewer,
7 as they stand now, in line with other rates throughout the
8 state for this size a company?

9 A. Boy, that's a loaded question that we always
10 get. Well, they are from the perspective that their rates
11 are set on a consistent basis with all the other companies.
12 The problem you have when you're trying to compare rates
13 from Warren County Water & Sewer Company to Central
14 Jefferson Water and Sewer Company is that the level of
15 investment in those systems may vary greatly, so --

16 Q. You're basically saying that you can't really
17 compare; it's apples and oranges?

18 A. I can't compare the rates themselves. I can
19 tell you that there is consistency between the companies on
20 how those rates are established, and the main focal point of
21 that consistency is that it's original cost less
22 depreciation.

23 Q. Okay.

24 A. That's a standard bearer in all of them.

25 Q. Okay. That's fine. Are you familiar with

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392

1 what took place in the way of a bid process for this company
2 in this situation?

3 A. Very generally only.

4 Q. Do you know if there were any other bids
5 besides St. Louis County and Warren -- or Missouri-American?

6 A. I don't know that there was a formal bid.
7 There was a third party that was a potential bidder that
8 talked to me about it, asked me some questions, we discussed
9 it. I explained to him what our process was, what the
10 process would be. At that time that party indicated to me
11 they were going to submit a bid. I don't know if they did
12 or not.

13 Q. Do you believe that if there's moratorium on
14 rates, that the rates will be sufficient for
15 Missouri-American to operate and maintain the system?

16 A. I believe they are, yes, and I think that is a
17 decision, quite honestly, that Missouri -- or a
18 determination that Missouri-American has had because they
19 proposed the moratorium. So I'm very confident that they
20 have made the evaluation that the rates currently are
21 sufficient to support the operation of the system and --
22 until the end of that moratorium. And I believe they are,
23 too.

24 Q. Staff indicated in their pleadings that
25 Missouri-American Water Company owes some overdue assessment

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393

1 fees. Are you aware of that?

2 A. Warren County Water & Sewer.

3 Q. I'm sorry. Warren County Water & Sewer owes
4 some overdue assessment fees?

5 A. That's correct.

6 Q. Are you -- you're familiar with that?

7 A. Yes.

8 Q. And have you looked up that amount from the
9 Commission's records?

10 A. That actually is Exhibit 12 that we presented
11 earlier.

12 Q. Okay. I'm sorry. Got my exhibits behind my
13 questions.

14 A. And if I could clarify on that point, I think
15 Missouri-American, in their response to our recommendation,
16 thought there might be a question about who would be

17 responsible for paying those. I wanted it to be very clear
18 that the Staff's position is that the past due assessments
19 would be paid by Warren County Water & Sewer out of the
20 proceeds of the sale. Nothing going forward as a liability
21 for Missouri-American.

22 Q. Are you aware of any other fines or fees owed
23 by Warren County Water & Sewer to --

24 A. The only other one, and I don't have personal
25 knowledge of this, but I believe there was mention yesterday

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394

1 that there may be a fine that has been assessed by the
2 Department of Natural Resources that has not yet been paid.

3 Q. And are you aware of any liens or debts owed
4 by Warren County Water & Sewer?

5 A. I'm not, no.

6 JUDGE DIPPELL: Okay. That's all the
7 questions I have for you. Is there any further
8 cross-examination from Public Counsel?

9 MS. O'NEILL: I just want to try and clarify
10 something, Judge. I'll try to be really brief.

11 RE-CROSS-EXAMINATION BY MS. O'NEILL:

12 Q. Mr. Johansen, you had some discussion
13 regarding the spreadsheets in Exhibit 2. Do you still have
14 that up there?

15 A. Yes.

16 Q. And the questions were related to whether or

17 not all the -- or at least my understanding of the question
18 and answer was related to whether all of the itemized
19 estimates in the last three columns of spreadsheet No. 1
20 were related to those other three subdivisions. Do you
21 recall that?

22 A. Yes.

23 Q. Is there anything on spreadsheet No. 1 that
24 says that?

25 A. No. And that's why I was confused as to

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395

1 whether or not that's what that was.

2 Q. And, in fact, the pump that we've been talking
3 about, which is a new pump that hasn't been included in the
4 Staff's calculation of \$15,000, does that match up with the
5 well pump that's listed in spreadsheet No. 1 in that last
6 column, which is about halfway -- a little bit over halfway
7 down?

8 A. Yes.

9 Q. And the well isn't in Shady Oaks or Brandi
10 Lynn or Forest Green? I can never remember that one.

11 A. No, it's in Incline Village.

12 Q. So given the fact that there's not a
13 designation that those last three columns related to those
14 three subdivisions and it appears there's a major expense
15 item that doesn't belong in those, would it be more accurate
16 for us to assume -- although Mr. Fraiser (sic) is gone or
17 maybe I could ask him again -- that these are just general

18 figures that were estimated as far as additions in those
19 time periods, as opposed to designated specifically to
20 specific subdivisions?

21 A. I think you're correct. And the reason I say
22 that, at the top of the page, over those three columns,
23 there is a time frame shown.

24 Q. Okay.

25 A. There's a '91 to '95 time frame, '95 to 2000,

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396

1 and then the last column is '00 to '03.

2 Q. Okay.

3 A. That indicates to me that the entries in those
4 columns are reflective of things that happen in those time
5 periods, rather than things that happened in a particular
6 location.

7 Q. And those three last columns roughly, although
8 not exactly, would correspond to when Mr. Smith owned the
9 company; is that correct?

10 A. That's correct.

11 Q. Okay. And again, we don't know for sure.

12 These are estimated numbers, I think is what we heard
13 earlier, is that right --

14 A. Yes.

15 Q. -- that are in these three columns?

16 And it's your understanding that basically
17 rate base -- what would be rate base was basically all

18 contributed up 'til the time that Mr. Smith purchased the
19 company?

20 A. Correct.

21 MS. O'NEILL: No further questions.

22 JUDGE DIPPELL: Is there further
23 cross-examination from Missouri-American?

24 MR. ABERNATHY: No questions.

25 JUDGE DIPPELL: Thank you. Warren County?

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397

1 MR. DeFORD: None, your Honor.

2 JUDGE DIPPELL: Is there redirect?

3 MR. KRUEGER: Yes, your Honor.

4 REDIRECT EXAMINATION BY MR. KRUEGER:

5 Q. Mr. Johansen, in regard to Exhibit 7, which
6 was the EMS run for the small company rate increase case for
7 the water side of the business, does that show that the
8 current rates being charged at that time were excessive,
9 according to Staff's evaluation?

10 A. Yes.

11 Q. In your opinion, would Missouri-American be
12 able to collect enough money to be able to cover the
13 acquisition premium based upon an adjustment of the rate
14 base to include these assets that we've been talking about
15 this afternoon, the extra, I believe it's about \$110,000?

16 A. Well, if their operating expenses were similar
17 to or less than the operating expenses that are built into
18 this analysis, then those what we can characterize as

19 overearnings that exist in the current rates would -- could
20 offset recovery of part of the premium.

21 Q. Is there anybody on your staff who could
22 verify the manner in which the utility system was organized
23 at the time that Incline Village was operating it; that is,
24 with Incline Village or Incline Investments, I believe is
25 the name of the development company, owning all the utility

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398

1 assets and Incline Village Water Company and Incline Village
2 Sewer Company responsible for the operating costs?

3 A. Yes. Jim Merciel, who's on my staff, worked
4 here at that time, and I've had discussions with him about
5 this. And actually he's the one that clued me in to looking
6 for some of the information I have available. So he has
7 knowledge of the situation that was in existence at the time
8 when those two companies were developed -- or were formed
9 rather, and when they were certificated and so on.

10 Q. And he works under your direct supervision?

11 A. Yes.

12 Q. And reported this to you in the normal course
13 of your business?

14 A. Yes.

15 Q. When utility systems are placed in service
16 today, is it uncommon for developers to contribute portions
17 of the new system to the utility?

18 A. No. It's common.

19 Q. Now, can this contribution take the form of
20 either the developer paying cash or actually contributing
21 the utility plant itself?

22 A. It's either one.

23 Q. Did you participate in the recent TBJ case?

24 A. Yes.

25 Q. Are there similarities between the situation

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399

1 in that case and the situation in the present case?

2 A. Yes, to the extent that the TBJ sewer system
3 is expanding its service area and, in doing so, the
4 developers of the subdivisions and properties that the
5 system is being expanded into are contributing either
6 cash -- or making cash contributions or actually
7 constructing facilities and contributing those back to the
8 company.

9 Q. Thank you. In the meetings that you had with
10 Mr. Smith at the time of the last small company rate
11 increase case, did Mr. Smith have any consultant with him at
12 the time of the meeting?

13 A. He did.

14 Q. Who was that person?

15 A. Bill Sankpill.

16 Q. And what is your understanding of
17 Mr. Sankpill's experience and expertise in regard to water
18 and utility regulation?

19 A. He had the job I'm currently in for probably

20 25 or 30 years.

21 Q. Now, if there was a large difference in the
22 rate base that the Staff had developed and the amount that
23 the company or Mr. Sankpill believed was appropriate, based
24 on Mr. Sankpill's experience with the Commission, you would
25 expect him to have raised some objections to the Staff's

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400

1 determination of the rate base number?

2 MR. DeFORD: I'll object. This calls for
3 absolute speculation. He can't know what Mr. Sankpill
4 thinks.

5 MR. KRUEGER: I'm not asking what he thought.
6 I'm asking whether, based on Mr. Sankpill's experience in
7 this role, whether he would have -- likely have raised an
8 objection to it -- to the Staff's determination.

9 MR. DeFORD: Again, it calls for speculation.
10 Mr. Sankpill could have been asleep in the meeting. Who
11 knows?

12 JUDGE DIPPELL: I believe it does call for
13 speculation, Mr. Krueger. I'll sustain the objection, or
14 perhaps you'd like to ask it a different way.

15 BY MR. KRUEGER:

16 Q. Or maybe not. Was Mr. Sankpill an employee of
17 the Commission during the time that Incline Village Water
18 Company and Incline Village Sewer Company were certificated?

19 A. Yes.

20 Q. I believe that in response to a question from
21 Commissioner Murray you testified that you also had to
22 estimate the original cost of the treatment plant. Do you
23 recall that question and answer?

24 A. Yes.

25 Q. Now, what do you mean by an estimate there?

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401

1 Did you --

2 A. Well, okay. The information that is available
3 in the calendar year 1985 report, what I'm not sure of is if
4 that's the original cost as the facilities were built in
5 1981 or if that is the depreciated cost, if you will, for
6 lack of a better word -- that's technically not correct.
7 But if that is reflective of a cost or if that number is
8 reflective of something less than the original cost.

9 There's no doubt in my mind that that is, at
10 minimum, the cost. It could be more than that, but I'm
11 confident that that's the minimum of what the cost was.

12 Q. But in forming that estimate, you were relying
13 on documentation --

14 A. Yes.

15 Q. -- filed with the Commission --

16 A. Yes.

17 Q. -- by the company?

18 A. Yes.

19 Q. And verified?

20 A. Correct.

21 Q. With regard to that 1985 report of Incline
22 Village Water Company and Incline Village Sewer Company,
23 which has been admitted as Exhibit 15, does that report
24 appear to be complete?

25 A. Yes.

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402

1 Q. Did you notice any obvious deficiencies or
2 defects in that report?

3 A. None obvious. And quite honestly, for a small
4 water and sewer company, it's very complete, comparatively.

5 Q. And by your standard, then, would it be a
6 satisfactory annual report?

7 A. Yes.

8 Q. And how does the quality of that -- of the
9 preparation of that report compare to the annual reports
10 that were submitted by Warren County Water & Sewer Company
11 for 1997 through 2000 which were admitted as Exhibits 3
12 through 6?

13 A. Distinctly different and substantially better.

14 MR. KRUEGER: Thank you. That's all the
15 questions I have.

16 JUDGE DIPPELL: I believe that's all the
17 questions for you, then, Mr. Johansen. You may be excused.

18 THE WITNESS: Thank you.

19 JUDGE DIPPELL: I'd like to go ahead and bring
20 Mr. Jenkins back to the stand, and then we still have to get

21 to Ms. Bolin, and then we still have to get to closing
22 arguments.

23 MR. ABERNATHY: While he's there, I can do
24 some rebuttal with him, too, I believe.

25 JUDGE DIPPELL: Yes. I was going to ask would

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403

1 you rather do your rebuttal first and then have questions
2 from the Bench?

3 MR. ABERNATHY: Let's do the rebuttal first.
4 It'll only be four or five minutes, and then the Bench can
5 have him.

6 JUDGE DIPPELL: Let's do that first then.
7 Mr. Jenkins, you're still under oath.

8 THE WITNESS: Yes, ma'am.

9 REDIRECT EXAMINATION BY MR. ABERNATHY:

10 Q. Mr. Jenkins, let's look at Exhibit 15, which
11 we just were discussing a minute ago.

12 A. Yes.

13 Q. You've got that in front of you, right?

14 A. Yes, I do.

15 Q. I'm going to kind of --

16 MR. KRUEGER: Your Honor, I believe that the
17 testimony of Mr. Jenkins was supposed to be limited to
18 Exhibit 7 and 8. That's what was reserved for rebuttal, not
19 Exhibit 15.

20 MR. ABERNATHY: We didn't have Exhibit 15 when
21 we talked about 7 and 8.

22 JUDGE DIPPELL: That is correct. We didn't
23 have Exhibit 15 when we talked about 7 and 8, so I'm going
24 to allow him to do some rebuttal on Exhibit 15 only.

25 MR. ABERNATHY: We'll skip 7 and 8 and just go

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404

1 to 15.

2 BY MR. ABERNATHY:

3 Q. I'm going to kind of mirror Mr. Krueger's
4 question a minute ago of Mr. Johansen, Mr. Jenkins. In
5 looking at Exhibit 15, do you find that to be complete or
6 without deficiencies?

7 A. I'd certainly raise an issue with what I see
8 on page 9 of the annual report. And this goes to my
9 previous testimony with respect to issues I've seen with
10 small water and sewer companies. What's very interesting
11 about page 9, although I definitely agree that this report
12 is filled out, it's of higher quality than what I saw with
13 the reports from the ownership of Mr. Smith, but if we take
14 a look at page 9, I see one thing that's missing here
15 that -- I recognize there's a lot of history. I'm taking
16 this at one point in time, but let's turn to page 9, and I
17 think we can begin to understand an issue that is a problem
18 with small water and sewer companies and their lack of
19 understanding of accounting.

20 On page 9, what we have is the contribution
21 balance for this water and sewer company, balance first of

22 the year, then we have a title for additions, which would
23 mean if you added any additions to the contributions, you'd
24 record those in the year.

25 Likewise, on line 10 of page 9, there's a

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1 title called less deductions during the year. What you
2 would record there is what is referred to as the negative
3 amortization related to depreciation, which is missing,
4 which recognizes that depreciation on contributed property
5 is not recognized in rates.

6 So, therefore, when we go to page -- page 9,
7 on -- or page W-1, line 17, you see a reference that says
8 less amortization of contributions in aid of construction.
9 That's negative depreciation. The debit goes to that
10 account on page 9, which recognizes the impairment of the
11 contribution account. And this is something that I'd seen
12 many times in my previous roles as director of accounting at
13 the Illinois Commerce Commission.

14 And, therefore, if you follow the logic down,
15 when you assume that the contributions relationship remains
16 at a hundred percent, if you follow that down to line 17 and
17 line 18, total contributions on line 17, instead of being
18 729 should, in fact, be 714,470. And then when you compare
19 that with what was at the beginning of the year, you begin
20 to see that the contribution balance declines over time.

21 And that recognizes impairment in the
22 contribution account and something that I see a lot of times

23 that's missed with small water and sewer companies. We
24 record that at Missouri-American.

25 Q. Do you have anything else further to add?

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1 A. No, I do not.

2 MR. ABERNATHY: Okay. That's all I have for
3 him.

4 JUDGE DIPPELL: Okay. Is there
5 cross-examination based on the rebuttal from Warren County?

6 MR. DeFORD: None, your Honor.

7 JUDGE DIPPELL: Staff?

8 MR. KRUEGER: Yes, your Honor. May I have a
9 moment?

10 JUDGE DIPPELL: Yes.

11 RE-CROSS-EXAMINATION BY MR. KRUEGER:

12 Q. Mr. Jenkins, I want to call your attention
13 then to page 9 of Exhibit 15.

14 A. Yes.

15 Q. On line 16 is showing the balance of first of
16 year?

17 A. That is correct.

18 Q. \$30,072?

19 A. That's correct.

20 Q. And on line 20 is shown total depreciation
21 expense, \$15,036?

22 A. That is correct.

23 Q. And on line 22 is shown balance at end of
24 year, \$45,108?

25 A. That's correct.

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1 Q. And that -- and the entry that's on line 22 is
2 the sum of lines 16 and 20, correct?

3 A. That is correct.

4 Q. And that is also the -- the number that
5 appears, then, on line 22 is carried over to page 5,
6 line 12; is that correct?

7 A. That is correct.

8 Q. And if there was property taken out of
9 service, where would that be recorded on these pages?

10 A. If there was property taken out of service?

11 Q. Retirements.

12 A. Taken out of the plant account.

13 Q. Would it show up on line 10 on page 9?

14 A. Yes.

15 Q. Additions, new contributions in aid of
16 construction that are added during the year, property that's
17 placed in service would go on line 4; isn't that correct?

18 A. That's correct.

19 Q. And retirement would go on line 10?

20 A. That is correct. But also you would record
21 the related depreciation in terms of recognizing that the
22 contribution account has declined in value.

23 Q. Going back now to page 5, on line 11 is shown

24 the water CIAC in the amount of \$729,506?

25 A. That is correct.

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1 Q. And on line 12 is the entry that we talked a
2 little bit about, the \$45,108 which was brought over from
3 page 9?

4 A. That is correct.

5 Q. And then on line 13, is the net water CIAC
6 which is line 11 minus line 12?

7 A. That's right.

8 Q. And so the subtraction is taken care of there?

9 A. That's correct. But what the important point
10 to note is that that doesn't mean that your CIAC balance is
11 always at 100 percent. Otherwise, if you don't account that
12 correctly when you deduct it from your rate base, you can
13 end up with double counting rate base.

14 Q. When you calculate depreciation on plant, is
15 that based on original cost or original cost less
16 depreciation?

17 A. It's based on original cost.

18 Q. Would that not then be appropriate for this as
19 well?

20 A. You would calculate the depreciation on CIAC
21 at original cost as well, except we classify that as
22 negative rate base or negative depreciation. So therefore,
23 the net effect, if all your plant's contributed, is you

24 don't -- is zero and you're not allowed to recover that in
25 rates.

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409

1 MR. KRUEGER: No other questions.

2 JUDGE DIPPELL: Thank you. Is there further
3 cross from Public Counsel?

4 MS. O'NEILL: No, your Honor.

5 JUDGE DIPPELL: Questions from the Bench,
6 Commissioner Murray, for Mr. Jenkins?

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Mr. Jenkins, just to follow up there a little
9 bit with that exhibit, Exhibit 15, you said that failure to
10 account for the negative amortization related to
11 depreciation in bringing the balance forward could result in
12 double counting?

13 A. Yes.

14 Q. Can you explain that a little more?

15 A. First of all is, I don't have all the
16 information. I've learned over the last day and a half
17 there's a lot of history with this company that I was not
18 aware of.

19 One of the things that I was bringing out that
20 you have to be careful when you deal with small water and
21 sewer companies, and it's been my experience that at times
22 you can run into, if the accounting's not done right, you
23 can run into what's called a negative rate base if you carry
24 it to the extreme, or you can run into rate base values that

25 are very low.

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410

1 And the reason for that is that sometimes the
2 small water and sewer company operator does not recognize
3 the fact that they're not allowed to collect depreciation on
4 contributed property, and the proper accounting for that is
5 then to reduce the contribution balance over time, because
6 you're not collecting any depreciation expense, the assets
7 are wasting away. If you don't get that entry correct, you
8 can end up double counting the deduction from rate base.

9 Now, I don't know if that's happened here, and
10 all I can say is -- is I would be surprised that somebody's
11 contribution balance and their gross plant in service
12 balance would just remain at 100 percent. I've never seen
13 that happen before.

14 Q. So in a calculation where you take original
15 cost adjusted for contributions, do you take that same
16 original cost and annually then adjust it on a declining
17 basis for contributions?

18 A. What you do is you start out with a plant in
19 service, and since you're not allowed to depreciate
20 contributed property in rates, what some practitioners do
21 and some small operators do, because they're not familiar
22 with the accounting system, is they just record that in the
23 accumulated depreciation reserve, because depreciation,
24 that's standard. That's for tax accounting, et cetera.

25

And what happens is they never record the

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1 offsetting entry to the contribution account because --
2 because you're not allowed to collect that in rates. If
3 you're not careful, what will happen is -- is if you're not
4 adding any additional assets, which happens a lot of times
5 in small operations, you can even run into a negative rate
6 base.

7 Q. If you don't make both entries?

8 A. If you don't make both entries, correct.

9 Now, I am not saying that's happened here
10 because, quite frankly, the Staff is right, this is a pretty
11 thorough annual report from a small company. The point I
12 was making is I didn't see the entry that we'd normally make
13 on our annual report, is just to say that the CIAC balance
14 should be declining over time. All things being equal, you
15 should record the impairment into the contribution account.

16 JUDGE DIPPELL: Commissioner, if you don't
17 mind, I'm going to break in. We need to take a break so
18 that we can switch court reporters. Let's take a break just
19 until 25 'til, or until we get the court reporters set back
20 up. Let's go off the record.

21 (A BREAK WAS TAKEN.)

22

23

24

25

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412

1 (WHEREUPON, there was a change in
2 reporters.)

3 JUDGE DIPPELL: Okay. Let's go back on
4 the record. We're back to continue questions. I
5 just wanted to let you all know that the back door to
6 the hearing room will be locked at 5:00 as well as
7 the doors to the building, I believe, so if you go
8 out, you won't be able to come back in that door
9 after 5:00, and if you go outside, unless you have
10 somebody with a key card, you won't be able to get
11 back in. Commissioner Murray, did you have more
12 questions for Mr. Jenkins?

13 COMMISSIONER MURRAY: Just a few.
14 Thank you.

15 CONTINUED QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Mr. Jenkins, do you agree that based on
17 the current rates that Missouri-American can continue
18 to operate or could operate the Warren County Water
19 and Sewer System until the next rate case without
20 suffering a loss?

21 A. We can certainly operate it without
22 suffering a loss to our overall company given the
23 size of our company in comparison to Warren County
24 Water and Sewer Company and its impact on our
25 operations. I prepared for the Commission a rate

1 analysis that really gets right to that point and
2 kind of shows a growth -- a no growth and a growth
3 analysis with respect to the operations of Warren
4 County. What exhibit number?

5 JUDGE DIPPELL: That was Exhibit No.
6 14?

7 THE WITNESS: Exhibit No. 14, do you
8 have that before you?

9 Q. (By Commissioner Murray) Yes. All
10 right. And --

11 A. What this rate analysis shows is that
12 at the company's proposed original cost rate base and
13 then assuming all the additions that we talked about
14 yesterday that need to be made in the system, and
15 under a no growth scenario, which is at the top half
16 of the page, is that -- is that the company at that
17 level, if the system didn't grow at all, would
18 require around a 27 percent increase at present
19 rates, and in terms of our ability to operate this
20 today on a going forward basis, I think it's really
21 key to look at that Line 9, the operating expenses.

22 If we take a look at the Staff's last
23 rate evaluation of Warren County Water and Sewer,
24 they were indicating basically in operating expenses
25 of \$132,000. Warren County was asking for operating

1 expenses back in 2001 of \$194,000, and I just picked
2 a midpoint of \$163,000.

3 What I had discussed about earlier
4 today is that if you take a system that we have
5 that's of similar size, our Brunswick operation,
6 which has 468 customers and it's just water only, we
7 currently operate that with about \$221,000 a year, so
8 it would be our intention to really try to operate
9 this system in that -- somewhere between that \$150 to
10 \$200,000 a year.

11 The problem is we just don't have the
12 records, we don't have the experience, this is really
13 our first time to take on a company that has the
14 situation that we've all heard the last day and a
15 half, and we can certainly operate it, we won't make
16 the returns that we've come to expect, but we think
17 that will get trued up in a future rate proceeding,
18 and that's what this analysis do does.

19 It really shows the value of the no
20 growth and then what the customers are really talking
21 about this five percent growth factor down at the
22 bottom of the page and in a really is starting to
23 tell the story in terms of the starting rate base of
24 \$335,000 including the capital additions of \$550,000
25 that this system needs and that we would get done.

1 You would grow that rate base to \$885,000.

2 If you assumed our rate of return, kind
3 of our capital structure in terms of what we'd
4 request, and just fix it at the same operating cost,
5 the required revenue requirement for that system
6 would be around 200 -- at the low end of operating
7 expenses \$229,000.

8 If we stay out for three years, which
9 is our intention, and if this was to grow at five
10 percent per year, the present rate revenues would
11 grow up to about \$208,000 and what that shows you is
12 that at that type of operating level, just real
13 high-end analysis, is that we still think we'd need
14 about a \$4 a month rate increase, and quite frankly,
15 I hope that happens. We need the growth, our
16 company's committed to operating this as efficiently
17 as we could possibly run it.

18 I think we've demonstrated that in the
19 past, and that's what we intend to do. You know,
20 1996, 1997, to think that we can still operate this
21 at 2001 operating expense levels, that's a big
22 challenge.

23 JUDGE DIPPELL: You mean 2006, 2007?

24 THE WITNESS: Yeah, 2006, 2007. I'm
25 sorry. I'm back at the -- these guys got me back at

1 the Commerce case, I'm back in the 90's, it's been a
2 long day and a half. But anyway, what I'm saying is
3 that we're up for the challenge, and we're just, you
4 know, asked to be treated fairly as we move forward
5 with this.

6 Q. (By Commissioner Murray) Mr. Jenkins,
7 you said -- I believe you said that you estimate that
8 you would need a -- you gave a figure of so many
9 dollars a month rate increase, I believe. What did
10 you say there?

11 A. Yes, looking at lines, let's say Lines
12 39 and 40, for example, that has the growth scenario
13 in it.

14 Q. Okay.

15 A. If we're able to operate this company
16 in the \$132,000 range and this growth comes into
17 place, very conservative estimates is that that would
18 drive a \$4 per month rate increase or about a 10
19 percent increase. If at the midpoint level, which is
20 probably, my gut feel, is where we'd operate this
21 company in terms of operating expenses, because we
22 can get some synergies with our St. Charles operation
23 that we wouldn't be able to get, like, in a Brunswick
24 operation, it's just we don't have any common scale
25 there, then you know, we could potentially be, you

1 know, running a 24 percent increase or a \$10 per
2 month increase, but that's not until 1997 time frame,
3 so -- 2007, sorry.

4 Q. I even wrote down 1997.

5 A. We had to figure out what this rate
6 base was.

7 Q. If that, in fact, is what the numbers
8 turn out to be, though, in terms of income, operating
9 income and expenses, could you not get that kind of
10 an increase at your next rate case even if we did not
11 accept the \$335,000 as the rate base?

12 A. Well, what that shows you is if you
13 wanted to treat that \$335,000 as if it was entirely a
14 premium.

15 Q. Uh-huh.

16 A. For us to really earn on the upfront
17 cost we're laying out on the table to buy the system,
18 we'd still need a rate increase. In other words, we
19 need to be able to support this. This isn't an
20 operation that, given the way it's been run, that we
21 can run through, in my opinion, enough operating
22 expense initiatives to pay for if we had a
23 theoretical premium here, so if all we're asking is
24 get some sort of fair treatment on that, what the
25 original cost value is, obviously, I don't think it's

1 \$50,000.

2 I think the record is clear, but what
3 this shows you is if we're not earning on -- if we're
4 not allowed to put the 335 in rate base, unless we
5 can get more efficiencies than what we've driven out
6 here, higher growth rate, be able to cut these costs
7 down below, you know, \$135,000 a year, we're going to
8 need -- we're going to make a contribution here to
9 run the system.

10 Q. Okay. And I don't believe that anybody
11 is here today saying -- taking the position that when
12 you come in for a rate case that you would not be
13 entitled to an increase. I don't believe that right
14 off the bat they're saying that.

15 A. Right.

16 Q. So you heard Mr. Johansen on the stand
17 earlier, I'm sure, when I was asking him about some
18 of the numbers that he said that the Staff would be
19 willing to make an adjustment, and what they would
20 consider a rate base treatment, and I don't know if
21 you're really prepared to answer this question, but
22 would the company be -- feel that the risk were
23 reduced enough -- would be reduced enough if this
24 Commission approved the sale recognizing that --
25 recognizing a minimum for future treatment in rate

1 base, the approximate \$170,000 of assets that Mr.
2 Johansen said he was willing to stipulate to?

3 A. That's certainly, you know, moving in
4 the right direction, and obviously, as I had said
5 earlier, is that if the original cost rate base was
6 going to remain at the \$50,000 level that's proposed
7 by Staff, from a pure business decision, I found that
8 very difficult to accept because that would mean we
9 would immediately have to right off \$285,000.

10 Moving up to \$175,000 begins to make it
11 at least more palatable, and in terms of -- of at
12 least what we'd be looking for from the Commission
13 is, you know, some sort of idea that if we were able
14 to prove up additional rate base as we get more
15 information, as we've seen here in the last day and a
16 half, this has got a lot of twists and turns, and
17 furthermore, I mean, quite frankly, the reason we're
18 here today is really not to cause a bunch of
19 controversy.

20 We just stepped in here, laid out a
21 proposal on the table, and this is what we think is
22 the first of many. There's a lot of troubled water
23 and sewer companies out there, and all we're asking
24 from the Commission in terms of what we think is in
25 the best interest of the public. We serve 20 percent

1 of the state's population, we're spread out all over
2 the state, that we can really make a difference, we
3 can fix the fire protectin issues, to fix these waste
4 water systems, we can do that across the state and
5 what we're asking is that we be treated fairly and
6 that we have a reasonable opportunity to at least be
7 able to -- to try to put in rate base what we pay for
8 these systems.

9 Now, I appreciate the original cost
10 standard that Staff is doing, but at times, I think
11 we got to really look at the facts and circumstances
12 that are before us and obviously this company's
13 recordkeeping lacks a lot to be desired, and it's
14 really caused all of us a lot of aggravation in
15 trying to figure out, you know, what's fair going
16 forward.

17 Q. You're primarily trying to limit the
18 risk -- your total risk; is that right?

19 A. That is correct.

20 Q. And if -- if our Order recognized what
21 can be shown through the original cost rate base
22 today, based upon Staff's testimony and what Staff is
23 willing to stipulate to, that would eliminate a good
24 portion of your risk, would it not?

25 A. That is correct, that would begin to

1 start eliminating close to half of it. I mean, what
2 we don't want to happen is there's thousands of these
3 out there between now and 2007. If the situation's
4 right, we would like to address and look at several
5 of those, and we don't want to get, let's say for
6 example, five or ten of those type of systems
7 acquired and then get out into 2006, 2007 and find
8 out that for whatever reasons in terms of the
9 original cost standard, that we've got big
10 disallowances facing us that we'd have to write-off,
11 and there's business consequences of this, and
12 certainly, you know, an amount of \$285,000 for a
13 company our size is not immaterial, but it's the
14 principle of the matter, and it's really trying to
15 look forward into the future of how we can work
16 together to be able to address some of these, the
17 systems that have liability problems.

18 Q. Okay. And a part of what you would
19 need, I understand, I believe, to assure that your
20 risks were minimized would be if we were to recognize
21 an amount less than your purchase price for future
22 treatment and rate base, that we would make it clear
23 that that's not the final determination of rate base,
24 that's the -- that the rate case would still be open
25 for inclusion of anything else that could be proven

1 to be included in rate base, correct?

2 A. Certainly that would help if the
3 Commission Order would at least limit our exposure,
4 and as we discussed, you know, previously, things
5 that -- that have been identified for the record that
6 haven't been considered or the original cost values
7 related to these -- the Shady Oaks, the Forrest Green
8 the Brandi Lynn operations, it's one thing to say
9 those are all contributed, it's another thing to
10 know, really, what the facts are, and you know, we
11 deal with that at Missouri-American when people have
12 to develop or makes a contribution, if you will, or
13 why does a developer do that, why do we want that to
14 be done, because if this growth doesn't happen, we
15 don't want the captive rate payers to be stuck with
16 the bill, but then in return, now I've not reviewed
17 Warren County Water and Sewers and all their tariffs
18 and all this, but in our tariffs, and most tariffs
19 across the country, then that is treated as an
20 advance, and if that growth comes, then the utility
21 company reinvests that and that's fair for everybody,
22 that's fair for us as the utility, that's fair for
23 the rate payers that are there because the growth's
24 there, and then the good news is kind of the example
25 I was showing you if the growth comes about, you got

1 more fixed cost to spread around more people and
2 that's kind of the whole reason you have
3 contributions in the water and sewer business is
4 because of that very fact is that people don't want
5 to take the risk with growth.

6 We all know development and that
7 development that's supposed to take place in economy
8 would go more sour than what we've got here in
9 Missouri, maybe that development doesn't go, and if
10 you didn't have those kinds of checks and balances in
11 place, then your captive rate payers could get really
12 stuck with a bill, and that's the reason developers,
13 you know, usually look to them to help upfront some
14 of this initially.

15 Q. But bottom line is to the assets being
16 idea here, we don't have complete evidence to show
17 what was or was not contributed.

18 A. Right, and that's something that I
19 think we all need to recognize, and my prior
20 experience, I'm sure the Staff's, these small systems
21 just don't have the owners, they don't have owners
22 that could even be very well intentioned, but they
23 don't understand the regulatory accounting process,
24 and it doesn't take long for things to get really
25 skewed, and then you're stuck with not having very

1 good records, and that's the reason you deploy
2 original cost studies and those studies are used not
3 only in private sector but also municipal sectors and
4 we've got to get comfortable with.

5 Q. Okay. In the interest of time, I think
6 I'm going to stop now. Thank you.

7 A. Thank you.

8 JUDGE DIPPELL: Commissioner Gaw, do
9 you have questions?

10 CHAIRMAN GAW: I have no further
11 questions.

12 JUDGE DIPPELL: Commissioner Clayton.

13 COMMISSIONER CLAYTON: The Chairman
14 wants to ask a question.

15 THE WITNESS: Okay.

16 QUESTIONS BY CHAIRMAN GAW:

17 Q. I think Commissioner Murray covered
18 nearly every question I could think of and more,
19 except -- and this is not really an issue so much for
20 Missouri-American directly, but I don't know if you
21 have any kind of an opinion about these
22 Missouri-American is posing fine assets here and not
23 liabilities.

24 A. That's correct.

25 Q. And I'm not sure if we have a list of

1 all of the liabilities that may be outstanding, but I
2 know that we've got some issues of penalties for late
3 assessments and some other things with Department of
4 Natural Resources. Does Missouri-American have any
5 suggestions about an appropriate way for this
6 Commission to handle the fact that those things are
7 outstanding in dealing with this issue of approving
8 the sale since you all are only proposing buying the
9 assets?

10 A. I'd have to check with my legal
11 counsel.

12 Q. And I realize you may not be the right
13 one to ask.

14 A. Right, but typically I think with
15 something like that is you'd like to reserve the
16 right for some of the cash that, for example, that we
17 would be delivering in the transaction, and I don't
18 know if we'd agree to it or not, but just common
19 sense, kind of like when you go to closing, you like
20 to try to make sure certain things are paid before
21 you, as the final homeowner, et cetera, gets the
22 check, the banks also make sure that happens.

23 Q. Yes, sir, and maybe I'd have Counsel
24 address that later, but I'm looking for ideas about
25 how we might best deal with that in an Order without

1 -- without putting the obligation or changing the
2 agreement for Missouri-American itself, but dealing
3 with the closing as being the place where those
4 issues are resolved, so do you want to add anything
5 further to it or do you want me to just get some
6 response from counsel?

7 A. Ask counsel that question.

8 Q. That will be fine.

9 CHAIRMAN GAW: That's all I have Judge,
10 thank you.

11 JUDGE DIPPELL: Do you have anything?

12 COMMISSIONER CLAYTON: I don't want to
13 get repetitive.

14 QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. I understand that the company needs
16 some certainty as we look forward with regard to
17 rates and values of properties. Can you identify,
18 and you may have already done this, if you have, I
19 apologize, but can you identify specifically any
20 other things that the Commission could order if we
21 were to approve this sale, other than setting rate
22 base at the purchase price? Are there any other
23 things that the Commission could order to give the
24 company certainty?

25 A. If you ordered it at the purchase

1 price, then we'd be, you know --

2 Q. Would that make you happy?

3 A. Well, I don't want it -- certainly from
4 a business standpoint, that would solve the issues,
5 but I do really want to respect this Commission and
6 the issues that it has before you. All we're asking
7 is in these things is we don't really want to be
8 unfairly enriched.

9 I mean, we've made an investment in
10 terms of this \$335,000, let's just assume for a
11 second that that was entirely -- the entire amount of
12 that was a premium. I mean, that's a cash outlay.
13 We think we can run this system a heck of a lot
14 better than it's been run. We're going to put in the
15 assets that need to be done so we can get these
16 customers not coming in really complaining.

17 Q. I understand that, sir, and I
18 appreciate that, but can you give me specific
19 examples of what we could do to assist you in
20 achieving some certainty or some consistency or?

21 A. Well, perhaps it's something I've heard
22 some discussion about legislation. I mean, I'd
23 raised that earlier.

24 Q. If you're expecting that to be certain
25 or any certainty with that, I'm not sure what state

1 you're from, but.

2 A. Well, I mean, the things that
3 Commissions that I'm familiar with that deal with in
4 its purview is -- would treat very favorably, for
5 example, those investments made if you had to stick
6 with the original cost standard, maybe you look for
7 favorably towards the return that you're allowed to
8 just that piece of the investment, not the entire
9 investment of the company, but maybe you look towards
10 granting at a higher return than what you normally
11 would grant if we're constrained with the original
12 cost standard. I mean, that's some of the things
13 that I think are within your purview and your
14 discretion to authorize when you look in the future
15 rates.

16 Q. Do you believe this is an appropriate
17 case where the Commission should set a precedent for
18 future cases where your company would step in taking
19 over a smaller company? Is this really an
20 appropriate case or is this case too difficult
21 because of other inherent problems that are within it
22 due to lack of record keeping?

23 A. I think this case is a beginning in
24 terms of being able to recognize these type of
25 issues, and it's certainly something that I know that

1 we, as the officers of Missouri-American, are looking
2 at very closely as well as my board in terms of what
3 kind of signals is the Commission in Missouri going
4 to give us in terms of taking a look at some troubled
5 water and sewer companies and so, yes, I think this
6 decision is very important to us, and I think if we
7 were to be signaled that the \$50,000 rate base as
8 originally put together from Staff versus what we
9 thought in terms of fair offer for this system based
10 on our experience, there's a lot of stuff in the
11 record where I addressed that earlier, but if that
12 was the signal, I think we're going to be taking a
13 step back and really scratching our heads, but if we
14 can get some positive, you know, responses from the
15 Commission that think we're the company that can come
16 in and help, we start moving this rate base, you
17 know, value up to something that's more reasonable
18 based on what we paid, I think those would be good
19 signals and I think we all got to deal with these
20 small water and sewer companies.

21 I think we're just going to find that a
22 lot of their recordkeeping is going to be in this
23 kind of a state of affairs, and that's what we really
24 get concerned about if we get three or four years out
25 the door with these that somebody really comes back

1 in and really challenges that we can't find a certain
2 piece of paper that went back two or three owners ago
3 that maybe had developers involved, gets to be a real
4 fuzzy thing to deal with and that's the reason we
5 wanted to at least start to get this upfront with
6 this first one.

7 Q. Did you participate in the decision
8 making for making this specific offer to purchase
9 this company and arriving at a value?

10 A. What I had been working in our
11 corporate office for the last 18 months and
12 specifically --

13 Q. In New Jersey?

14 A. In New Jersey.

15 Q. Okay.

16 A. Since January, and then I've come back
17 to my role again in Missouri in August, and I
18 actually presented this specific acquisition to our
19 board. These transactions, Bob LeGrand is business
20 development, he's looking at a marketplace, he had
21 proposed those, talked to the owner, you work
22 internally with, if I was there. We've got a finance
23 department, we've got a rates department to look at
24 what we really felt the rate base value was, that's
25 how this thing was, you know.

1 Q. So you did participate in?

2 A. Not me personally.

3 Q. Oh, you didn't?

4 A. Not in the initial stages, when we got
5 back in the August and September time frame when the
6 contract was signed then went to the board and said
7 here's what we're planning to do, it is really a done
8 deal, it's no more discussions, we're really wanting
9 to move forward with this, and advised our board in
10 terms of there would be probably an original cost
11 issue that the records were not in good shape and
12 felt that this was going to be a good indication in
13 terms of Missouri, just to begin to test the process
14 of whether this is the right thing to do in Missouri
15 is step in and utilize our shareholder resources to
16 do those in Missouri, or you know, if that's not the
17 way we want to do it, then there's lots of other
18 places across the country to invest. For example, I
19 mentioned Indiana and Pennsylvania that those type of
20 acquisitions that are made, the exact kind of the
21 facts and circumstances we've got here. They have
22 legislation in place in which the purchase price
23 becomes a rate base value and we're not put into a
24 situation of trying to go back and add invoices up
25 with systems that change ownership hands.

1 Q. Well, if you have legislation and we're
2 getting way out and beyond what this case is about,
3 but if you had a legislation or statute that made it
4 automatic that a market price were the rate base with
5 due to lack of record keeping or whatever the
6 circumstances would be --

7 A. Right.

8 Q. -- what -- what pressure is there to
9 protect the rate payer when in a normal purchase and
10 sale environment where you have the property will go
11 for the highest bidder, how in those circumstances,
12 how are the rate payers protected?

13 A. If you look at the statutes, and I'm
14 kind of going by memory, but there's tests and
15 balances within there in terms of addressing that
16 type of issue, so at the extreme, you know, that a
17 company like mine, for example, stepping in to help
18 wouldn't feel that there was no -- no risk in terms
19 of paying something that was just totally out of line
20 and there's checks and balances in those statutes
21 that deal with those -- deal with those issues.

22 Q. Do those statutes include provisions
23 that would provide disincentives or punishment for
24 companies that do not conduct themselves in
25 accordance with good business practices?

1 A. No, not that I recall, but certainly
2 could share the statute with the parties to look at.

3 Q. Well I'm looking for more reading, I'd
4 appreciate this.

5 COMMISSIONER CLAYTON: The hour is
6 late. Thank you, Judge.

7 JUDGE DIPPELL: Thank you. I have just
8 a couple more for you, Mr. Jenkins.

9 QUESTIONS BY JUDGE DIPPELL:

10 Q. Earlier today in your testimony, you
11 discussed a couple of different ways that this
12 particular system might be treated within
13 Missouri-American system as a whole, one being that
14 it be treated separately, one being that you might
15 someday try to join it in with some of your other
16 treatment or some of your other facilities to sort of
17 spread the rates. Is that --

18 A. That's correct. I mean, the obvious
19 place would be to look toward our St. Charles
20 operation, which we would use to help us run and
21 support the Warren County Water and Sewer operation.

22 Q. But right now, what you're proposing
23 would be to keep that as a separate district?

24 A. Definitely we'd keep it as a separate
25 district and keep our accounting records that way and

1 then would address that issue in subsequent rate
2 filings before the Commission.

3 Q. And then on your rate analysis on
4 Exhibit 14, you used 11 percent return on equity.
5 Can you tell me what -- where you got that number?

6 A. That's -- that's a number that, for
7 example, we're utilizing in the current St. Louis
8 County rate case, and I understand that we all have a
9 difference of opinion, so I just set it at that level
10 just to give all of us an understanding.

11 Q. Okay. And then we had a little
12 confusion about dates today.

13 A. Yes.

14 Q. So -- and now I'm confused because in
15 the application, it mentions a moratorium on rates
16 until May of 2004.

17 A. Okay.

18 Q. We've had some discussion about that
19 the rates probably wouldn't change until 2006.

20 A. That's correct.

21 Q. But you're requesting the moratorium
22 until 2004?

23 A. Right, and the reason for that is that
24 that time's right with the completion of our current
25 Missouri-American rate filing, and typically with any

1 system that we would acquire, we'll just fold them
2 within the operations and then get them on the same
3 timing as the rest of our rate filings.

4 I think that's more administrative
5 convenient for the parties, but doesn't mean that if
6 something happens that would force us to have to file
7 earlier and after the moratorium here in the late '04
8 or '05 time frame, if something changes, we're
9 reserving the right to do that, but based on the
10 information I have today, we wouldn't file until the
11 2006 time frame, that's our planning.

12 Q. Okay. And are you aware of any other
13 offers for this system other than the St. Charles --
14 or the Public Water Supply District?

15 A. No, I am not.

16 JUDGE DIPPELL: I think that's all the
17 questions I had for you. Is there any recross based
18 on questions from the bench from Public Counsel -- or
19 I'm sorry, I'm getting mixed up, Warren County?

20 MR. DEFORD: None, your Honor.

21 JUDGE DIPPELL: Staff.

22 MR. KRUEGER: Yes, your Honor.

23 QUESTIONS BY MR. KRUEGER:

24 Q. Mr. Jenkins, would you agree that the
25 premium -- the acquisition premium that may now exist

1 given Mr. Johansen's updated rate base figure, which
2 would apply if these assets are -- these three assets
3 that we talked about are conveyed to
4 Missouri-American, and if they are put into service
5 and made useful, that updated rate base figure, if --
6 that is the updated rate base figure, would you agree
7 that the acquisition figure would be approximately
8 \$170,000? I can try to rephrase that.

9 A. First of all, we wouldn't agree that an
10 acquisition premium has been paid, but based on the
11 math and the position you've taken into account, I
12 can accept the mathematics of that. I think we'd
13 still reserve our right to prove up the rate base in
14 a future rate case proceeding and address those
15 subdivisions and -- that are outside the scope of
16 that calculation, and then quite frankly, we get in
17 and run the thing and really understand what's behind
18 it, I mean, we spent \$10,000, and really at the end
19 of the day now after going through this, I didn't
20 like doing it at the time, but I'm kind of glad I did
21 it because I understand a little bit more about
22 what's out there.

23 This is the best records we have.
24 Right here is the best records we had, and it took us
25 a week to get it done. Now, I understand Staff has

1 some, the owner has some, but none of them are put
2 together. Nobody could tell us how many miles of
3 main this company has or how many miles of sewers.

4 Q. I think you've answered my question.

5 A. Okay.

6 Q. Mr. Jenkins, what did your company do
7 with the premium that it paid for the Webster Groves
8 and Florissant systems?

9 A. That premium is the subject of our
10 current rate proceeding. We intend to support the
11 premium we paid and that the savings that we're
12 generating or looking towards recovery of that
13 through the rate-making process, which will be
14 subject of hearings, I guess, in December.

15 Q. And the amount of that premium was
16 approximately \$7.5 million for the two cases?

17 MR. ABERNATHY: I think we answered
18 this question already.

19 THE WITNESS: Yes, in terms of both
20 those systems, the premium was \$7.7 million.

21 Q. (By Mr. Krueger) Okay. Has that been
22 written off in your financial books?

23 A. That -- I can't remember if we've
24 started the amortization of that or that we'll begin
25 the amortization once the rate proceeding starts.

1 MR. KRUEGER: Thank you. That's all
2 the questions I have.

3 JUDGE DIPPELL: Is there any further
4 Cross from Public Counsel?

5 MS. O'NEILL: No questions, your Honor.

6 JUDGE DIPPELL: I just wanted to
7 clarify earlier the witness was referring to right
8 here is the best records we have and the here was
9 Exhibit 2.

10 THE WITNESS: Thank you.

11 JUDGE DIPPELL: Okay. Redirect?

12 MR. ABERNATHY: No questions.

13 JUDGE DIPPELL: Thank you. All right.
14 Mr. Jenkins, you may be excused.

15 THE WITNESS: Thank you.

16 JUDGE DIPPELL: We have one more
17 witness, Ms. Bolin, I believe. Well, I guess I
18 should have asked. Staff, do you have any more
19 witness?

20 MR. KRUEGER: No, I don't, your Honor.

21 JUDGE DIPPELL: Office of Public
22 Counsel.

23 MS. O'NEILL: We'd call Kimberly Bolin.
24 (Witness sworn.)
25 ///

1 QUESTIONS BY MS. O'NEILL:

2 Q. Can you state your name for the record?

3 A. Kimberly Bolin.

4 Q. And how are you employed?

5 A. I am employed as a Public Utility
6 Accountant with the Missouri Office of the Public
7 Counsel.

8 Q. And could you briefly state your
9 educational background for the Commission?

10 A. Yes, I graduated from Central Missouri
11 State University with a Bachelor of Science in
12 Business Administration with a major emphasis in
13 Accounting.

14 Q. Okay. How long have you been working
15 for Public Counsel?

16 A. Since September of 1994.

17 Q. And you're familiar with the
18 proceedings that happened before this case was filed
19 and are basically the reason that this sale is
20 brought before the Commission today?

21 A. Yes, I prepared the complaint case
22 against Warren County Water and Sewer.

23 Q. Okay. Now, this afternoon, you heard
24 Dale Johansen tell that Staff would be willing to
25 stipulate to approximately \$170,000 as being rate

1 base, subject to verification. Would Public Counsel
2 also be willing to make that sort of a stipulation?

3 A. Yes, we would.

4 Q. And would Public Counsel also be
5 willing to leave this matter open until the next rate
6 case in the event that other items may be discovered
7 that would come to light, although they were missed
8 in the calculations at this time, and for decision
9 about that at the next rate case?

10 A. Yes, we would.

11 MS. O'NEILL: No further questions.

12 JUDGE DIPPELL: Is there any
13 cross-examination from Staff?

14 MR. KRUEGER: No, your Honor.

15 JUDGE DIPPELL: Missouri-American?

16 MR. ABERNATHY: No questions.

17 JUDGE DIPPELL: Warren County?

18 MR. DEFORD: None, your Honor.

19 JUDGE DIPPELL: Are there questions
20 from the bench?

21 CHAIRMAN GAW: Just briefly.

22 QUESTIONS BY CHAIRMAN GAW:

23 Q. The \$170,000 figure that you're willing
24 to stipulate to, tell me what you mean subject to
25 verification.

1 A. I think part of the figure was based on
2 cost of land that was purchased by the company. We
3 still need to see the documentation to verify that
4 that's the actual purchase price.

5 Q. When do you expect that information?

6 A. I'm not sure. The company has the
7 information or -- I don't know.

8 JUDGE DIPPELL: Let me just ask, Mr.
9 Abernathy, do you know if your company has the
10 documents that we're sort of referring to third-hand
11 earlier in testimony?

12 MR. ABERNATHY: Mr. LeGrand probably
13 has it better than I do. Bob, do you have the
14 information?

15 MR. LEGRAND: I have a copy of the
16 invoice for the well -- or not well but the pump that
17 was put in. I only have his general ledger run that
18 shows the cost of the land. I have not verified that
19 that's the actual cost. I have land descriptions,
20 but again, I don't have the cost.

21 MR. ABERNATHY: What's the year when
22 you bought that land, bob, do you know?

23 MR. LEGRAND: I want to say 2001 or so,
24 2002. It was pretty much when he was being pressured
25 by the DNR to put the well in and also to fix up and

1 replace that sewer plant, so I think that goes back
2 to about '99, 2000.

3 MR. ABERNATHY: I think one of those
4 sites is where we're going to put a storage tank
5 water tank on site.

6 JUDGE DIPPELL: Okay.

7 CHAIRMAN GAW: Judge, I might ask if
8 that is going to be testimony in the record that we
9 can rely on.

10 JUDGE DIPPELL: Well, Mr. Legrand was
11 previously sworn, so.

12 CHAIRMAN GAW: And the Court Reporter
13 did get that, I assume. It looks like the answer to
14 that is yes. Okay. After the document or documents
15 are provided to Public Counsel, how long will it take
16 you to verify the information?

17 THE WITNESS: It should not take very
18 long.

19 CHAIRMAN GAW: I'm just trying to
20 establish if that's an important thing for us in
21 regard to our decision, and I'm not sure that whether
22 it is or isn't, but if it's done as some sort of a
23 late-filed exhibit or something like that, it would
24 impact when we could get a decision out, if it's
25 critical to Public Counsel's position and to Staff's

1 position, in regard to what they view as an
2 appropriate value.

3 JUDGE DIPPELL: Does Staff have any
4 idea if they would be able to verify the real estate
5 values in any kind of expedited manner? Mr.
6 Abernathy, would you be able to provide a copy as a
7 late filed exhibit of that invoice?

8 MR. ABERNATHY: Yes, sure, we'll do
9 that tomorrow, if we can.

10 JUDGE DIPPELL: Could you do that early
11 tomorrow?

12 MR. ABERNATHY: All right. We'll do
13 that.

14 JUDGE DIPPELL: If they have it and
15 they can provide it, I think we could go ahead and
16 mark that as a late-filed exhibit and they could file
17 it on as Exhibit 16.

18 CHAIRMAN GAW: And Judge, I would
19 assume that we would need something from Public
20 Counsel and Staff saying yes, okay, we're satisfied
21 to close this testimony on this issue since it's --
22 it almost sounds like a subject to check.

23 JUDGE DIPPELL: Well, that was exactly,
24 I mean, that was exactly, I think, the stipulations
25 from both Staff and Public Counsel --

1 MS. O'NEILL: Your Honor, I think that
2 if Ms. Bolin is able to look at that on Friday, we
3 can file something by Monday. I don't know for sure
4 if I can file it Friday because Mr. Krueger and I and
5 somebody from Missouri-American are in hearings all
6 day tomorrow, and in a couple of different court
7 rooms, so I may not be able to get something by close
8 of business Friday, but I certainly can file it
9 Monday, if she can look at it by Friday.

10 JUDGE DIPPELL: Okay. Let's just go
11 on, and by the time we leave here today, we'll make a
12 decision about whether we need that or not.

13 CHAIRMAN GAW: I think that's all I
14 have. Thank you.

15 JUDGE DIPPELL: Commissioner Murray,
16 did you have questions of Public Counsel?

17 COMMISSIONER MURRAY: Yes, a couple,
18 thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Ms. Bolin, you may not know the answer
21 to this question, but Public Counsel filed a
22 complaint against Warren County Water and Sewer
23 Company November 7th.

24 A. I assume that's the time.

25 Q. And it just occurred to me, what would

1 be the effect of that complaint on this proceeding,
2 if any, or this transaction, if any?

3 A. The complaint filed November 7th, 2003?

4 Q. Yes.

5 A. I'm just briefly aware of it. I don't
6 know what the impact would be. If I remember, it was
7 based on a customer's billing problem. I don't know
8 if it's been resolved.

9 Q. Okay.

10 COMMISSIONER MURRAY: That's all I
11 have. Thank you.

12 JUDGE DIPPELL: Commissioner Forbis,
13 did you have questions?

14 COMMISSIONER FORBIS: No.

15 JUDGE DIPPELL: Commissioner Clayton?
16 Is there any Recross based on questions from the
17 bench from Staff?

18 MR. KRUEGER: No, your Honor.

19 JUDGE DIPPELL: Missouri-American?

20 MR. ABERNATHY: No questions.

21 JUDGE DIPPELL: Warren County?

22 MR. DEFORD: None.

23 JUDGE DIPPELL: Is there any Redirect?

24 MS. O'NEILL: No, your Honor.

25 JUDGE DIPPELL: Then Ms. -- oh, wait a

1 minute. Let me make sure I don't have questions.
2 Getting in a hurry.

3 QUESTIONS BY JUDGE DIPPELL:

4 Q. Ms. Bolin, are you familiar with --
5 you're familiar with the rate structure of Warren
6 County Water and Sewer?

7 A. I've reviewed Staff's audits of Warren
8 County Water and Sewer.

9 Q. Are you able to give an opinion for the
10 Office of Public Counsel as to whether or not these
11 rates are sufficient to operate and maintain the
12 system if the moratorium is placed on there?

13 A. I've reviewed Staff's audits and I
14 believe they're correct in they will be able to run
15 sufficiently.

16 JUDGE DIPPELL: Okay. That's all I
17 had. Was there any further Cross based on my
18 question?

19 MR. KRUEGER: No, your Honor.

20 JUDGE DIPPELL: Seeing none, is there
21 any redirect?

22 MS. O'NEILL: No, your Honor.

23 JUDGE DIPPELL: All right then.

24 Ms. Bolin, you may be excused. Thank you very much.
25 Are there any other witnesses from Office of Public

1 Counsel?

2 MS. O'NEILL: We have no further
3 witnesses.

4 JUDGE DIPPELL: Well, then, I believe
5 that concludes the witness portion of the testimony
6 -- or of the hearing, and we can begin in closing
7 arguments. I think I'll go ahead and take just a
8 five-minute break to let us gather our thoughts
9 before we start that, and I'll come back and begin
10 with closing arguments of -- I believe I said Public
11 Counsel was going first, didn't I?

12 MS. O'NEILL: Okay. I'll be ready.

13 JUDGE DIPPELL: Okay. I said Staff was
14 going first.

15 MR. KRUEGER: I'll be ready.

16 JUDGE DIPPELL: We'll begin with
17 closing arguments of Staff at 5:30. Let's go
18 off-the-record.

19 (A BREAK WAS HAD.)

20 JUDGE DIPPELL: We're going to begin
21 with closing arguments of staff -- well, first, Mr.
22 Abernathy, I believe, was going to make a clarifying
23 statement about that invoice that we've been
24 discussing.

25 MR. ABERNATHY: Well, I just wanted to

1 announce that I think that we're not quite ready to
2 have it filed tonight. Dale Johansen has it in his
3 hands, he's going to do some analysis on it and make
4 sure it's accurate, and once that's done, we can file
5 it. Is that a good portrayal.

6 JUDGE DIPPELL: Okay. Let's go ahead
7 and proceed with closing arguments then Mr. Krueger.

8 MR. KRUEGER: Thank you, your Honor.
9 Good afternoon. I am still calling it afternoon.
10 May it please the Commission.

11 First of all, I want to make one point
12 very clear. The Staff would be delighted to see the
13 assets of Warren County Water and Sewer Company
14 transfer to a qualified buyer, and the Staff
15 certainly believes that Missouri-American is capable
16 of providing the kind of service that the residents
17 of Incline Village and the other subdivisions there
18 have a right to expect. In fact, the Staff would be
19 delighted to see those assets transferred to
20 Missouri-American.

21 The only real dispute is whether the
22 Commission should allow Missouri-American to recoup
23 in an acquisition premium if it acquires these
24 assets. The residents of Incline Village who
25 testified said they would gladly pay 15 percent more

1 to get rid of Gary Smith. Understandably so.

2 If their utility bills go from \$40 per
3 month to \$46 per month, it's a small price to pay to
4 keep their property values from continuing to go
5 thud, but that does not mean it's a good public
6 policy to make them pay again for assets the rate
7 payers or the homeowners in Incline Village have
8 already paid for once. One who's accosted at
9 gunpoint might pay a thousand dollars to a total
10 stranger to save his life. That doesn't mean that
11 it's a kind of financial transaction that should be
12 at Incline Village. They need a just and reasonable
13 level.

14 It's not just and reasonable to make
15 the rate payers pay the -- pay an acquisition
16 premium. There was, in fact, testimony in this case
17 from at least one rate payer who said he would be
18 willing to pay a 15 percent increase in his utility
19 rates if he got a different provider, specifically
20 Missouri-American, but as Exhibit 14 shows,
21 Missouri-American indicates that its rates might have
22 to go up 61 percent if the rate base is set at
23 \$335,000, and if there's no growth in the customer
24 base. More than that if the company's operating
25 expenses also increase. Even if there's a five

1 percent growth in customer base, the rates would have
2 to increase 40 percent if expenses stay constant.
3 More than that if the operating expenses increase.

4 The ultimate essential issue in this
5 case is what is the company's rate base. The company
6 says it's \$335,000 because that's what the company
7 agreed to pay. They say there's no acquisition
8 premium because that is the rate base.

9 Staff contends that the rate base of
10 the company is about \$53,000. I'm ignoring for the
11 moment now, the other assets that -- the other three
12 assets that we've been talking about today that
13 Warren County Water and Sewer does not own or at
14 least does not have useful in the provision of
15 utility service, but which would be conveyed to
16 Missouri-American in this transaction.

17 The company has -- the Commission has
18 traditionally established the rate base of regulated
19 utilities at the original cost less accumulated
20 depreciation. It's based on historical information
21 and although it's not perfect, that information is
22 available in this case. The Staff made the effort to
23 find this information. Missouri-American did not.

24 They did not obtain copies of annual
25 reports on file with the Commission until just prior

1 to the hearing, nor did they do or rely on an
2 original cost study until just the last week. Black
3 and Veatch, which was retained just last week by the
4 company, went back to determine the year that assets
5 were placed in service and reviewed DNR certificates,
6 but no one from the company went beyond Mr. Smith's
7 records, which they admit are very inadequate to find
8 any documented record of the original cost of the
9 Warren County Water and Sewer Company assets.

10 Missouri-American spent \$10,000 for
11 consultant but didn't spend a single day researching
12 the records at the Commission. The Staff's research
13 into the Commission's records clearly documents and
14 establish the company's rate base, that is the
15 original cost less depreciation of the assets of
16 Warren County Water and Sewer Company.

17 Mr. Kaiser, the consultant that
18 Missouri-American hired, said he would be surprised,
19 but not greatly surprised, to find the documentation
20 shows that the water systems original cost was
21 \$729,500, and that he would be surprised, but not
22 greatly surprised, to find out that documentation
23 shows that the sewer systems original cost was
24 \$497,155.

25 The 1985 annual report that was filed

1 by Incline Village Water Company and Incline Village
2 Sewer Company, which is admitted into evidence as
3 Exhibit 15, provides just such documentation. It
4 also shows that CIAC was almost exactly equal to
5 service, therefore Incline Village Water Company and
6 Incline Village Sewer Company's rate base was 0. The
7 staff also presented uncontradicted evidence that
8 Gary Smith purchased these utilities by paying 10,000
9 -- approximately \$10,000 in past due taxes.

10 There was no evidence that the original
11 cost less depreciation was then greater than \$10,000.
12 Staff's subsequent audits of the company conducted
13 during -- in connection with small company rate
14 increase cases revealed that the rate base was about
15 \$53,000 for the company as of June 3, 2001. Warren
16 County hired Bill Sankbill as a Consultant on that
17 case, but no one from the company challenged -- no
18 one from Warren County challenged that determination
19 of the rate base.

20 I submit that it's well-established
21 that the rate base of the company, and I'm talking
22 now about Warren County Water and Sewer Company, was
23 about \$53,000 as of June 1, 2001. Now, we have
24 talked today a little bit about those other three
25 assets that might be included in Missouri-American's

1 rate base if it acquires the assets pursuant to this
2 contract.

3 I want to make clear that the Staff
4 still maintains, as it has throughout this hearing,
5 that the company's rate base is about \$53,000, but if
6 these other assets, now owned by others, are conveyed
7 to Missouri-American, and if they're placed in
8 service and made used and useful for provision of
9 utility service, and if documentation supports the
10 numbers that we have discussed here today, then
11 Missouri-American's rate base for the Warren County
12 service area would be about \$175,000.

13 The Staff doesn't care how much
14 Missouri-American pays for these assets or how much
15 Gary Smith receives. That's beyond the scope of
16 regulation of this company, simply doesn't matter.
17 What the Staff does care about is making sure that
18 the rate payers don't have to pay twice for the same
19 assets or as Mr. Johansen phrased it, we want to make
20 sure that the rate payers don't have to pay for
21 utility plant in which the utility has no investment.

22 I've been asked also to address the
23 Supreme Court's decision in the Ag Processing case.
24 The Missouri Supreme Court recently addressed the
25 issue of an acquisition premium in that case, which

1 was just decided last month, October 28th, I believe.

2 The substantive holding that is of
3 greatest interest to us here today consists of just a
4 single paragraph. The first sentence of that
5 paragraph says the fact that the acquisition premium
6 recoupment issue could be addressed in a subsequent
7 rate making case did not relieve the PSC of the duty
8 of deciding it is a relevant and critical issue when
9 ruling on the proposed merger. Basically that says
10 that the Commission had a duty to address the
11 acquisition premium recoupment issue in ruling on a
12 merger.

13 The second sentence in that paragraph
14 says while PSC may be unable to speculate about
15 future merger-related rate increases, it can
16 determine whether the acquisition premium was
17 reasonable and it should have considered it as part
18 of the cost analysis when evaluating whether the
19 proposed merger would be detrimental to the public.
20 Basically that says that the Commission should have
21 considered as part of its cost analysis when deciding
22 whether it would be detrimental to the public.

23 The third sentence to consider this
24 issue in conjunction with the other issues raised by
25 the PSC staff may have substantially impacted the

1 weight of the evidence evaluated to approve the
2 merger, and then the final sentence of that paragraph
3 read the PSC erred because it failed to consider and
4 decide all the necessary and essential issues,
5 primarily the issue of UtiliCorp being premium
6 basically that says the Commission erred in failing
7 to consider utilicorp being allowed to recoup the
8 acquisition premium.

9 It would seem that the Commission could
10 meet the burden imposed by the Ag Processing decision
11 of the Supreme Court by simply ruling that no
12 acquisition premium will be recognized. This would
13 also fully respond to the request that
14 Missouri-American made in Paragraph 16 of its
15 application in this case.

16 The request that they made, which was
17 that the purchase price for the assets be established
18 as the rate base for rate-making purposes can be
19 answered simply as yes or no, and the Commission's
20 answer should be no. There's no need to determine
21 now exactly what the new rate base of Warren County
22 assets should be. That issue can be more fully
23 developed in the context of a subsequent rate case
24 when it has arisen in the past two small company rate
25 increases, it's within a non-issue.

1 Gary Smith conceded the point and the
2 issue was not litigated. We may not be able to agree
3 or determine how much the acquisition premium is with
4 the evidence at hand, but the Commission can say in
5 this case that it will now allow -- that it will not
6 allow the company to recover the acquisition premium
7 whatever that is subsequently determined to be.
8 That would comply with the requirements of the Ag
9 Processing case and Missouri-American could know
10 before it actually completes the transaction whether
11 it will be able to recoup the acquisition premium.
12 That would enable it to decide whether or not to
13 proceed with the transaction.

14 Commission should not feel that it's
15 pressured into a choice between approving the
16 acquisition premium -- between including the
17 acquisition and rate base for all time or forcing the
18 rate payers to endure more hardship. The Staff would
19 hope and believes that Missouri-American will perform
20 this contract regardless of whether the contract
21 price is recognized in rate base or not because we
22 believe the company sees a tremendous potential for
23 growth, and that that's the reason that motivated the
24 company -- Missouri-American to enter into this
25 contract with Warren County in the first place.

1 Missouri-American witness, Bob LeGrand,
2 cited five things that he considered before deciding
3 how much to offer Warren County for its assets.
4 Those five things were market, synergies, committees
5 of scale, potential for growth, and location. He
6 didn't mention rate base.

7 Mr. Walters, the Public witness,
8 testified that if the assets are transferred to
9 Missouri-American, about 30 to 40 new homes would be
10 built every year in Incline Village until it's fully
11 developed as there are now about 390 homes there,
12 that represents a growth of about 10 percent per year
13 in that service area. The subdivision has about 800
14 lots, so if Mr. Walters is correct, this growth would
15 continue for 10 to 15 years into the future.

16 It's easy to understand why
17 Missouri-American could conclude that this is a good
18 investment without even asking what the rate base is.
19 Getting the special rate-making relief that it
20 requested in Paragraph 16 of the application would be
21 just a little something extra, so I submit that
22 Missouri-American will probably perform this contract
23 even if their request in Paragraph 16 is not granted,
24 but if it does not, there's another potential buyer
25 that's expressed interest in this property and has

1 made an offer of \$300,000 to purchase the assets.

2 It's also possible that the contract
3 between Missouri-American and Warren County could be
4 renegotiated. Gary Smith, the owner of Warren County
5 is a motivated seller. The Federal District Court
6 has ordered him to sell the company, so the
7 Commission should not think that this is a take it or
8 leave it deal where it either must grant the relief
9 that Missouri-American seeks or lose every chance of
10 a sale.

11 The downside for the Commission of
12 caving into this demand is too great. The rate
13 payers in Incline Village would have to pay a second
14 time for assets that the landowners or rate payers
15 have already paid for once, or at least that is not
16 included -- for which the utility does not have any
17 investment. Furthermore, if the Commission allows a
18 regulated utility to recoup an acquisition premium in
19 this case, it would establish a very dangerous and
20 ultimately costly precedent.

21 Both the Staff and Public Counsel have
22 steadfastly opposed recoupment of acquisition
23 premiums for many years and the Commission has not
24 allowed it. If the Commission does allow recoupment
25 in this case, it will open up the issue in future

1 acquisition cases. Here, the amount is relatively
2 small, \$280,000 or so, or perhaps only \$170,000 or
3 so, and that might be a small price to pay to relieve
4 the suffering of the residents in Incline Village,
5 but in the next case, the issue might be \$50 million.

6 In fact, the acquisition premiums that
7 Missouri-American paid in the -- to acquire the
8 Florissant and Webster Grove service areas are now at
9 issue in the company's currently pending rate case.
10 The acquiring corporation might reasonably say you
11 allowed Missouri-American to recover the acquisition
12 premium in the Warren County transfer of assets case,
13 so why not allow it here? And the Commission would
14 be forced to follow this costly precedent or to
15 continually distinguish future cases from its
16 decision in this case.

17 Staff therefore requests that the
18 Commission authorize Missouri-American to acquire
19 Warren County Water and Sewer Company's assets,
20 authorize it to perform it in accordance with the
21 terms in the sale agreement, deny the request for
22 special rate-making, approve the special rate
23 moratorium, and condition the sale of Warren County
24 Water and Sewer on the payments of past due
25 assessments. Thank you.

1 JUDGE DIPPELL: Thank you, Mr. Krueger.
2 Would the Commissioners have any questions for
3 counsel or do you want to hold those for the end?
4 Okay. We'll hold those for the end. Let -- we have
5 some questions for Counsel before we're done here.
6 Public Counsel.

7 MS. O'NEILL: It's kind of the end of a
8 long day and I'll try not to run through too many
9 things that Mr. Krueger's talked about because many
10 of the things Mr. Krueger said, although not quite
11 all, Public Counsel is in agreement with.

12 Basically, we understand that the value
13 of the assets is a primary purpose of this hearing,
14 but we also understand that the long-standing,
15 clearly recognized standing for whether the
16 Commission should allow one company to acquire the
17 assets of another is whether or not that sale or
18 transfer would be detrimental to the public interest,
19 and in looking at whether or not that sale or
20 transfer is detrimental to the public interest, the
21 Commission needs to look at all the relevant factors.

22 Public Counsel's complaint in
23 WC-2002-155, I don't want to go through things in
24 detail again, but the Report and Order has -- we'd
25 ask for, and the Judge has allowed us to have you

1 take notice of the Report and Order of the Commission
2 in that case.

3 I believe the Commission is also going
4 to take notice of the Federal Court's Order regarding
5 its direction to Mr. Smith to sell this company, and
6 briefly, I don't want to go into all the details
7 again, but this is a situation where this company has
8 basically been mismanaged to the point that it is not
9 a viable company, and it is because of the actions of
10 its management that we're here today in the first
11 place.

12 The relevant factors that the
13 Commission should consider is whether or not it's
14 more detrimental to say no to this proposed
15 transaction or to say yes to this proposed
16 transaction and if the answer is we should allow the
17 transaction, which Public Counsel believes you should
18 do, then determine whether or not you have enough
19 information before you to make a numerical decision
20 regarding whether or not there's an acquisition
21 premium and the amount of what that premium is.

22 This system needs, no matter who owns
23 it, a new water storage tower. It's needed one for
24 years, and the Commission authorized financing a long
25 time ago, that's mentioned in the Report and Order.

1 This system needs, no matter who owns it, new sewage
2 treatment upgrades or a new plant. Those are things
3 that are factored into the capital additions that Mr.
4 Jenkins talked about and which are in Exhibit 14,
5 which drive these rate case illustrations in Exhibit
6 14 regarding possibilities for increases in rates in
7 the next rate case.

8 Everybody who has been involved in this
9 case from my office, from the Staff, from the
10 companys, know that those things need to be done
11 whether or not they're done by Missouri-American or
12 some other purchaser. They've been needed for a long
13 time, and further delay does not help the people in
14 the Warren County Water and Service territory.

15 Mr. Smith has consented to a judgment.
16 If you don't believe that, this is an appropriate
17 thing and it's not with the receivership. Frankly,
18 we just believe that's going to inject more delay
19 into the proceedings. Receiver finds a buyer, they
20 still have to come back to the Commission, we still
21 have to go through this process again, and the time
22 before improvements actually get made will be further
23 and further off on the horizon.

24 That leads us to the question of what
25 do we do about the fact that Missouri-American

1 decided that it would enter into a contract for
2 \$335,000 and there seems to be quite a discrepancy,
3 even now, with these additions we've talked about
4 about how much the Staff and Public Counsel believe
5 we can verify is rate base in this matter.

6 Based on -- based on Dale Johansen's
7 testimony and information that we were able to
8 ascertain, to some extent, by looking at the assets
9 being purchased, which did refer to two parcels of
10 land and this well pump, although no figures
11 regarding value, we believe that there's a ballpark
12 number out there that says that probably the assets,
13 once they are used and useful, would be about
14 \$170,000, maybe there's some other things out there
15 that we haven't been able to put a number on yet,
16 maybe it's a little bit less, maybe it's a little bit
17 more.

18 There's also testimony in this case
19 that at the time that Mr. Smith acquired Warren
20 County Water and Sewer Company, basically all the
21 rate base was contributed and that value was 0. That
22 was in 1992. Exhibit 2 is really the only other
23 documentation that talks about value and its based --
24 basically estimates and approximations, and it's a
25 good first step, better than nothing. Good for a

1 week, and the last three columns of that first
2 spreadsheet that we've talked about talk about the
3 estimates, and based on the assumptions that Mr.
4 Frazier had of what might have gone in in that period
5 beginning in 1991, which is right before Mr. Smith
6 bought the company through the present, and it does
7 include things like that well pump of \$15,000 and
8 that is -- and it appears that that is probably
9 pretty close.

10 So there's also evidence in the record
11 that suggests that maybe if all these numbers are
12 right, if you totaled up those last three columns and
13 you adjusted that for depreciation, maybe that would
14 be a number. We don't know for sure. We're
15 uncertain. If you want certainty, and you want it --
16 and you want to have a number, I'm not sure what
17 Public Counsel can recommend to you. I'm not sure
18 Public Counsel, however, has to make a specific
19 recommendation about the number that you should pick
20 because the records are horrible and that's one of
21 the reasons that we're here today.

22 One of the concerns that we have, as
23 well as the Commission, is the fact that there is
24 this decision in the Ag Processing case. The Ag
25 Processing case has language that Mr. Krueger has

1 discussed that appears to suggest that some sort of
2 number or some sort of determination about
3 acquisition premiums needs to be made.

4 As you know, Public Counsel's practice
5 additionally opposed acquisition premium and rates
6 and we agree with the Staff that it would be
7 appropriate to deny Missouri-American's request. We
8 do believe that until the next rate case, the
9 physical assets, the capital rate-based assets of
10 Warren County Water and Sewer should be valued at the
11 original cost that we've talked about, but we also
12 think that even if the Commission would decide to
13 defer the decision, this uncertainty would not cause
14 the possible detriments involved to outweigh the
15 benefits to the going through this transaction.

16 Public Counsel opposes granting of
17 Missouri-American's request to have the assets just
18 valued at the sale price for purposes of future
19 rate-making here in this proceeding. However, when
20 you look at that Ag Processing case, we don't believe
21 that it's all that clear.

22 I think, also, that the situation is
23 distinguishable from the Ag Processing case in a
24 couple of ways. Ag Processing case, the issue
25 basically was whether the Commission could decline to

1 decide the reasonableness of an acquisition premium
2 and whether the premium would be a detriment that
3 outweighed the benefits of the transaction. That is
4 would the acquisition premium be detrimental to the
5 public interest. Now, before the UtiliCorp St. Joe
6 and Ag Processing case, both companies were solvent,
7 they were providing safe and adequate service to
8 their customers, there was no detriment to the public
9 interest to denying the merger because the status quo
10 was sufficient.

11 In this case, however, the customers
12 are not receiving safe or adequate service and the
13 Commission has determined that the status quo cannot
14 continue. The Ag Processing case does not require
15 the Commission to base this determination on whether
16 the sale is detrimental only on the issue of whether
17 or not an acquisition premium exists.

18 I want to refer a little bit to the
19 language here, and I don't want to read the whole
20 paragraph, but in the middle of the paragraph that
21 Mr. Krueger has already been talking about, one of
22 the things that I found very compelling in
23 considering this issue for you today is the fact that
24 it states that the Commission's refusal to consider
25 this issue of the premium in conjunction with the

1 other issues raised by the Staff may have
2 substantially impacted the weight of the evidence
3 evaluated to improve the merger.

4 The weight of the evidence in this case
5 is not just the financial aspect of the purchase
6 price. The weight of the evidence in this case is
7 what's going to happen to the people who are in the
8 service territory if they still have Warren County
9 Water and Sewer as their provider. The weight of the
10 evidence, and Commissioner Murray did bring this up,
11 public interest does talk about the other aspects,
12 too, including the customers of Missouri-American
13 now.

14 It should not be a rate payer expense
15 to absorb acquisition premiums, and we don't think
16 the Commission should make a decision that would put
17 any rate payer at a disadvantage regarding this,
18 however, we do believe that this is -- this small
19 system can be easily and readily absorbed into the
20 Missouri-American system and things can digress for
21 anybody along the same track in the specific, as well
22 as in this new district in Warren County if the
23 Commission approves the transaction.

24 The case held that the err for the
25 Commission was when determining whether to approve

1 the merger was failing to consider and decide all the
2 necessary and essential issues in the case, and it
3 found that the issue of utilicorp being allowed to
4 was an issue that needed -- needed decision in that
5 case when balanced against all the beneficial-type
6 financial information that the Commission talked
7 about in its decision.

8 This case goes beyond those strict
9 finances. We also don't believe that this decision
10 requires the Commission to say right now what the
11 rate-making treatment is going to be in the future.
12 We agree that it would be speculation, just as the
13 court says to decide what future rate increases may
14 be because of acquisition premiums, if there is one,
15 which we think there probably is, because that's
16 something that we have to look at all the parties
17 when we come to a rate case and look at all of the
18 relevant factors in that rate case, and it may be
19 that this does not even become a relevant factor in
20 the next rate case or it may be a big one.

21 I don't believe the Commission should
22 foreclose itself from being able to look at all
23 factors by prematurely judging anything. We believe
24 that the evidence in this case, including the
25 information related to this discrepancy about

1 pricing, is not to the extent that it should outweigh
2 the benefits, and we believe the Commission should
3 approve the transaction.

4 We also share concerns that the
5 Commission has expressed today about outstanding
6 penalties and assessments that Warren County Water
7 and Sewer owe. We believe the Commission has the
8 authority, at least as the Public Service Commission,
9 to order that Warren County Water and Sewer pay
10 those.

11 I would suggest that the Commission
12 could also order, although frankly I'm unclear about
13 the enforceability of that order, Warren County Water
14 and Sewer pay those penalties and assessments that
15 are owed so that this new district of
16 Missouri-American, once the assets are acquired, can
17 go forward without those things hanging in the
18 background.

19 I'm trying to rush a little bit because
20 the hour is late. I'm trying not to repeat things.
21 I think Mr. Krueger had a number of good points
22 regarding the need to be careful about recognizing
23 things that are in rate-base and things that may be
24 in rate-base in the future. These land parcels, this
25 pump probably could be considered to be in rate base,

1 it's not yet, but we're not setting rates in this
2 proceeding.

3 We're not setting rates for this
4 company until the next time Missouri-American comes
5 in for a general rate case, and at that time, we can
6 look at the additions to the plant, we can look at
7 whether or not that water tower has, in fact, gotten
8 placed on that parcel of land, and whether the sewer
9 treatment improvements have been placed on that other
10 parcel of land and make the determination that those
11 things should be included in rate base, which frankly
12 they probably will be.

13 Missouri-American has strong business
14 interest in making those improvements if they're
15 going to acquire this system because the growth is a
16 primary consideration, not the only, but a primary
17 consideration in this particular acquisition. We
18 would ask the Commission to approve this transfer of
19 assets, order the moratorium, order Warren County
20 Water and Sewer Company to pay any past due
21 assessments and penalties that are outstanding and
22 not make a specific finding that the \$335,000
23 purchase price should be recognized as rate base.
24 Thank you.

25 JUDGE DIPPELL: Thank you, Ms. O'Neill.

1 Is there a closing statement from Warren County?

2 MR. DEFORD: Other than to urge the
3 Commission to approve the joint application and the
4 transaction as submitted, I would defer to Mr.
5 Abernathy.

6 JUDGE DIPPELL: All right. Thank you.
7 Mr. Abernathy.

8 MR. ABERNATHY: Okay.
9 Missouri-American Water wants to purchase Warren
10 County Water and Sewer. We believe, as do the
11 customers who testified in this proceeding yesterday,
12 that we are the best option to improve Warren County
13 Water and Sewer.

14 It's funny, though, we think that our
15 request is a simple request, but listen to Mr.
16 Krueger and staff, and it's like the gravity of that
17 request will shake the foundation of regulations as
18 we know it. It's not that big of a deal, as we think
19 of it. I'll go on further.

20 But the company, as we've testified,
21 can't buy this system when the rate base is only
22 going to be considered to be \$50,000. You can't make
23 any money on it, you can't run the system. There's
24 no income, it's risky, you just won't do it.
25 There's been a lot of time spent in testimony here

1 trying to prove or intimate what Missouri-American
2 knew or thought it knew or the mens rea of the
3 company at the time it made to buy water and sewer.
4 It's a red herring in my opinion.

5 The point is, though, is that we think
6 we knew or had a good idea what the rate base would
7 be, we think we offered a reasonable number, and it
8 was at that rate base level or below, even, that rate
9 base level, and then we've got evidence showing that.
10 The original cost on the Missouri-American is a good
11 evaluation number as we've got in this case.

12 In addition, we've also put new
13 evidence in 1997 Public Service Commission report in
14 which showed a contribution in a construction number
15 of \$145,000. If you take the number from the
16 original cost study and subtract that CIAC number,
17 you end up with a rate base approximation of
18 \$598,000. That's much more than the offer of
19 \$335,000 being proposed by Missouri-American. Maybe
20 we're being too reasonable by only asking for
21 \$335,000.

22 Obviously, in our opinion, there's no
23 acquisition premium, which brings me to my next item
24 I used on my soap box a little bit, and that's to
25 debunk this myth that anytime you pay an acquisition

1 premium it's detrimental to the rate payer. In fact,
2 Ms. O'Neill even said it really if the Commission
3 looks at these type of sales, see what's detrimental,
4 you have to look at all the factors, and I think we
5 have to do that. There are many benefits that can
6 incur from a sale of this.

7 An acquisition premium in itself seems
8 to speak that there's some benefits to be gotten
9 whether it's lowering rates, improve service, fire
10 protection, better property values, lower insurance
11 rates, not having to put in additional well because
12 you can use another one to wheel water through, for
13 example. All those things should be taken into
14 consideration to decide whether or not, even, if
15 there is a premium at all if it's detrimental.

16 It's not going to be detrimental in our
17 view. Coming up to talk about premiums we've paid,
18 alleged premiums on Florissant and Webster Groves,
19 and we don't think that's detrimental to the rate
20 payers.

21 There's also the statements being made
22 that we're going to have growth. Growth will solve
23 all problems. Well, that's not true. If we are to
24 buy this system and there's an acquisition premium
25 declaration, in other words, rate base is considered

1 to be a much lower number than what we've offered,
2 there will be growth but we don't that's the case.
3 That goes back to the rate payer, so the company is
4 taking a risk.

5 If there is no growth, we've lost money
6 on the deal, so that doesn't solve all problems. But
7 back to the premium issue for a second, just one more
8 comment was that I think in regard to an acquisition
9 premium is not a one-item issue, there's a lot of
10 factors to look at.

11 I'm also somewhat amused here by the
12 double standard that's being put forth. It came out
13 a lot when Mr. Johansen was talking to Commissioner
14 Murray. Mr. Krueger eluded to it a minute ago and
15 that is the claim that Warren County Water and Sewer
16 purchased, in other words, Gary Smith purchased the
17 system for a dollar, there's no rate base, that's the
18 rate base, the purchase price, a dollar.

19 Here we are offering \$335,000, why is
20 that not the rate base? It seems to be a heads I
21 win, tails you loose situation. That's why we're
22 here asking for some definition, some certainty
23 within these type of transactions. Our goal should
24 be to enable large companies like Missouri-American
25 to assist in solving the problems of the troubled,

1 small, non-viable companies like Warren County Water
2 and Sewer. They exist throughout Missouri.

3 We believe it is a part of our
4 corporate responsibility to take a step up and take
5 care of these problems, but the company is also a
6 profit-making venture, and it has to have some kind
7 of return on its investment. Missouri-American needs
8 to know now if investing those small systems is a
9 viable venture or not. Bottom line, Staff's original
10 number is not credible.

11 We've talked about it and it's been
12 talked about in testimony that \$50,000 produces only
13 \$2400 in income. It seems that that type of a rate
14 base number continues to perpetuate a problem, not
15 solve it. The company's number, or something close
16 to it, we believe, is a much more credible position
17 in this case.

18 We believe it's time for the Commission
19 to send the message that it wants to solve the small
20 system problem and that it was -- thinks that private
21 utilities like Missouri-American Water Company are a
22 key to that solution.

23 In regard to some of the questions I
24 think Commissioner Gaw wanted answered, just a few
25 thoughts, and I'm not going to get too deep in the

1 legal theory, but I don't know if the acquisition
2 premium issue needs to be addressed necessarily, and
3 that's probably going to follow where I go here.

4 Missouri-American and I asked for
5 approval, we merely asked for a declaration that rate
6 base is our purchase price. If that is done, then
7 there is no acquisition premium and issues do not
8 need to be addressed. I do think you read in the
9 Supreme Court case that the Supreme Court seems to be
10 saying to the Commission that it can make rate-making
11 decisions outside the course of a rate case. That's
12 what I read from that one line in there, that I think
13 probably causes some problem when everybody sees it,
14 but I do not believe the acquisition premium issue
15 necessarily needs to be addressed at this time.

16 You can just address the issue on the
17 rate base. Assessments, we talked about the issue of
18 assessments. I think the Commission has a
19 jurisdiction in this case. Don't forget, this is a
20 joint application between Missouri-American and
21 Warren County Water and Sewer to put some kind of
22 requirement on us to make sure the debts get paid,
23 whether it's telling Missouri-American to put some
24 kind of money in the escrow account to be paid out,
25 to require Warren County Water and Sewer to pay by a

1 certain date or the deal is void. I think any one of
2 those types of proposals would work in this
3 situation. I think there's a jurisdiction. And
4 that's all I have. Thank you. I appreciate your
5 time on this case.

6 JUDGE DIPPELL: Thank you very much,
7 Mr. Abernathy. Are there some further questions for
8 counsel? Mr. Chairman?

9 CHAIRMAN GAW: Thank you, Judge. If
10 the Commission were to -- we've got a couple of
11 things I guess I'm trying to -- trying to gather here
12 in regard to timing. If the Commission are -- were
13 to make some conclusions based upon the price and pay
14 for these additional properties, that would require
15 -- potentially require us to wait until we got that
16 information back from the parties, and I've got -- I
17 got some replies earlier on that.

18 Does that change in regard to how much
19 time the parties anticipate that taking to get
20 information to us?

21 MS. O'NEILL: I think that is -- I
22 think that I can probably turn something around to
23 the day after I get it so that -- or the working day
24 after I get it, so if I get something tomorrow, I can
25 probably get something filed Monday, if I get it

1 Monday, I can file it Tuesday, that sort of thing.

2 CHAIRMAN GAW: Staff.

3 MR. KRUEGER: We'd like two days after
4 we receive it from Mr. Smith.

5 CHAIRMAN GAW: Is that where the
6 information is coming from, from Mr. Smith's
7 counselor, or is it coming from Missouri-American?

8 MR. DEFORD: Your Honor, I'm not sure
9 what documentation exists. I learned of the
10 additional property at the time we saw the contract
11 and I have no information as to when the property was
12 actually acquired, what was paid for it. I guess I
13 might suggest that to expedite -- going out on a
14 limb, it may be faster to get an appraisal of the
15 property. I don't know.

16 MR. KRUEGER: We would want to know the
17 original cost.

18 CHAIRMAN GAW: The original cost of the
19 -- would you specify the property we're talking about
20 again?

21 MR. KRUEGER: These are two tracts of
22 land, I believe, one in which the water tower is to
23 be built, one for the sewage treatment plant, and
24 then also documentation on the pump.

25 CHAIRMAN GAW: And this property, as

1 the evidence suggests, that the property was owned by
2 who or what?

3 MR. KRUEGER: I believe it's owned by
4 Mr. Smith.

5 CHAIRMAN GAW: And is it a part of this
6 overall payment on the purchase price that's in the
7 record?

8 MR. ABERNATHY: Yes, it's our intent
9 that when we were going to pay the \$335,000 that
10 would be included in the sale, but apparently right
11 now it's not, but I think it's owned by Mr. Smith or
12 some entity separate, that's my understanding.

13 MR. DEFORD: And your Honor, if that's
14 the case, I don't know how you establish the original
15 cost.

16 CHAIRMAN GAW: I'm just trying to
17 gather how much difficulty this is going to be for
18 purposes of timing more than anything else. Let me
19 ask this question then.

20 If I recognize that, if I'm hearing
21 correctly, that Missouri-American is, as it has from
22 the beginning, taken the position that there is no
23 acquisition premium here, that the amount of the
24 purchase price should be the amount of the value
25 given for purposes of rate-making treatment, and I

1 recognize that, if I understand this correctly, that
2 staff is taking the position that the answer under Ag
3 Processing is just to suggest that there will be --
4 or to state there is no acquisition premium that will
5 be allowed in regard to rate base calculation.

6 If the Commission were to look at this
7 case in regard to assessing all of the public
8 interest issues on the positive and negative side,
9 including many of the -- all the things that are in
10 the record, and in addition in determining whether or
11 not this is detrimental to the public interest, make
12 an assessment that even if you assume that the
13 acquisition premium is X and that X figure being a
14 maximum amount that could be determined based upon
15 the evidence in the record to be against
16 Missouri-American's interest, that the overall --
17 considering all the factors in this case that the
18 Commission determines that it is in the best interest
19 or it is not detrimental to the public interest that
20 the transaction take place, I recognize that's not
21 what everyone's necessarily asking for.

22 What I'm looking for is whether or not,
23 first of all, the parties feel that that addresses
24 the Ag Processing issue, and second of all, if there
25 is a determination that we're talking about a range

1 here of values that's in the record and the worst
2 case scenario from Missouri-American standpoint as
3 far as the acquisition premium and it -- well, let's
4 say the best case scenario, excuse me, that \$335,000,
5 that it's fully that there's no acquisition premium,
6 that even then it's found to be not detrimental, is
7 that going to -- is that going to result in a problem
8 from the party's standpoint in seeing a transaction
9 go forward?

10 I know that's very long winded, but I'm
11 looking for feedback here in the event that we don't
12 have all of this information in in regard to whatever
13 the minimum figure is other than what Staff has
14 previously testified to as a \$53,000 figure and a
15 range of \$53,000 to \$335,000 being in the record
16 without this additional information.

17 I think I've confused them.

18 MR. KRUEGER: I'm not sure I understand
19 the question, Commissioner.

20 CHAIRMAN GAW: There was more than one
21 question.

22 MR. KRUEGER: Can we take them one at a
23 time?

24 CHAIRMAN GAW: Yeah. Does everyone
25 agree that the Commission does not need to specify an

1 amount as the value of this -- of this plant and
2 assets in order to satisfy Ag Processing?

3 MS. O'NEILL: That would be our
4 position.

5 MR. KRUEGER: That's our position as
6 well.

7 MR. ABERNATHY: That you would not
8 need?

9 CHAIRMAN GAW: Yes, it is not necessary
10 to do that to come up with a specific amount to
11 satisfy Ag Processing?

12 MR. ABERNATHY: Well, maybe I'm
13 confused as to Ag Processing. Doesn't Ag Processing
14 require the declaration that if there is an
15 acquisition premium whether or not it is to be
16 allowed to be recovered or not and how do you know
17 what, if there is one, if you don't have an amount?
18 Am I a little slow in the uptake here?

19 CHAIRMAN GAW: Well, I think that's the
20 question that I'm looking for response about, because
21 you could argue -- there is -- some of you are
22 arguing that it needs to be determined that there is
23 or is not a premium, and I think I'm hearing Public
24 Counsel suggest, I think, that it is not necessarily
25 the case that we have to come up with a specific

1 amount or determine that a specific number is there
2 for the acquisition premium so long as we take it
3 into consideration with all the other factors, the
4 possibilities and consideration with all the other
5 factors in determining whether or not this
6 transaction is detrimental to the public interest.
7 That's two different ways of analyzing here, and I'm
8 looking to see whether or not there is a dispute
9 about whether or not either one of those avenues are
10 problematic from a legal standpoint.

11 MR. KRUEGER: It's my position that the
12 Commission could decide that it will not allow the
13 recovery of an acquisition premium and leave for
14 another day the question of whether there is an
15 acquisition premium -- whether it's approximate
16 \$135,000 includes an acquisition premium.

17 The company has taken the position that
18 that is the rate base, and if they can establish in a
19 subsequent proceeding that that is the rate base and
20 that is the purchase price and that goes into rate
21 base for rate-making purposes, there is no
22 acquisition, so I think the Commission could say we
23 are deciding in this case no acquisition premium will
24 be included in rate base without determining whether
25 the correct number is \$53,000 or \$170 or \$335 or

1 something in between.

2 CHAIRMAN GAW: I recognize that's
3 Staff's position on that one issue, but suppose the
4 Commission decided that they were not going to make
5 the decision about whether or not an acquisition
6 premium would or would not be allowed in the future
7 rate case. Are you suggesting that the Commission
8 must make that decision in this case?

9 MR. KRUEGER: I don't know whether you
10 must, but I think that I'd be more comfortable with
11 it.

12 CHAIRMAN GAW: I understand that. I
13 understand that is a simple solution from Staff's
14 standpoint. Public Counsel, do you want to venture
15 down that road?

16 MS. O'NEILL: Well, not real willingly.
17 I think there would be some cases. I'm not sure that
18 this particular case with these particular facts is
19 one of those cases.

20 CHAIRMAN GAW: And that's because you
21 think the other factors are so important in regard to
22 the decision in this -- on public interest in this
23 case that it may reduce the level of important of
24 making the finding to a specific number on an
25 acquisition premium whether it exists or whether it's

1 allowed?

2 MS. O'NEILL: Right.

3 CHAIRMAN GAW: Am I saying that
4 correctly?

5 MS. O'NEILL: There are so many factors
6 here that I think are before the Commission in
7 deciding whether or not this is not detrimental or
8 even a good idea to transfer the ownership of this
9 company that in this -- under these circumstances, I
10 think this is not the controlling factor and
11 shouldn't be the controlling factor, and that's
12 basically how we feel about this case. I think there
13 may be cases where it is, but this isn't one of them.

14 MR. ABERNATHY: See, I agree with
15 Ms. O'Neill on that part of it that you can certainly
16 find if there's an acquisition premium that this is
17 not a detrimental rate case because of all the other
18 factors that are going to help Warren County Water
19 and Sewer, but of course as the person putting the
20 cash out would still like an idea what our exposure
21 is and that's the dilemma here.

22 CHAIRMAN GAW: That's problematic, not
23 necessarily from Ag Processing, as it is from giving
24 some idea to Missouri-American about their status in
25 moving forward with a closing. Is that not correct?

1 MR. ABERNATHY: Right, because we never
2 put that in our request to force an acquisition
3 premium in this case. We simply are trying to make
4 sure we had some comfort that our number was close to
5 that, we didn't have a huge loss come, you know, next
6 time we had our rate case.

7 CHAIRMAN GAW: And part of this is a
8 question of whether or not if we would make some sort
9 of a finding of what -- if we went down the road of
10 suggesting that here's what the range might be, if I
11 took this incorrectly, that the range is narrowed
12 with this additional information that we don't have
13 in the record right now because Staff's position, it
14 seems to me, moves from \$53,000 to somewhere around
15 170, so does Public Counsel's, in regard to what
16 number we're looking at to see what potential
17 acquisition premium might exist between the purchase
18 price and what is suggested as Staff and Public
19 Counsel's view of what we should look at as a value
20 based on what they know today.

21 MR. ABERNATHY: Right, and understand a
22 little bit more in our position that we feel that,
23 you know, that \$170,000 number is just -- is the
24 bottom because we know the value of those properties,
25 at least we think we do. We have other properties in

1 this case like Shady Oaks and Forest Green and Brandi
2 Lynn and other properties that are out there we think
3 is probably not all contributed and it's probably
4 sitting there that could make this number bigger.

5 CHAIRMAN GAW: And I'm not suggesting
6 to you that the Commission would make a finding that
7 that is the correct amount. I'm suggesting that at
8 least in one Commissioner's view, it might be
9 possible that the Commission might say this is the
10 range that we find based upon the evidence and the
11 range is -- the value is somewhere, according to some
12 parties, between 170 and other parties 335, and
13 therefore that scope of that range becomes a smaller
14 factor in weighing all the other issues that are
15 here.

16 If we don't have this information in,
17 then we're looking at a bigger range, might still
18 allow the Commission to make a conclusion, but give
19 the company less comfort and what I'm looking for is
20 how important is it, and I am pushing the envelope in
21 asking this question, how important is it that we
22 have that in the record as a part of something that
23 might end up, if it ends up in a decision, because it
24 may impact how quickly we can get an order out.

25 MR. ABERNATHY: Well, I think it's

1 important to us, to our investors, and everyone else
2 involved to know what kind of treatment we may get as
3 far as numbers are concerned. I mean, even if we
4 have a range, what's that mean next rate case, do we
5 get the top of the range or bottom of the range? We
6 don't have any idea what we get.

7 CHAIRMAN GAW: I understand, but it
8 also may not be possible to get a specific number.
9 I'm looking to understand what since we have all to
10 contend with what happens after the Order. That -- I
11 think that's all I have, maybe. Commissioner Murray
12 can follow-up.

13 JUDGE DIPPELL: Commissioner Murray,
14 did you want to ask some additional questions?

15 COMMISSIONER MURRAY: I'll try. It
16 appears from what I'm hearing that we may never have
17 full documentation of the original cost; is that
18 correct?

19 MS. O'NEILL: That's a possibility.

20 COMMISSIONER MURRAY: So it appears
21 that to wait for that documentation may be
22 counterproductive, and I guess I would ask counsel
23 if, and all counsel may not agree to this, but based
24 on the evidence before us, the Commission could make
25 the determination that the best -- we have the best

1 evidence that it is possible to have at this time,
2 and based upon that evidence, it is reasonable to
3 recognize for rate base treatment an amount, and I
4 would say either at a minimum of \$170,000 or at -- at
5 a range of between 170 and 335,000, and I'd like to
6 know why, if anybody thinks that wouldn't work, why
7 not.

8 MR. KRUEGER: Well, it might work, but
9 I think -- I think it would be productive to try to
10 obtain documentation concerning the cost of those
11 assets, perhaps to put a time limit on how long we'll
12 wait, you know, there might come a time where we
13 conclude that we just can't determine them and that
14 we do, in fact, have the best evidence, but I think
15 some time would be beneficial.

16 COMMISSIONER MURRAY: Well, don't you
17 think time is of the essence here and we may be
18 really being a little bit too inflexible?

19 MR. KRUEGER: Well, I think time is
20 very important and I don't think we ought to -- I
21 think it would be good to come to a conclusion on
22 this just as soon as possible, so I would suggest a
23 limited period of time.

24 JUDGE DIPPELL: Mr. DeFord, do you want
25 to respond?

1 MR. DEFORD: I would, again, suggest
2 that since it is not currently a utility asset,
3 whatever Missouri-American pays for it becomes the
4 original cost for that property, and if they are
5 acting in a reasonable fashion in making the offer,
6 then done.

7 COMMISSIONER MURRAY: Let me follow-up
8 on that. It's not utility property right now, so
9 when the utility, like Missouri-American, purchases
10 it, that is the original cost to the utility?

11 MR. DEFORD: It will become utility
12 property for the first time at that time.

13 MR. ABERNATHY: And Commissioner
14 Murray, I agree with you time is of the essence, and
15 your suggestion about setting a number between 170
16 and 335, that would work for us, I think.
17 I think we need this resolved.

18 COMMISSIONER MURRAY: I don't know why
19 that would not be reasonable based upon the evidence
20 that we have. I don't hear Staff being able to
21 present evidence that those figures are not likely to
22 be accurate.

23 MR. ABERNATHY: And we think that the
24 Exhibit 2 that we put in is the best evidence that
25 we've got. It's the most thorough look.

1 MR. KRUEGER: The burden in
2 establishing rate base should be upon the Applicant,
3 and I don't know that the burden should be placed
4 upon Staff to come up with the documentation of the
5 original cost of these assets or if it is placed upon
6 Staff, I think that we should have a little bit of
7 opportunity to come up with that information.

8 COMMISSIONER MURRAY: And you haven't
9 had that opportunity to date?

10 MR. KRUEGER: Not sufficient. This
11 case proceeded on a very expedited basis and there
12 was a lot of things to prepare for the hearing in
13 this matter and I think that we were not aware
14 specifically of these assets until -- and their
15 potential includibility until a couple of days ago,
16 and the time that was available since we became aware
17 of that was not sufficient to allow us to ascertain
18 the original cost.

19 MR. ABERNATHY: The Missouri-American
20 would be, I guess, amenable to going out and
21 reappraising this non-utility property and seeing
22 what the value is. Is that something the Commission
23 wants to work with?

24 MR. KRUEGER: The Staff does not favor
25 the appraisal concept. If there's any other way to

1 get at a number, certainly, because it should be
2 based upon the cost of the property, and -- and I
3 believe these parcels of land, although not placed in
4 service of utility customers, were purchased for the
5 purpose of constructing utility plant on them, and I
6 think that the price that was paid for them would be
7 probably the best evidence of the original cost of
8 those assets for the purpose of providing utility
9 service, which is, I think, what the Commission's
10 interested in learning.

11 JUDGE DIPPELL: Let's take a little
12 break. We've been in here for more than an hour and
13 a half, so let's take a seven-minute break, and we're
14 going to see if there's any last questions. I have
15 some housekeeping things to clear up with you all
16 before -- even after we get this done, so let's go
17 off-the-record.

18 (A BREAK WAS HAD.)

19 JUDGE DIPPELL: Okay. I conferred with
20 the two Commissioners, and I think we've reached a
21 conclusion that we don't want to delay this any
22 longer, so I'm not going to require the submission of
23 what I called the Exhibit 16.

24 Because what may be a surprise to you
25 all, I know it was to me earlier today, is that

1 there's a report and order in this case on agenda
2 tomorrow, and so -- so whether or not an Order
3 actually gets voted out tomorrow is yet to be seen,
4 but I know the Commission is interested in acting
5 quickly on this, so that was added on the good cause
6 agenda for tomorrow, so we don't want to hold it up
7 anymore with any late-filed exhibits, so I won't
8 require that. Is there any other questions you have
9 for Counsel?

10 COMMISSIONER GAW: I don't think so,
11 and -- well, let me ask about the, real briefly,
12 about the issue of penalties, and probably this is
13 more Warren County's issue than it is anybody else.

14 If the Commission were to enter an
15 order that would specify that past due assessments
16 that are outstanding to the PSC and perhaps
17 Department of Natural Resources had to be escrowed
18 and paid from closing proceeds, where would we be
19 with that if you have a response and anybody wants to
20 venture into that, but I realize Warren County,
21 probably, is the most impacted.

22 MR. DEFORD: I agree, I think that the
23 Commission has jurisdiction over both parties, and if
24 that is a condition of the approval of the
25 transaction, I think it's within the Commission's

1 power.

2 COMMISSIONER GAW: Okay. And I think
3 I'm seeing everyone else nod heads yes, so I'll stop
4 my inquiry and that's all I had. Thank you.

5 JUDGE DIPPELL: Commissioner Murray,
6 did you have any final questions?

7 COMMISSIONER MURRAY: I don't believe
8 so, thank you.

9 JUDGE DIPPELL: Okay. There are just a
10 couple of other housekeeping things that I want to
11 take care of. Mr. Krueger, when you were questioning
12 Mr. Johansen, you mentioned the recent TBJ case,
13 could you elaborate on what that is for the record?

14 MR. KRUEGER: I can't, but perhaps Mr.
15 Johansen can.

16 JUDGE DIPPELL: Maybe Mr. Johansen can
17 tell you the case number and you can relay that.

18 MR. KRUEGER: Mr. Johansen says he can
19 have the case number in two minutes. Would that be
20 soon enough?

21 JUDGE DIPPELL: Oh, that would be fine.

22 MR. KRUEGER: It's a certificate case
23 involving TBJ Sewer Company, which would it be 2003?

24 JUDGE DIPPELL: That's probably good
25 enough, it's a Commission --

1 MR. KRUEGER: Correct.

2 JUDGE DIPPELL: -- certificate case?

3 MR. KRUEGER: And the name of the
4 company is TBJ Sewer Company, Inc.

5 JUDGE DIPPELL: That's enough
6 information.

7 MR. KRUEGER: Okay.

8 JUDGE DIPPELL: I took notice of two
9 orders earlier, and just so that the record is clear,
10 I'm going to go ahead and assign those exhibit
11 numbers, and I'll ask Ms. O'Neill and Mr. DeFord,
12 because your colleague asked me to take notice of
13 that, to provide a copy of that if you could
14 tomorrow.

15 For Mr. DeFord -- well, let me start
16 with the other one. Ms. O'Neill's was the report and
17 order in WC-2002-155, and I am going to -- I'm going
18 to label that as Exhibit 17, even though I don't
19 really have an Exhibit 16 anymore, and if you could
20 just submit through the electronic filing system a
21 copy of that, and that way it will be in the record
22 if another court should ever want to see everything,
23 and then Mr. DeFord, yours was a copy of the federal
24 court order that ordered Mr. Smith to sell this
25 company, and that's all I have, other than to say to

1 let you all know that that this case is on agenda
2 tomorrow.

3 I realize you have other conflicts, so
4 you may not be there, but you may want to find a
5 colleague to take notes for you. Thank you all very
6 much. I appreciate you -- your patience and your
7 ability to get this all in. Thank you. We can go
8 off-the-record.

9 WHEREUPON, the on-the-record portion of
10 the hearing was adjourned.

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17
18
19
20
21
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23
24
25

I N D E X

MISSOURI-AMERICAN'S EVIDENCE

ROBERT LEGRAND
Questions by Judge Dippell 181
Recross-Examination by Krueger 183
Redirect Examination by Mr. Abernathy 192

JEFF KAISER
Direct Examination by Mr. Abernathy 194
Voir Dire Examination by Ms. O'Neill 198
Con't Direct Examination by Mr. Abernathy 200
Cross-Examination by Mr. Krueger 215
Cross-Examination by Ms. O'Neill 224
Questions by Judge Dippell 231

JAMES JENKINS
Direct Examination by Mr. Abernathy 234
Cross-Examination by Mr. DeFord 270
Cross-Examination by Mr. Krueger 273
Cross-Examination by Ms. O'Neill 288
Redirect Examination by Mr. Abernathy 404
Recross-Examination by Mr. Krueger 407
Questions by Commissioner Murray 410
Questions by Chairman Gaw 425
Questions by Commissioner Clayton 427
Questions by Judge Dippell 434
Recross-Examination by Mr. Krueger 436

STAFF'S EVIDENCE

DALE JOHANSEN
Direct Examination by Mr. Krueger 297
Cross-Examination by Ms. O'Neill 331
Cross-Examination by Mr. Abernathy 333
Questions by Commissioner Murray 353
Questions by Commissioner Forbis 380
Questions by Commissioner Clayton 385
Further Questions by Commissioner Murray 390
Questions by Judge Dippell 392
Recross-Examination by Ms. O'Neill 395
Redirect Examination by Mr. Krueger 398

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X (con't)

PUBLIC COUNSEL'S EVIDENCE

KIMBERLY BOLIN
Direct Examination by Ms. O'Neill 440
Questions by Chairman Gaw 441
Questions by Commissioner Murray 445
Questions by Judge Dippell 447

EXHIBITS INDEX

	MARKED	RECEIVED
EXHIBIT NO. 2		
Warren County Water and Sewer Company Original Cost Less Depreciation Supporting Documentation	24	199
EXHIBIT NO. 3		
1997 Annual Report of Warren County Water & Sewer	24	248
EXHIBIT NO. 4		
1998 Annual Report of Warren County Water & Sewer	24	248
EXHIBIT NO. 5		
1999 Annual Report of Warren County Water & Sewer	24	248
EXHIBIT NO. 6		
2000 Annual Report of Warren County Water & Sewer	24	248
EXHIBIT NO. 7		
Case WR-02-019A Year Ending June 30, 2001, Accounting Schedules	24	309
EXHIBIT NO. 8		
Case SR-02-020A Year Ending June 30, 2001, Accounting Schedules	24	309
EXHIBIT NO. 9		
3/9/02 Letter to Gary Smith From Wendell R. Hubbs	24	317

1		EXHIBITS INDEX (con't)		
2	EXHIBIT NO. 10			
3	History of Water & Sewer			
4	Systems Serving Incline			
5	Village	24		320
6	EXHIBIT NO. 11			
7	Warren County Water & Sewer			
8	Company Rate Base Revenue			
9	Impact Summaries	24		325
10	EXHIBIT NO. 12			
11	Warren County Water & Sewer			
12	Company History of Assessments			
13	& Assessment Payments	24		327
14	EXHIBIT NO. 13			
15	Joint Application and Motion			
16	For Expedited Treatment	192		192
17	EXHIBIT NO. 14			
18	Warren County Water & Sewer			
19	Rate Analysis	261		262
20	EXHIBIT NO. 15			
21	1985 Annual Report	296		304
22				
23				
24				
25				