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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Order Concerning Test Year and True-Up, Resetting
Evidentiary and True-up Hearings, Adopting Procedural
Schedule and Concerning Local Public Hearings

January 12, 2003
Jefferson City, Missouri
Volume 24

In the Missouri-American Water)
Company's Tariff to Revise Water) Case No.
And Sewer Rate Schedules) WR-2003-0500

KEVIN THOMPSON, Presiding,
Deputy Chief Regulatory Law Judge

REPORTED BY:
Jennifer L. Leibach
ASSOCIATED COURT REPORTERS

1 A P P E A R A N C E S

2 W.R. ENGLAND, III, Attorney at Law
DEAN L. COOPER, Attorney at Law
3 RICHARD T. CIOTTONE, Attorney at Law
Brydon, Swearengen & England, P.C.
4 312 East Capitol
P.O. Box 456
5 Jefferson City, Missouri 65102-0456
(573) 635-7166

6 DAVID P. ABERNATHY, General Counsel
7 Missouri-American Water
535 North New Ballas Road
8 St. Louis, MO 63141-6875
(314) 996-2276

9 FOR: Missouri-American Water Company.
10

11 MARK W. COMLEY, Attorney at Law
Newman, Comley & Ruth
12 601 Monroe, Suite 301
P.O. Box 537
13 Jefferson City, Missouri 65102
(573) 634-2266

14 FOR: City of Jefferson.
15

16 CHARLES BRENT STEWART, Attorney at Law
Stewart & Keevil
17 Southampton Village at Corporate Lake
4603 John Garry Drive, Suite 11
18 Columbia, Missouri 65203
(573) 499-0635

19 FOR: The Empire District Electric Company.
20

21 LELAND B. CURTIS, Attorney at Law
Curtis, Oetting, Heinz, Garrett & O'Keefe
22 130 South Bemiston, Suite 200
Clayton, Missouri 63105-1913
23 (314) 725-8788

24 FOR: City of Warrensburg.
25

1 A P P E A R A N C E S (con't)

2 JAMES M. FISCHER, Attorney at Law
3 Fischer & Dority
4 101 Madison, Suite 400
 Jefferson City, Missouri 65101
 (573) 636-6758

5 FOR: Public Water Supply District No. 1
6 and 2 of Andrew County.
 Public Water Supply District No. 1 of
7 DeKalb County.

8 JEREMIAH D. FINNEGAN, Attorney at Law
9 Finnegan, Conrad & Peterson
 3100 Broadway
10 1209 Penntower Office Center
 Kansas City, MO 64111
 (816) 753-1122

11 FOR: City of Riverside, Missouri.

12 STUART CONRAD, Attorney at Law
13 Finnegan, Conrad & Peterson
 3100 Broadway
14 1209 Penntower Office Center
 Kansas City, MO 64111
 (816) 753-1122

15 FOR: AG Processing.

16

17 LISA C. LANGENECKERT, Attorney at Law
18 720 Olive Street, Suite 2400
 St. Louis, MO 63101
 (314) 345-6441

19 FOR: Missouri Energy Group.

20

21 KARL ZOBRIST, Attorney at Law
22 TIMOTHY SWENSEN, Attorney at Law
 Blackwell, Sanders, Peper, Martin, LLP
23 2300 Main Street, Suite 1100
 Kansas City, MO 64113
 (816) 983-8171

24 FOR: St. Joseph Water Rate Coalition.

25

1 A P P E A R A N C E S (con't)

2 MARC ELLINGER, Attorney at Law
3 JIM DEUTSCH, Attorney at Law
4 Blitz, Bardgett & Deutsch
5 308 East High Street, Suite 301
6 Jefferson City, MO 65101-3237
7 (573) 634-2500

8 FOR: City of Joplin

9 JAN BOND, Attorney at Law
10 7730 Carondelet, Suite 200
11 St. Louis, MO 63105
12 (314) 727-1015

13 FOR: Utility Workers Union of America
14 Local 335, AFL-CIO.

15 RUTH O'NEILL, Assistant Public Counsel
16 P.O. Box 2230
17 200 Madison Street, Suite 650
18 Jefferson City, Missouri 65102-2230
19 (573) 751-4857

20 FOR: Office of the Public Counsel
21 and the Public.

22 KEITH R. KRUEGER, Deputy General Counsel
23 THOMAS R. SCHWARZ, JR., Deputy General Counsel
24 CLIFF E. SNODGRASS, Senior Counsel
25 BRUCE H. BATES, Associate General Counsel
 P.O. Box 360
 Jefferson City, Missouri 65102
 (573) 751-3234

 FOR: Staff of the Missouri Public
 Service Commission.

1 PROCEEDINGS

2 JUDGE THOMPSON: We'll go ahead and go
3 on the record. Good morning. We're here for a
4 continuation of hearing in WR-2003-0500, the
5 Missouri-American Water Company's general rate case,
6 and when we left on Friday, Mr. Merciel was there,
7 and Commissioner Murray had just completed questions
8 from the bench.

9 Do you have any new questions that have
10 occurred to you over the weekend, Commissioner?

11 COMMISSIONER MURRAY: Yes, I may ask
12 one more question.

13 JUDGE THOMPSON: Fire away.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Mr. Merciel, is there a standard or a
16 benchmark that the Staff ordinarily uses in
17 determining what is the appropriate capacity to build
18 for?

19 A. There really isn't. I was thinking a
20 little more about that over the weekend, too, and
21 really, the company's develop their standards for
22 increasing plant capacity, and I'd say I think it
23 would be pretty tough to try to write out one
24 standard.

25 It kind of -- it's almost case by case.

1 It depends on your rate of growth and what you have
2 to build, so maybe some kind of a policy could be
3 written out, and to the great extent the companies
4 do. The fact is Missouri-American presented us with
5 what they did on the St. Joseph project, so that's my
6 best answer.

7 Q. Do you have a range that you would work
8 within on a case by case basis?

9 A. A range of?

10 Q. Of either additional capacity needed
11 for the X number of years or for a percentage of
12 growth or some benchmark range?

13 A. Okay. Well, I think even that is case
14 by case. And to be honest, I am not sure what the
15 American System does. I know, like, St. Louis County
16 Water Company, they did five year plans. They'd look
17 five years in the future to figure what they needed
18 to do, and St. Louis has always been kind of a
19 growing area, so other systems could be something
20 different.

21 Q. Well, there's no staff position on what
22 is reasonable or what is not reasonable?

23 A. As far as how they do the planning?

24 Q. Yes.

25 A. Not from a generic standpoint, there's

1 no Staff position. I -- in the last rate case in
2 Missouri-American, I don't really have any desire to
3 challenge American's methodology of how they do their
4 planning.

5 To get more specific, with St. Joseph,
6 my biggest point was it appeared to me that they were
7 planning for some growth, and planning is fine, but I
8 just didn't think they'd actually need to construct,
9 you know, at that present time, you know, based on
10 growth, because they didn't have any. Now, to have
11 the plan in place, you know, you make plans to do
12 things, that doesn't necessarily mean you go ahead
13 with it right away, so it kind of depends on how you
14 look at plans.

15 Q. Okay. Is there any standard or
16 benchmark for determining at what point in the
17 planning process you go ahead and construct?

18 A. Well, you would need to take into
19 consideration permitting time, planning for
20 construction. You definitely need to do it ahead of
21 time. You watch your growth and you want to -- the
22 idea is to have the plant available and online when
23 you need it, maybe even with some safety factor in
24 there; talking about if you're growing into plant,
25 you know, it's pretty hard to time something like

1 that to the day, so to speak, but doing it within,
2 say, a couple-year period, you would plan to have the
3 plant online, doing all the construction, permitting;
4 and depending on what you're building, that could be
5 up to a year, maybe more than a year for a major
6 facility.

7 Q. So when you talk about maybe some
8 reasonable safety affect, I believe was what your
9 words were, are you talking about building for
10 actually constructing for what you may need within
11 the next year, is that?

12 A. Do you mean construct plant that you
13 would need for the next coming year?

14 Q. Well, let's put it this way, that you
15 would not need for another year.

16 A. If they get within a year, talking
17 about growth, if it's within a year, you might
18 construct something, and you know, you might have a
19 year -- you might construct something and it might be
20 one year before you actually get another capacity of
21 that item. If you construct something large, it
22 might be ten years before you reach the capacity of
23 that item.

24 Q. So are there instances in which Staff
25 would not suggest a disallowance because the capacity

1 would not be reached for another ten years?

2 A. Yes, if they're, yeah, I think we do
3 that frequently. There are, you know, upgrading, oh,
4 I don't know, intake structure, expanding your plant.
5 It could well be a number of years before you
6 actually need the entire capacity, but you can't --
7 you can't always build your utility plant from year
8 to year; small items you can, but major facilities
9 you can't do that.

10 Q. And the St. Joseph treatment capacity
11 that we're talking about, weren't those major items?

12 A. Oh, yes, yes, that was -- yes, the
13 entire plant is all -- well, the plant, the project
14 is a major item. It's entire treatment plant,
15 although my testimony I'm focusing on some of the
16 components, and there are -- there are major items.
17 But there are -- well, for example, wells, there's a
18 total of ten what they have right now, a total of ten
19 pumps that they have in the well field.

20 And I advocated disallowing two of
21 them, two of the ten; although they would qualify as
22 major facilities, but to add some of those units when
23 you need them, such as adding a well, it's, you know,
24 it's construction project, it's not anything -- it's
25 not a small project, but it's, you know, certainly

1 not as big as constructing the entire filtration
2 plant. It's adding a component to it.

3 Now, you might come to time where you
4 need the well and there could be a number of reasons
5 for it; maybe your usage increases, perhaps as the
6 company has suggested and it is correct, as wells
7 operate over a number of years, the yield from the
8 well or the pumping capacity could decrease for
9 various factors; wear on the equipment and might be
10 changes in the water strata, so the wells they have,
11 if the volume goes down, that might be a good reason
12 to go ahead and place another well in service.

13 Q. And with Staff's recommendation, the
14 result over time would be more wells of smaller size;
15 is that right?

16 A. Not necessarily. I didn't propose any
17 change to the size of the wells. That's always a
18 consideration, there could be different sized units
19 that might get constructed, but in this case of the
20 seven vertical wells, I recommended eliminating two
21 of them. I didn't recommend any change in the size
22 of each individual well.

23 Q. Okay. You just recommended timing
24 difference?

25 A. Yes, exactly. Now, I did in the case

1 of the high service pumps. There are four high
2 service pumps, and in order to eliminate one of them,
3 there would need to be a change either increase
4 another one by another 100 horsepower, another way to
5 look at it of the four pumps, they could have
6 decreased one by another horsepower. I just
7 basically recommended eliminating 100 horsepower.

8 Now, how you do that, you could do that
9 a couple of different ways. You could extend that to
10 the clarifier, we've had some discussions on the
11 record about the clarifiers. At present, they have
12 three clarifiers. There's room for a fourth, sometime
13 in the future. I recommend eliminating one of them.

14 Now, instead of planning for a total of
15 four clarifiers, the clarifiers could have been
16 resized. You know, there are a number of ways you
17 can go about constructing something of a different
18 size.

19 Q. I know we're going back in time here,
20 but when this construction process was going on, was
21 the company consulting with the Staff about what was
22 -- the planning process and the construction process?

23 A. Yes, they were.

24 Q. And was Staff recommending to them at
25 that time, no, don't build as much as you say you're

1 going to build?

2 A. No, we didn't, and I would shoulder
3 some responsibility. We didn't really look that
4 closely at the capacity that was needed. We did know
5 that the existing treatment plant, what we usually
6 call the old St. Joseph Plant we knew the capacity
7 had been exceeded a number times, so we knew there
8 was need for more capacity than what they had. That
9 was the 20.8 or sometimes we say 21 million gallon
10 plant. Clearly there was more capacity than that
11 that was needed.

12 Most of the discussions were over the
13 concept of constructing new facility versus rehabing
14 the old one.

15 Q. And Staff didn't give the company any
16 indication that Staff might be recommending a
17 disallowance of a portion?

18 A. No, we did not. That really came
19 during testimony in the rate case. That was really
20 when we took the close look at the sizing of it.

21 Q. Okay. Thank you, Mr. Merciel.

22 JUDGE THOMPSON: Thank you,
23 Commissioner Murray.
24 Commissioner Clayton.
25 COMMISSIONER CLAYTON: Thank you.

1 QUESTIONS BY COMMISSIONER CLAYTON:

2 Q. I am struggling to catch up with being
3 gone for a couple of days, so bear with me just for a
4 second as I get organized.

5 A. I understand.

6 Q. We're talking about pension expense
7 here today?

8 A. No, sir.

9 Q. I'm just kidding. I'm not that far
10 behind. The -- just make sure everyone is paying
11 attention out there.

12 A. Woke me up.

13 Q. Well, I was going to ask about FAS 87,
14 then I realized that I would probably ask the
15 question wrong.

16 The dollar amount that we're talking
17 here is 2.2 million dollars, roughly?

18 A. Yes, that's correct.

19 Q. Okay. And can you explain to me the
20 type of plant that is included within that figure
21 that is not used and useful?

22 A. Yes, I can. It's -- there's four
23 different parts to it. One -- first part is in the
24 well field, and as you might guess, the well field is
25 where you get the raw water from that pumps into the

1 plant.

2 Q. So it doesn't come out of the river or
3 could connections to the river be considered --

4 A. It's what's called alluvial wells.
5 They're right next to the river in the river bottom
6 area, and it is ground water that's somewhat
7 influenced by the river.

8 Q. Okay.

9 A. But it's not directly from the river,
10 but anyway, there are -- what they actually
11 constructed was seven what they call vertical wells,
12 and each one has a pump in it, motor and pump, and
13 then there's one, what they call, horizontal
14 collector well facility, and that facility has three
15 pumps in it. Okay. Of the seven vertical wells, I
16 recommended disallowing two of them, and that would
17 reduce --

18 Q. You disallowed three of the seven?

19 A. Two of the seven.

20 Q. Two of the seven.

21 A. Yes.

22 Q. Okay.

23 A. That's the well field. The next item
24 in the treatment process is the clarifiers.

25 Q. Before we go past the well field, that

1 means that you're in agreement with five out of the
2 seven vertical wells with pumps and the horizontal
3 facility with the three pumps, correct?

4 A. Yes, that's correct.

5 Q. Okay. Go ahead.

6 A. Okay. Next item would be the
7 clarifiers. This treatment plant, it's designed to
8 ultimately have four clarifiers as constructed. For
9 the 30-million gallon capacity, it has three
10 clarifiers, and I recommended that one clarifier be
11 eliminated.

12 Q. And that was -- you said there were
13 four clarifiers for how much?

14 A. Well, there are three existing
15 clarifiers.

16 Q. Okay.

17 A. This plant is designed to be expandable
18 in the future, so there's room for a fourth, but it's
19 not there. There's only three that are built, and
20 they use that to get to the 30-million gallon
21 capacity.

22 Q. Okay. So you disallowed one there?

23 A. Right, one of the three clarifiers.

24 Q. Okay. Go ahead.

25 A. Next item would be the high service

1 pumps. Well, let me say the next item would be the
2 clear well. This is presently either two million
3 gallons, it's basically storage on-site. After the
4 water is treated, it's -- chemicals have been
5 applied, it's gone through the clarifiers, gone
6 through the sand filters, it's ready for
7 distribution, except they have a clear well on-site.

8 Part of the function of it is to allow
9 contact time for disinfection, so it's still part of
10 the treatment process, and so the sizing is
11 important. But with the two million gallons, I
12 recommended -- well, I should say there are two --
13 there are two one-million gallon units there, and I
14 recommended that there could be two 750,000-gallon
15 units, so decreasing by a half a million gallons.

16 Q. Or half -- I guess half a tank?

17 A. You could look at it that way.

18 Q. Well, out of curiosity, why did you say
19 they could have two 750,000-gallon tanks rather than
20 just say -- why did you make it in terms of tank size
21 rather than gallons?

22 A. Well, that's really the same thing.
23 You measure the tank size in gallons, that's saying
24 the same thing.

25 Q. Okay.

1 A. Okay. If you're ready, the final item
2 would be the high service pumps. Sometimes this
3 company calls them distributive pumps. This is what
4 pumps from the plant or from the clear well out to
5 the distribution system, out to the storage tanks;
6 and I recommended disallowance of 100 horsepower of
7 the high service pumps. There are --

8 Q. Say that again. How many horsepower?

9 A. One hundred horsepower. Let me
10 explain. There are four pumps as built. They built
11 four pumps, two of them are 300 horsepower, and two
12 of them are 200 horsepower, and what I said in my
13 testimony, we could disallow one of the pumps, we
14 could disallow one 200 horsepower pump, but the three
15 remaining would not be quite enough, you would have
16 to increase another one by another horsepower, so to
17 sum that up, instead of two 300s and two 200s, you
18 could have three 300s, and when it boils down, you're
19 disallowing 100 horsepower.

20 Q. Okay.

21 A. And so that's -- those are the items
22 and I made an estimate of the value based on my
23 experience and some of the estimates we had, the
24 plant wasn't quite finished at the time, but my
25 estimates came up to the 2.2 million dollars of

1 capital expenditure.

2 Q. How long have you been with the
3 Commission?

4 A. Since 1977, twenty -- whatever it is,
5 26 years.

6 Q. You have a few years with -- a few
7 years on the clock, huh?

8 A. Yeah, there's a few.

9 Q. Okay. Could you explain to me what
10 traditions or what methods of evaluating excess
11 capacity have been used in the past, whether it be in
12 water or another type of utility on this issue? Can
13 you give me just a brief history of how this issue
14 has been treated by Staff and the Commission in the
15 past?

16 A. Well, frankly, it hasn't been done that
17 often in the water and sewer industry, and I can't
18 speak to other industries.

19 Q. And when you say it hasn't been done,
20 you're saying that there haven't been new plants or
21 the method that you've chosen hasn't been used or the
22 method that the company has chosen hasn't been used?

23 A. As I said before, I don't really have
24 an argument with the company's method. In most
25 cases, the large companies have plans and procedures

1 on how to expand the plant, and by and large, we
2 don't find that unreasonable how they go about doing
3 it.

4 To a great extent, part of our problem
5 is getting some of the companies to expand the
6 facilities when they need to, so excess capacity is
7 by and large not a big problem in the water and sewer
8 business for this state.

9 Q. When was the last new water plant or
10 treatment plant that was put into service in the
11 state of Missouri? Can you -- prior to St. Joe?

12 A. An entire water treatment plant?

13 Q. Yes, similar to a case like this, can
14 you think of one?

15 A. No, I can't, and this is -- this is
16 pretty infrequent. In St. Louis County, I've seen
17 some of the plant sites, they've expanded units,
18 actually, I guess there was a -- one other plant site
19 they had a facility there, and they basically built
20 another treatment plant next to it, and I don't
21 remember the time frame, that was probably in the
22 maybe 70's or 80's, I can't really remember.

23 Q. But you were with the Commission when
24 it happened?

25 A. To a great extent I was, yes.

1 Q. Okay. And do you recall how excess
2 capacity was dealt with in terms of rates?

3 A. It was not an issue, excess capacity
4 wasn't an issue. The company had --

5 Q. So it wasn't an issue, so basically the
6 Commission author and Staff agreed to authorize 100
7 percent of the dollars spent on the plant rather than
8 make a disallowance for excess capacity?

9 A. That would be correct.

10 Q. Okay. So this is a change, then, in
11 Staff's position?

12 A. It was case by case. In this case, the
13 Staff, or I should say I, took a look at it and this
14 is what I felt was the best thing to do.

15 Q. Okay. So because they're so
16 infrequent, you're saying that there is no fixed
17 method?

18 A. For an entire plant, the Staff does not
19 have a fixed method. We would review what the
20 company is doing.

21 Q. Okay. What, in this case, would
22 require, in your opinion, a departure from the
23 position that the Commission took in the last new
24 treatment plant case?

25 A. In my opinion, this issue would not be

1 here if St. Joseph were a growing area. That was
2 really what -- one of the things that caught my
3 attention was planning for the growth and it wasn't
4 occurring in St. Joseph.

5 Q. So do you think the company made a
6 mistake in overbuilding their plant?

7 A. For the present time, I guess the
8 answer would be yes, that's the position I took. I
9 felt that the plant was oversized for what the
10 citizens of St. Joseph should be paying for today.

11 Q. Could you explain to me, if at all,
12 whether Staff was involved in any of the planning for
13 the construction of the St. Joe treatment plant?

14 A. Well, the company had been planning it
15 for some years, and we were involved in meetings and
16 onsite tours, a number of informal telephone calls as
17 were other parties, the City was involved and Public
18 Counsel, and there was a -- if I recall -- in St.
19 Joseph, they had a committee that the -- I guess that
20 was set up through the Chamber of Commerce, some
21 citizens that were looking at it.

22 Q. And did they conclude with
23 recommendations -- official recommendations or a
24 proposal or anything like that?

25 A. Well, I wouldn't say that everybody

1 really agreed on what needed to be done, and as I
2 answered one of Commissioner Murray's questions, one
3 of the biggest questions was whether the company
4 should proceed with a new treatment plant or some
5 other plant to rehabilitate the old plant. That was
6 -- and you know, building new plant was an expensive
7 project, rehabing the old plant would have been
8 expensive, too.

9 Q. Did Staff make an official
10 communication in that regard, and I'm sure some of
11 this is repetitive, and I apologize for that, but did
12 Staff make an official, in-writing recommendation or
13 proposal for what the company ought to do or was it
14 all just over-the-phone and informal?

15 A. Well, it was really informal. There
16 was a -- there was a case prior to the rate case, and
17 I don't remember the case number, but it was what we
18 call a WA case. It was a certificate application,
19 when the company expanded the service area for the
20 well field. I think it was maybe a '97 case, and
21 there was quite a bit of information on the record
22 from the Staff and other parties regarding whether
23 the plant was necessary or not, so it wasn't -- in
24 that case, we had gone on the record.

25 Q. And what was the recommendation that

1 was unnecessary?

2 A. Well, the recommendation was Staff was
3 in agreement with the concept of constructing a new
4 plant. We really didn't get into the specific
5 capacity at the time, other than we knew it needed to
6 be bigger than what the company already had.

7 Q. Did Staff ever participate in capacity
8 discussions?

9 A. Not specifically on that topic.

10 Q. Okay.

11 A. That I recall.

12 Q. Do you recall in the St. Louis County
13 example that you used whether there was excess
14 capacity or not? I know you said it wasn't an issue,
15 but was there excess capacity with what the current
16 needs of St. Louis -- the customers in St. Louis
17 County have?

18 A. I don't believe there was without going
19 back and really looking at the numbers, but the new
20 plant at the central location in some of the other
21 units, they're being added to take care of growth.
22 That was a growing area, and it was necessary to
23 handle the growth in St. Louis County.

24 Q. The amounts that you have agreed to
25 allow; the five vertical wells, the one horizontal

1 facility, and the pumps associated with them, for
2 example, do they include any growth factor at all or
3 are they exactly with what St. Joe's current needs
4 currently are?

5 A. It was based on the current need,
6 because -- and that's on -- going on my belief that
7 there really was no substantial growth in St. Joseph.
8 That's not to say it can't happen in the future, and
9 I think everybody hopes, certainly the folks in St.
10 Joseph hope that they grow, but at the time, and
11 really until just recently, it was -- there really
12 wasn't any substantial growth, so I couldn't see
13 constructing plant for growth when you can go in as
14 needed, and you know, within a year if, you know, as
15 the town does begin growing, you know, then you do
16 drill another well or a another couple of wells and
17 add some of these other units.

18 Q. Is there savings that rate payers would
19 benefit from by building the plant with excess
20 capacity at one time rather than piecemealing in the
21 future?

22 A. I don't think constructing the one time
23 would save you that much. It would -- there would be
24 some savings there, but the customers are also paying
25 for plant that, I believe, is excess, so, you know,

1 you're paying -- the customers are paying a lot
2 there, too, so I think it would be economical to
3 construct plant in the future as needed.

4 Q. What factors did you look at in making
5 a determination of whether St. Joe was a growth or a
6 non-growth area?

7 A. Mostly historical water usages; average
8 day and peak day.

9 Q. Over how many years?

10 A. I have some numbers that went back to
11 1977, but also discussions with the company. I mean,
12 it's not a -- it simply isn't a growing community.
13 You do see construction in St. Joseph.

14 Q. Hang on. So you look at water usage
15 over 15 years or so?

16 A. Yes.

17 Q. Okay. What else do you look at, what
18 other factors?

19 A. Well, that's primarily it, but I had a
20 question in that when you go to St. Joseph you do see
21 new houses, there are new subdivisions, but it's been
22 explained to me that St. Joseph -- apparently people
23 are moving out of the older part of town, and you
24 know, moving into newer, you know, newer residential
25 houses.

1 Q. Did you assess population rates?

2 A. I reviewed some of the information the
3 company had. They had some of that in the reports
4 that they had filed.

5 Q. Did you do a historical perspective on
6 unemployment rates and number of jobs in the
7 community?

8 A. To be honest, I didn't really digest
9 all that information, but there were some -- there
10 was some information, I believe along that line in
11 some of the company's reports, too.

12 Q. Did you meet with the local economic
13 coordinators to incorporate their, not necessarily
14 plans, but what their goals were and how they were
15 working to meet those goals in terms of attracting
16 industry, for example?

17 A. I did not specifically meet with them
18 and participate in that kind of a meeting.

19 Q. Did anyone on Staff or did you consider
20 any of those factors?

21 A. Not specifically, but again, my
22 position is this company could go ahead, you know,
23 when I say they construct the plant as I recommended,
24 they could go ahead and add the additional units and
25 do the increase when the need arises.

1 Q. Did you take a survey of local industry
2 in determining whether they would be expanding or
3 declining in the service that they were providing in
4 whatever industry?

5 A. I didn't conduct any surveys.

6 Q. Did anyone on Staff?

7 A. Not on Staff, to my knowledge.

8 Q. Okay. Did anyone on Staff meet with
9 anyone within the Department of Economic Development
10 to determine their analysis of what the economic
11 conditions were in northwest Missouri?

12 A. Not to my knowledge.

13 Q. Okay. So basically your assessment of
14 whether or not St. Joe is a high-growth, a
15 low-growth, or a no-growth community is based
16 entirely on water usage and nothing else?

17 A. And my observations of the town, having
18 visited.

19 Q. Okay. Is that a sufficient analysis
20 for us to make the determination of whether or not it
21 is a high-growth, a low-growth, or a no-growth
22 community?

23 A. Well, I believe it is for purposes of
24 constructing a water plant based on the water needs.

25 Q. Okay.

1 A. If you wanted to look into the future,
2 some of the things that you suggested, you know,
3 could be studied, but again, I believe that was not
4 necessary for the purposes of that case. You know,
5 come the time that there is some growth, I think this
6 company was in a position to go ahead and proceed.

7 Q. And forgive me, I should know this
8 offhand, are you an accountant, engineer, lawyer,
9 what's your background?

10 A. I'm an Engineer, Civil Engineer, yes.

11 Q. Well, you've been around the Commission
12 for 26 years, 27 years, roughly, you've been around a
13 long time; you've been involved with a number cases.
14 Is that a fair statement?

15 A. Yes, sir.

16 Q. Okay. If we were to disallow this
17 figure, this 2.2 million dollars, would it be
18 possible for the company to come back and bring this
19 issue up again in the next rate case in three years?
20 Do you know in your experience as a Staff witness?

21 A. Oh, yes, it would certainly be
22 possible. In fact, it would be probable. This could
23 be an issue that would go on and on if growth doesn't
24 get going in St. Joseph.

25 Q. That's if there are no changes in used

1 and useful plant?

2 A. Yes, if there are no changes. Now,
3 there are indications that there are going to be some
4 changes in St. Joseph, as in new industry coming to
5 town.

6 Q. Okay.

7 A. I guess you weren't here Friday at the
8 hearing, there was some on-the-record discussion
9 about an industry called Premium Pork constructing a
10 facility in St. Joseph and being that the plan is
11 that they'll be a fairly substantial water user, and
12 I'm not sure of the time frame, I think we're looking
13 at a few years down the road.

14 Q. Did you all incorporate that
15 possibility in your position?

16 A. No, because first of all, when
17 testimony for this case was written, I'm sure there
18 was some local discussion, but I was not aware of it,
19 and it wasn't really a public -- to my knowledge,
20 wasn't a public issue about Premium Pork.

21 And even now, even though it did come
22 in, with the water usage for Premium Pork to be --
23 what am I trying to say. If it's going to be a
24 couple of years before they actually use that water,
25 then we don't consider that to be an issue in this

1 rate case. It may well be in the next one.

2 Q. Are you aware of whether local economic
3 development officials supported the capacity of this
4 plant or whether they had any knowledge at all about
5 it?

6 A. Oh, they had knowledge about it. I
7 don't think I can really give you an answer on that.
8 There were some mixed feelings on whether the plant
9 should be constructed. It was controversial and I
10 couldn't give you a blanket.

11 Q. Does the amount of excess in plant
12 reflect what the capacity of the former plant was?
13 For example, the amount that you're willing to allow,
14 is that the same capacity of the retired plant at St.
15 Joe?

16 A. No, it's more. The old plant was 20.8
17 and what I'm recommending is 23.

18 Q. And what's the capacity?

19 A. What they actually built is 30 million
20 gallons per day.

21 Q. Okay.

22 COMMISSIONER CLAYTON: Thank you very
23 much.

24 THE WITNESS: Yes, sir.

25 JUDGE THOMPSON: Thank you,

1 Commissioner.

2 QUESTIONS BY JUDGE THOMPSON:

3 Q. Mr. Merciel, there was a list of new
4 construction that was in the testimony of one of the
5 company's witnesses, and I just wanted to ask whether
6 -- do you have -- is there any dispute about whether
7 all that was built and is used and useful?

8 A. I believe I know what list you're
9 looking at, and to my knowledge, there isn't any
10 dispute over those items.

11 Q. Okay. And then I noticed in your
12 testimony there was some discussion of -- let's see
13 here, company's Camelot booster facility and
14 residential customers that are served by it in the
15 St. Charles area.

16 A. Yes.

17 Q. Is there any recommendation that Staff
18 has with respect to that? I think you indicated it
19 needs to be upgraded.

20 A. Well, there may need to be some work on
21 it. The answer is no, I don't have a recommendation.
22 Those problems were occurring this Summer during some
23 peak water usages, and the company was trying some
24 various operational techniques to minimize some of
25 the problems, and when water usage went down in the

1 Fall, the problems customers were having seemed to
2 settle down. I don't consider it a closed issue, but
3 with some of the other pipeline improvements the
4 company has planned, I simply don't have a
5 recommendation at this point in time.

6 Q. In other words, Staff is not asking for
7 there to be anything in the Order reflecting that
8 issue?

9 A. That's correct.

10 Q. Okay.

11 A. I think it's safe to say I mentioned it
12 because it was certainly something we could have
13 heard from customers, and I just wanted the issue to
14 be out there and -- so everyone was aware that we
15 were, you know, we were looking at it.

16 Q. Now, with respect to the St. Joseph
17 plant, and you've indicated it's a 30 million gallon
18 a day plant; is that correct?

19 A. That's correct.

20 Q. Now, is that the firm rated capacity?

21 A. It's really nominal capacity, if you're
22 referring to how we were speaking of top speeds and
23 speed limits, that would be a speed limit.

24 Q. Okay. So it's rated to produce that
25 and no more?

1 A. That's what it's rated for, yes.

2 Q. But theoretically, it might produce

3 more?

4 A. Yes.

5 Q. Okay. Just as the old plant, on

6 occasion, produced more than its rated capacity?

7 A. Exactly.

8 Q. And do you know what the greatest

9 amount that the new plant has ever produced in a day

10 thus far has been?

11 A. I don't believe I've seen a number that

12 was much greater than 23. There was some -- I think

13 I've -- let's see.

14 Q. But you've seen numbers that are

15 greater than 23?

16 A. Perhaps not; perhaps not greater than

17 23. Some numbers approach 23.

18 Q. Okay.

19 A. I've -- there may be some days that I'm

20 not aware of, but.

21 Q. So as far as you know it's never

22 produced in excess of 23 million gallons a day?

23 A. That's correct.

24 Q. Okay.

25 A. I could be wrong, but I don't know of

1 any.

2 Q. Now, with respect to the wells that
3 you've disallowed, if those wells were not there,
4 would the plant be capable of producing 23 million
5 gallons a day?

6 A. You're referring to the two wells I
7 disallowed, if those were not there, yes, it would
8 still produce it.

9 Q. But are those two wells in use?

10 A. They are in use, and they're usable,
11 yes.

12 Q. Okay. So they are in use, and are they
13 useful?

14 A. Yes.

15 Q. Okay. And what about the clarifier.
16 You indicated that you disallowed one clarifier.

17 A. Yes.

18 Q. And is that clarifier in use?

19 A. Yes, there are three clarifiers. I
20 recommended disallowing one, but the three are there
21 and in use.

22 Q. And useful?

23 A. Yes.

24 Q. Okay. And what about the clear well.
25 You indicated, I believe, that there's two there.

1 A. There are two one-million gallon units
2 in place.

3 Q. And they could have been smaller?

4 A. Right, that's my position.

5 Q. So both of them are in use?

6 A. Both of them are in use.

7 Q. And both of them are useful?

8 A. Yes, sir.

9 Q. Okay. And with respect to the
10 distributive pumps, there are four pumps and they're
11 all in use?

12 A. They're all in use and useable.

13 Q. And they are useful?

14 A. Yes, sir.

15 Q. And they could have had three of the
16 smaller pumps rather than two small, two large?

17 A. Yes, they could have either sized them
18 differently somehow to have either three pumps or
19 four smaller pumps, yes.

20 Q. But nonetheless, all of these things
21 are in use?

22 A. What the company constructed is all in
23 use and useful.

24 Q. And you don't dispute that it's useful?

25 A. No, I don't.

1 JUDGE THOMPSON: Okay. That's all the
2 questions that I have. Further questions from the
3 bench? Okay.

4 Cross-examination, Ms. O'Neill.

5 MS. O'NEILL: Thank you.

6 CROSS-EXAMINATION

7 QUESTIONS BY MS. O'NEILL:

8 Q. Good morning, Mr. Merciel.

9 A. Good morning, Ms. O'Neill.

10 Q. I want to just touch a little bit on
11 the prior history here a little bit. I want to get
12 back to the case at hand as quickly as we can, but in
13 the last case, in the 2000-281 case, which was the
14 last case to cover St. Joe, the Commission disallowed
15 this 2.2 million from rate base; is that right?

16 A. That's correct.

17 Q. And you're asking that that prior
18 decision continue into this case?

19 A. Yes, that's correct.

20 Q. And in the last rate case, the issue of
21 whether or not this whole new plant should have been
22 built versus a rehabilitation of the old water
23 treatment plant was a major issue in the case; is
24 that right?

25 A. Yes, it was.

1 Q. There were several parties, including
2 my office, who thought that it would have been more
3 cost effective and would have provided just as safe
4 and as adequate service to customers at less cost?

5 A. That's correct.

6 Q. And when there were discussions -- I
7 know that you weren't directly involved in some of
8 these but you were involved in some meetings, but
9 there were discussions regarding whether or not a new
10 plant should be built rather than rehabing the old
11 plant. At that time, Missouri-American Water
12 employed something called single tariff pricing to
13 bill its customers; is that correct?

14 A. That is correct.

15 Q. And if Missouri-American was still
16 using single tariff pricing, the cost of the new St.
17 Joseph treatment plan would have been spread
18 throughout the state and not just the customers of
19 St. Joe; is that correct?

20 A. Yes, that's correct.

21 Q. And was that, to your knowledge, also a
22 matter of discussion when community development
23 leaders or economic development people were being
24 advised about possibilities for new treatment plants
25 in St. Joe?

1 A. That issue certainly was discussed
2 extensively, not only in St. Joseph, but also other
3 service areas.

4 Q. And was a matter of concern in some of
5 those other service areas, especially when they saw
6 the size of the new plant in St. Joe?

7 A. It was.

8 Q. Now, although there were prior cases
9 regarding acquisition of certificate areas and some
10 financing, perhaps, issues in prior cases, the
11 Commission was not -- didn't issue any Orders
12 preapproving or specifying what kind of plant the
13 company should build. Is that fair to say?

14 A. That's correct.

15 Q. And in fact, the Pubic Service
16 Commission is not historically in the business of
17 preapproving plants before they're built?

18 A. That's correct, too.

19 Q. And the St. Joe treatment plant that
20 was built cost about 70 million dollars; is that
21 right?

22 A. That's a round number, yes.

23 Q. Okay. And another fairly round number,
24 this 2.2 million disallowance, is kind of a round
25 number, too, it's not exact?

1 A. Yes.

2 Q. And that's a -- that 2.2 million,
3 that's a rate base number or revenue requirement
4 number?

5 A. Rate base.

6 Q. Okay. So the revenue requirement would
7 affect that significantly?

8 A. Yes, it would be the return and
9 depreciation associated with it.

10 Q. Now, coming to this rate case, you've
11 recommended continuing this disallowance because of
12 the fact that the needs of St. Joe have not grown
13 beyond the water needs as you perceived them in that
14 281 case.

15 A. That's exactly correct. My position
16 here is that there's really been no change since the
17 last rate case.

18 Q. That's based on the amount of water
19 customers are actually taking in service today as
20 opposed to the last case?

21 A. Yes.

22 Q. And we've had some discussion while
23 you've been on the witness stand about sizing of
24 plants and how expansions are planned. Would it be
25 fair to say that your opinion about how those plants

1 should be sized depends, at least in part, on the
2 level of growth likely to occur in an area in the
3 near future?

4 A. It depends on that. It depends on what
5 you're building, yes.

6 Q. And in an area that's experiencing
7 rapid growth and has been experiencing rapid growth
8 in the previous two years and is expected to do that
9 in the future, Staff might be -- have a more expanded
10 view about what the allowable capacity should be at
11 the time that plant went into service versus when you
12 don't think there's any growth?

13 A. Well, yes, certainly a different
14 position, yeah. You have to take the growth into
15 consideration, and yeah, it would be something
16 different than what I'm saying with respect to this
17 case.

18 Q. Okay. And despite the fact that the
19 company may actually be using some of these
20 components of plant that you recommend disallowance
21 for, is it your recommendation that those components
22 not be allowed in rate base because they're not
23 necessary to provide safe and adequate service right
24 now?

25 A. That is my position, yes.

1 Q. Okay. And you believe that the company
2 could meet its peak demands with the five vertical
3 wells and the horizontal well, rather than the seven
4 vertical wells?

5 A. Yes.

6 Q. And the peak days that you had data
7 for, in this last case -- in this current case, do
8 you know whether or not the company was actually
9 pumping from five vertical wells and a horizontal
10 well on those peak days?

11 A. If you're asking how many facilities
12 are on at a given time, it's not designed so that
13 everything runs all at once. It's designed so that
14 you do have spares, so there were no days where all
15 of them would have been running. Had the two that
16 I'm recommending, if they didn't exist, all the
17 facilities still wouldn't have run. You would still
18 have some spares.

19 Q. Okay. And on -- you had actually
20 received some information from the company regarding
21 peak usage on those two days in July and one of the
22 August dates, or at least two dates in July and one
23 date in August; is that correct?

24 A. Yes, you're referring to what I think
25 Mr. Ciottone passed out?

1 Q. Right.

2 A. Yes, I have that.

3 Q. And do you know whether or not on those

4 -- on those -- and that's Exhibit 135, do you know

5 whether or not on those days the company was actually

6 pumping from more than four vertical wells?

7 A. Well, I don't know about the August

8 days, because I haven't looked at that data. What I

9 do have, which I had asked the company for back in

10 July, specifically in July, it looks like there were

11 -- the days that I had asked for, there were three

12 vertical wells that were not in use, and two of the

13 three horizontal pumps that were not in use.

14 Q. So even at your recommendation on those

15 days, which were peak days this past year, the

16 company had more than adequate capacity for pumping;

17 is that correct?

18 A. In my opinion, yes.

19 Q. Did not even need to use all the pumps

20 that you recommend including in rate base at this

21 time?

22 A. That's correct.

23 Q. And to your knowledge, did any

24 customers experience any outages or dimission of

25 service on those days -- peak days this year?

1 A. Not to my knowledge.

2 Q. And we've talked about peak and the

3 plant needs to be sized to handle those peak days,

4 but is the average pumping of gallons per day in St.

5 Joe close to these peak days or does it tend to be

6 seasonal, does it vary quite a bit?

7 A. Well, it's seasonal. The peak days

8 occur in the summertime, and we're looking at the

9 numbers that approached 23 million gallons per day.

10 In St. Joseph, the average day is something on the

11 order of 16.5 million gallons per day.

12 Q. Okay. Sixteen and a half million

13 gallons per day?

14 A. Yes.

15 Q. Okay. We've also had some discussion

16 about the fact that growth has been pretty stagnant

17 in St. Joe, and that's what your study showed before

18 the last rate case as well; is that correct?

19 A. Yes, or observation anyway, yes.

20 Q. And that observation has been born out

21 in the day that that you looked at for this rate

22 case?

23 A. It seems so, yes.

24 Q. And although we talked about Premium

25 Pork as a possible new customer, they're not poised

1 and ready to start taking service from the company at
2 this time, are they?

3 A. Not at this time.

4 Q. They haven't built their facility, have
5 they, as far as you know?

6 A. To my knowledge, they're going to build
7 a facility, but it's not there yet.

8 Q. And we don't absolutely know for sure
9 because things could happen in the future, whether or
10 not the facility will actually go into service?

11 A. I suppose that that's correct.
12 Everybody says it's actually going to happen, but I
13 suppose things could happen.

14 Q. Okay. And when Premium Pork becomes a
15 customer, it will pay for water that it uses; is that
16 correct?

17 A. Yes, it would. It would get a water
18 bill.

19 Q. And so the company will receive
20 revenues from that source?

21 A. Yes.

22 Q. And Missouri-American does have a
23 capacity to serve that customer at this time?

24 A. With what they built they do. Now, you
25 know, with what I recommended, they would not.

1 Q. Okay. In the next rate case, if
2 Premium Pork comes online, it looks like they're
3 serving and that's requiring them to use more of
4 their plant, would you recommend that more of the
5 plant be included in rate base for recovery at that
6 time?

7 A. Yes.

8 Q. Because that would be necessary to
9 provide the used -- necessarily used and necessarily
10 useful; is that correct?

11 A. Yes.

12 Q. Now, when you talked earlier about the
13 ability of companies to add capacity to their plant
14 and build additional capacity, necessary additions to
15 plant, once they're in service and the company comes
16 back in for a rate case, things that are used and
17 useful will be recommended to be included in rate
18 base as an addition to rate base; is that right?

19 A. Yes.

20 Q. And similarly, if more of this capacity
21 is in use at the next rate case, it would be similar
22 to a situation where the company had then put
23 additional facilities in and was taking a return on
24 those facilities; is that right?

25 A. Yes.

1 Q. But there won't be no additional cost
2 to this company to add those facilities so their
3 already there. So if, for example, if construction
4 costs increase, they won't be experiencing those
5 increases because they don't have to do the
6 construction.

7 A. That would be correct.

8 Q. Okay. So while Missouri-American is
9 not earning a return on the excess capacity of their
10 plant right now, they might be allowed to earn a
11 return on it in the future at some point?

12 A. Yes, that's correct.

13 Q. And if St. Joe doesn't grow enough to
14 justify all of that capacity by this disallowance, we
15 are preventing the customers from having to pay for
16 an oversized plant that's not necessary to provide
17 them a service; is that right?

18 A. That would be right.

19 MS. O'NEILL: No further questions.

20 JUDGE THOMPSON: Thank you, Ms.

21 O'Neill. Mr. Ciottone.

22 MR. CIOTTONE: Thank you, your Honor.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. CIOTTONE:

25 Q. Good morning, Mr. Merciel.

1 A. Good morning, Mr. Ciottone.

2 Q. For the benefit of Commissioner Clayton
3 and Commissioner Gaw, who are the only two, I
4 believe, who weren't involved in that last case. Ms.
5 O'Neill gave a fairly accurate characterization of
6 what that was about with respect to the building of
7 the new St. Joseph Treatment Plant, did she not?

8 A. I believe so, yes.

9 Q. Is it fair to say that there was a
10 considerable amount of organized resistance to the
11 inclusion of that new treatment plant in rate base
12 intervenors?

13 A. Yes, yes, that would be fair.

14 Q. And the Staff, at that time, took the
15 position that the building of the new treatment plant
16 was appropriate, notwithstanding this excess
17 capacity issue?

18 A. Correct, yeah, that is correct.

19 Q. Is it fair to say that that was an
20 unpopular position for the Staff to take?

21 A. At many times, it certainly seemed that
22 way, yes.

23 Q. As this case developed -- well, then is
24 it not true that as a fall-back position, if you
25 will, and that's my characterization, a colloquial

1 term, a fall-back position of this organized
2 resistance was that there should be an excess
3 capacity adjustment, if this case was to be put in --
4 if this new plant was to be put in rate base. Is
5 that accurate?

6 A. I'm sorry, were you referring to some
7 of the other some of the opposition of the plant?

8 Q. Right, right. They had an excess
9 capacity adjustment of their own, did they not?

10 A. To be honest, I don't remember what
11 they did with that.

12 Q. Well, let me see if you remember. Did
13 not both the witness for the Office of Public Counsel
14 and the witness for the intervenors make a percentage
15 allocation, and they wanted to apply that percentage
16 against the entire construction cost associated with
17 it?

18 A. Okay. Yes, I remember what you're
19 getting at now. Yes, for fall-back position, they
20 were recommending that the plant not be allowed at
21 all. They wanted -- they wanted some other number
22 associated with the old plant with rehab.

23 Q. And then with respect to the new plant,
24 they wanted to take -- they wanted to compare the
25 excess capacity number that they calculated and

1 perform a percentage ratio of the total cost?

2 A. Yes, that's correct. They had at
3 position if the Commission does approve the new
4 plant, they had a different disallowance that they
5 wanted to do.

6 Q. And that would have been a
7 significantly greater adjustment than yours, would it
8 not?

9 A. It would have been greater, yes.

10 Q. Is it fair to say that you thought that
11 adjustment was inappropriate?

12 A. Yes, I did. I didn't agree with the
13 methodology of how they did that.

14 Q. And you testified that that was
15 inappropriate?

16 A. Yes, I did.

17 Q. Is it fair to say that that, too, was
18 unpopular at the time, certainly among all the
19 organized intervenors?

20 A. Yes.

21 Q. In your experience, in your 26-some
22 years of experience at the Commission, and I'll try
23 to say this as diplomatically as I can. Did you not
24 have a sense that the Commission might be inclined to
25 do some baby-splitting on this issue?

1 A. Well, we certainly didn't know what
2 could have happened, and yes, that was a possibility.
3 Anything could have come out of what the Commission
4 was going to decide.

5 Q. Is it fair to say that your adjustment
6 and the way you structured it, that if the Commission
7 was inclined to make some capacity adjustment or some
8 adjustment to the plant that your adjustment, in your
9 opinion, was considerably more sensible than any
10 other suggested alternative?

11 A. Well, I certainly did have that
12 position. I felt that if there was going to be an
13 adjustment at all, then mine was the better one to
14 do.

15 Q. Is it fair to say that you were in
16 somewhat of a delicate position on how to handle that
17 issue at that time?

18 A. I believe I was, since we were
19 recommending that the plant be constructed and yet we
20 were recommending disallowance. It was somewhat
21 awkward.

22 Q. And the Commission was, in fact,
23 severely divided on this issue, were they not, it was
24 a 3-2 decision?

25 A. I believe it was 3-2, yes.

1 Q. And the two dissenting votes even
2 published written descents, did they not,
3 Commissioner Murray and Commissioner Drainer?
4 A. Yes, that's correct.
5 Q. On this particular issue?
6 A. Uh-huh.
7 Q. So perhaps your intuition about the
8 baby-splitting was right on the money. Isn't that a
9 fact?
10 A. Well, perhaps so.
11 Q. Now, let's look at what the Order, in
12 fact, says, because there's -- do you agree that
13 there's some confusion about what the Commission
14 meant to say in its language?
15 A. Confusion?
16 Q. Yeah.
17 A. I'm not sure what you're getting at on
18 that.
19 Q. I'm getting at this. Let me read what
20 Ms. Bolin says the Commission says. This is reading
21 from Ms. Bolin's direct testimony in this case, and I
22 will ask you whether you agree or disagree with it.
23 It's Page 9 of her direct testimony, Line 5. She
24 says if a utility has built excess capacity that is
25 not currently necessary for the provision of service

1 to current customers, the associated cost or value
2 should not be included in the overall cost of service
3 on which rates are set. Do you agree that that's the
4 rule of law in the Missouri?

5 A. Well, currently necessary could
6 certainly be more strict than what the Commission
7 should disallow. As we've discussed, you do need to
8 take into consideration growth and what you're going
9 to need in the future, and you may need to build
10 units that take you quite a ways into the future, so
11 you can't -- you can't always look at today's need
12 for something that you're going to build because you
13 need additional plant capacity.

14 Q. And Mr. Kartmann says, and I believe
15 it's his quote. He says nobody builds new plant for
16 a present max day. Is that an accurate
17 characterization?

18 A. That would be accurate, you don't build
19 it for present max day, except I took that position
20 because of the no-growth factor. That's the only
21 reason I did that in this case.

22 Q. I understand. So it is not the rule in
23 Missouri nor was it ever intended to be the rule in
24 Missouri that you should only build a plant for max
25 day -- present max day, and that any capacity more

1 than that is going to be disallowed, that's not rule?

2 A. I believe you're correct. I don't
3 believe that's the rule.

4 Q. I'm reading from the Commission's
5 Order. This is what the Order actually says, and
6 I'll ask you if you can see any definitive statement
7 to the contrary in this. This is all they say. The
8 record shows that the available portion of the rated
9 capacity of the new plant, 28.5 million gallons
10 daily, is in excess of present needs. Whether those
11 needs are expressed as the average day figure of 16.0
12 million gallons or the peak day figure of 23.0
13 million gallons.

14 Two methods have been proposed by which
15 to deduct the excess capacity from rate base. That's
16 ceasing the quote, and then they go on to describe
17 your version and the percentage disallowance
18 recommended by the interveners, and at the end, they
19 say the amount of two million, two seventy-one, seven
20 fifty-six shall be deducted from the value of the new
21 St. Joseph plant included in rate base.

22 Now, that's all they say. Does that
23 tell you anything about what the rule in Missouri is?

24 A. No, to me, that simply expresses what
25 the Commission's opinion is on the issue.

1 Q. So we all agree we've got confusion
2 here.

3 A. I suppose you can say that, yes; there
4 certainly are some questions, there's no doubt about
5 that.

6 Q. All right. Now, I want to just move
7 from that onto this issue of prudence. Is this in
8 the category of a prudence issue?

9 A. Yes.

10 Q. All right. Now, Commissioner Murray,
11 in her descent, if she will permit me to speak about
12 her in her presence, said this quote. The company
13 was not imprudent in designing and sizing the St.
14 Joseph plant to meet anticipated needs of the
15 district until the year 2009. To the contrary, it
16 would seem imprudent not to design and size a new
17 plant to meet the needs of the district beyond the
18 immediate time period. That's end of quote.

19 Now, in your -- I sent you a data
20 request, Data Request No. 115, and I asked you if you
21 agreed with that, and now correct me if I'm wrong,
22 this is what you say. You say the statement is
23 correct, but that the argument is whether certain
24 plant components are oversized for foreseeable growth
25 as opposed to be added at some point in the future.

1 The 2009 growth projection was correct at the time,
2 but the problem is low growth at present.

3 Is that an accurate characterization of
4 your position?

5 A. Yes.

6 Q. All right. Now, the 2009 growth
7 projection was correct at the time, but the problem
8 is low growth at present, so it's what happened after
9 the plant was designed that caused you to say that
10 the capacity proved to be more than is necessary in
11 hindsight?

12 A. I'm not sure I would say it quite that
13 way as far as low growth occurring after the plant
14 was constructed. I wouldn't -- at least that's what
15 I heard you say, and I wouldn't quite agree with
16 that.

17 Q. Well, I wrote this --

18 A. Well --

19 Q. I'm sorry.

20 A. Well, go ahead.

21 Q. Well, I wrote this quote from you last
22 week when Commissioner Murray was asking you about
23 this very issue, and you are said if there had been
24 growth, I would not have done that. I would not have
25 made the adjustment if the growth had materialized;

1 is that correct?

2 A. That is correct, uh-huh.

3 Q. All right. Now, isn't the standard for
4 prudence what a reasonable person would know at the
5 time the decision is made? Isn't that the way
6 prudence is typically judged?

7 A. Well, yes, but as I said, I don't -- I
8 wouldn't agree that the zero growth, I don't believe
9 that was something that everybody discovered after
10 the plant was constructed. That was when I looked at
11 it and noticed it, but I believe it was occurring
12 before then.

13 MR. CIOTTONE: Your Honor, I'd like to
14 put Mr. Merciel's data request into evidence, simply
15 in the interest of brevity. They're very complete
16 and candid and will save me a lot of time of reciting
17 them into the record.

18 JUDGE THOMPSON: No problem.

19 MR. CIOTTONE: It would be 136, I
20 believe.

21 JUDGE THOMPSON: That is correct. And
22 this is data request number what?

23 MR. CIOTTONE: This is all of his data
24 requests, No. 111 -- he was kind enough to put them
25 together in a word sheet. It's a word format. It's

1 111 through 135.

2 JUDGE THOMPSON: Very well.

3 (EXHIBIT NO. 136 WAS MARKED FOR

4 IDENTIFICATION BY THE COURT REPORTER.)

5 Q. (By Mr. Ciottone) Now, in your DR112,

6 this is a quote from your DR112. You said --

7 MS. O'NEILL: Your Honor, before he

8 goes further, I didn't -- I don't know if this has

9 been offered, if it has, at this point, I have an

10 objection.

11 JUDGE THOMPSON: It has not been

12 offered, no.

13 MS. O'NEILL: If it has not been

14 offered, I would object to any testimony about a

15 document that's not in evidence.

16 MR. CIOTTONE: I'll offer the DR's as

17 admissions -- party admissions.

18 MS. O'NEILL: Your Honor, my objection

19 is that this is not -- this does not appear to be

20 data request responses; rather, it appears to be a

21 compilation by somebody else, and I don't know that

22 Mr. Merciel has identified these as his actual

23 answers of whether he's identified whether these are

24 his complete answers and whether this is -- these are

25 his words or somebody else's words. I think that

1 those are foundational issues. I didn't know whether
2 or not Mr. Ciottone was going to ask the questions or
3 not, but apparently he's not.

4 MR. CIOTTONE: That's a reasonable
5 question, your Honor. I'll ask Mr. Merciel.

6 Q. (By Mr. Ciottone) Are those not, in
7 fact, your data requests in the form that you sent
8 them to us?

9 A. Well, the data requests were from the
10 company, I believe specifically from Dean Cooper, and
11 this does appear to be the document I prepared to
12 answer them. I took the questions and basically
13 typed my answer with it and created another document
14 in response to the company, and this appears to be
15 what I did.

16 MR. CIOTTONE: Thank you. I'll offer
17 them, then, your Honor.

18 MS. O'NEILL: I have no objection.

19 JUDGE THOMPSON: Any objection to the
20 receipt of Exhibit 136?

21 MR. KRUEGER: No objection, your Honor.

22 JUDGE THOMPSON: Hearing no objection,
23 136 is received and made a part of record of this
24 proceeding.

25 (EXHIBIT NO. 136 WAS RECEIVED INTO THE

1 RECORD BY THE JUDGE.)

2 Q. (By Mr. Ciottone) Now, in DR 124 and

3 125 where we set out Mr. Young's methodology in

4 determining the size of the plant, your answer is Mr.

5 Young used the correct concept, but the calculation

6 was flawed by unusually high peak days and/or

7 unusually low average day usage; is that correct?

8 A. That would be correct. That has to do

9 with the ratio of maximum day to average day.

10 Q. The 1.6 thing?

11 A. Yes.

12 Q. Right. Now, had the average days

13 materialized, what is the present average day? I've

14 got it at 16.05; is that correct?

15 A. That would be close. I was going to

16 say 16 to 16.5.

17 Q. And the maximum days, now, we're back

18 to Exhibit No. 135; is that correct?

19 A. Yes.

20 Q. All right. Now, incidently, we were

21 confused with this number. There is a correction on

22 this that the numbers showing July 11 is, in fact,

23 I'm told July 16, which matches the number you

24 already have and put in your answers before. So

25 that's not two different days?

1 A. Okay, so July 11th is really July 16th.

2 Q. Right, and that matches your 22.005 MGD

3 number?

4 A. Okay.

5 Q. All right. Now, did we resolve whether

6 or not these are system delivery numbers, given the

7 concern that certain amount of treatment capacity is

8 necessary for in-plant usage?

9 A. I'm not sure we actually completely

10 resolved it. We did talk a little bit about the

11 recycled water and chemical mixing water, which of

12 course, goes back into the system.

13 Q. Your concern came from 43 -- your

14 DR43001 that showed well water total, that troubled

15 you with respect to this number shown there as system

16 delivery; is that correct?

17 A. Yes, that's correct.

18 Q. But the system delivery number on that

19 does, in fact, match the number on 135, right?

20 A. Yes, it does.

21 Q. And you did recall, did you not, after

22 your testimony on Friday, that they do, in fact,

23 recycle water for in-plant usage?

24 A. Yes, there is water recycled there, not

25 100 percent though.

1 Q. And that recycled water also has to go
2 through the treatment capacity to be used, correct?

3 A. It does go back to the head of the
4 plant, yes.

5 Q. So it eats up system capacity?

6 A. Yes.

7 Q. So does that give you any more
8 confidence that these numbers on 135 are, in fact,
9 likely to be system delivery numbers as Mr. Kartmann
10 testified insomuch as the July 16 numbers seem to
11 match your DR? Well, let me put it this way. Do you
12 have any reason to doubt, at this point, that those
13 are, in fact, system delivery numbers?

14 A. If the present -- well, I think it's
15 close. I'll say that.

16 Q. So what calculation would you think
17 would be appropriate, given what has materialized now
18 with this 16 MGD average day and the peak days of --
19 creeping up on 23 MGD when you use in-plant usage,
20 what design criteria would you apply today? What
21 ratio? Do you think the 1.6 would be appropriate
22 today if it was being done today or would you still
23 insist on the 1.45?

24 A. I would have to do a calculation on the
25 twenty-two and a half to 16. Is that what you're

1 really asking about?

2 Q. Yes, yes.

3 A. Okay. I don't have a calculator here.

4 I can do it by hand, if you want me to.

5 Q. No, that's all right. We can move on

6 to something else. Let me ask you this, then. If

7 these numbers are, in fact, being delivered to the

8 system, and I'm looking now at Exhibit 135, and

9 they're all -- there's four days in July and August

10 that exceeded 22 MGD, and now there is -- we

11 established, also, system capacity of the available

12 23 that's necessary for in-plant usage, so we're very

13 close to 23, if not over, a little under, a little

14 over.

15 A. Certainly very close, I wouldn't argue

16 with that.

17 Q. Using responsible engineering, which

18 certainly you're competent to address with your years

19 of experience in the water and sewer industry, would

20 it not be responsible now for a company in that

21 situation to be planning and building plants, you're

22 pumping your max days?

23 A. In most cases, yes, with any kind of a

24 growth, yes, absolutely.

25 Q. How would they know how much to build?

1 A. It depends on the units you're
2 building. As I said before, you can't just build for
3 what you need in the next year or some short time
4 frame like that. In a case like this, you may need
5 to drill another well, maybe it would need to be one
6 well. That would have enough capacity to take you in
7 some point in the future. At some point, you might
8 need the next clarifier, the next high service pump.
9 You need to construct those units in -- they're
10 appropriately sized for your plant.

11 Q. Okay. We've got -- I want to get back
12 to economies of scale, but let's stay on what you're
13 talking here, the number of units. We've got now on
14 average day usage of 16 MGD plus a little more for
15 in-plant usage, correct?

16 A. Yes, the recycled water, yes.

17 Q. And we've got max days of twenty-two
18 and a half close to 23 plus some in-plant usage?

19 A. Yes.

20 Q. That's the reality we're dealing with
21 today without Premium Pork, correct?

22 A. Yes.

23 Q. Okay. All right. Now, you gave us two
24 clarifiers. What's the capacity of a clarifier,
25 these clarifiers, rated capacity?

1 A. Well, I believe Mr. Kartmann testified
2 from, and I'm not sure where the number came from, a
3 sales brochure or something he says he got from the
4 manufacture. I forgot now, 11.5, 11.4 --
5 Q. Okay.
6 A. -- million gallons.
7 Q. Let's call it 11.5. Now, you've
8 disallowed one of those clarifiers, so we have to
9 assume that there are only two --
10 A. Yes.
11 Q. -- used and we have to assume that the
12 other one doesn't exist. Now, did you hear Mr.
13 Kartmann testify on Friday that one of those
14 clarifiers has, in fact, gone down on occasion?
15 A. Yes, I did.
16 Q. All right. Then does that not leave
17 you with only 11.5 MGD of clarification rated
18 capacity? You can't -- can you even meet average
19 day?
20 A. It would be pushing on average day, I
21 agree with that.
22 Q. What would you do on max day?
23 A. If one went down on emergency, it would
24 have to be repaired as quickly as possible.
25 Q. But you could not meet max day?

1 A. You couldn't take it down for more
2 than, say, some time measured in hours. You couldn't
3 go down for a week.

4 Q. Now, in fact, when that one clarifier
5 went down, we don't know the specific date, but I
6 think we can reasonably assume that it was on average
7 day, that's an average assumption, could have been
8 higher. If it was on average day, they would, in
9 fact, have gone to the third clarify, would they not?

10 A. Yes, or more accurately, probably all
11 three of them would have been running anyway, so the
12 other two would just pick up the load is what really
13 would have happened.

14 Q. And the only other thing they could do
15 is if they wanted to literally comply with the
16 ramifications of the Commission's disallowance, which
17 of course would not happen, this is hypothetical, if
18 they shut off that third clarifier, they would have
19 to push the 11.5 rated -- MGD rated clarifier up to
20 the 16 plus, right?

21 A. Yes, that's correct.

22 Q. All right. Now, is pushing a good
23 idea?

24 A. Well, it's not a good idea. That's the
25 sort of thing you do if you have to do it, and that's

1 what's been done with the old plant. That's where we
2 talked about exceeding the speed limit, and you don't
3 want to do it, it can be done.

4 Q. I was chaffing at your metaphor
5 exceeding the speed limit. As one gear head to
6 another, isn't it more like exceeding the red line,
7 you're getting into the situation where bad things
8 can happen when you exceed rated capacity?

9 A. Well, you could look at it that way.

10 Q. It's not just a polite indiscretion,
11 it's dangerous, that's the whole point of a rated
12 capacity, is it not?

13 A. Well, it could be. It's --

14 Q. Now, let's go to the wells then. There
15 are seven vertical wells out there, two of which have
16 been disallowed?

17 A. Yes.

18 Q. What's the capacity of the remaining
19 five that are allowed?

20 A. I could --

21 Q. I've got 18.7.

22 A. Yeah, I could put the math together.
23 Let's see. The five of them --

24 Q. Eighteen, actually.

25 A. Eighteen to 19.

1 Q. Okay.

2 A. And the horizontal well itself is, I

3 believe, 18, maybe a little bit more.

4 Q. All right. Now, if the -- the

5 horizontal well is a three-well system that goes into

6 one collector unit, correct?

7 A. Yes -- it's -- well, it's not really

8 three wells, it's a facility. It's basically a big

9 hole, actually there are seven screens like you would

10 see in a well.

11 Q. But it's one big collector facility.

12 A. It's one big collector with three pumps

13 in it.

14 Q. All right. Now, did you hear Mr.

15 Kartmann testify on Friday that that collector, in

16 fact, failed?

17 A. I heard him say that, I don't know what

18 happened, unless it was something, like, electrical.

19 I don't really see that facility totally going down.

20 Q. But he did tell you under oath that it

21 went down?

22 A. He said that, yes.

23 Q. All right. Now, when it went down,

24 then you lose all of those well capacities associated

25 with that collector, correct?

1 A. If all three of the pumps go down, then
2 you would be losing it.

3 Q. Well, if the collector goes down, you
4 can't use the pumps.

5 A. Well, there again, I'm not sure what
6 you mean, and I'm not doubting his testimony, but I
7 don't know what he was referring to. The collector
8 is basically a hole in the ground that fills with
9 water and the mechanical equipment is the three pumps
10 that pump out of it.

11 Q. And if you've got to take it down, it
12 is out of service.

13 A. If you have to take it down, but there
14 again, I don't know what the reason was.

15 Q. When that happens, and it did happen
16 since we have testimony in the record to that effect,
17 now you're stuck with just the vertical wells, right?

18 A. Well, that would be true.

19 Q. All right. Now, if you only have five
20 vertical wells and the other two that have been
21 disallowed hadn't been billed, you would have 18 MGD,
22 right?

23 A. Yes.

24 Q. You might be able to meet average day,
25 but you sure couldn't meet peak day, could you?

1 A. You wouldn't be able to meet a peak
2 day, if that really happened.

3 Q. You can't push them, can you? You can
4 push a clarifier, but you can't push a well pump.

5 A. In my characterization, that's top
6 speed.

7 Q. All right. So in that situation, now
8 we don't know in what situation that happened, but is
9 it not a fact that the other two wells, vertical
10 wells, that have been disallowed were being used?

11 A. If that really happened, the company
12 may have actually used them and needed them.

13 Q. And they would have been critical to
14 meet max day, correct?

15 A. Yes, without some kind of usage
16 restrictions.

17 Q. Now, this economy of scale thing when
18 you're building these things, there are several
19 ramifications of that. Ms. O'Neill gave a very
20 interesting characterization. She said by building
21 things earlier, you don't have any of the increased
22 construction costs associated with building them
23 later, and I think she was talking about inflation,
24 and --

25 A. That's the way I took it, yes.

1 Q. So that's true, you do avoid that by
2 building them earlier, correct?

3 A. Yes, you would.

4 Q. And do you not also avoid the costs
5 associated with move-in, move-out, repermitting,
6 working around existing facilities that have to be
7 operating while they're working. You avoid all of
8 that, do you not?

9 A. Yeah, that's true.

10 Q. Let me read some -- a statement that
11 you made in your direct testimony in the last case
12 and I'll ask you if you still agree with it. It's on
13 Page 3, Lines 7 through 13. You were talking about
14 St. Joe and Mexico. You said since these facilities
15 and/or their components are in need of replacement or
16 refurbishment now, it is also an opportune time to
17 increase capacity. The reason for this is that I
18 would expect the incremental cost to increase
19 capacity now while repairs, replacement, and
20 reconstruction are being done will likely be less
21 than the total cost of undertaking improvements for
22 today's needs and then undertaking another expansion
23 project within a few years. Do you still stand by
24 that?

25 A. I still stand by that. That was in the

1 context of some work needing to be done anyway.

2 Q. You also went on record, I think, on --

3 in DR114, your answer to DR114, you have this

4 sentence in there. Whereas in a large system with

5 multiple component units can be designed with a

6 reasonable number of spare units for greater

7 reliability. Do you believe that that's an

8 appropriate engineering undertaking to have spare

9 units for greater reliability?

10 A. Yes.

11 Q. All right. Now, let's get to Premium

12 Pork. Mr. Kartmann testified that they're going to

13 need 2.7 MGD, correct?

14 A. Yes.

15 Q. All right. That's on top of the max

16 day usage that is shown on Exhibit 135 because their

17 2.7 MGD is not going to be temperature or weather

18 sensitive. It's going to be constant, right?

19 A. Probably so.

20 Q. So we're over the rated capacity at

21 that point of the plant?

22 A. Over the 23 you mean?

23 Q. Right.

24 A. Yes, that's correct.

25 Q. So at that point, I think it's been

1 said several times that you would agree that this
2 disallowance should die a natural death at that
3 point.

4 A. Yes.

5 Q. All right. Now, let me ask you this
6 though. Would it be responsible for the water
7 company if they had only built a 23 MGD plant, would
8 it have been responsible for them to entertain
9 discussions with these pork folks telling them that
10 they had capacity available to serve them?

11 A. Well, yes, I think the company could
12 have done that. The answer would be we can have the
13 capacity ready for you, and by that, meaning the
14 company would have been in a position to go ahead
15 with whatever another well or a couple of wells and
16 to do the work that needs to be done and take
17 whatever it takes, about a year, to get that
18 construction.

19 Q. So this may beyond your expertise, but
20 you think that would have any impact on the
21 discussions with these pork folks as being inclined
22 or otherwise to locate in St. Joe, the availability
23 of that capacity already there?

24 A. Well, that I don't know the answer to,
25 and -- but I will admit that's a good point, whether

1 the water company can say yes, we have it versus yes,
2 we can have it available, and maybe that's worth
3 something, I don't know what it's worth. Again, I
4 take the position that the company can go ahead with
5 the appropriate construction and have it ready to go
6 when Premium Pork needs it.

7 Q. Let's move on to Joplin, if you will.
8 The company's concern here is that the implications
9 of this disallowance, if not reversed by this
10 Commission, place it in an impossible position in
11 Joplin to plant. Can you understand how the company
12 could feel it is in that position?

13 A. I can understand.

14 Q. All right. What in your -- are you
15 also aware of the fact, I believe in your testimony
16 when you talked about the increased water needs in
17 Joplin, that they could address them incrementally
18 with additional wells. Wasn't your testimony?

19 A. I did talk about that, that's what the
20 company has been doing in recent times in Joplin.

21 Q. Now, are you aware of the fact that
22 there are published concerns in Joplin about the
23 water table problem there?

24 A. Yes, I am.

25 Q. Have you been involved with -- in

1 discussions with both the company personnel and
2 perhaps other people in Joplin about the need to
3 entertain other solutions to water other than wells?

4 A. Well, really just with the company. I
5 don't believe I've talked to other parties, but I am
6 aware of it.

7 Q. But you have no reason to disbelieve
8 the concerns -- I've got studies, I don't want to
9 burden the evidence with, you have no reason to
10 disbelieve that there are ground water concerns in
11 Joplin --

12 A. I have no disputes with the genuineness
13 of that concern.

14 Q. So now the company is in a situation
15 now where it's probably going to have to go to
16 surface water, it's going to have to go to a river.

17 A. Yes, in some fashion.

18 Q. Now, that means, then, necessarily
19 larger increments, does it not, other than single
20 well, additional well. It's going to require a
21 treatment facility of a somewhat greater capacity
22 than the immediate needs of the area?

23 A. Probably so, yes.

24 Q. And that's going to be economically,
25 and from an engineering point of view, sensible and

1 feasible to oversize something to some degree,
2 correct?

3 A. Probably so, yes.

4 Q. Okay. Now, how did they decide -- how
5 do they not get caught like they got caught here?
6 How do they not get caught with an after-the-fact
7 disallowance of having built some plant down there?

8 A. Well, again, as I said before, it's
9 case by case. It's -- it depends on the growth, and
10 I know Joplin is -- it's growing, not a fast growth,
11 but it is growing.

12 You may need to take into consideration
13 the needs outside of Joplin. Such a facility might
14 not serve just Joplin, there could be other
15 utilities. I'm saying this because knowing the
16 specific situation there are some wild cards in
17 what's going to get built and who's going to
18 participate. It may be other utilities besides the
19 company you represent.

20 But I think the answer to your question
21 is you just have to take a reasonable look at the
22 growth and the units, the facilities that are going
23 to be built, and I don't really know how to say it
24 any better than that, other than it's a case by case.
25 I wish I could give you some standard, but I'm really

1 not sure I can.

2 Q. All right. So if the Commission does
3 not take it upon itself to clarify what rules are now
4 in the state of Missouri, we don't know what to build
5 down there safely to avoid a disallowance, do we?

6 A. Well, maybe my best answer would be
7 make a plan and phase in what you can as needed.
8 That's really the position I'm taking in St. Joseph.

9 Q. So that would be the sensible thing to
10 do to build the smallest amount possible and fooey on
11 economies of scale, wouldn't that be the sensible
12 thing to do from the company's point of view?

13 A. You may need to show what the economy
14 is. Is it economical to go ahead and build it and
15 make the customers pay more rate of return or is it
16 better to save that money and spend it on maybe a
17 little bit increased construction costs later. It's
18 an economic study, and I still think it's case by
19 case.

20 Q. Okay. Just two more questions for you.
21 I think I wrote this quote down when you were
22 answering Commissioner Clayton's questions. You did
23 say this, I believe, did you not, it is important to
24 have it available, meaning capacity, online when you
25 need it?

1 A. When you need it, it needs to be there.
2 Yes, no doubt about it.

3 Q. You can't build it after you're already
4 needing it. You need to have it there when you need
5 it.

6 A. You don't want to be behind the 8-ball.
7 That might have been mentioned, too, but you can't
8 say we have this need today, we better get started on
9 construction. No, you can't do it that way.

10 Q. And with the present experience of the
11 max days that we're experiencing and the average day
12 experience, it would be prudent now for the company
13 to be building these facilities if they had not
14 already been built. Is that true?

15 A. Okay. If -- you're talking about St.
16 Joseph?

17 Q. Yeah, I'm sorry.

18 A. Okay. Considering growth, yes.

19 Q. Yes.

20 A. Now that you have customers --
21 additional customers, and when you really are looking
22 at increased demand, yes, you would need to be
23 planning for it.

24 Q. Okay. Just one last question for you,
25 then, now. If and when, and we all agree that it's

1 going to be when, this plant will be allowed to be in
2 rate base, when it's allowed to be in rate base, do
3 we agree that right now its status is plant held for
4 future use?

5 A. Well, that's my opinion, yes. Today,
6 for this rate case, it's still held for future use.

7 Q. So if it goes into rate base, it will
8 go in as the amount that was disallowed before, as
9 Ms. O'Neill said, without any increase. It will go
10 in as two million, two seventy-one, seven fifty-six.

11 A. That would be the number. There might
12 be some depreciation. Well, I don't even know,
13 forget I said that, I'm not sure.

14 Q. That's my point, there would be
15 depreciation, wouldn't there?

16 A. Yes, the company would be losing some
17 depreciation, but that would be the capital dollars
18 that goes on the books associated with that plant.

19 Q. Because the company hasn't been getting
20 any depreciation in rates either, correct?

21 A. That's true.

22 Q. That's all I have.

23 MR. CIOTTONE: Thank you, your Honor.
24 If I failed to offer any exhibits, 135 and 136, I
25 think they're both offered.

1 JUDGE THOMPSON: They've both been
2 offered and received. Thank you, Mr. Ciottone.
3 We're exactly at the point where we need to take a
4 break for the Reporter, so we will take five minutes
5 at this time.

6 (A RECESS WAS HAD.)

7 JUDGE THOMPSON: Mr. Krueger.

8 MR. KRUEGER: Thank you, your Honor.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MR. KRUEGER:

11 Q. Good morning, Mr. Merciel.

12 A. Good morning, Mr. Krueger.

13 Q. Mr. Ciottone asked you some questions
14 about your response to DR115. Do you recall those?

15 A. Yes, I do.

16 Q. I believe he quoted you as saying, at
17 some point, if there had not been growth, I would not
18 have done that. Do you recall him asking you about
19 that?

20 A. Yes.

21 Q. Do you recall saying that?

22 A. Yes.

23 Q. I don't know when it was said, but you
24 did say that in this hearing?

25 A. Well, I believe I -- let's see. Well,

1 I'm not sure when I -- I said it somewhere. It might
2 have been in the data request when I said that.

3 Q. Okay. Now, at the time that you filed
4 your testimony in the previous case, did you look at
5 the projected needs of the plant at that time?

6 A. Yes, I did.

7 Q. And the growth in the St. Joseph area
8 at that time?

9 A. Yes.

10 Q. And did you base your recommendations
11 then on the base -- on the information that was
12 available to you at the time you filed the testimony?

13 A. Yes, I did.

14 Q. And likewise, in this case?

15 A. Yes.

16 Q. In this case --

17 A. I'm sorry, go ahead.

18 Q. In this case, you looked at the demand
19 at the St. Joseph plant?

20 A. Right, based on data that's available.

21 Q. And the projected growth at the time
22 that you prepared your testimony?

23 A. Yes.

24 Q. And made your recommendation on that
25 basis?

1 A. Yes, that's correct.

2 Q. Now, did you make your recommendation
3 in either of these cases based on a retrospective
4 look at what growth had occurred?

5 A. Um --

6 Q. I believe Mr. Ciottone asked you about
7 whether you looked back and said, well, there hasn't
8 been any growth, so obviously it wasn't needed or
9 something like that.

10 A. Well, yes, I did. I did look at what
11 happened. As I said, it's based on my observations
12 of St. Joseph. For a number of years, the water
13 usage really hasn't increased, and the town is not a
14 growing community.

15 The fact is, they had lost another
16 industrial customer, which in itself is an issue in
17 the health of St. Joseph, but it just appeared to me
18 that it's not, the water usage is not increasing.
19 That's not to say you shouldn't make a plan for come
20 today when water usage does increase in St. Joseph,
21 but at the time, I didn't believe that actually
22 constructing for the growth was necessary.

23 Q. Now, you mentioned that they lost a
24 customer, who would that be?

25 A. Well, I don't remember. I've heard the

1 name and I can't remember now.

2 Q. Would it be Frisky's?

3 A. That sounds right, I believe that's

4 right.

5 Q. Is that a substantial customer or was

6 that a substantial customer?

7 A. If I recall, it was. I couldn't tell

8 you their usage. It might have been something on the

9 order of a million gallons a day.

10 Q. Okay. Now, your adjustment in this

11 case was guided by your assessment of the growth in

12 the St. Joseph area?

13 A. Yes.

14 Q. And your assessment of the capacity of

15 the new plant that was necessary to meet the needs

16 was based upon that also?

17 A. Yes, uh-huh.

18 Q. And was your adjustment guided by your

19 intuition regarding how the Commission might rule on

20 the case?

21 A. Well, I guess the answer is yes. I

22 just step back and said is this really what's

23 necessary for St. Joseph, and I felt like I was able

24 to identify some parts of the plant that could have

25 been faced in a later time. I felt like I was

1 offering something that the Commission could approve,
2 if they so desired.

3 Q. And did you base your adjustment in a
4 way that you believe was appropriate for addressing
5 that excess capacity issue?

6 A. I believe then, I believe now, that
7 this was appropriate.

8 Q. Is the Joplin area presently what you
9 would consider a growing area or have you studied
10 that at all?

11 A. Yeah, I've looked at the water usage.
12 It does appear to be a growing area, not only with
13 water usage but with customers. There are -- they do
14 have a, you know, there's growing customer numbers,
15 some of them are industrial customers. There's an
16 industrial park that recently developed, so yes, I
17 consider it a growing community.

18 Q. Would you characterize that growth as
19 significant?

20 A. Significant, not what you might call a
21 hot area or really, really fast growth, but
22 significant enough to where you need to address it in
23 your water plant.

24 Q. How does it compare -- how does the
25 growth in Joplin compare with the growth in the St.

1 Joseph area?

2 A. Well, my answer to that is Joplin has
3 growth and St. Joseph does not.

4 Q. Okay.

5 A. It might be one way to say it.

6 Q. Now, you've seen Exhibit 135 and you
7 heard Mr. Kartmann's testimony about that?

8 A. Yes.

9 Q. Have you been able to determine from
10 that exhibit whether that data includes water
11 required for internal use in the plant?

12 A. Well, we -- yeah, I think what we --
13 about the only variable we could identify was
14 recycled water, and I guess I'm still thinking about
15 it a little bit, but you have measured water from
16 each well facility, I should say each pump in the
17 well field. You can add that up, and then there's
18 another meter coming into the plant, that's water
19 from the well field, and it should be pretty much the
20 same.

21 You have a little bit of meter and
22 accuracy, but that's water pump -- that's well water
23 coming into the plant, and that appears in some of
24 the numbers here. After you treat the water, there
25 is some waste, mostly backwash water, a little bit of

1 low-down from the clarifiers as you take the sludge
2 out of the clarifiers, there's some water that goes
3 with it, and as you backwash your sand filters, that
4 water all goes to, yet, another clarifier, and solids
5 are settled out and water is recycled back to the
6 head of the treatment plant, and it's -- if you think
7 about it, that water it probably neater, but it
8 wouldn't be included in the raw water meter, so the
9 flow through the plant probably could be a little bit
10 more than what these numbers are reflecting.

11 Q. In your testimony, Schedule 1, you
12 listed in the right-hand column, system D-E-L. I
13 assume that's delivery?

14 A. Yes, system delivery.

15 Q. And what does system delivery mean?

16 A. That's what you're pumping out to the
17 system. That's what the high service pumps pump out
18 to the distribution system, and there's a meter for
19 that in the treatment plant, too.

20 Q. So are you able to form a conclusion as
21 to whether the system -- whether the plant has ever
22 exceeded a demand, including for internal use, in
23 excess of 23 MGD?

24 A. Not knowing the quantity of the
25 recycled water, I would say not conclusively.

1 Q. Okay.

2 A. I believe Mr. Ciottone asked me and I
3 do agree, it's -- it's close. It's right there.

4 Q. Did Mr. Kartmann testify as to what the
5 maximum use was, including internal use, during 2003?
6 Did you hear any testimony on that?

7 A. Not that I recall. I don't remember
8 him saying a number.

9 Q. Okay. I'm going to ask you to assume
10 that the treatment plant had been built as you
11 recommended with unit size that you recommended. I'm
12 going ask you to also assume that sometime on a max
13 day in 2003 the water -- the treatment plant needed
14 to produce water including water for internal use in
15 excess of 23 MGD.

16 A. Okay.

17 Q. Say 23.5 MGD. If that were the case,
18 would the well pumps that you have -- that you
19 recommended have been sufficient to meet the demand
20 on the max day?

21 A. Yes.

22 Q. Would the distributive pumps that you
23 recommended had been sufficient to meet the demand on
24 that day?

25 A. Yes, let me back up. I would say the

1 well pumps, even with another probably two to maybe
2 three pumps out of service, would still be able to
3 meet the max day. Distributive pumps, with one out
4 of service, would still be able to meet that max day,
5 the 23.

6 Q. Thank you. Now, with regard to the
7 clarifiers, I'm asking you still to take the same
8 assumptions.

9 A. Yes, uh-huh.

10 Q. Would the clarifiers have been
11 overloaded if the plant had been constructed with
12 only two clarifiers, as you recommended, and if both
13 clarifiers were in service on that max day?

14 A. With both clarifiers in service, by the
15 numbers that I used when I was doing my analysis,
16 they would not be. I will say the number Mr.
17 Kartmann had gotten, and I never seen that number
18 myself before, they may be slightly over capacity,
19 meaning 11.4, that would be -- that would be -- well,
20 actually that would be right at 23, I guess, so they
21 would be right at capacity. By my calculation, there
22 would be just a tiny bit of excess capacity with two
23 clarifiers at 23.

24 Q. I'm looking now at your Schedule 2-3,
25 which was attached to your testimony, specifically

1 the part there at the bottom of the page with regard
2 to clarifiers. Do you have that in front of you?

3 A. I will in just a second here. It's
4 Page 2-3?

5 Q. Page 2-3.

6 A. Okay. I've got it.

7 Q. Am I correct to understand from that
8 that your design criteria for the clarifiers are that
9 they provide a minimum detention time of 90 minutes
10 and a maximum loading of one gallon per minute per
11 square foot?

12 A. Yes, and that was a number I had seen
13 in a design criteria, and I'm sorry, I don't remember
14 where it was. I believe it was something the company
15 filed.

16 Q. Would those criteria have been met on
17 those max flow days if both clarifiers were in
18 service?

19 A. Yes.

20 Q. What if only one of the clarifiers was
21 in service on such a max day?

22 A. It would -- on max day, it would exceed
23 the capacity, it would exceed what I call the speed
24 limit.

25 Q. Now, in that section of Schedule 2-3

1 that I'm referring to, under 23 MGD, it says one in
2 service, and in the right-hand column there it says
3 89 minutes detention; is that correct?

4 A. Yes.

5 Q. And that would be the detention time
6 that would be provided at 23 MGD?

7 A. Yes.

8 Q. With one clarifier in service?

9 A. Yes, uh-huh.

10 Q. And is that -- does that meet or very
11 nearly meet your criteria of 90 minutes?

12 A. It very nearly meets it, yes.

13 Q. Okay. And the surface loading of 1.85
14 GPM per square foot, then, would exceed the criteria
15 you mentioned?

16 A. Yes, in fact, I'd have to admit that
17 well exceeds the 90 minutes. I am not sure the
18 clarifier could actually do that.

19 Q. What's the consequence of overloading
20 the clarifier?

21 A. You can get -- well, maybe we should
22 explain on clarifier. These are sometimes called an
23 upflow clarifier. The way they work, you've already
24 mixed some chemicals into the water, and the water
25 comes into the center. There's a center column in

1 the clarifier, and the water goes at a very -- at the
2 low depth, the water goes out to the large area of
3 the clarifier, and the water flows up into some
4 troughs up around the surface.

5 While the water is flowing up, the
6 solids are settling at a faster rate than the water
7 flows up. If you're overloading the clarifiers you
8 may not get the settling velocity, so the particles
9 wouldn't settle out, they just carry on in the water
10 and they go out the troughs and onto your sand
11 filters.

12 The other thing that can happen, you --
13 as the solids settle, you have a sludge blanket at
14 the bottom of the clarifier. That's where you have
15 to remove those every so often, and if you get a lot
16 of -- too much flow, you could stir that up and it
17 would kind of stir up the solids.

18 Q. So if solids go out the clarifier and
19 to the filters, what becomes of them at that point?

20 A. Well, for the most part, the filters
21 would stop them, but you would have to backwash your
22 filters more often.

23 Q. Okay.

24 A. At best. I suppose you could get some
25 carry through in the filters. It would be poor

1 filter performance.

2 Q. Would the plant still be able to
3 actually produce and deliver to the system
4 twenty-three and a half MGD in that circumstance?

5 A. If that was happening, you may have to
6 slow down and stop it and get it corrected. You
7 might still be able to pump 23 million gallons out of
8 the clear well, that doesn't necessarily mean you're
9 not sending it to the system, but we're talking a
10 matter of a fairly short time, if you can't get your
11 plant performing.

12 Q. In your experience, is it common for
13 clarifiers to experience a breakdown?

14 A. Well, they certainly can. Mechanical
15 breakdowns can occur. I mentioned there's sludge at
16 the bottom of the clarifier. There are some scrapers
17 that are run by an electric motor that scrape the
18 sludge to the middle, and that's how you get the
19 solids out.

20 You could have a mechanical breakdown,
21 either the scraper structure could break or your
22 motor could burn out. That's something -- if
23 something breaks underwater, I've seen plants where
24 you might have a broken scraper and you might let it
25 go until you take it down, you know, at some later

1 time.

2 Motor burnout, obviously the scrapers

3 wouldn't work, so you would have to replace the

4 motor. These aren't huge motors, not like you

5 wouldn't have to bring one in with a crane. I

6 believe you could -- if you have you had a motor on

7 hand, you would be able to replace it in a matter of

8 hours.

9 Q. Are there other moving parts that could

10 break down in the clarifier?

11 A. No, that's just -- the scraper

12 mechanism is the only moving part.

13 Q. And you said that could be repaired in

14 a matter of hours, probably?

15 A. Well, in most cases, either it might be

16 a breakdown that you don't have to repair

17 immediately, or you would -- as I said, the motor,

18 you replace that in a matter of hours.

19 I guess there could be other things

20 that would bring you to a complete halt, but as I

21 say, I've seen broken parts, and you can continue to

22 operate it until you do have time to take it down.

23 Now, if you do break a scraper, you drain the water

24 and go down and do your repair, so that's where you

25 would have to take it down for maybe days.

1 Q. But such breakdowns are rare or
2 infrequent?

3 A. Relatively infrequent. Not to say it
4 can't happen at any given time and they do happen.

5 Q. Are clarifiers sometimes taken out of
6 service for routine maintenance?

7 A. That is a regular occurrence, and
8 usually you plan those. You would do that either in
9 the Wintertime or Fall or Spring. If they're steel,
10 you have to paint them, or if you're scraper
11 structure is steel, you paint that; broken parts you
12 can drain it and get to it, clean things out.

13 Q. This is done at times when peak flow is
14 not expected?

15 A. Right, for the most part, you plan for
16 that, and you do it on your lower flow days.

17 Q. Okay. Now, I want to talk about the
18 clear wells, and I'm still asking you to make those
19 assumptions that I asked to you make that the plant
20 had been constructed as you recommended, and we're
21 talking about a flow of perhaps twenty-three point --
22 demand of perhaps 23.5 MGD.

23 What would have been the consequence in
24 that case with regard to the clear wells, with regard
25 to the operation of the clear wells?

1 A. In my opinion, substantially no
2 consequence. Now, clear wells, you, you know, that's
3 not something that would break down. It's really
4 just a storage tank. It's there for -- just for your
5 contact time for water to sit in for a while.

6 Q. So it wouldn't have been necessary to
7 shut the plant down because of a problem with the
8 clear wells?

9 A. No, that really, I don't see that
10 happening.

11 Q. Is it sometimes necessary to remove a
12 clear well from service?

13 A. Yes, it could be. You may -- you might
14 get a little bit of settling, and you may need to
15 clean them out once in a while. Now these are
16 concrete, but if it's a steel tank, they would need
17 to be painted every so often, so for something like
18 that, you will need to take it down. You might need
19 to take it down just to drain it and send somebody in
20 just to inspect it. You probably do that every few
21 years.

22 Q. Every few years?

23 A. Yes.

24 Q. And that's ordinarily done at a time
25 when peak demand is not expected?

1 A. Yes.

2 Q. And you recommended the construction of
3 two clear wells?

4 A. Yes, because they have two clear wells
5 now, and I recommended two of a smaller size, and you
6 would have two just for that reason, when you do take
7 one down, then you still have another one you're
8 using.

9 Q. And the company's design and
10 construction involved two clear wells?

11 A. Yes, it did.

12 Q. Okay. When was this St. Joseph
13 treatment plant placed in service?

14 A. I believe it was in 2000. It was in
15 April, I believe it was in 2000.

16 Q. Do you believe it was proper or not
17 proper for the company to choose 2009 as its design
18 year?

19 A. I think that was proper for planning
20 purposes.

21 Q. Does that mean that the company should
22 have immediately constructed the plant to meet the
23 demand expected in 2009?

24 A. In my opinion, no.

25 Q. Why not?

1 A. Because you can phase in components as
2 they are needed, and I don't mean wait until, you
3 know, we talked about this, wait until you have the
4 -- have a certain demand and then construct after the
5 fact. You don't do that, but to plan your facility,
6 put it on paper and have the design in place, and
7 construct it in -- construct the parts you need for
8 the capacity you need today with the ability to add
9 additional units as they become necessary; meaning
10 wells, pumps, clarifier units, that sort of thing.

11 Q. Commissioner Murray asked you some
12 questions on Friday, I believe, about what I would
13 call the planning horizon. And in response to one of
14 her questions, this isn't an exact quote, but I think
15 you said something like if they expect to exceed 23
16 MGD in two years and it takes one year to plan and
17 construct facilities to meet that demand, it would be
18 reasonable to begin planning for it. Does that sound
19 --

20 A. Yes, I recall saying something like
21 that, yes.

22 Q. And you would agree with that
23 statement?

24 A. Yes.

25 Q. Is it inaccurate in any way?

1 A. I don't believe so.

2 Q. Okay. Now I want to ask you some

3 questions about how precise and accurate the company

4 needs to be in the phasing of its construction to

5 satisfy increasing demand. Is it your position that

6 when new demand or increases in demand are expected,

7 the company should build exactly the facilities

8 required to meet that demand and no more?

9 A. Well, that -- that's kind of an ideal.

10 If they can do that, that would be the most

11 economical for the customers. Now, you can't always

12 do that. You can't always build for exactly what you

13 need.

14 If it's a -- a clarifier unit, you have

15 your design on paper and the design for what you're

16 going to be operating with your plant, when you --

17 when you're exceeding your existing clarifiers, it's

18 time to build another new clarifier.

19 The entire capacity of that clarifier

20 may not be needed for maybe several years, five

21 years, maybe longer than that, but when you need that

22 unit, then you do the construction, you do the

23 planning and get it in service at the time that it's

24 needed.

25 Q. So then for a period of time, there

1 would be more capacity than is required to meet the
2 demand?

3 A. With the growing community, you're
4 almost always going to have some excess capacity.

5 Q. What factors would affect the
6 determination of what facilities should be
7 constructed at any time when demand is increased?
8 What are the principal things you take into account?

9 A. Well, your customer growth, your water
10 usage pattern, variables in the water usage pattern,
11 meaning hot summers, cooler summers, that can make a
12 difference, so it's not always just an exact straight
13 line, but you need to take that into consideration.

14 Other unusual events, like unusual
15 increases. St. Joe is a good example. With one
16 large industrial customer coming on, that's a
17 substantial event, and you may need to plan your
18 growth accordingly or plan your construction
19 accordingly.

20 You also plan for lead time, getting
21 permits, getting contractors lined up, maybe final
22 plans might be something you have on -- a plan on
23 paper, but somebody's going to need to work on the
24 project, maybe some of the components that were used
25 previous are no longer available, there are almost

1 always changes.

2 Anytime you do a construction project,
3 it's going to be a project that somebody has to work
4 on and spend some time and get some gray hairs over
5 and that sort of thing, and you have to take all that
6 time into consideration.

7 Q. Does the nature of the components that
8 you're adding affect your judgment of what capacity
9 you need to provide comparing, say, clarifier with
10 adding a clarifier with adding vertical wells?

11 A. Okay. If I understand your question
12 correctly, a clarifier has greater capacity than one
13 well or at least in this case. You know, a well -- a
14 well you're looking at about 4 million gallons a day.
15 If a clarifier has a capacity of -- or the types of
16 clarifiers they are using, if they have capacity of
17 whatever it is, 12 or 13 gallons per day, that's
18 obviously something different, but when you need your
19 next unit, it would need to go online, and the one
20 clarifier would give you more capacity than one well
21 unit would, if that answers your question.

22 Q. Would the planning horizon, then, be
23 different for a clarifier than it is for a vertical
24 well?

25 A. Well, I kind of see the planning

1 horizon -- I guess I don't see the planning horizon
2 quite that way. I see the planning horizon on how
3 far you're looking out, how far ahead are you putting
4 plans on paper to what you need. Having different
5 capacities, I suppose the different types of units
6 would be -- you would handle them differently.

7 Q. The construction scheduling, would that
8 vary for clarifier versus a vertical well?

9 A. If anything, I would say the clarifier
10 will take longer than a vertical well. Both would
11 need a substantial amount of lead time getting parts
12 and materials, so those are both construction
13 projects that will take a substantial amount of time
14 as opposed to maybe a distributive pump, that's not
15 so much of a big project.

16 It's a -- I mean, it's a big job for a
17 crew of people to work on, but that's something more
18 like setting a pump, doing some mechanical work, you
19 know, connecting the pipe lines and doing some
20 electrical work as opposed to ordering, you know,
21 some large units that need to be brought in by
22 several trucks and having a construction crew with
23 cranes and lots of construction equipment, so what
24 you're doing, you know, there are different types of
25 projects.

1 Q. I guess what I'm trying to get at is
2 how far into the future you would size a unit to meet
3 the demand for. Would that be different for a
4 clarifier than for a vertical well?

5 A. Yes, it could be.

6 Q. In what sense?

7 A. In that your -- well, in that your
8 clarifier would have a greater capacity. It will
9 take you farther into the future. You might ask
10 yourself do you need -- should we do one clarifier or
11 utilize smaller clarifiers, which may not be
12 practical on the side.

13 That's why -- I'm not sure if I'm
14 addressing your question or not, but your overall
15 plan, you would have a plan with what you're going to
16 construct. When you're phasing something in, you
17 know what you're going to build, it's just a matter
18 of when you do it, so you know, when we go through
19 these questions, when do we add the next clarifier,
20 we've already determined what the ultimate plan is
21 for this facility, and with that mind, the size
22 clarifiers we're talking about in St. Joseph, the
23 clarifiers, give you a lot more capacity than --
24 well, I should say the additional one clarifier is
25 more capacity than the addition of one additional

1 well, and yes, it takes you farther into the future.

2 Q. I think you mentioned that we already
3 know what the plan is for this facility, and that was
4 done prior to the construction of the plant; is that
5 correct?

6 A. Yes, that's correct.

7 Q. And your quarrel isn't with the
8 planning?

9 A. Correct.

10 Q. Okay. Now, there were also some
11 questions about the ability of the plant to meet the
12 requirements of the Premium Pork plant, and I'd ask
13 you to assume, as previously, that the St. Joseph
14 plant had been constructed in accordance with your
15 recommendations and that the maximum day in 2003 was
16 as shown on Exhibit 135, and that in the Summer of
17 2003, the company began negotiating with Premium Pork
18 about its plan to locate a new plant in St. Joseph.
19 Are you following my assumptions?

20 A. Yes.

21 Q. Okay. In those circumstances, when
22 would you recommend that the company begin planning
23 for an expansion of its plant?

24 A. Certainly by the time that it's certain
25 that Premium Pork, or whoever the customer is, is

1 going to actually move there and begin water usage.
2 The company would need to look at the time frame, and
3 if it's two years in the future, it would be time,
4 almost immediately, to line up contractors and get
5 things going on something like a clarifier or an
6 additional well.

7 Q. Do you have an opinion on how long it
8 would take to complete preparation of plans for such
9 an expansion?

10 A. I can't tell you exact, but it is a
11 construction project, it could be a year.

12 Q. Do you have an opinion on how long it
13 would take to complete construction of such
14 facilities?

15 A. Oh, I thought you meant planning and
16 the whole thing. I think you could probably do in a
17 year. Construction itself is -- that could be, I
18 don't know, four months, six months of that.

19 There may be permitting that -- there
20 may not since the plant has already been, you know,
21 approved from Department of Natural Resources, could
22 be local permitting to do a construction project.

23 Bidding, you need to bid, send bids,
24 and have contractors bid on them. I'm not sure how
25 long it takes, we're probably taking months, and for

1 contractor to schedule it.

2 Q. So if the final decision on the Premium
3 Pork plant was made on, say, October 1st of 2003,
4 plans could be completed and construction completed
5 by a year from then, that is 2004?

6 A. About, approximately.

7 Q. And then that would be sufficient to
8 serve the needs of the plant if it doesn't begin
9 operation until 2005?

10 A. In my opinion, yes.

11 Q. If the plant had been constructed in
12 accordance with your recommendations, would those
13 facilities still be adequate to serve the needs of
14 the St. Joseph district as of the true-up date for
15 this case, which was November 30th?

16 A. In my opinion, yes.

17 MR. KRUEGER: That's all the questions
18 I have, your Honor.

19 JUDGE THOMPSON: Thank you, Mr.
20 Krueger. We will take the lunch recess now until
21 1:15.

22 (A RECESS WAS HAD.)

23 JUDGE THOMPSON: I believe Ms. Bolin is
24 up, and look at that, you're already up there in the
25 witness chair. You're as eager to finish as the rest

1 of us.

2 THE WITNESS: Oh, yes.

3 JUDGE THOMPSON: I will remind you, Ms.

4 Bolin, that you are still under oath.

5 MS. O'NEILL: And your Honor, I would

6 tender Ms. Bolin for cross-examination and questions

7 from the bench.

8 JUDGE THOMPSON: Thank you.

9 Commissioner Murray.

10 COMMISSIONER MURRAY: Thank you.

11 QUESTIONS BY COMMISSIONER MURRAY:

12 Q. I don't have much, Ms. Bolin. I just

13 wanted to ask you if you -- do you ever recommend

14 that any portion of new plant be included in rate

15 base before it is actually necessary, what you

16 consider necessary to provide current service?

17 A. I don't believe I ever have recommended

18 that.

19 Q. Okay. And I don't think I have any

20 other questions for you.

21 COMMISSIONER MURRAY: Thank you.

22 JUDGE THOMPSON: Thank you,

23 Commissioner. Mr. Krueger.

24 MR. KRUEGER: No questions, your Honor.

25 JUDGE THOMPSON: Mr. Ciottone.

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. CIOTTONE:

3 Q. Good afternoon, Ms. Bolin.

4 A. Good afternoon.

5 Q. All right. So currently necessary,

6 quotes in your -- means being used for the present

7 max day. Is that what you mean?

8 A. Being necessary to meet present max

9 day.

10 Q. Okay. Is that different -- is it

11 different -- is being necessary different than being

12 used?

13 A. The company is using some of them, but

14 not all of it is necessary.

15 Q. So necessary is a smaller criteria --

16 criterium than being used?

17 A. It should not be. What should be used

18 should be necessary.

19 Q. Okay. So -- let's say hypothetically

20 that we have a 23 million gallon a day plant. Okay.

21 With everything running. Let's say that we're now

22 starting to exceed that 23 million gallon a day, say

23 we're starting to produce having max days of 24

24 million gallons a day. Right?

25 A. Okay.

1 Q. Okay. Would you agree that it would be
2 time to add some plant?

3 A. I'm not an engineer, but from looking
4 at that data, I would think the company would need to
5 start looking at expanding it.

6 Q. So if the company expanded the plant to
7 24 million gallons a day, since they were producing
8 -- since they had 24 million gallon a day demands,
9 that would be okay?

10 A. Everything else -- I mean, you would
11 have to look at other data, too, to determine that.

12 Q. But if they built one that could
13 produce 25 million gallons day, you would be
14 recommending a disallowance?

15 A. I would have to look at other factors,
16 there may be other factors to take into consideration
17 and it may not be disallowed.

18 Q. What factors would permit you to not
19 disallow plant that exceeds the amount of plant
20 necessary for the provision of service to current
21 customers?

22 A. It would just depend on if the plant --
23 if you could build a plant -- if you could only build
24 the plant at 24, but you built it for 25, but you
25 couldn't build it for 24, like some of the wells,

1 from what I've heard testimony on, they're capable of
2 producing more than just one million gallon, other
3 factors like that, growth.

4 Q. Is it fair to say that you are
5 essentially enunciating what you believe to be the
6 appropriate accounting principal, and you're not an
7 engineer and are not that concerned about plant?

8 A. I'm not an engineer, that's correct.

9 Q. That's all I have for, Ms. Bolin.

10 JUDGE THOMPSON: Thank you, Mr.
11 Ciottone. Ms. O'Neill.

12 MS. O'NEILL: Thank you.

13 REDIRECT EXAMINATION

14 QUESTIONS BY MS. O'NEILL:

15 Q. Hi, Ms. Bolin.

16 A. Hello.

17 Q. When you're looking at those factors
18 regarding what the appropriate size is for the plant
19 to provide service, is one of the things that you're
20 looking at is the size of the component that may be
21 added to provide that additional service?

22 A. That's correct.

23 Q. So if the current -- the need was going
24 to be, at the time that the project was completed,
25 twenty-four and a half million gallons, but the

1 equipment that they had to put in was sized for 25
2 million, that might be a factor that might say you
3 wouldn't disallow the 25?

4 A. Yes, that's correct.

5 Q. Okay. And one of the things that you
6 would consider would be things like whether or not
7 there's a recent history and projected growth in the
8 area where the expansion is being proposed?

9 A. Growth would be something you would
10 look at.

11 Q. And in the St. Joe area, based on the
12 data that you've looked at, was there growth that
13 would change the recommendation from the 23 million
14 gallons per day maximum?

15 A. There was nothing -- I didn't see any
16 new growth that would change my -- change the 23
17 million.

18 Q. The usage was pretty constant from the
19 last rate case to this rate case?

20 A. Yes, it was.

21 MS. O'NEILL: Thank you. No further
22 questions.

23 JUDGE THOMPSON: Thank you, Ms.
24 O'Neill. You may step down, Ms. Bolin.

25 I wonder if the parties can tell me

1 what has happened with the weather normalization and
2 fuel power and chemicals issues? Those are settled;
3 is that correct? Okay. Great. Then I think our
4 next witness would be either Mr. Jenkins or Mr.
5 Grubb.

6 MR. COOPER: Mr. Jenkins, your Honor.

7 JUDGE THOMPSON: Very well.

8 MR. COOPER: Your Honor, I believe we
9 need Mr. Schwarz.

10 JUDGE THOMPSON: Why don't we take a
11 five minute recess so that you can find whatever
12 lawyers you need.

13 JUDGE THOMPSON: Mr. Jenkins, I will
14 remind you that you are still under oath.

15 THE WITNESS: Yes, sir.

16 JUDGE THOMPSON: Mr. Cooper, I assume
17 you tender.

18 MR. COOPER: Yes, your Honor, we tender
19 Mr. Jenkins for cross on the acquisition adjustment
20 issue.

21 JUDGE THOMPSON: Thank you.
22 Commissioner Murray.

23 COMMISSIONER MURRAY: Thank you.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Jenkins.

1 A. Good afternoon.

2 Q. In your testimony, your rebuttal

3 testimony on Page 13, you have some figures regarding

4 the savings for -- resulting from the acquisitions;

5 is that right?

6 A. Yes.

7 Q. Can you tell me what is the difference

8 -- total difference in revenue requirement for this

9 issue between the parties?

10 A. Right now, the total difference in

11 revenue requirement is right at 1.1 million dollars.

12 Q. Okay. Now, as I understand your

13 testimony, you're saying that the ongoing expenses of

14 the company are lower as a result of the

15 acquisitions?

16 A. That is correct.

17 Q. And that that has the affect of

18 lowering the revenue requirement, correct?

19 A. That's correct.

20 Q. But that that revenue requirement is

21 lowered as a result of the company's investment;

22 i.e., the acquisition premium to acquire those

23 districts; is that right?

24 A. That's correct. The company's invested

25 approximately 34 million dollars to acquire those

1 systems in which about 7.8 million dollars of that
2 investment exceeds what is referred to as the
3 original cost, and that's the investment that is at
4 issue that we think that the company should be
5 entitled to recover and earn a return over an
6 amortization period on that investment.

7 Q. And have you ever been able to recover
8 an acquisition premium in Missouri?

9 A. No.

10 Q. In your surrebuttal testimony on Page
11 2, I believe it is, you're talking about a no
12 detriment standard, and I think you're saying that
13 the company believes that the no detriment standard
14 is sufficient to cap acquisition premium recovery?

15 A. That is correct.

16 Q. And I -- as I read that, I was trying
17 to see how this would work. If you had a limit on
18 the acquisition premium that was set by the no
19 detriment standard, but the rates would not be higher
20 than they would have been absent the transaction, how
21 would that standard apply in the case of a troubled
22 water company acquisition where no matter who
23 purchased the company, the rates would have to
24 increase to provide safe and adequate service.

25 Q. In terms of a troubled water company, I

1 think that the no detriment standard would also apply
2 not just strictly to a financial perspective, but in
3 terms of benefits to the -- in that example, stranded
4 customers that were having to live with water service
5 that, in my opinion, would be inadequate.

6 Q. But if the rates had to increase, would
7 that make the acquisition premium fail the no
8 detriment standard?

9 A. Not being an attorney, I've not thought
10 -- I have not been advised in terms of that specific
11 situation.

12 Q. Ms. Bolin had some testimony regarding
13 acquisition premiums, and on Page 14 of her direct
14 testimony, I don't know if you have that with you.

15 A. It's her direct testimony?

16 Q. Yes.

17 A. Yes, I do happen to have that.

18 Q. At Line 7, she states that allowing
19 recovery of acquisition adjustments in rates will not
20 provide sufficient incentive for the acquiring
21 utility to negotiate the best possible price for the
22 required utility, and then at the end of that
23 paragraph, she says if the acquisition adjustment is
24 allowed in rates, both the purchaser and the seller
25 of the property can benefit from inflating the rate

1 base, and I read those sentences because that appears
2 to me to be the catch-22 in the whole issue of
3 whether to allow recovery of acquisition premiums,
4 and do you have a response as to how the Commission
5 can allow recovery of acquisition premiums without
6 providing a disincentive to get the best price?

7 A. Yes. First of all, I don't agree with
8 the -- Ms. Bolin's statements, but I do understand
9 from a regulatory Commission's perspective how that
10 statement and somebody that needs to make decisions
11 on behalf of acquisition premiums, that it needs to
12 be responded to.

13 I think when you step back and take a
14 look at the acquisitions that we're making as a
15 company, we take a look at both what I'd call
16 traditional evaluation analysis, so when we look at
17 an acquisition, somebody like myself as a treasurer
18 of the company, and people that support that type of
19 evaluation underneath me, we take a look in terms of
20 just traditional cash flow analysis, what would the
21 business take in terms of what it should be priced on
22 in a public sector, what's kind of -- from what I'd
23 call an owner check, what's a reasonable price to pay
24 for the utility.

25 Then secondly, what we look at after we

1 get over those hurdles, we really focus on what I
2 refer to as type of synergies, savings that we can
3 drive into the business, can we run that business
4 more efficiently than the present owner.

5 We'll take a look at growth potential,
6 we'll also take a look at service improvements, and
7 those are more, you know, the first is macro, the
8 second is micro in terms of really what we can
9 specifically do on the business we're looking to
10 acquire.

11 All of that, we're taking into context
12 within terms of a regulatory Commission, and kind of
13 the thought process in terms of this no detriment
14 standard realizing that any price that we pay, we
15 need to be able to ultimately demonstrate that that
16 price, whether it's a premium, for example, from
17 original cost that we can operate that more -- that
18 facility more efficiently under the typical scenario
19 as opposed to a utility that was more troubled. So
20 we can operate it more efficiently, can drive the
21 savings, so the rate payers ultimately benefit from
22 having rates lower than what they would have been, in
23 other words, being able to share fixed costs.

24 Now, when we're doing that, we're doing
25 that in a dynamic marketplace in terms of what water

1 and sewer assets would be sold at, doing it in front
2 of a mayor, you know, for a governmental entity, city
3 council, these parties have outside consultants from
4 time to time, which we've encountered, that have the
5 belief in terms of evaluation of their system, so
6 we're trying to do all that type of work at the same
7 time that there's a market place there, and in my
8 view, that becomes some of the checks, whether you
9 got a situation where you really have a competitive
10 situation, where you're evaluating and making an
11 offer with another -- maybe another willing buyer, or
12 in a situation maybe where there's not a willing
13 buyer, as long as you have this no detriment standard
14 before you and you're able to drive enough savings to
15 the business that the rate payers are better off,
16 then that's the stance in terms of my perspective
17 from the company that the Commission should allow
18 recovery of that acquisition premium of rates and
19 that's how you get around this issue in terms of
20 where there's really been a good fair price for the
21 system.

22 Q. Okay. And in evaluating any savings,
23 would you not also have to determine whether there
24 were any increased costs as a result of the
25 acquisition?

1 A. That's correct.

2 Q. And offset the savings by those

3 increased costs?

4 A. That is correct.

5 Q. And did you do that here with these

6 particular acquisitions?

7 A. Yeah, with these particular

8 acquisitions, it was in terms of just -- just with

9 employee savings alone, in terms of being able to run

10 the systems, spread the fixed cost out with basically

11 the equivalent work force that we have today, you

12 know, we can get -- drive 1.3 million dollars of

13 savings is what's in my testimony.

14 And then in addition to that, you take

15 a look at the exhibit that I have in the schedule in

16 terms of wholesale versus retail rates in my direct

17 testimony. I'm sorry, rebuttal testimony. In terms

18 of Exhibit Schedule JMJ-2, which shows a net benefit

19 in terms of the net affect of wholesale versus retail

20 rates, which drives about 1.7 million out of the

21 savings.

22 Q. And in your methodology, you're not

23 looking at net original cost and the calculation; is

24 that right?

25 A. Yeah, in my methodology, I include the

1 entire cost, which would be the purchase price.

2 Q. And do you know how other jurisdictions
3 that American Water serves in treat acquisition
4 premiums from your own personal knowledge?

5 A. What -- what you -- what I'm familiar
6 with, for example, in Illinois, was just a recent one
7 in terms of there was a sharing of the savings
8 approach as opposed to allowing the acquisition --
9 recovery of the acquisition premium, so the company
10 was allowed to share half the savings.

11 Q. If that were the methodology being
12 applied here, how would that compare with what the
13 company is proposing?

14 A. Certainly that would be one -- one
15 mechanism in terms of allowing the company an
16 opportunity to recover the investment that its made
17 above the original cost.

18 At the end of the day, really what the
19 desire is, is to be able to consolidate this
20 industry, in this example, for the state of Missouri,
21 and be able to run our company at rates lower than
22 what they would have been.

23 If you take a look at this company,
24 Missouri-American, and its sister companies in the
25 1999 time frame and you compare that with the test

1 year ONM expenses, essentially our ONM expenses are
2 two percent lower today than they were in 1999, which
3 clearly demonstrates, you know, the benefit and
4 advantage of adding, I think, in this example around
5 35,000 customers and being able to do that despite
6 healthcare costs going up, despite insurance costs
7 going up, despite having to take a work force and pay
8 competitively, and so I mean, that's -- that's my
9 perspective when you step away high level as the
10 utility executive here saying this is really what
11 we've been able to drive in the business, and for
12 that, I don't think -- I think the company should, in
13 good regulation, would allow the company some way to
14 recover and earn a return on that investment whether
15 it's shared savings or whether it's like we've
16 proposed in this case.

17 Q. Would you earn a greater return with
18 your proposal here or with the shared savings
19 approach?

20 A. In -- it always depends on how long you
21 share the savings, and in terms of, you know, how
22 many -- you know, from the implementation of this
23 rate order and how far the rates would run until you
24 went to the next one, but if it was -- you know,
25 let's say \$700,000 a year, so about half the 1.4

1 million in terms of labor savings we identify, then
2 it would take, you can do the math, but up to a 7.8
3 million dollar premium would be how many years it
4 would take to fully earn on that in between rate
5 cycles.

6 Q. And your proposal here, I believe, is
7 to amortize the acquisition premium over how many
8 years?

9 A. Thirty-seven years, which is about the
10 average remaining life of the assets of all the
11 companies we've acquired.

12 Q. Which would mean that it would go into
13 rate base and then it would be depreciated?

14 A. That's correct.

15 Q. And that would allow you to earn a
16 return on that amount?

17 A. That's correct.

18 Q. And if we disallow the acquisition
19 adjustment, are you allowed to earn a return off or a
20 return on?

21 A. Depending on how you treated the
22 acquisition adjustment. I mean, for example, you
23 could disallow it in its entirety, so that would be
24 we would not be allowed to earn a return on or of, or
25 you could disallow the return on, in other words, not

1 provide rate base treatment and allow the company to
2 amortize that cost over the years.

3 When you spread something out, I mean,
4 it's just like your home mortgage, you spread
5 something out, like we've proposed here, 37 years and
6 then to support the return on in the earlier years,
7 it requires quite a bit of return carrying charge
8 from the rate payers as opposed to if you found your
9 way to a quicker amortization, you could pay it off
10 quicker and not have the carrying charge, or if you
11 were to just allow the recovery of or just the
12 amortization piece that would cost you, I believe,
13 around 200 -- a little over \$200,000, whereas the
14 return piece getting to that 1.2 million is close to
15 \$900,000, just to carry the investment.

16 Q. And Staff's recommendation for
17 treatment of the acquisition premium?

18 A. The Staff's recommended that we get no
19 recovery at all, so no return on and of.

20 COMMISSIONER MURRAY: Thank you.

21 JUDGE THOMPSON: Thank you,
22 Commissioner.

23 Commissioner Clayton.

24 COMMISSIONER CLAYTON: Give me just a
25 second here.

1 QUESTIONS BY COMMISSIONER CLAYTON:

2 Q. Just for my own clarification, the --
3 what was the acquisition premium for the Webster
4 Groves?

5 A. The Webster Groves premium,
6 Commissioner, was approximately 2.9 million dollars.

7 Q. And then Florissant and then Jeff City,
8 I mean, if you have them?

9 A. I do have them. The Florissant
10 acquisition was -- premium was 4.6 million. What was
11 the third one you asked?

12 Q. United?

13 A. United Water-Jeff City. Okay. That
14 premium was around 1.1 million.

15 Q. Okay. Are there any other acquisition
16 premiums for any other acquisitions in the state?

17 A. In this case?

18 Q. Yeah.

19 A. Yes. The fourth one would be Valley
20 Park. And in that case, it's referred to as a
21 negative acquisition premium, so it's an example, you
22 see these from time to time, it's an example where we
23 paid less than the original cost.

24 I'd like to get all these small systems
25 for that, but, you know, that in terms of willing

1 buyers, willing sellers, but there we had an
2 opportunity and we paid less than the original cost
3 value, and that was a negative -- it was close to a
4 million dollars, Commissioner, around right at
5 900,000 negative, so when you add those up, hopefully
6 the math comes up to around 7.8 million premium in
7 total.

8 Q. Any other?

9 A. No.

10 Q. Just those four cases, correct?

11 A. That's correct.

12 Q. Okay. And then in the company's sum
13 total, did you all deduct off that 900,000 for the
14 Valley Park or did you just not include it?

15 A. Yes, yes, it was deducted off the
16 acquisition premium, so that's an example where we're
17 being allowed to put in rate base the original cost
18 at 1.2 million, but we paid 393,000, for example. So
19 that's -- if somebody believes in the original cost
20 theory, then that's how that -- and that's how
21 accountants add this up, but it's an example of the
22 negative acquisition premium.

23 Q. Okay. I know your testimony includes a
24 considerable amount of explanation on economies of
25 scale and cost savings by increasing the size of the

1 company. I know you make reference to labor savings
2 and -- could you explain what other savings would be
3 out there other than labor costs?

4 A. Uh-huh.

5 Q. Certainly there wouldn't be any less
6 capital expenditures, or I mean, because each of
7 these locations -- or each of the water facilities
8 are in different locations, they're not necessarily
9 that close to each other. Could you elaborate on
10 that savings?

11 A. Okay. For example, with Florissant and
12 Webster Groves, because of the strategic nature of
13 those being well within the boundaries of the St.
14 Louis County operation, we were able, by buying their
15 facilities, what we're able to do is avoid making
16 other investments to those -- to those systems in
17 terms of being able to use existing transmission --
18 transmission mains that run right through their
19 system as opposed to how many to beef up around it,
20 et cetera, so there's savings in terms of lowering
21 other capital investment that we might have made if
22 we had known those facilities.

23 On the Schedule JMJ-2, which is in the
24 rebuttal testimony, the examples of -- of being able
25 to bring in additional revenues from a retail versus

1 wholesale standpoint is one of the -- one of the
2 things I was trying to emphasize in my testimony is
3 that by having customers available to share your
4 existing fixed costs, which are going to be there
5 pretty much regardless for, you know, acquisitions
6 that run up to close to 35,000 customers, you're able
7 to collect additional revenues to offset the
8 incremental cost, so in my view, it's a good deal.
9 Have I captured everything, Commissioner?

10 Q. I think so. Can you give me a dollar
11 figure in terms of savings that customers benefit
12 from because of these acquisitions? Did you all
13 calculate such a figure either by customer or by
14 water service territory?

15 A. Yeah, what we did in the testimony was
16 it indicated in terms of labor savings.

17 Q. Well, I mean, a total savings per
18 customer or a total amount of savings by water
19 service territory, so that we could compare that
20 savings versus the acquisition premium. Is that
21 included within your testimony, a total dollar amount
22 of savings, were you able to --

23 A. Yeah, within the St. Louis -- say the
24 St. Louis district --

25 Q. And I'm -- I may not be asking --

1 A. I think the easiest way to try to
2 simplify it is --

3 Q. For example, could you point to a total
4 amount of savings in the Webster Groves service
5 territory that I could compare the acquisition
6 premium 2.9 million dollars to?

7 A. Okay. It would be with the Webster
8 Groves acquisition, for example, this would be two
9 ways to look at it, Commissioner; one would be on
10 Page 13 of my rebuttal testimony. So in terms of
11 being able to drive labor savings of the \$342,000
12 from running that system, and then on top of that, if
13 you refer to Schedule JMJ-2 in which with the Webster
14 Groves example in terms of --

15 Q. Let me stop you right there because I
16 don't -- I am missing my exhibits. JMJ-2?

17 A. Yes, right at the back of my rebuttal
18 testimony.

19 Q. The staple on my thing has come loose,
20 so about the back half of the entire testimony is
21 gone. It's come off. Okay. I've got JMJ-2?

22 A. Okay. With JMJ-2 and on the Webster
23 Groves, you see a net benefit of around \$707,000.

24 Q. Yes.

25 A. So that's how you would look at Webster

1 Groves, and then Florissant would be the same way.

2 Q. Okay. Let's just stay on Webster
3 Groves right now until I fully comprehend this
4 concept here. How is that 707,000 calculated?

5 A. The 707,000, when rates are entered
6 into this regulatory proceeding, what -- what will be
7 included as part of our revenues and for the benefit
8 of the customers is we would collect an additional
9 1.5 million dollars of revenue, really being driven
10 by the fuel and power, the depreciation, and then the
11 returned component on the original cost investment,
12 so that net benefit of \$707,000 is there to support,
13 in that example, a 2.9 million dollar premium.

14 Q. So for Webster Groves, your contention
15 is that there is this net benefit of \$707,000 plus a
16 savings in labor component of 342,000. Is there any
17 other savings for Webster Groves that you can
18 identify?

19 A. No.

20 Q. So basically there would be savings of
21 roughly a million -- a million -- 1.05 million
22 compared to the 2.5 million acquisition premium?

23 A. That's correct.

24 Q. Okay. Okay. What do you have for
25 Florissant? I think we can get through this quickly

1 here.

2 A. Florissant.

3 Q. That has the labor component of

4 432,786?

5 A. That's correct, and then the net

6 benefit of 989 on the JMJ-2.

7 Q. So that's roughly 1.4 million in

8 savings for Florissant. For United Missouri Water, I

9 don't see --

10 A. What we would have there is primarily

11 the savings with that is the 500 -- \$500,000 -- let

12 me give you a reference in the testimony. On Page

13 14, and Commissioner, just for your benefit, we had a

14 -- there's been a regulatory proceeding involving

15 United Water, has quite a bit of history to it, but

16 in this proceeding, Mr. Rackers and myself, if I

17 understand his position correctly, and that's what I

18 was presenting his testimony has agreed that there

19 was \$510,000 of savings with the United Water

20 acquisition.

21 Q. And that's total with no additional

22 growth for later?

23 A. Correct.

24 Q. Okay. And then to conclude, Valley

25 Park had labor savings of 105,669?

1 A. That's correct, and then I didn't do a
2 calculation consistent with JMJ-2 on that because the
3 savings were nominal.

4 Q. The acquisition premiums are
5 significantly higher than these cost savings. How do
6 you reconcile that in terms of rates in your
7 testimony?

8 A. Well, if you -- in terms of rates and
9 what we're --

10 Q. In terms of what is included in rate
11 base is the way I should ask the question.

12 A. In terms of what's included in rate
13 base, we're seeking to recover right about \$900,000
14 for that, and then the amortization of those -- of
15 the premium is we're seeking another \$200,000, so
16 therein gets to the 1.2 million dollars.

17 In my view, as long as we can
18 demonstrate that we've got savings above the 1.2
19 million dollars, then we've passed the no detriment
20 charge, and even if one was to go, as I was talking
21 to Commissioner Murray about, if one was to go to the
22 not allowing a return on but just the recovery of,
23 the floor on that is just the \$200,000 of savings,
24 which clearly we exceed.

25 Q. You're seeking -- you're seeking the

1 third option that you mentioned, you're seeking a
2 return of and a return on?

3 A. That's correct.

4 Q. Okay. So just helping me through this,
5 what is the total amount of addition added to rate
6 base? Is it the 2.9, the 4.6, the 1.1, and the
7 900,000?

8 A. Yes, and the 900,000 is a negative
9 number.

10 Q. Okay. Subtracting off the negative.
11 Okay.

12 A. And Commissioner, that will get you to
13 around 7 -- the 7.9 million.

14 Q. Uh-huh.

15 A. Then just so the record is clear, with
16 any of these acquisitions, there's always certain --
17 it's referred to as transaction type costs, costs to
18 close the deal, legal fees. If we do some original
19 cost study, if we look at -- if we send customer
20 notifications out. On top of that acquisition
21 premium, the company has an additional 326,000,
22 rounded, let's say \$327,000 of transaction costs that
23 we're asking recovery that would be added to the 7.9
24 million.

25 Q. Okay. For a total of roughly 8.2?

1 A. That's correct.

2 Q. Eight point two million, and then how
3 do you calculate the return on the amortization?

4 A. The -- first of all, to get to what you
5 apply a return onto is we need to deduct other
6 amortizations that we started once we took over the
7 system, so you have to subtract off -- so we've got
8 about another \$290,000 of costs that we've previously
9 amortized, so I gave you the gross cost, so you take
10 the basically 7.9 million, you'd subtract out the
11 \$289,000, you'd add back the \$326,000, and hopefully
12 we do the math right, the issue is 7.9 million of --
13 that's the part that we want to apply a return on at
14 this point in time.

15 Then that amount there is what we
16 amortize over 37 -- 37 years, and which would mean
17 around \$213,000 of -- or 222 -- sorry, \$223,000
18 rounded of amortization costs.

19 Q. Per year?

20 A. Per year.

21 Q. Okay. And that would be included in
22 operating expense; is that correct?

23 A. That's correct.

24 Q. Okay. Okay. Now, you mentioned
25 earlier achieving savings of roughly 1.2 million

1 dollars, and I wasn't sure where you used that
2 figure. Do you recall that?

3 A. Yes, and that's -- that's primarily the
4 -- all the labor savings that we went through.

5 Q. Uh-huh.

6 A. Probably rounds to 1.3 million, but.

7 Q. The 880,000 on Page 13 plus the 510,000
8 --

9 A. That's correct.

10 Q. -- from United Missouri Water?

11 A. That's correct.

12 Q. Okay. But you had -- that was your
13 savings of 1.2, and that was greater than another
14 number that would, in your theorizing --

15 A. That's greater than, for example, what
16 we just went through --

17 Q. The 223,000 per year?

18 A. Two hundred, twenty-three thousand plus
19 the other nine -- the 900,000 return, that kind of
20 gets to you that 1.2 million dollar threshold.

21 Q. Okay.

22 COMMISSIONER CLAYTON: I don't have any
23 further questions. Thank you.

24 THE WITNESS: Thank you.

25 JUDGE THOMPSON: Ms. O'Neill.

1 MS. O'NEILL: Thank you.

2 CROSS-EXAMINATION

3 QUESTIONS BY MS. O'NEILL:

4 Q. Good afternoon, Mr. Jenkins.

5 A. Good afternoon.

6 Q. Okay. Just so I'm clear, here, and in
7 your surrebuttal testimony, I think it was, like, at
8 the bottom of Page 2, you characterize this
9 acquisition adjustment that you're seeking to be a
10 temporary -- to be temporary; is that correct, Line
11 30?

12 A. That's correct.

13 Q. And yet you propose an amortization of
14 this acquisition adjustment for 37 years; is that
15 correct?

16 A. That's correct.

17 Q. Do you consider 37 years to be
18 temporary?

19 A. In the context of original cost
20 investment, and these assets that typically last
21 anywhere from, let's say, 50 to 100 years, that's
22 what that context is supposed to mean.

23 Q. Have you talked to any of your
24 customers who would believe that a 37-year addition
25 to their rates would be a temporary adjustment to

1 their rates?

2 A. No.

3 Q. Now, in your rebuttal testimony where

4 you're first discussing allowing your company

5 recovery acquisition premiums related to the purchase

6 of three of the four of these systems; is that

7 correct; Jeff City, Webster Groves, and Florissant?

8 A. That's correct.

9 Q. That would be the positive ones and

10 then there's Valley Park, and you're proposing to

11 balance this out by dealing with this negative

12 adjustment on Valley Park. Is that basically the

13 gist of your testimony?

14 A. Yes, applying the original cost

15 standard with an acquisition premium on top of the

16 original cost.

17 Q. You've also testified a little bit

18 about small troubled systems, kind of thrown in some

19 comments regarding that, but would you describe

20 Webster Groves as a small troubled system? It's a

21 large municipal system, wasn't it?

22 A. It depends on what context you want to

23 raise that in.

24 Q. Well, let's compare it to Warren County

25 Water and Sewer Company, small troubled system?

1 A. Not in comparison to Warren County, no.

2 Q. Florissant, same comparison?

3 A. Yeah, not in comparison to Warren

4 County.

5 Q. Jefferson City?

6 A. Not in comparison to Warren County.

7 Q. Valley Park, in comparison to Warren

8 County?

9 A. Not in comparison to Warren County.

10 Q. So even if there were, at some point,

11 there may be some discussion theoretically about

12 recovery of purchase prices other than book value for

13 small troubled water systems, that's not the system

14 we're talking about in this particular case. Would

15 that be fair to say?

16 A. That's correct.

17 Q. Okay. Now, you've testified that these

18 purchases have resolved in savings, but the net

19 effect is that you want to raise customers' rates to

20 account for these premiums; is that right?

21 A. In totality, no, because in my view,

22 the savings that I drive each and every year, for

23 example, by removing labor-type costs, those savings

24 will be there over the same period, for example, as

25 the amortization period, so in my view, no.

1 Q. So -- but rates will be higher if the
2 acquisition premium is allowed than if it's rejected;
3 is that correct?

4 A. The only way rates would be higher is
5 if we had never made the acquisitions.

6 Q. Well, let's talk about that, because
7 Webster Groves, for example, was a wholesale customer
8 of Missouri-American Water Company; is that correct?

9 A. That's correct.

10 Q. So was Florissant?

11 A. That's correct.

12 Q. So was Valley Park?

13 A. That's correct.

14 Q. And as wholesale customers, you
15 received revenues based on the wholesale sale of
16 water to those systems?

17 A. That's correct.

18 Q. And when these systems were purchased
19 by Missouri-American Water, the customers of those
20 systems became your retail customers; is that
21 correct?

22 A. That's correct.

23 Q. And as a result of that, your company
24 experienced an increase in revenues relative to prior
25 to the acquisitions. Is that also correct?

1 A. That's correct.

2 Q. In fact, also, is it not correct that
3 for customers in those areas, at least some of those
4 customers, experienced an increase in the rates they
5 paid as a result of your acquisition?

6 A. From my -- my recollection is that the
7 rates were virtually equivalent to what we charged in
8 the St. Louis district because both those city
9 councils, from my recall in terms of negotiations,
10 indicated that they more or less tracked their rates
11 with St. Louis County rates.

12 Q. Are you aware of customers in
13 Florissant who have complained to your company that
14 their water bills have significantly increased since
15 this acquisition?

16 A. No.

17 Q. Did you receive a copy of Kimberly
18 Bolin's surrebuttal testimony?

19 A. Yes.

20 Q. And attached to her surrebuttal
21 testimony in the Appendix, are you aware of a number
22 of letters from customers in Appendix A?

23 A. Make sure I've got -- I found her
24 testimony at one point.

25 Q. This would be Exhibit 61.

1 A. Was attached to her rebuttal testimony,
2 you say, Ruth?

3 Q. Surrebuttal testimony.

4 A. Surrebuttal. I apologize, I don't have
5 that in front of me.

6 Q. Okay. So you would be -- would it
7 surprise you to know that you had customers in
8 Florissant who had written to your company to
9 complain about doubling of their water bills as a
10 result of this acquisition?

11 A. Absolutely, because I think if we took
12 a look at the nature of them, it would be more
13 billing errors as opposed to reality.

14 Q. Have there been billing error problems
15 with Florissant since your company took over that
16 system?

17 A. Yes, we've had some billing errors.

18 Q. Some estimated billing problems?

19 A. Yes, which is not uncommon when you try
20 to take over a system and you run it for, you know,
21 the initial period. I would expect that we would run
22 into some of those issues, not something we're proud
23 of, but something that happened, and we got on board
24 with those, met with the mayor, worked that out, and
25 taken care of it.

1 Q. So would you say that those billing
2 problems customers experienced would be a detrimental
3 affect of your acquiring of the system?

4 A. No.

5 Q. Are you aware that Public Counsel's
6 position is that neither the negative acquisition
7 adjustment or positive acquisition adjustment should
8 be recognized in rates?

9 A. No.

10 Q. You're not aware of that position?

11 A. I wasn't aware regarding the negative
12 acquisition adjustment.

13 Q. You didn't see that in Ms. Bolin's
14 testimony?

15 A. If I did, I didn't understand it to be
16 that.

17 Q. Okay. Are you also aware that the
18 Missouri Public Service Commission has not allowed
19 recovery of acquisition premiums in other cases?

20 A. Not done a comprehensive study of that.

21 Q. Mr. Jenkins, are you aware of an Order
22 Granting Clarification in the case of WM-2004-0122,
23 which was the Matter of the Joint Application
24 Regarding Warren County Water and Sewer Company and
25 your company?

1 A. Yes, what was the reference, again,
2 Ruth?
3 Q. WM-2004 --
4 A. No, the title of the --
5 Q. Order granting clarification.
6 A. Okay.
7 Q. Are you aware of that Order?
8 A. Yes.
9 Q. Okay. Are you aware of the text in
10 that Order that states that the Missouri Public
11 Service Commission has not previously allowed
12 recovery of an acquisition premium?
13 A. I do remember it now.
14 Q. Okay. Do you have any reason to doubt
15 that?
16 A. No.
17 Q. And in fact, in prior cases regarding
18 your company, has your company unsuccessfully sought
19 recovery of acquisition premiums?
20 A. Right, and that's the reason I brought
21 that up in terms of settlements. I'm not privy to
22 all settlements and the terms of how one views
23 whether an acquisition adjustment has been recovered
24 or not, but I understand that from the Warren County
25 Order.

1 Q. Now, these acquisition adjustments that
2 you're requesting, are you requesting that those be
3 -- are those district specific or are those company
4 wide, are they spread throughout the whole company?

5 A. Well, when you -- it's company wide;
6 however, when you would do rate design, to the extent
7 the rate base allocation would be, for example,
8 allocated to Jefferson City operation, and the other
9 three are based on the St. Louis district, the rate
10 design would make its way to the proper allocation by
11 district.

12 Q. So when we got to the allocation, they
13 would go to the district in which those territories
14 exist?

15 A. That is correct.

16 Q. Okay. Now, as far as Valley Park,
17 Webster Groves, and Florissant, you said they're on
18 the St. Louis County service area; is that correct?

19 A. That's correct.

20 Q. Are they all in St. Louis County?

21 A. Yes.

22 Q. And so would each of these districts be
23 subject to paying ISRS surcharge, if it was approved
24 by the Commission between rates?

25 A. That's correct.

1 Q. So these customers would potentially
2 see further rate increases in addition to this
3 acquisition premium allocation even between rate
4 cases; is that correct? At least there's a potential
5 there.

6 Q. I'm having trouble with the way you've
7 worded that question, Ruth. I can't answer it.
8 Could you rephrase it?

9 Q. Sure. Putting aside any rate increase
10 that these customers would receive as a result of
11 allocating an acquisition premium to the St. Louis
12 County service area.

13 A. That's where we have --

14 Q. Put that aside for a minute.

15 A. Okay.

16 Q. The customers in St. Louis County in
17 these new areas that you've acquired would also be
18 subject to interim rate increases under the ISRS; is
19 that correct?

20 A. Yes, to help compensate for replacing
21 the aging infrastructure, yes.

22 MS. O'NEILL: I don't have anything
23 further.

24 JUDGE THOMPSON: Thank you, Ms.
25 O'Neill.

1 Mr. Schwarz.

2 MR. SCHWARZ: I have no questions of

3 this witness.

4 JUDGE THOMPSON: Mr. Cooper.

5 MR. COOPER: Yes.

6 REDIRECT EXAMINATION

7 QUESTIONS BY MR. COOPER:

8 Q. Mr. Jenkins, Ms. O'Neill was asking you

9 about the possibility of customers in Florissant and

10 Webster Groves paying an ISRS surcharge at some

11 point, correct?

12 A. That's correct.

13 Q. Is the company replacing mains in

14 Florissant and Webster Groves?

15 A. Yes.

16 Q. So there would be -- there would be

17 investment in both those -- both those systems that

18 the customers in Florissant and Webster Groves would

19 be benefiting from?

20 A. That's correct.

21 Q. Ms. O'Neill also asked you whether you

22 thought that a 37-year amortization was temporary.

23 Do you remember that?

24 A. Yes.

25 Q. Compare that to the savings, would you

1 say that the savings are temporary?

2 A. No, the savings are permanent.

3 Q. Will the savings continue for longer
4 than 37 years?

5 A. Yes.

6 Q. In questions from Commissioner Clayton,
7 you identified savings as to each of these
8 acquisitions, correct?

9 A. That's correct.

10 Q. And just so it's clear, the numbers
11 that you provided to Commissioner Clayton, are those
12 savings for the lifetime of -- or the lifetime of
13 MAWC's ownership of those properties or are those
14 annual savings?

15 A. Those are annual savings.

16 Q. So those are savings that you would
17 expect to occur year after year after year?

18 A. That is correct.

19 Q. The premium amounts that you described
20 in terms of Webster Groves, Florissant, United, and
21 Valley Park, are those annual amounts or is that a
22 one-time investment by the company?

23 A. Those are one-time investments.

24 Q. Commissioner Murray, I believe, had
25 pointed to your surrebuttal testimony, and in

1 particular, Page 2. Where you spoke of capping the
2 acquisition premium at an amount of savings. Do you
3 recall that?

4 A. Yes.

5 Q. And I think it came up, there was a
6 question for you as to whether how that would apply
7 to small troubled systems, correct?

8 A. Correct.

9 Q. Okay. Do you have your surrebuttal
10 testimony in front of you or can you?

11 A. Yes.

12 Q. Why don't you look at Page 2.

13 A. Okay.

14 Q. On Line 15 near the end of that line,
15 there's a sentence that starts in other words. Do
16 you see that?

17 A. Yes.

18 Q. Can you read that sentence for us?

19 A. In other words, the no detriment
20 standard effectively caps acquisition premiums at the
21 amount of cost savings and service enhancements,
22 which the acquiring party is able to deliver.

23 Q. When you refer to service enhancements,
24 what are you speaking of?

25 A. That would be the example with a small

1 troubled system or it could be any of the systems we
2 acquired in which we needed to make improvements
3 whether it's in Webster Groves, there's significant
4 pressure problems there that we're able to improve,
5 and in Warren County, that record speaks for many
6 things that we need to do to make in terms of service
7 enhancements.

8 Q. Now, you were asked about, I guess it's
9 the fear that's kind of been associated with
10 acquisition premium, that somehow the granting of
11 recovery of acquisition premium would lead to
12 escalating rates in purchase prices and that sort of
13 thing.

14 Could you describe for us why it is you
15 think that capping acquisition premium recovery at
16 the amount of savings will put a stop to that or will
17 avoid the danger of this escalating purchase price
18 situation?

19 A. Yes, because I think there's an equal
20 fear in terms of the -- in utility management. If we
21 can't demonstrate the savings that we can drive that
22 will at least pay for the premiums, then we couldn't
23 expect to recover the full acquisition price, and a
24 perfect example of that is with the Webster Groves
25 facility, we were faced in terms of they'd hired

1 outside engineering firm support, and the outside
2 engineering firm's support for that system first came
3 in at 21 million dollars, and obviously we weren't
4 going to purchase the system for 21 million dollars.
5 We ended up purchasing it for nine and a half million
6 dollars, and I spent a good two weeks of my own
7 personal time arguing with and discussing the
8 relevance of what we were agreed to pay versus what
9 was in the engineering report.

10 Q. I guess what I'm curious about, really,
11 is whether capping recovery at the amount of savings
12 would work on both sides. Is there a possibility it
13 will work both in terms of capping the amount that
14 you could actually pay for a system as well as
15 motivating the company to drive the greatest amount
16 of savings possible?

17 A. Yes, I think that would work on both
18 sides.

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

21 JUDGE THOMPSON: Thank you, Mr. Cooper.
22 You may step down.

23 COMMISSIONER MURRAY: Judge.

24 JUDGE THOMPSON: Yes, ma'am.

25 COMMISSIONER MURRAY: I hate to do

1 this, but can I ask for one clarification?

2 JUDGE THOMPSON: Absolutely.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. I apologize, but in terms of capping

5 the acquisition premium at the amount of cost savings

6 and service enhancements, how do you value the

7 service enhancements for that calculation?

8 A. It's not easy, but in terms of if you

9 were to look at a system like Warren County and the

10 way that is presently being run, in my view,

11 obviously, that new capital investment that would

12 need to be made in an example like that would be a

13 way to, you know, value the service enhancements you

14 were going to make to the system.

15 Q. And I guess I'm a little bit confused

16 because we're talking about capping the premium that

17 would be recognized, correct?

18 A. Correct.

19 Q. And if you have to make more

20 expenditures for service enhancements, how are those

21 expenditures going into that calculation of capping

22 the premium?

23 A. Okay. Good question. I think what

24 we're talking about here is something that's not the

25 normal and that -- in that companies that were

1 troubled, there are troubled utilities out there, but
2 I think it's trying to get to the comfort level as a
3 matter of policy for the Commission is if you would
4 -- for whatever reason have to pay a premium, and
5 because of that premium, you can drive some savings
6 but not entirely all of them; and in other words,
7 their rates may have to go up in order to provide
8 safe and adequate service, and I don't -- I think at
9 that point is where the Commission would need to get
10 comfortable whether that type of rates driven by a
11 premium, that the Commission could support, and I
12 don't think there's, you know, real detailed
13 calculation giving you on that, Commissioner.

14 COMMISSIONER MURRAY: Okay. I'll stop
15 there. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE THOMPSON: Thank you,
18 Commissioner. Additional Cross, Ms. O'Neill.

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

20 JUDGE THOMPSON: Mr. Schwarz.

21 MR. SCHWARZ: No, sir.

22 JUDGE THOMPSON: Additional Redirect,
23 Mr. Cooper?

24 MR. COOPER: No, your Honor.

25 JUDGE THOMPSON: You may step down, Mr.

1 Jenkins. The next witness, I believe, is Mr. Grubb.

2 MR. COOPER: Yes, your Honor, we would

3 tender Mr. Grubb for cross-examination on behalf of

4 the acquisition adjustment issue.

5 JUDGE THOMPSON: Very well. Come on

6 up, Mr. Grubb.

7 Okay. Why don't we go ahead and take

8 five minutes.

9 (A RECESS WAS HAD.)

10 JUDGE THOMPSON: We'll go back on the

11 record. Mr. Grubb, I will remind you that you are

12 still under oath.

13 THE WITNESS: Yes, sir.

14 JUDGE THOMPSON: And I bet you'll

15 tender.

16 MR. COOPER: If we didn't do it before

17 we went off the record, your Honor, yes, we tender

18 Mr. Grubb for cross-examination on the acquisition

19 adjustment issue.

20 JUDGE THOMPSON: Very well. There are

21 no questions from the bench. Ms. O'Neill.

22 MS. O'NEILL: No questions.

23 JUDGE THOMPSON: Mr. Schwarz.

24 MR. SCHWARZ: No questions.

25 JUDGE THOMPSON: Mr. Cooper.

1 MR. COOPER: No redirect.

2 JUDGE THOMPSON: It's your chance to

3 jump in and they can't ask any follow-up. Thank you,

4 Mr. Grubb, step down, if you would, before anybody

5 comes down and asks you a question.

6 JUDGE THOMPSON: Mr. Rackers. And I'll

7 send a message to the Commissioners that we're going

8 to start with Mr. Rackers now.

9 I will remind you that you are still

10 under oath, Mr. Rackers.

11 QUESTIONS BY JUDGE THOMPSON:

12 Q. Do you have any disagreements with Mr.

13 Jenkins with respect to the calculations?

14 A. Of the value of the issues?

15 Q. Yes.

16 A. No.

17 Q. Okay. And are the exact amounts in the

18 record anywhere as far as you know?

19 A. Yes, I believe they are in the

20 company's exhibits.

21 Q. Okay. Very well.

22 JUDGE THOMPSON: Commissioner Clayton,

23 Staff witness Mr. Rackers is at your disposal.

24 COMMISSIONER CLAYTON: Now that is

25 available.

1 QUESTIONS BY COMMISSIONER CLAYTON:

2 Q. We're still on pensions, right? I keep
3 walking in and I forget what we're talking about.
4 Does Staff buy the figures that I discussed with Mr.
5 Jenkins earlier regarding cost savings to customers
6 in the Webster Groves, Florissant, United Missouri
7 Water, and Valley Park water districts?

8 A. I don't know that the company has
9 assigned or identified all the costs and/or all the
10 savings. I think if you -- if you accept what the
11 company has identified as cost and savings, plus the
12 additional revenues, then the company has already
13 recovered or significantly recovered the acquisition
14 adjustments.

15 Q. I'm going to re-ask the question. Does
16 Staff buy the cost savings that have been discussed
17 earlier, yes or no? Do you -- do you believe the
18 figures or accept the figures that have been stated
19 in terms of cost savings? And I can pose specific
20 figures for each district, I've got them written
21 down.

22 A. Yes.

23 Q. Okay. So you do agree to a cost
24 savings to customers in each of those districts by
25 the amount -- by the amounts that were discussed

1 earlier?

2 A. I don't know that that's all there is,
3 but.

4 Q. So there may be more savings to
5 customers?

6 A. And/or costs.

7 Q. And/or costs. Okay. Now, having
8 stated that, in light of those cost savings, why does
9 Staff not agree to allow them the return of and
10 return on the acquisition premium, which is what I
11 think -- how you started, but in comparison to those
12 savings, why not?

13 A. Well, if you accept what the company
14 has identified and you take into account the
15 additional revenues that they're enjoying and the
16 fact that they have been enjoying those benefits
17 since the acquisitions were made, Staff would contend
18 that there's already been recovery of either in total
19 or significantly all of the acquisition adjustments
20 and the acquisition costs.

21 Now, I've got other reasons in my
22 testimony why Staff, in general, doesn't support the
23 recovery of acquisition adjustment.

24 Q. Let's not go to those yet, okay?

25 A. Okay.

1 Q. What was the date of the acquisition of
2 Webster Groves, do you know? If you don't know, you
3 can tell me and we can move on.

4 A. I do know, but whether I have that with
5 me or not. According to the data that I received,
6 the company purchased Webster Groves in February of
7 2002.

8 Q. Okay. And so that would have been
9 annual savings of roughly a million a year for only
10 about -- well, I guess about two years to date,
11 correct?

12 A. That's correct, and you'll have an
13 additional two months, three months, before rates go
14 into effect.

15 Q. So they haven't recouped all of their
16 2.9 million acquisition premium, correct? They'd
17 still have about 800,000 left, roughly? I know, I
18 was told there would be no math either.

19 A. If you look at my -- if you have a copy
20 of my surrebuttal testimony.

21 Q. You're asking an awful lot.

22 A. Okay. I've got a schedule in my
23 testimony on that page, and it shows that for Webster
24 through April 16th of 2004, the operational law date,
25 the company will have recovered through the

1 additional revenue the acquisition adjustment.

2 Q. Oh, here we go. Good. Okay. What
3 other reasons were you going to suggest why Staff
4 would be opposed to recouping the acquisition
5 premium?

6 A. Well, we can start in my direct
7 testimony on Page 5. Recovery of acquisition
8 adjustments is counter to the Commission's historical
9 position where deviations from original cost stay
10 with shareholders. That's both with regard to
11 acquisition adjustments, gains and losses on sales.

12 On the bottom of Page 5, at least in
13 this specific case, with regard to the
14 municipalities, the company didn't come before the
15 Commission to really seek approval of these
16 purchases. In fact, with regard to the
17 municipalities, I don't think the Commission has
18 jurisdiction over these sales.

19 If we move to Page 6, what you have
20 here is basically the same investment serving these
21 same customers, simply because the company purchased
22 it and in current acquisition adjustment, there's no
23 new investment really associated with the pipe, it's
24 still the same pipe in the ground that's serving
25 these customers, and then a little farther down the

1 page, customers don't participate in this decision.

2 This is a decision that's made by
3 management of the company, management of the
4 purchased company. In this case, it was made by
5 representatives of the municipalities. There's no
6 say by rate payers in terms of are they in favor of
7 the sale, do they want to now become a customer of
8 Missouri-American Water.

9 Q. Well, do you propose that the customers
10 be polled every time a -- an acquisition possibility
11 comes up? How would -- how would there be a
12 communication between customers, company, and
13 Commission regarding such acquisitions?

14 A. Well, it could be put to a vote by the
15 customers of the company or by certainly in these
16 municipalities. It's not that I'm advocating that,
17 but my point is that you've got a change in ownership
18 here. That doesn't really -- that doesn't
19 necessarily affect the customer. There's no -- the
20 customer is not necessarily better off just because
21 I'm served by Missouri-American Water now as opposed
22 to I was served by Webster Groves utility authority.

23 Q. If we were to -- if we were to make an
24 assumption that there would be future cost savings
25 but not cost savings between the acquisition and the

1 present date, meaning that there hadn't been this
2 recouping of the acquisition premium through rates
3 and cost savings as you mention on Page 9 of your
4 surrebuttal testimony.

5 If we assume that that didn't occur,
6 and we look forward where costs would be reduced in
7 the future, would there be an occasion where an
8 acquisition premium would be justified and being
9 passed on to the customers because the customers and
10 rate payers benefit from the consolidation?

11 A. Well, I would say that should not be
12 your only criteria. There's other reasons, I
13 believe, why you shouldn't recognize an acquisition
14 adjustment, but even if you just use that one
15 criteria --

16 Q. Uh-huh.

17 A. -- I think you've got a serious
18 measurement problem. To be able to say I've
19 accounted for all the costs and I've accounted for
20 all the savings, and going forward, this is a great
21 deal for the customer, that's a very hard thing to
22 do, and to say that because of that cost or the
23 savings above cost that justifies this additional
24 acquisition premium, that's a very hard thing to do.

25 Q. It's a hard thing to identify the cost

1 savings or it would be a very -- it is too difficult
2 to make that assumption?

3 A. You would have trouble identifying and
4 then you would have trouble measuring the value of
5 it.

6 Q. Okay. Would your position change if
7 there were other inherent benefits to the customer
8 for an acquisition, as in perhaps a troubled water
9 district that's been mentioned earlier? Would that
10 play a part in the decision-making process?

11 A. Well, not in Staff's opinion. I think
12 -- especially in the situation with a troubled
13 utility, it's -- there you get into a situation where
14 you're rewarding, you're probably rewarding bad
15 management by paying an acquisition premium.

16 Q. Okay. Can you think of any example of
17 where Staff would be agreeable to allowing --
18 allowing for the acquisition premium to be included
19 in rates?

20 A. No.

21 Q. Is there any example, any extreme
22 circumstance that would -- where Staff would believe
23 that was in the best interest of the customer?

24 A. I don't believe so.

25 Q. Okay. Can you think of any example in

1 your tenure at the Commission where an acquisition
2 premium has been permitted --

3 A. No.

4 Q. -- whether it be water or any other
5 type of case?

6 A. No.

7 Q. Are you familiar of any other states
8 authorizing a -- an acquisition premium?

9 A. I'm not, but I haven't done that
10 examination.

11 Q. Okay. That position is consistent on
12 both the return of and return on portions of the
13 acquisition premium?

14 A. Yes.

15 Q. That's the same on the transition or
16 transaction cost?

17 A. That's correct.

18 Q. Do you have a position on the pension
19 allowance?

20 A. I support Staff's position.

21 Q. Wise maneuver.

22 COMMISSIONER CLAYTON: Thank you very
23 much.

24 JUDGE THOMPSON: Commissioner Murray.

25 COMMISSIONER MURRAY: Thank you.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good afternoon, Mr. Rackers.

3 A. Good afternoon.

4 Q. On Page 86 your surrebuttal testimony,
5 your answer beginning on Line 6, you speak about the
6 Commission precedent being an inherence to original
7 cost in the determination of appropriate investment
8 to include in the cost of service, and you go on to
9 say that that argument for inherence to original cost
10 is not invalidated by any circumstances that exist in
11 the current case.

12 Now, it sounded -- I mean, it sounds
13 from that as if there might be some circumstances
14 that you would think would invalidate inherence to
15 original cost, but in listening to your answers to
16 Commissioner Clayton just now, it sounds as if you're
17 saying there is no situation in which you think that
18 we should not adhere to original cost for
19 determination.

20 A. Well, if I, somehow with my response
21 here, indicated that there might be some
22 circumstance, then it's -- I apologize for that. I
23 mean, this -- this answer -- I mean for this answer
24 to be consistent with the one that I gave
25 Commissioner Clayton.

1 Q. Okay. So it is your position that
2 there is no circumstance that would warrant the
3 Commission not adhering to original cost in
4 determination of an acquisition premium?

5 A. That's correct.

6 Q. Okay. When you're looking at valuing
7 rate base, you look at -- you have a choice, I
8 believe, of either the net original cost, which is
9 what we have traditionally looked at here in
10 Missouri; is that right, as one choice?

11 A. Yes.

12 Q. And then another that some
13 jurisdictions apply, I believe, as something called
14 fair value, is that right?

15 A. I don't know that. I mean, I'm
16 familiar with that term fair value, but I don't -- I
17 don't know how other jurisdictions use it.

18 Q. Are you familiar with other
19 jurisdictions using replacement cost ever for
20 determination of whether to allow an acquisition
21 premium?

22 A. I'm not familiar with that.

23 Q. Are you familiar with jurisdictions
24 allowing some hybrid of these determinations of cost?

25 A. No, I'm not.

1 Q. In the case of a troubled water
2 company, I heard you say to Commissioner Clayton a
3 couple of minutes ago that you would probably be
4 rewarding a bad act or bad management by paying an
5 acquisition premium. Did I hear you correctly?

6 A. Yes.

7 Q. When a company acquires another
8 company, one of our regulated utilities acquires
9 another regulated utility, they have to come to us
10 for approval; is that right?

11 A. Yes.

12 Q. And Staff files a recommendation at
13 that time as to whether we should approve that
14 acquisition, does it not?

15 A. Yes.

16 Q. Have you been involved in any of those
17 Staff recs for acquisitions of some troubled water
18 companies?

19 A. I was involved with the Warren County
20 situation recently where Missouri-American Water
21 purchased that system.

22 Q. And did you -- did Staff recommend that
23 the Commission approve that transaction? I'm talking
24 about the original transfer of the assets, the
25 purchase?

1 A. I believe it did with certain
2 conditions.

3 Q. Okay. And if -- I believe, and I don't
4 want to get too specific, I don't want to get into
5 specific cases, but let's look at this through a
6 hypothetical.

7 If a company is purchasing a small
8 troubled water company, and is purchasing that
9 company for an amount that is greater than that
10 original cost, would it be Staff's position that
11 there should be no acquisition premium for that
12 difference above net original cost in rate base?

13 A. Based on my experience, yes, I mean,
14 it's hard to speak, you know, generally to every
15 situation that might come up, but my experience with
16 every situation that's come up so far, I think Staff
17 has proposed no recognition of the acquisition
18 adjustment.

19 Q. And in light of what you said earlier
20 about in the case of the troubled water company, it
21 would probably be rewarding bad management to pay an
22 acquisition premium, would Staff recommend against
23 the Commission rewarding that bad management by
24 approving a purchase that involved an acquisition
25 premium?

1 A. I think Staff would recommend approval,
2 but not recommend recognition in rates.

3 Q. Why would Staff recommend approval, if
4 to approve it and to allow it to go through, would
5 reward bad management?

6 A. Maybe I'm not understanding your
7 question, but --

8 Q. Well, whose bad management are you
9 rewarding if you allow an acquisition premium, if
10 there is an acquisition premium in the purchase
11 price, whether or not it's involved and allowed in
12 rates? Whose bad management is being rewarded?

13 A. Well, I would say the current owner.

14 Q. And why would Staff recommend that if
15 that is the result of approving it to reward the bad
16 management of the current owner?

17 A. Well, Staff would approve the purchase
18 because it may believe that it would be -- that the
19 purchaser would be a better owner or that it would be
20 better for the system if it were sold to whoever the
21 purchaser was, but to pay above -- and we're talking
22 about a troubled utility here --

23 Q. Uh-huh.

24 A. -- so without being specific, in the
25 recent example that was before the Commission, I

1 think it was shown that that owner had mismanaged
2 that system so bad that people who lived in the
3 service area weren't even able to get permits to do
4 construction or put in new housing.

5 Q. Okay. I understand that. Let's just
6 stick to a hypothetical where we've got a company
7 where that's a situation. Customers are not
8 receiving safe and adequate service because of bad
9 management.

10 The person who has done the bad
11 management that is selling the company is asking a
12 premium. Another company comes in and says I will
13 purchase it and pay that premium.

14 Now, it's my understanding that Staff
15 would come back to the Commission and say, yes,
16 approve that transaction where this bad manager gets
17 rewarded with a premium, but don't allow the
18 purchasing company to be reimbursed for that, to
19 recognize that in rates. Approve it, but make the
20 purchasing company suffer, go ahead and reward the
21 bad actor, but make the purchasing company eat it.

22 why would that be -- I don't understand
23 Staff's rationale. I don't understand why Staff
24 would want the Commission to act that way.
25 If it is rewarding a bad management to pay an

1 acquisition premium, why wouldn't Staff say do not
2 approve a sale that involves an acquisition premium?
3 Let it go to whatever receiver determines.

4 A. And that's certainly one position Staff
5 could take, that, I mean, in this situation, I think
6 Staff put conditions on that sale. It said go ahead
7 and approve the purchase, don't recognize the
8 acquisition adjustment, and I think that there were
9 some other conditions the company wanted that Staff
10 didn't want the Commission to approve.

11 Now, if the Commission accepts or --
12 accepts those conditions, the company that may be
13 part of the contract for purchase that the company
14 can void the sale, you know, under those conditions,
15 and receivership may be the result.

16 Q. Would Staff recommend conditions that
17 mitigated the reward to the bad manager? Is that
18 what those conditions would do? Or is Staff
19 concerned at all about the reward of the bad manager?

20 A. I think Staff is concerned about what
21 the result of the purchase going through, which
22 included the acquisition adjustment, what affect that
23 would have on customers.

24 Q. So Staff doesn't care if bad management
25 gets rewarded so long as it's not the customers that

1 are doing the rewarding? Is that your position?

2 A. I think Staff does care about rewarding

3 bad management, and I think that their --

4 Q. But you're not recommending that we

5 stop it. Your recommendation doesn't have any effect

6 on whether or not the bad manager gets rewarded.

7 A. Well, it may have an effect on that.

8 If by placing conditions on the sale, the company

9 doesn't accept those conditions or that voids the

10 sale, then that sale wouldn't go through, and there

11 would be other situations that could happen, you

12 mentioned receivership, that's another potential

13 result.

14 Q. Give me some examples of conditions

15 that Staff would recommend that we apply that would

16 mitigate the reward to the bad manager.

17 A. Well, if the company knows that its

18 acquisition adjustment will not be recognized in

19 rates, then potentially when it goes out to purchase

20 these systems, it will seek a price -- well, it will

21 seek the best price that it can, recognizing that

22 anything above original cost won't be recognized in

23 rates, but it will -- I would think, that that

24 realization would push the purchase price closer to

25 original cost.

1 Q. But even if the seller, the one who has
2 been the bad manager and has not been providing safe
3 and adequate service holds out for a price that is
4 far above the net original cost, so long as the
5 company is willing to come in and pay it, Staff would
6 recommend that the Commission approve it?

7 A. I don't know that that would be the
8 situation in every case. I think the -- I think the
9 standard is in a sale case is no detriment, so as
10 long as the purchaser could operate the system and
11 you could determine a rate or determine what costs
12 were going to be built into future rates and see that
13 those -- that's not a detriment, Staff could support
14 the sale.

15 Q. Okay. I've been struggling with this
16 for some time trying to understand why it is we get
17 recommendations that sometimes seem incongruent, so
18 I'm going to just ask you a couple more questions
19 about it and see if I'm understanding what you're
20 telling me.

21 I think you're telling me that your
22 analysis when a company comes in to purchase another
23 company is that you would recommend the Commission
24 approve it so long as there is no detriment to the
25 customers from that sale; is that correct?

1 A. I need to check, but I think that's the
2 standard that's -- that's the legal standard or the
3 Commission standard in a sale case is no detriment.

4 Q. Is it no detriment to the public
5 interest, no detriment to the specific customers, no
6 detriment to one class of customers?

7 A. I think it's no detriment to the public
8 interest is the actual standard. I think that's been
9 interpreted as no detriment to rate payers.

10 Q. And you're saying that so long as the
11 rates don't go up -- I'm assuming that your analysis
12 would say even if the service remains the same, bad,
13 as long as the rates don't go up, there wouldn't be a
14 detriment.

15 A. Well, and I don't want to tie that down
16 and say that just because rates went up that that --
17 that that -- that would be deemed as a detriment so
18 significant that Staff wouldn't recommend that the
19 sale go through. There might be other -- other
20 things with regard to service or long-term
21 improvement of the system that would make Staff
22 recommend the sale go through even if it did mean a
23 rate increase.

24 Q. And there is no instance at this time
25 that you can think of that Staff would recommend

1 recognition of an acquisition premium; is that
2 correct?

3 A. That's correct.

4 Q. Okay.

5 COMMISSIONER MURRAY: I think that's
6 all I have. Thank you.

7 JUDGE THOMPSON: Thank you,
8 Commissioner.

9 Ms. O'Neill.

10 MS. O'NEILL: I hate to do it, but I
11 will.

12 CROSS-EXAMINATION

13 QUESTIONS BY MS. O'NEILL:

14 Q. Mr. Rackers, just so we're clear, the
15 four acquisitions that we're talking about in this
16 case don't fall into that category of small troubled
17 water systems; is that correct?

18 A. To my knowledge, that's correct.

19 Q. At Page 9 of your surrebuttal
20 testimony, the schedule that you have prepared there,
21 could you turn to that for a second?

22 A. Yes.

23 Q. The -- you've got a column there called
24 revenues realized since acquisition through
25 4/16/2004. Is that revenues in addition to what the

1 company would have received, for example, from those
2 first three items as resale customers?

3 A. That's the annual increase in revenue
4 above the wholesale rate.

5 Q. And when rates were set in the last St.
6 Louis County Water case, those revenues were not
7 considered in setting rates, correct?

8 A. The additional revenues above
9 wholesale, no.

10 Q. Okay. Because when we set rates on a
11 going forward basis, we look at the revenue
12 requirement, we look at the revenues coming in, but
13 we only look at the actual customers at the time; is
14 that correct, the actual revenues from the customers
15 that they have?

16 A. Yes.

17 Q. So they had wholesale customers but
18 they didn't have all these retail customers?

19 A. That's correct.

20 Q. Okay. So according to this, it looks
21 like their additional revenues by the time the
22 operation of law date happens in this case, exceeds
23 what the acquisition adjustment amount is as far as a
24 return of that amount. Is that accurate?

25 A. In total, that's correct.

1 Q. Okay. And regarding transaction cost,
2 traditionally, does the Commission recognize and
3 authorize recovery of transaction cost in rates for
4 mergers and acquisitions?

5 A. No.

6 Q. And is there included in the company's
7 cost of service some line item for illegal fee
8 expense that covers things like mergers and
9 acquisitions and legal work that needs to be done in
10 those cases?

11 A. I believe that's a portion of the
12 transaction costs that were identified for me.

13 Q. There is an annualized amount that's
14 included in revenue requirement for legal expenses;
15 is that correct?

16 A. Yes.

17 Q. And that annualized level is not being
18 -- not really in dispute in this case?

19 A. That's correct.

20 Q. Okay.

21 MS. O'NEILL: No further questions.

22 JUDGE THOMPSON: Thank you, Ms.

23 O'Neill.

24 Mr. Cooper.

25 MR. COOPER: I need one bit of

1 clarification, if I can, without offending anyone
2 here.

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. COOPER:

5 Q. Mr. Rackers, you were just being asked
6 by Ms. O'Neill about the figures that were included
7 on Page 9 of your surrebuttal testimony, correct?

8 A. Yes.

9 Q. And the annual revenue increase numbers
10 that you have there, the 2.051 million for Florissant
11 and so on down that column, as stated by your
12 heading, those are pure revenue numbers, correct?

13 A. Yes.

14 Q. And those numbers don't include any
15 provisions for depreciation on that acquired property
16 or any return on the investment in that acquired
17 property, correct?

18 A. That's correct, but likewise, this
19 table doesn't include any cost savings.

20 Q. And if -- are you familiar with Mr.
21 Jenkins' testimony, you've taken a look at both his
22 rebuttal and surrebuttal, correct?

23 A. Yes.

24 Q. And at Schedule JMJ-2, which I think
25 was referred to earlier by Mr. Jenkins, Mr. Jenkins

1 does, in regard to the Florissant and Webster Groves
2 acquisitions, take these annual revenue increase
3 numbers and add in or take into account depreciation
4 and return numbers on both those acquisitions,
5 correct?

6 A. Yeah, that's what his schedule depicts,
7 yes.

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

10 JUDGE THOMPSON: Thank you, Mr. Cooper.
11 Mr. Schwarz.

12 REDIRECT EXAMINATION

13 QUESTIONS BY MR. SCHWARZ:

14 Q. Mr. Rackers, early on, Commissioner
15 Clayton asked you about cost savings to customers.
16 Do you remember that?

17 A. Yes.

18 Q. Isn't it true that until rates are set
19 in this case, sometime in April, that customers won't
20 realize any of those savings?

21 A. That's correct.

22 Q. So that the costs have been recovered
23 in rates from customers, but the company, by virtue
24 of these savings, hasn't actually incurred these
25 costs, is that correct?

1 A. That's correct.

2 Q. So that the cost savings from the dates
3 of acquisition through the operation of law day or
4 the effective date of the Commission Order approving
5 new tariffs in this case all accrue to the benefit of
6 the company; is that correct?

7 A. That's correct.

8 Q. And is it also true that under the
9 Staff's proposal, that the company although -- strike
10 that.

11 When rates from this proceeding go into
12 effect, then the cost savings will begin to accrue to
13 the customers; is that correct?

14 A. That's correct.

15 Q. But isn't it also true that under the
16 Staff's proposal, the company will continue to enjoy
17 the benefit of its bargain acquisition of the Valley
18 Park system because Staff is not going to, and is not
19 recommending, that the Commission reduce the rate
20 base to reflect the negative acquisition premium?

21 A. That's correct.

22 Q. That's correct. Have you heard it
23 observed that regulation is supposed to take the
24 place of the market?

25 A. Yes.

1 Q. And to the extent that the parties to
2 merger and sales transactions of utilities understand
3 that acquisition premiums aren't going to be
4 recognized in rates, you accept that --
5 A. Yes.
6 Q. -- as a basis. Then won't that sharpen
7 the pencils of the acquirers, that is, if, for
8 instance, in the example of Valley Park, they're able
9 to actually acquire the assets below net book value,
10 they'll actually be able to, in the long-term,
11 recognize the benefit of that bargain?
12 A. Yes.
13 Q. And it will give them every incentive
14 to keep any acquisition premium that they pay to the
15 bare minimum, isn't that true?
16 A. Yes.
17 Q. And doesn't this approach minimize the
18 need for subjective estimates of how much the
19 customers benefit and what intangible benefits to a
20 better operating management might be worth, minimizes
21 those?
22 A. I agree with that.
23 Q. How long have you worked for the
24 Commission?
25 A. Approximately 25 years.

1 Q. So in relation to a question that
2 Commissioner Clayton asked, it's been at least 25
3 years that the Commission has not permitted an
4 acquisition premium adjustment; is that correct?

5 A. That's correct.

6 Q. Commissioner Murray asked you a series
7 of questions about rewarding current bad management
8 by providing -- I mean, they get the benefit of
9 acquisition premium if someone pays more than net
10 book; is that correct?

11 A. Yes.

12 Q. But Staff's approach would have the
13 tendency, as we discussed before, would it not, of
14 minimizing that; is that correct?

15 A. That's correct.

16 Q. Now, I didn't work the Warren County
17 Water acquisition case, but my understanding is that
18 there was another party interested in the acquisition
19 of that system; is that correct?

20 A. Yes, I believe a water district in St.
21 Charles County was interested also, or Warren County.

22 Q. Might a water district have a different
23 cost structure than an investor-owned utility?

24 A. Yes.

25 Q. Might there be a difference in property

1 taxes?

2 A. Yes.

3 Q. Might there be a difference in income

4 taxes?

5 A. Yes.

6 Q. Do political subdivisions or water

7 districts have an equity cost?

8 A. I don't believe they do.

9 Q. They're funded principally by

10 borrowing; is that correct?

11 A. That's right.

12 Q. And is -- it to your knowledge, is that

13 borrowing tax favored?

14 A. Yes, it is.

15 Q. So it might be that a public water

16 system would have a different cost structure on which

17 to base a bid for a particular property as opposed to

18 an investor-owned utility; is that correct?

19 A. That's correct.

20 Q. And is -- strike that.

21 MR. SCHWARZ: I think that's all I

22 have.

23 JUDGE THOMPSON: Thank you, Mr.

24 Schwarz. You may step down.

25 Commissioner Murray.

1 COMMISSIONER MURRAY: Here we go again.
2 I just wanted a clarification of something. I'm
3 sorry.
4 JUDGE THOMPSON: Absolutely.
5 QUESTIONS BY COMMISSIONER MURRAY:
6 Q. I forgot to ask you this earlier,
7 because of your testimony in your direct testimony on
8 Page 4, at Line 11, there was a question posed did
9 MAWC acquire these service areas at net book value,
10 original cost of plant and service less accumulated
11 depreciation. Do you see that question?
12 A. Yes.
13 Q. And my question is about Staff's
14 definition of net book value. Is net book value the
15 same as net original cost?
16 A. Yes.
17 Q. Then shouldn't the definition also
18 include that deduction of contributed property?
19 A. Yes, it should. In the water industry,
20 contributions are set out separate, and in the energy
21 utilities, contributions are actually included as
22 part of the plant cost, so at a water utility, you'd
23 have to take out the contributions also.
24 Q. Do you have any idea why energy
25 companies are treated differently than water

1 companies?

2 A. Well, they're not treated differently,
3 the contribution is accounted for in a different way.

4 Q. If the contribution is accounted for in
5 the -- as a part of the net book value, it increases
6 the net book value, doesn't it?

7 A. No, the contribution would be a
8 reduction to the cost of the plant that's put in
9 service. In other words, it would be booked to the
10 work order and your plant and service would be a
11 smaller number, so you would -- it would be -- the
12 carrying value of the plant service would be less by
13 the contribution.

14 Q. And if you were trying to value each
15 type of company, they would both be valued absent the
16 contributed property?

17 A. I think the answer to your question is
18 yes, but that the contribution would be -- would be a
19 reduction.

20 Q. Okay. And that is your definition, is
21 it not, that for a water utility at least that net
22 book value is original cost of plant interview less
23 accumulated depreciation and less contributed
24 property?

25 A. That's right.

1 Q. Okay.

2 COMMISSIONER MURRAY: Thank you.

3 JUDGE THOMPSON: Thank you,

4 Commissioner.

5 Further questions from the bench?

6 Additional Cross?

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

8 MR. COOPER: No.

9 JUDGE THOMPSON: Mr. Schwarz,

10 additional redirect?

11 MR. SCHWARZ: No.

12 JUDGE THOMPSON: You may step down, Mr.

13 Rackers.

14 Ms. Bolin, I'll remind you that you're

15 still under oath.

16 Ms. O'Neill.

17 MS. O'NEILL: Yes, actually, your

18 Honor, there's a couple of bookkeeping things I need

19 to clarify with Ms. Bolin before I tender her for

20 cross.

21 JUDGE THOMPSON: Absolutely, step up to

22 the podium. I'm glad to see you've arranged an

23 exciting direct examination for us this afternoon.

24 MS. O'NEILL: I'll try keep it brief.

25 ///

1 DIRECT EXAMINATION

2 QUESTIONS BY MS. O'NEILL:

3 Q. Ms. Bolin, referring to your rebuttal
4 testimony, which is Exhibit 52, and your surrebuttal
5 testimony, which is Exhibit 61, is there a technical
6 correction that you would like to make for the record
7 on those?

8 A. Yes. In the headings starting on Page
9 2 of both testimonies, the first testimony Exhibit 52
10 needs to read rebuttal testimony instead of direct
11 testimony, and then Exhibit 61, my surrebuttal
12 testimony, needs to read surrebuttal testimony
13 instead of direct testimony.

14 Q. And that was just a heading error when
15 things printed?

16 A. Yes.

17 Q. But the -- the information in 52 and 61
18 are your rebuttal and surrebuttal testimonies
19 respectively?

20 A. Yes, they are.

21 Q. And just to clarify for the record,
22 there was a reference made to Page 14 of one of your
23 pre-filed testimonies and some questions that
24 Commissioner Murray had earlier. Was that Page 14
25 actually Page 14 from Exhibit 52 your rebuttal

1 testimony?

2 A. Yes, it was.

3 Q. All right.

4 MS. O'NEILL: I would tender the
5 witness for cross. Thank you.

6 JUDGE THOMPSON: Thank you.
7 Commissioner Murray.

8 COMMISSIONER MURRAY: Thank you.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. That was a good segway into Page 14 of
11 your rebuttal testimony. Ms. Bolin, I just need you
12 to explain a sentence to me that I'm having trouble
13 understanding, and I'm sure there's a good
14 explanation, I just haven't figured it out.

15 It's the sentence that begins on Line
16 16, a policy of giving rate-making treatment to
17 acquisition premiums place Missouri regulated
18 utilities at a competitive advantage over unregulated
19 entities, since Missouri jurisdictional utilities
20 would then have a blank check for recovering of
21 acquisition premium from rate payers.

22 Would you explain how regulated
23 utilities would be at a competitive advantage over
24 unregulated entities?

25 A. If you were to give an acquisition

1 premium, acquisition adjustment, if the company would
2 be able to maybe raise a price -- be able to pay for
3 a price more than a non-regulated, non-regulated has
4 customers that are not captive and can go elsewhere.

5 Q. So you're saying in terms of purchasing
6 or acquiring existing companies, a regulated utility
7 would be at a competitive advantage in being able to
8 offer more?

9 A. Yeah, if they were to -- if you were to
10 allow the acquisition adjustment.

11 Q. Okay. Thank you for explaining that
12 sentence. If this whole idea of allowing the
13 recovery of acquisition premiums or acquisition
14 adjustments in rates, if it -- if it would create a
15 danger that the acquiring utility would not have an
16 incentive to seek the best price, is it your position
17 that denying recovery in rates is enough of a
18 deterrent to regulated utilities, and I use deterrent
19 referencing a deterrent for paying more than -- for
20 paying an acquisition premium.

21 Is that enough of a deterrent to
22 minimize a potential reward to those who have held
23 the company and managed it poorly?

24 A. I don't know that you would necessarily
25 look at just that as a deterrent. There may be some

1 other benefits that would outweigh the deterrent. I
2 think you have to look at it in a case by case
3 situation.

4 Q. Benefits to whom?

5 A. To the company acquiring the new --
6 acquiring the utility. There may be such things as
7 growth potential in the area, other factors.

8 Q. And if there were, would there still be
9 a potential of, as Mr. Rackers stated it, rewarding
10 bad management by paying an acquisition premium?

11 A. You may still reward a bad actor, yes,
12 that may happen.

13 Q. Is that --

14 A. That's something we would not want.

15 Q. Do you consider that a problem?

16 A. No, we would not want that, but it
17 could happen.

18 Q. Is there any way we can provide an
19 incentive that that not happen?

20 A. Not allow an acquisition adjustments
21 may be one. The companies we're looking at here
22 today, the utilities that were purchased were not
23 owned by bad actors, so i've not given that a whole
24 lot of thought.

25 Q. I understand, and I am going outside

1 the bounds of this case by asking that question, but
2 I'm -- I'm trying to apply the reasoning regarding
3 acquisition premiums in its broadest sense, because I
4 think the Commission has, over the years, followed --
5 apparently followed the net original cost in
6 determining what should go into rate base and has
7 disallowed acquisition premiums, and not all cases
8 are alike, not all acquisitions are alike. That --

9 COMMISSIONER MURRAY: I think's all.

10 Thank you.

11 THE WITNESS: Thank you.

12 JUDGE THOMPSON: Thank you,

13 Commissioner.

14 Commissioner Clayton.

15 COMMISSIONER CLAYTON: No questions.

16 JUDGE THOMPSON: Cross, Mr. Schwarz.

17 MR. SCHWARZ: I have none.

18 JUDGE THOMPSON: Mr. Cooper.

19 MR. COOPER: Yes, your Honor.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. COOPER:

22 Q. Ms. Bolin, are there any circumstances
23 under which you would recommend recovery of an
24 acquisition premium?

25 A. Not given that a lot of thought, there

1 may be with a troubled water system, but as a general
2 rule, no.

3 Q. How about shared savings, do you put
4 that in the same category as acquisition premium
5 recovery?

6 A. Yes, because a lot of time the savings
7 are hard to identify if they are actually savings
8 from the acquisition or if they're savings that would
9 have occurred naturally.

10 Q. So it doesn't really matter to you
11 whether rate-making treatments is tied to premium or
12 to savings, you'd be opposed in both instances?

13 A. We would have to look at both, but as a
14 general rule, I would be opposed.

15 Q. I believe in his Redirect, Mr. Schwarz
16 asked Mr. Rackers about kind of some market concepts
17 and what affect it would have on the market if the
18 Commission just had a rule against recovery of
19 acquisition premium. Did you hear that?

20 A. Yes, I believe I did.

21 Q. Okay. Do you believe that this
22 Commission has clearly set out a rule that there --
23 or a policy that there will be no acquisition premium
24 recovery?

25 A. They have not granted one, so.

1 Q. But have they ever said absolutely they
2 will not grant one?

3 A. They have denied them, but they have
4 not said on a going-forward basis they would deny
5 them.

6 Q. Let me read you something that was from
7 a Missouri-American Water Company case in 1995. This
8 is a case WR-95-205, a rate case for
9 Missouri-American. And there's a passage that says
10 the Commission finds that on a policy basis, it is
11 not necessarily opposed to consideration of
12 acquisition adjustment.

13 Commission stated in Case No.
14 EM-91-213, in the Matter of the Application of the
15 Kansas Power and Light Company, and I've omitted the
16 rest that have site, that it was not opposed to the
17 concept of the savings sharing plan as a part of an
18 acquisition adjustment request provided that only
19 merger-related savings would be shared.

20 The Commission went on to state and
21 finds in this Order that it does not wish to
22 discourage companies from actions which produce
23 economies of scale and savings which can benefit rate
24 payers and shareholders alike.

25 Would you agree with me that for many

1 years, that provision has been interpreted to mean
2 that the Commission certainly was open to
3 consideration of acquisition premium and would, in
4 fact, grant recovery of acquisition premium if
5 presented with the right facts situation?

6 A. If they were presented with the right
7 facts, they may grant one.

8 Q. But in your opinion, they haven't found
9 the right facts situation?

10 A. That's correct.

11 Q. Ever?

12 A. Not to my knowledge.

13 Q. Okay. But in spite of that, I think as
14 recently as the Warren County case, which has been
15 discussed here today, the Commission, again, seemed
16 to indicate, didn't it, that it was open to recovery
17 of acquisition premium, correct?

18 A. The circumstances with the Warren
19 County case are very complicated. In that case, we
20 didn't know what exactly rate base really is for this
21 company due to the poor records, so I think it was
22 left open as to if there was even an acquisition
23 premium.

24 Q. But when presented with the opportunity
25 to say that there just will be no recovery of

1 acquisition premium, Commission refused to do so,
2 correct?

3 A. I think they didn't come out and say
4 they were opposed.

5 Q. In one of the acquisitions that is the
6 subject of this case is the United Water Missouri
7 acquisition, correct, the Jefferson City properties?

8 A. That's correct.

9 Q. Okay. And that acquisition was subject
10 to Commission approval, correct?

11 A. I believe it was.

12 Q. Okay. And is it correct that that was,
13 let's see, case WM-2000-222?

14 A. I'll have to take your word on the case
15 number.

16 Q. Okay. Well, let's say that it was. In
17 that case, wasn't it true that the Staff asked the
18 Commission to state at that time that there would be
19 no recovery of acquisition premium related to the
20 Jefferson City acquisition?

21 A. I'm not quite sure if the Staff asked
22 for that or not. I wasn't a part of that case. They
23 may have, I don't know right now.

24 Q. Okay.

25 MR. COOPER: Pardon me just a minute,

1 your Honor.

2 JUDGE THOMPSON: Sure.

3 MR. COOPER: I don't know that it needs

4 to be marked as an exhibit, but I would like to

5 provide copies of that case, if I could.

6 JUDGE THOMPSON: This is a Commission

7 Order?

8 MR. COOPER: It is, your Honor.

9 MR. SCHWARZ: I would --

10 JUDGE THOMPSON: Yes, Mr. Schwarz.

11 MR. SCHWARZ: I don't know that I would

12 necessarily like to object. I would like to know how

13 this ties into questions from the bench, however.

14 MS. O'NEILL: I also would, especially

15 in light of the fact that Ms. Bolin didn't

16 participate in this case, so I'm not sure that she

17 has any actual knowledge regarding this Order that

18 would be subject to cross-examination right now.

19 MR. SCHWARZ: Well, the Order is the

20 Order. If Counsel wants to argue from this Order in

21 his brief, I think that's appropriate, but I don't

22 recall questions from the bench that could be --

23 JUDGE THOMPSON: We didn't have a round

24 of cross before questions from the bench, so this is

25 both recross and cross.

1 MR. SCHWARZ: That suffices for my
2 purposes, Judge.

3 JUDGE THOMPSON: Thank you.

4 MS. O'NEILL: Your Honor, I --

5 JUDGE THOMPSON: I think I said earlier
6 in this case, as far as I'm concerned, you can hand a
7 witness anything and ask him questions about it, and
8 if they don't, you know --

9 MS. O'NEILL: My only concern, your
10 Honor, in the interest of time, is that Ms. Bolin has
11 already testified she didn't participate in the case,
12 so I'm not sure what kind of answers she can give
13 him, but I don't know.

14 JUDGE THOMPSON: Well, maybe a fresh
15 outlook. I will overrule the objection. Please
16 proceed.

17 MR. COOPER: Well, and let me ask Ms.
18 O'Neill this, while we're having this discussion.
19 What I would really like to bring forth out of this
20 Order is the fact that Staff asked the Commission to
21 provide a condition -- or a condition upfront that
22 there would be no recovery of acquisition premium,
23 and the Commission in this case refused to do so, and
24 if Ms. O'Neill is comfortable that that's what
25 happened in that case, we can just move on from that.

1 MS. O'NEILL: Well, you know, I don't
2 have any reason to dispute that, and if you want to
3 argue it in the brief, that's fine, but as a
4 practical matter, I didn't work for the Office of the
5 Public Counsel then, and I didn't participate in the
6 case either, and I haven't looked at this in a while,
7 so I would have to see if it's in there.

8 Can you show me where it is and maybe
9 we can just stip to it if it's in the text.

10 MR. COOPER: Let me make a couple of
11 points then. On Page 2 of the Order, the last
12 paragraph, begins Staff recommends that the
13 Commission approve the proposed acquisition with one
14 proviso that MAWC not be permitted to seek recovery
15 of the acquisition premium in a future rate
16 proceeding. Do you see that sentence?

17 MS. O'NEILL: I see that.

18 MR. COOPER: Okay. And if we turn over
19 to Page 3, near the middle of the page, there's a
20 paragraph that starts in the matter of the
21 acquisition adjustment. Do you see that?

22 MS. O'NEILL: It's not properly before
23 the Commission in this case.

24 MR. COOPER: Is not properly before the
25 Commission in this case, that is a matter for a rate

1 case as the Applicants point out. This is not a rate
2 case; therefore, the Commission will not address the
3 matter of the acquisition premium in this case.

4 MS. O'NEILL: Your Honor, I would
5 stipulate that the Order says what it says without
6 any commentary on what it says.

7 JUDGE THOMPSON: I appreciate that. As
8 far as I'm concerned, you can ask the witness
9 whatever you want about this, as I ruled, I think,
10 some moment ago.

11 MR. COOPER: We really are listening to
12 you, your Honor, even if it appears otherwise from
13 time to time.

14 JUDGE THOMPSON: Let's move forward and
15 see if we can bring this ship into dock sometime
16 today.

17 MR. COOPER: Are we close?

18 JUDGE THOMPSON: I think this is the
19 last witness.

20 MS. O'NEILL: You're the only one who
21 knows that.

22 MR. COOPER: I don't know. Rarely have
23 I been excused of extending the length of proceedings
24 myself.

25 JUDGE THOMPSON: Until now. It was

1 just pointed out. Counsel get on with it, please.

2 Q. (By Mr. Cooper) Let's go back to my
3 earlier question, Ms. Bolin. This Commission has
4 never given an absolute statement that it would not
5 grant recovery of acquisition premium, has it?

6 A. It's denied acquisition premiums in the
7 past. In this case, that we were just talking about,
8 they left it open for a rate case proceeding.

9 Q. And in the Warren County case, they
10 left it open. In the 1995 case that I referred you
11 to, it was left open, correct?

12 A. The '95 case, I'm not sure that it was.
13 WR-95-205?

14 Q. Correct.

15 A. I think they denied it, if I'm --

16 Q. They denied it but stated that they
17 were not opposed -- that on a policy basis,
18 Commission was not necessarily opposed to
19 consideration of acquisition adjustment?

20 A. That's correct.

21 Q. Okay. And there is no -- there is no
22 rule on the subject, correct?

23 A. As in rule, could be more specific?

24 Q. Any Commission rule.

25 A. None that I'm aware of.

1 MR. COOPER: That's all the questions I
2 have, your Honor.

3 JUDGE THOMPSON: Thank you, Mr. Cooper.
4 Ms. O'Neill.

5 MS. O'NEILL: Thank you.

6 REDIRECT EXAMINATION
7 QUESTIONS BY MS. O'NEILL:

8 Q. Ms. Bolin, could there be reasons why
9 shareholders might be willing to risk paying more
10 than net book value for a water system that would
11 make it worth the risk they wouldn't recover in
12 acquisition?

13 A. As I've said before, growth in the
14 potential acquiring area may be one factor.

15 Q. And there could even be other factors?

16 A. Yes, other factors.

17 Q. And in an extreme case, although we
18 don't have any of those before us today, we've had
19 some discussion about it, would Public Counsel want
20 to consider all the relevant factors in those extreme
21 situations where it turned out that maybe a troubled
22 system was purchased for something that turned out to
23 be more than its book value?

24 A. Yes, I think you would have to look at
25 all relevant factors in that case.

1 Q. And if an acquisition premium was
2 requested where a troubled water system was before
3 the Commission in a rate-making proceeding, Public
4 Counsel would be willing to look at all those factors
5 and come to a recommendation based on what we believe
6 was the best for the customers in that case?

7 A. Yes, we would look at all of the
8 evidence in the customer's interest.

9 Q. And at this point in time, it would be
10 premature to know what we would or would not approve
11 in a given situation?

12 A. That is true.

13 MS. O'NEILL: No further questions.

14 JUDGE THOMPSON: Thank you, Ms.

15 O'Neill.

16 I have one last question.

17 QUESTIONS BY JUDGE THOMPSON:

18 Q. On Page 14 of your rebuttal, Line 18,
19 you use the abbreviation CIAC.

20 A. Yes.

21 Q. What does that stand for?

22 A. Contributions in aid of construction.

23 JUDGE THOMPSON: Thank you.

24 Any recross from anyone based on my
25 question?

1 MS. O'NEILL: No redirect either, your
2 Honor.

3 JUDGE THOMPSON: No Redirect. Thank
4 you. You may step down, Ms. Bolin.

5 MR. SCHWARZ: If I might, I have a
6 housekeeping matter I would like to address.

7 JUDGE THOMPSON: Let's keep house.

8 MR. SCHWARZ: I would ask -- the
9 parties have settled weather normalization. I would
10 ask that; however, the Staff witness, Dennis
11 Patterson's direct, Exhibit 23, Rebuttal, Exhibit 39,
12 Surrebuttal, Exhibit 75, and supplemental direct
13 Exhibit 94 be admitted, and also Staff's accounting
14 schedules, which are Exhibit 25.

15 JUDGE THOMPSON: Okay. We're going to
16 go through all the exhibits.

17 MR. SCHWARZ: I made an undertaking to
18 my cohorts that I would do that.

19 JUDGE THOMPSON: I appreciate that.
20 Before we get to all those exhibits, it's my
21 understanding that we've now had the last witness on
22 the last issue; is that right?

23 MS. O'NEILL: That's my understanding,
24 your Honor.

25 JUDGE THOMPSON: Okay. Everyone in the

1 room is as happy as I am. Let's go through the
2 exhibits, then. I will just touch on the ones that
3 have not been offered or received. Number 3,
4 Deeters' direct.

5 MR. ENGLAND: That's correct, we would
6 offer it at this time, your Honor.

7 JUDGE THOMPSON: Do I have any
8 objections? Number 3 is received. Four, Dunn
9 direct.

10 MR. ENGLAND: We would offer that at
11 this time, your Honor.

12 JUDGE THOMPSON: Any objections?

13 MR. SCHWARZ: No. If it would speed
14 things up, Staff has no objections to anyone's
15 testimony being admitted.

16 JUDGE THOMPSON: Great, how about you,
17 Ms. O'Neill.

18 MS. O'NEILL: Unless I've already made
19 it, I don't have any objections either.

20 JUDGE THOMPSON: How about you, Mr.
21 England?

22 MR. ENGLAND: Ditto.

23 JUDGE THOMPSON: Great. Then I'll just
24 go through and check these boxes.

25 COMMISSIONER CLAYTON: A lot of love in

1 this room.

2 JUDGE THOMPSON: That takes care of

3 Staff's accounting schedules. And Mr. Patterson's

4 testimony. Now what about the supplemental

5 weatherization testimony.

6 MS. O'NEILL: No objection.

7 MR. ENGLAND: No objection here.

8 JUDGE THOMPSON: Okay. I don't know

9 that it's been numbered.

10 MR. SCHWARZ: 94.

11 JUDGE THOMPSON: All right. Very well.

12 There it is. There it is. Now, what about 99 that

13 pesky support agreement. There was an objection when

14 that was offered originally, Mr. England, and you

15 were going to get it in later, and I don't know that

16 you ever did.

17 MR. ENGLAND: You're right, your Honor,

18 I believe, without misstating anyone's position, it's

19 my understanding that neither Staff nor Public

20 Counsel have an objection to it anymore.

21 JUDGE THOMPSON: Is that true?

22 MS. O'NEILL: That's correct, your

23 Honor, we'll withdraw our objection.

24 MR. SNODGRASS: Staff withdraws any

25 objection to that exhibit.

1 JUDGE THOMPSON: Exhibit 106, Mr.
2 Gibbs' work papers on the pension issue, I think we
3 reserved a number for that, but I don't know that it
4 ever appeared.

5 MR. SCHWARZ: They have not yet been
6 produced.

7 JUDGE THOMPSON: Okay.

8 MR. SCHWARZ: True-up is due the 30th
9 of January, and they will be provided, certainly, by
10 that time.

11 JUDGE THOMPSON: Okay. Very well.
12 Then so I have Exhibit 106 that I just mentioned that
13 has not yet been produced and neither offered nor
14 received.

15 I have Exhibit 113 that was offered and
16 not received. An objection as to adequate foundation
17 was sustained.

18 And that's it. Everything else has
19 been received. In case you're wondering what that
20 last exhibit was, and I can see some looks, that was
21 offered by company, it was a comparison of projected
22 sample counts to actual sample counts. It had
23 something to do, I believe, with the laboratory,
24 Belleville Laboratory.

25 MR. CIOTTONE: Your Honor, that exhibit

1 was put in a different form. I think as 113, so it's
2 the same exhibit, just put in in a different form.

3 JUDGE THOMPSON: Well, it is 113, and I
4 show that as not being received.

5 MR. CIOTTONE: Well, it's in there with
6 a different number afterward.

7 JUDGE THOMPSON: Okay. I congratulate
8 you, Mr. Ciottone. Good job.

9 MR. ENGLAND: It may be in his own
10 mind, your Honor.

11 JUDGE THOMPSON: Okay. Now that we've
12 done that, we need to talk about briefing schedule.
13 Ms. Reporter, when will the transcripts be available
14 for this last week?

15 COURT REPORTER: Two weeks from today
16 unless you need them sooner.

17 JUDGE THOMPSON: Two weeks from today,
18 and how long will you need to do an initial round of
19 briefs, plus you recall I requested proposed Findings
20 of Fact and Conclusions of Law. Assuming the
21 transcripts are available, we're talking, what,
22 January 26th. Or do we need those transcripts to be
23 available sooner?

24 MR. ENGLAND: Would the -- just get the
25 ball rolling, would the end of February or

1 thereabouts be sufficient for first briefs, initial
2 briefs.

3 JUDGE THOMPSON: End of February, four
4 weeks from the date when the transcripts.

5 JUDGE THOMPSON: Well, that's what I
6 was thinking, but then we're looking at what for
7 reply briefs?

8 MR. ENGLAND: Fifteen days.

9 JUDGE THOMPSON: So middle of March.

10 MR. ENGLAND: Right.

11 JUDGE THOMPSON: And I think this has
12 to go out by the 6th of April.

13 MR. ENGLAND: Good point.

14 JUDGE THOMPSON: So you're looking at
15 three weeks, then, for the Commissioners to resolve
16 whatever number of contested issues actually remains.

17 I would really like to see some of way
18 to shorten the briefing rounds, if that can be
19 attained. Why don't we take a recess for 10 minutes
20 and let the parties discuss this among themselves,
21 talk about whether you would proffer from having the
22 transcript available sooner, whether it would be
23 possible to simply have one single round of briefing
24 rather than two rounds, as we've had in the past, and
25 see what we can do to speed that up. Okay.

1 So we'll go off-the-record now and go
2 back on around 3:30. Thank you.

3 (A RECESS WAS HAD.)

4 JUDGE THOMPSON: Let's go back on the
5 record. And you guys have been talking about
6 briefing schedule, and what have you come up with?

7 MR. SNODGRASS: Well, your Honor,
8 talking to all the parties here, this is Cliff
9 Snodgrass, for the record. I think we have some
10 agreed dates, if that will be agreeable to you,
11 Judge.

12 JUDGE THOMPSON: Let's hear them.

13 MR. SNODGRASS: February 24th for the
14 initial brief.

15 JUDGE THOMPSON: Okay.

16 MR. SNODGRASS: And March the 5th for
17 the reply brief.

18 JUDGE THOMPSON: That's fine with me.
19 Can we have transcripts in a week do you think?

20 COURT REPORTER: Yes.

21 JUDGE THOMPSON: So we'll ask for
22 transcripts in one week. That would be, what's
23 today, the 12th, so the 19th. And for the Findings
24 of Fact and Conclusions of Law, as I think I
25 indicated, they can be very summary. I want them

1 issue by issue just as the issues are set out on the
2 issues list, just tell me what the controlling legal
3 standard is for that issue, give me the facts that
4 you believe supports the resolution that your party
5 wants for that particular issue, and give me the
6 resolution, in case I've missed it in all the paper
7 we've seen so far.

8 I don't need to have a Proposed Order,
9 I don't need to have a procedural history or any of
10 that sort of thing. Okay. Let's talk about the
11 true-up. When's the true-up set for.

12 MS. O'NEILL: I think the 30th of
13 January.

14 MR. SNODGRASS: I think that's right.

15 MR. ENGLAND: Are you talking testimony
16 or hearing?

17 JUDGE THOMPSON: I was actually talking
18 hearing.

19 MR. SNODGRASS: Hearing is in February,
20 I believe.

21 MR. ENGLAND: My best guess was a
22 Thursday, Friday.

23 JUDGE THOMPSON: Okay. Let me see
24 here.

25 MR. SNODGRASS: I don't have the Order

1 with me; I normally do, Judge.

2 JUDGE THOMPSON: My notes suggest that

3 true-up direct is due on January 30th, and that the

4 true-up hearing is on February 5 and 6th. I don't

5 have any true-up rebuttal or surrebuttal indicated.

6 MR. ENGLAND: We had indicated, or I

7 think agreed among ourselves, that any additional

8 testimony in the way of rebuttal will be done

9 extemporaneously.

10 JUDGE THOMPSON: Great. That is a

11 wonderful thing. Now, here is one homework

12 assignment I want to give you for the true-up because

13 that's when we go from numbers that we don't have to

14 care about evidently to numbers that we do have to

15 care about.

16 So here's what I want. With respect to

17 operating expenses, I would like to have a total of

18 undisputed operating expenses, and then I'd like to

19 have each operating expense issue set out with the

20 amount, same thing for rate base, depreciation. In

21 other words, all the components, and then when the

22 Commission decides what the rate of return will be,

23 we can calculate what revenue requirement's going to

24 be from those other parts.

25 So in other words, I need to know what

1 is the undisputed amount, you don't have to set out
2 the components of the undisputed amount, just
3 undisputed total and then the disputed items and what
4 the total is. Okay.

5 MS. O'NEILL: Do you want the total and
6 the difference between the parties or just the
7 totals?

8 JUDGE THOMPSON: I think I certainly
9 want the totals, because with those, I can calculate
10 the difference. If you want to give me the
11 differences, too, that's fine, but don't give me just
12 the difference. I want to be able to give you an
13 Order that says here's the revenue requirement,
14 here's the rate of return, go out and write some
15 tariffs, right, so that we don't have to go through a
16 series of corrective and clarifying Orders as we did
17 after the last case. Okay.

18 MR. ENGLAND: Your Honor, would the
19 reconciliation that was attached to Staff's statement
20 of position suffice or do you need more detail than
21 that?

22 JUDGE THOMPSON: Once I began to
23 understand how it works, it was more helpful, but I
24 got to tell you that when I first saw it, I was
25 utterly at sea.

1 I think what I would rather see is that
2 maybe you can do it as one document with columns or
3 separate documents, but I want to see what the
4 company says this is our undisputed operating
5 expenses for the test year brought up to June 30th,
6 and then trued-up through November, whatever it is,
7 and then here are the disputed operating expense
8 issues and what they're worth.

9 Final numbers, same thing for rate
10 base, here's the undisputed rate base, here are the
11 disputed items of rate base, trued-up, here is the
12 undisputed depreciation allowance, here is the items
13 of disputed depreciation, and so that I can fit it
14 into that formula that I learned down at the water
15 rate school. You know, I don't want that week to
16 have been wasted in my life.

17 MR. ENGLAND: Without suggesting that
18 perhaps you wasted a week of your life.

19 JUDGE THOMPSON: Wouldn't be the first
20 time, but go on.

21 MR. ENGLAND: The problem you have, I
22 appreciate your desire for precision.

23 JUDGE THOMPSON: Okay.

24 MR. ENGLAND: But the problem you have
25 with a lot of these issues are they're dependent on

1 other issues. For example, you have a generic what
2 I'll call depreciation issue, the lives, whether you
3 include net salvage, whether you continue the
4 amortization of depreciation reserve, but then you
5 have what I would call roll out depreciation affects,
6 depending on what you include or what you don't
7 include in rate base, that may be associated with
8 some plant issues.

9 JUDGE THOMPSON: Then I guess you had
10 better just give me something issue by issue that
11 explains those things.

12 MR. ENGLAND: Well, the myriad of
13 outcomes, of scenarios, is maybe problematic, too
14 vast to put out there for you. We can give you a
15 pretty good idea of --

16 JUDGE THOMPSON: Tell you what. You do
17 the best you can along the lines I proposed, and then
18 we'll do some scenarios with those numbers, and that
19 way, when you guys start seeing, perhaps, an idea of
20 what the Commission is going to do on some things or
21 might do on some things, then the people that are in
22 charge of numbers can do their magic.

23 MR. ENGLAND: And that would have been
24 my suggestion.

25 JUDGE THOMPSON: Okay.

1 MR. ENGLAND: Because I think well give
2 you a pretty good idea of what the issues are worth,
3 but there are going to be some affects depending on
4 how you go with that.

5 JUDGE THOMPSON: And I recognize that,
6 tax effects, everything, everything changes
7 something.

8 MR. ENGLAND: And the Commission has,
9 in the past, done that, given us various scenarios,
10 and usually we've been -- and so far in this case, I
11 think we've been pretty good, although we disagree on
12 substance, we've been able to agree on dollar amounts
13 and amounts in disputes.

14 MR. CIOTTONE: Judge, in the old St.
15 Louis County cases, I guess this may not help if the
16 end dollar amount would, in fact, influence how the
17 Commission would decide anything, but I used to get a
18 call four days before the Order was going to be
19 written and it would say assuming this likely
20 scenario, which at that time, everyone knew was more
21 than likely, what are the numbers, and then we
22 calculated and checked with Staff and delivered them
23 under the unspoken knowledge that the hammer had
24 already fallen, so that's how we got to numbers that
25 were undisputed.

1 JUDGE THOMPSON: They didn't teach me
2 that at the water rate school.

3 MR. CIOTTONE: That's the way they used
4 to do it. And we don't have Stu in this section of
5 the case to file objections to everything that we
6 might do, so maybe we can fall back on some tried and
7 true methods.

8 MR. ENGLAND: Plus you're going to need
9 to know own a district by district basis, having
10 mentioned one of the interveners, because some of
11 these issues impact statewide and some may impact
12 only a district or something less than the total.

13 JUDGE THOMPSON: I think scenarios are
14 becoming more and more important as I see this thing
15 developing.

16 MR. ENGLAND: I agree.

17 JUDGE THOMPSON: Well, then, what we'll
18 do is as soon as the first round of briefs are in,
19 we'll start taking these issues to the Commission in
20 agenda for discussion and they can reach their
21 tentative conclusions as to what they're going to do,
22 and of course they'll revisit those when the final
23 briefs are in, and that will then permit some
24 scenarios to be generated with ample time for parties
25 to run the numbers and get them down. There you are.

1 We at least don't want the Court of
2 Appeals saying, my God, what did the Commission think
3 it was doing. They may say the Commission erred, but
4 we don't want them to think we were completely out in
5 space. Anything else? Great. You guys tried a good
6 case. Glad we're done.

7 WHEREUPON, the hearing of this case was
8 concluded.

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1	I N D E X		
2	STAFF EVIDENCE:		
3	JAMES MERCIEL		
4	Questions by Commissioner Murray	2630	
5	Questions by Commissioner Clayton	2638	
6	Questions by Judge Thompson	2656	
7	Cross-examination by Ms. O'Neill	2661	
8	Cross-examination by Mr. Ciottone	2671	
9	Redirect Examination by Mr. Krueger	2704	
10	STEPHEN RACKERS		
11	Questions by Judge Thompson	2776	
12	Questions by Commissioner Clayton	2777	
13	Questions by Commissioner Murray	2785	
14	Cross-Examination by Ms. O'Neill	2795	
15	Cross-Examination by Mr. Cooper	2798	
16	Redirect Examination by Mr. Schwarz	2799	
17	Questions by Commissioner Murray	2804	
18	OFFICE OF THE PUBLIC COUNSEL EVIDENCE:		
19	KIM BOLIN		
20	Questions by Commissioner Murray	2730	
21	Cross-examination by Mr. Ciottone	2731	
22	Redirect Examination by Ms. O'Neill	2733	
23	KIM BOLIN		
24	Direct Examination by Ms. O'Neill	2807	
25	Questions by Commissioner Murray	2808	
26	Cross-Examination by Mr. Cooper	2811	
27	Redirect Examination by Ms. O'Neill	2821	
28	Questions by Judge Thompson	2822	
29	MISSOURI-AMERICAN WATER COMPANY'S EVIDENCE:		
30	MR. JAMES JENKINS		
31	Questions by Commissioner Murray	2735	
32	Questions by Commissioner Clayton	2747	
33	Cross-Examination by Ms. O'Neill	2758	
34	Redirect Examination by Mr. Cooper	2768	
35	Questions by Commissioner Murray	2773	
36	EXHIBITS INDEX		
37	MARKED RECEIVED		
38	EXHIBIT NO. 136		
39	DR 111-135	*	2683