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7 On-the-Record Presentation
8 March 19, 2004
9 Jefferson City, Missouri
10 Volume 25
11
12 In the Matter of Missouri-American)
13 Water Company's Tariff to Revise) Case No. WR-2003-0500
14 Water and Sewer Rate Schedules.)
15
16 KEVIN A. THOMPSON, Presiding,
17 DEPUTY CHIEF REGULATORY LAW JUDGE.
18
19 STEVE GAW, Chairman,
20 CONNIE MURRAY,
21 COMMISSIONERS.
22
23 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good afternoon. We're
3 here in the matter of the general rate increase for water
4 and sewer service provided by Missouri-American Water
5 Company, Case No. WR-2003-0500, and we are also here in
6 the matter of the joint application of Missouri-American
7 Water Company, St. Louis County Water Company, doing
8 business as Missouri-American Water Company, and Jefferson
9 City Waterworks Company, doing business as
10 Missouri-American Water Company, for an Accounting
11 Authority Order relating to security costs, Case
12 No. WO-2002-273.

13 My name is Kevin Thompson. I'm the
14 Regulatory Law Judge assigned to preside over this matter.
15 We will take oral entries of appearance at this time. Why
16 don't we begin with company?

17 MR. ENGLAND: Thank you, your Honor. Let
18 the record reflect the appearances of W.R. England and
19 Dean Cooper on behalf of the company, Missouri-American
20 Water Company.

21 JUDGE THOMPSON: Thank you. Staff?

22 MR. SNODGRASS: Yes. Good afternoon,
23 Judge. Let the record reflect the appearances of Cliff
24 Snodgrass and Tim Schwarz on behalf of the Staff of the
25 Missouri Public Service Commission here today.

1 JUDGE THOMPSON: Thank you. Public
2 Counsel?

3 MR. COFFMAN: John B. Coffman appearing on
4 behalf of the Office of the Public Counsel.

5 JUDGE THOMPSON: Very well. And let's
6 start with the intervenors. We can begin with
7 Ms. Vuylsteke and work our way back and across.

8 MS. VUYLSTEKE: Diana Vuylsteke for the
9 Missouri Industrial Energy Consumers of the law firm Bryan
10 Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri
11 63102.

12 JUDGE THOMPSON: Thank you. Mr. Conrad?

13 MR. CONRAD: On behalf of -- well, let's
14 take these one at a time, I guess. In the WR case, Judge,
15 Stuart W. Conrad, law firm of Finnegan, Conrad & Peterson,
16 1209 Penntower, 3100 Broadway, Kansas City, Missouri
17 64111, on behalf of intervenor AG Processing.

18 In the WO docket, same attorney, same law
19 firm, same address, and the intervention there, the
20 appearance is on behalf of the group called St. Joseph
21 Industrial Intervenors, consisting of same AG Processing,
22 Frisky's and Wire Rope.

23 JUDGE THOMPSON: Thank you, sir.

24 Mr. Fischer?

25 MR. FISCHER: Appearing on behalf of the

1 Public Water Supply Districts 1 and 2 of Andrew County and
2 the Public Water Supply District No. 1 of DeKalb County is
3 James M. Fischer, Fischer & Dority, PC, 101 Madison
4 Street, Suite 400, Jefferson City, Missouri 65101.

5 JUDGE THOMPSON: Thank you, Mr. Fischer.
6 Mr. Deutsch?

7 MR. ELLINGER: Appearing on behalf of the
8 City of Joplin, Marc Ellinger and Jim Deutsch, the law
9 firm of Blitz, Bardgett & Deutsch, 308 East High,
10 Suite 301, Jefferson City, Missouri.

11 JUDGE THOMPSON: Thank you. Mr. Comley?

12 MR. COMLEY: Regarding the Case No.
13 WR-2003-0500, Mark W. Comley, Newman, Comley & Ruth,
14 601 Monroe, Suite 301, Jefferson City, Missouri, appearing
15 on behalf of City of Jefferson.

16 JUDGE THOMPSON: Thank you. Mr. Stewart?

17 MR. STEWART: Charles Brent Stewart, law
18 firm of Stewart & Keevil, LLC, appearing on behalf of
19 intervenor Empire District Electric Company in the WR
20 docket, and I've provided my address to the court
21 reporter.

22 JUDGE THOMPSON: Thank you very much. Any
23 other intervenors that I missed?

24 Okay. I understand we have some
25 stipulations and agreements in front of the Commission

1 today in WR-2003-0500. Would you like to say a little bit
2 about them, Mr. Snodgrass, or should we just proceed
3 directly to questions?

4 MR. SNODGRASS: Well, I have no preference
5 either way, your Honor. Whatever you prefer. I have some
6 overview highlights I can present at this time.

7 JUDGE THOMPSON: Why don't you step up and
8 go ahead and give us those?

9 MR. SNODGRASS: Thank you. Good afternoon.
10 May it please the Commission? I'll try to give you an
11 overview of the stipulation as best I can, and I'll have
12 Steve Rackers, Dale Johansen and Jim Merciel here to
13 answer questions from the Commissioners regarding the
14 specific details of this agreement, monetary figures and
15 that kind of thing.

16 Getting down to the bottom line here,
17 revenue requirement, the bottom line here is that the
18 agreement provides that the company will not obtain any
19 revenue increases or sustain any revenue decreases in its
20 districts, with the exception of the Joplin district which
21 will obtain a \$350,000 rate decrease.

22 From the Staff's perspective, getting this
23 decrease played a significant part in Staff settling this
24 matter because, in Staff's view, Joplin had been paying
25 more than its cost of service for a number of years, and

1 this overpayment had resulted in it subsidizing several
2 other operating districts for this period of time.

3 As to depreciation, here the company agreed
4 to move away from its past approach and agreed to expense
5 the cost of removal and salvage and discontinue reserve
6 deficiency amortizations. In addition, the company will
7 be authorized to use new depreciation rates for its
8 depreciable plant accounts.

9 By taking this depreciation route, Staff
10 believes there is a recognition that depreciation is a
11 return of invested capital rather than a funding mechanism
12 for plant replacement, and that cost of removal and
13 salvage is an expense based on amounts that are actually
14 experienced. The company's commitment to use this method
15 was indeed a significant ingredient in the settlement of
16 this case from the Staff's view.

17 As far as the infrastructure replacement
18 surcharge, the company agreed that the ISRS currently in
19 effect would be reset to zero effective April 16, 2004,
20 and that the company would not file a proposed tariff to
21 adjust its rates to recover water infrastructure costs
22 through an ISRS before December 16th, 2005.

23 What this boils down to is that this
24 stipulation protects ratepayers in the St. Louis district
25 from an ISRS rate increase for two years after expiration

1 of the current ISRS surcharge. In addition, this
2 provision moves the filing date of the next ISRS into line
3 with the earliest possible date for the filing of the
4 company's next rate case.

5 The bottom line of all this is that rate
6 stability and predictability are bolstered by this
7 provision.

8 Moving on to the weighted cost of capital
9 for ISRS filings, the basic idea here is that the weighted
10 cost of capital for any future ISRS filing made by the
11 company on or after December 16, 2005, and before rates
12 become effective in the company's next general rate case,
13 would be reduced from the current ISRS cost of 8.59
14 percent to 7.70 percent. Reduction in the cost of
15 financing the future ISRS also played an important part in
16 the settlement of this case from the Staff's viewpoint.

17 As far as the St. Louis district and ISRS,
18 in this agreement the company committed to expending a
19 minimum of \$12 million in infrastructure improvements in
20 the St. Louis district in calendar year 2004, 18 million
21 in 2005, and 25 million in 2006. Staff felt that this
22 commitment to provide these needed infrastructure
23 improvements helped assure St. Louis customers that their
24 water supply would continue to be both safe and reliable
25 into the future.

1 Bottom line financially, the promise by the
2 company to defer seeking a future ISRS until December of
3 2005, while at the same time agreeing to an infrastructure
4 replacement program, was another ingredient in the Staff's
5 willingness to settle this case.

6 A rate case moratorium is in this
7 agreement. This was strictly put in there in an effort to
8 promote rate stability and predictability over time.
9 Essentially the company agreed not to file a rate case
10 before December 31st, 2005. In exchange, both Staff and
11 OPC agreed not to fill a complaint for a rate decrease
12 before December 31st, 2005. And Staff felt there was
13 value in terms of rate stability over time with a rate
14 case moratorium.

15 As far as the CAM, cost allocation manual,
16 the company committed to an expanded and specified CAM
17 that Staff felt had value in this case. Basically, the
18 agreement assures that data will be made available for
19 regulatory purposes through an orderly and acceptable and
20 proper exchange of accounting information between the
21 company, Staff and OPC.

22 Additionally, there are improved customer
23 service provisions that the Staff felt were important.
24 Hitting the highlights, the agreement expands the content
25 of customer service performance indicator reports from the

1 company's call center and includes various other items
2 that the company agreed to provide to the Staff. It
3 identifies and specifies the weather reporting data the
4 company will provide Staff for all the service areas. It
5 provides the company's obligated to respond to customer
6 inquiries and complaints within specified time frames and
7 commits the company to furnish information in connection
8 with these inquiries.

9 And importantly, the agreement also
10 contains a commitment from the company to work with the
11 Staff and OPC to create an affiliated transactions rule.

12 Lastly, as with any litigated case, there's
13 always a litigation risk that the Commission would not
14 accept Staff's position on certain key important issues in
15 this matter. Because of the risk, Staff was willing to
16 meet with the company and attempt to reach an agreement
17 that each party could accept on a going-forward basis.

18 For all these reasons, Staff believes the
19 stipulation is in the public interest because it assures
20 safe and adequate service at just and reasonable rates.
21 Therefore, the Staff would respectfully ask the Commission
22 to approve the Stipulation & Agreement. That's all I
23 have, Judge.

24 JUDGE THOMPSON: Thank you, Mr. Snodgrass.
25 Commissioner Murray, are you ready?

1 COMMISSIONER MURRAY: Yes, I'd like to ask
2 Mr. Snodgrass a question before he sits down.

3 JUDGE THOMPSON: Mr. Snodgrass, go back to
4 the podium.

5 COMMISSIONER MURRAY: I said I'd like to
6 before you sit down.

7 Mr. Snodgrass, in your opening remarks you
8 made some reference to the company agreeing to expense net
9 salvage, and you said that Staff believes, therefore,
10 there is a recognition that, and you went on indicating at
11 some length what you thought that indicated to Staff that
12 the company was recognizing in terms of depreciation and
13 treatment of net salvage.

14 Can you show me in the Stipulation &
15 Agreement what specifically you're referring to?

16 MR. SNODGRASS: I think I can refer that
17 particular question to Mr. Schwarz who handled that
18 particular issue in the trial if you don't mind,
19 Commissioner.

20 COMMISSIONER MURRAY: All right. That will
21 be fine.

22 MR. SCHWARZ: Commissioner, the settlement
23 of the depreciation issue is reflected in paragraph No. 2
24 at the bottom of page 2 and the top of page 3 and recites
25 there the --

1 COMMISSIONER MURRAY: I'm sorry. Which --
2 MR. SCHWARZ: Of the Stipulation &
3 Agreement, as to revenue requirement.
4 COMMISSIONER MURRAY: Page 2. All right.
5 I see. And the language that you're saying -- or that
6 Mr. Snodgrass said the Staff believes is a recognition
7 of -- where do you see something that indicates that the
8 company recognizes that -- and I wish I had his exact
9 wording. I don't have my Livenote on. I can't repeat it
10 exactly.
11 MR. SCHWARZ: I would assume that it's --
12 in any event, the sentence that begins on the last line of
13 page 2, in addition, effective January 1, 2004, the
14 company will begin expensing cost of removal and salvage
15 and discontinue the reserve deficiency amortizations
16 currently in effect.
17 COMMISSIONER MURRAY: Where does that
18 indicate that a recognition by the company that that is
19 the appropriate way to treat the cost of removal and
20 salvage?
21 MR. SCHWARZ: Well, they will begin booking
22 it on their books of account for the future until the
23 effective date of the next time their depreciation rates
24 are specified.
25 COMMISSIONER MURRAY: As a part of the

1 entire Stipulation & Agreement; is that correct?

2 MR. SCHWARZ: Yes. Yes. And it's

3 certainly not to indicate that when they next file a rate

4 case or Staff next files a complaint case, that their

5 position at that time will be that that's an appropriate

6 method on a going-forward basis, but --

7 COMMISSIONER MURRAY: I'm going to have to

8 ask Mr. Snodgrass, what was the purpose of your remarks

9 about that Staff believes, therefore, there is a

10 recognition that you set out specifically as to the

11 depreciation of net salvage issue?

12 MR. SNODGRASS: Commissioner, I think that

13 was primarily because they agreed to do so, and by

14 taking -- by agreeing to do that, Staff felt there was a

15 recognition that Staff's theory behind that particular

16 method was valid, although it's not specified specifically

17 in the stipulation, ma'am.

18 COMMISSIONER MURRAY: And did you do that

19 as to any other issue, did you make that statement that

20 there was a recognition that Staff's methodology was valid

21 because the company had agreed to it?

22 MR. SNODGRASS: No, we did not, ma'am.

23 COMMISSIONER MURRAY: Why did you single

24 out this issue?

25 MR. SNODGRASS: Frankly, that was made at

1 the suggestion of the depreciation counsel, Mr. Schwarz.

2 COMMISSIONER MURRAY: And, Mr. Schwarz, was

3 that for the purpose of using this in the future as

4 pointing to a policy of this Commission or policy that

5 Missouri-American Water Company is in agreement with?

6 MR. SCHWARZ: Well, the statement reflects

7 that the company is currently -- assuming the Commission

8 prescribes the depreciation rates and the methods set out

9 in the Stipulation & Agreement, that the company will book

10 the depreciation expense and any cost of removal in the

11 manner specified.

12 COMMISSIONER MURRAY: In this particular

13 case?

14 MR. SCHWARZ: Until rates are next set,

15 because of the stipulation in this case, yes.

16 COMMISSIONER MURRAY: But it says nothing,

17 does it, about the company's agreeing to the Staff's

18 methodology as being the appropriate methodology?

19 MR. SCHWARZ: Well, if it's -- I think it

20 certainly implied that it is an appropriate methodology.

21 COMMISSIONER MURRAY: Okay. And how

22 does -- how do you intend to use that in the future?

23 MR. SCHWARZ: I'm not -- it's certainly a

24 representation that at this point in time the company was

25 willing to book its expenses in this manner. I don't

1 think that you could, for instance, argue that the company
2 agreed forever and for all time to do it in this manner.
3 It's certainly -- well, suffice that.

4 COMMISSIONER MURRAY: Okay. I'll stop
5 there and then, Judge, we can continue with the normal
6 order. I had just wanted to ask Mr. Schwarz some
7 questions, Mr. Snodgrass actually who gave the opening
8 statement and then he deferred it to Mr. Schwarz. So
9 that's where we are right now, Chairman Gaw.

10 JUDGE THOMPSON: Chairman Gaw, questions?

11 CHAIRMAN GAW: Not right now. Go ahead.

12 JUDGE THOMPSON: Any of the other parties
13 have anything they want to jump in with?

14 (No response.)

15 JUDGE THOMPSON: Okay. I have some
16 questions. We also noticed up Case No. WO-2002-273 for
17 today. That, you will recall, was an AAO case for
18 security expenses recently reversed and sent back to the
19 Commission by Circuit Judge Richard Callahan.

20 My question is, what becomes of that AAO
21 case since the Commission is now on the verge of
22 presumably finalizing this rate case and approving the
23 tariffs that will be filed after the stipulations are
24 approved, assuming that that's what happens, what becomes
25 of this AAO?

1 Mr. England? I saw you ducking down there
2 behind.

3 MR. ENGLAND: I'm going to follow learned
4 counsel immediately in front of me and dish that question
5 off to my partner.

6 (Laughter.)

7 I think counsel who gets to speak first has
8 the distinct advantage. In fairness to Mr. Cooper, I
9 think he was more involved in that case.

10 JUDGE THOMPSON: Mr. Cooper.

11 MR. COOPER: Your Honor, we believe that
12 that case continues to exist, that it's not mooted out by
13 the result in WR-2003-0500, and that, at least in our
14 opinion, the Commission will have a need to issue an Order
15 in response to that remand.

16 JUDGE THOMPSON: Let me ask you a
17 hypothetical question. Assuming that the Commission
18 issues an Order that grants the AAO request, as it did the
19 first time around, and let's say it's sustained on appeal,
20 would it then be available for recovery in the next rate
21 case, the one that you can't file until after December
22 2005?

23 MR. COOPER: Ask me the hypothetical again,
24 your Honor.

25 JUDGE THOMPSON: That was it.

1 MR. COOPER: If it is sustained, if the AAO
2 is granted by the Commission?

3 JUDGE THOMPSON: Let's say the Commission
4 grants it again, it's attacked on appeal and survives, or
5 maybe nobody appeals it. At any rate, it's still in
6 existence come December 2005 when you are free to file
7 your next rate case. Is that AAO then going to be
8 available for recovery at that time?

9 MR. COOPER: Certainly we would argue that
10 it is, yes.

11 JUDGE THOMPSON: Okay. That's your
12 position. Very well. Mr. Conrad, do you have a position
13 on that?

14 MR. CONRAD: Having no partner here --

15 JUDGE THOMPSON: You can pass this off to
16 Mr. Finnegan, have him flown in.

17 (Laughter.)

18 MR. CONRAD: Actually, I think the two
19 responses that Mr. Cooper made would make sense to us.
20 It's not moot and not mooted by this package, and at least
21 what I usually advise my clients, if they have a court
22 order, I usually advise them to comply with it.

23 JUDGE THOMPSON: Good advice, Mr. Conrad.
24 Thank you.

25 MR. COFFMAN: Your Honor?

1 JUDGE THOMPSON: Mr. Coffman.

2 MR. COFFMAN: Thank you. We were also
3 involved in that AAO case, and I would just specifically
4 note that this stipulation as to revenue requirement not
5 only does not address the AAO or security costs, but has a
6 specific provision in paragraph 17 pointing out that it
7 does not apply to any matters not raised in any prior or
8 subsequent Commission proceeding or any matters not
9 explicitly addressed in the Stipulation & Agreement.

10 And there are a host of other appeals and
11 issues in other courts or remanded to the Commission that
12 this order -- that this particular Stipulation & Agreement
13 would not dispose of.

14 JUDGE THOMPSON: Okay. Thank you. Further
15 questions from the Bench? Commissioner Murray?
16 Commissioner Gaw?

17 CHAIRMAN GAW: Help me to understand the
18 impact of the AAO question. I want to -- I need to follow
19 the logic of what that -- what that does if that -- where
20 that impacts, potentially impacts rates and when if that
21 order would be reaffirmed for some -- for some basis that
22 complies with the court's direction.

23 MR. COOPER: Your Honor, I think how it
24 applies is that currently that AAO is on an amortization
25 period that will stretch for some time into the future,

1 and so that's why we say that it will likely apply or be
2 available to be applied in the next rate case. I don't
3 remember -- I can't say this positively, but I think it's
4 actually a 20-year amortization.

5 CHAIRMAN GAW: Okay. Thanks.

6 JUDGE THOMPSON: Commissioner Murray?

7 COMMISSIONER MURRAY: Thank you. I'd like
8 to ask whichever company counsel would like to be first or
9 second, the initial application here was for a revenue
10 increase of approximately \$20 million; is that right?

11 MR. ENGLAND: That's correct.

12 COMMISSIONER MURRAY: And the result here
13 is a net decrease of approximately 350,000; is that right?

14 MR. ENGLAND: That's correct.

15 COMMISSIONER MURRAY: And the company has
16 agreed to not file an ISRS for two years after the
17 expiration of the current ISRS; is that correct?

18 MR. ENGLAND: I think we're precluded from
19 filing before December 16th, 2005, which is roughly 18
20 months from the operation of law date in this case.

21 COMMISSIONER MURRAY: And I assume the
22 company had some significant interest in getting the ISRS
23 legislation passed recently?

24 MR. ENGLAND: Yes, we did.

25 COMMISSIONER MURRAY: And was that because

1 it was considered that that was needed for being able to
2 make needed improvements?

3 MR. ENGLAND: Yes, exactly.

4 COMMISSIONER MURRAY: So I'm confused. I
5 don't understand if there was a need for a \$20 million
6 increase and you had the ability to do the ISRS filings,
7 how you can be agreeing to a \$350,000 net decrease and
8 committing to make major improvements for '04, '05 and '06
9 in the St. Louis area, and at the same time not having any
10 ISRS filings.

11 It seems like a net overall loss for the
12 company, and I'm trying to figure out. You filed a rate
13 increase. You must have incurred some expenses in
14 doing -- rate increase request. You must have incurred
15 some expenses in doing so and must have devoted
16 significant resources to seeking those things, but the
17 result is a net loss, it appears.

18 And if you have some better explanation for
19 that, I'd sure appreciate knowing how this could happen.

20 MR. ENGLAND: Well, my first -- and I
21 apologize. As you know, as you well know me by now, I
22 tend to be a little flip. My first response is it's just
23 darn good management.

24 (Laughter.)

25 My second response -- my second response is

1 a little bit more serious and hopefully addresses your
2 question to some degree or answers your question, and that
3 is that what we have done here, you're absolutely right,
4 cash flow essentially remains the same, but by agreeing to
5 Staff's depreciation rates, we have reduced booked
6 expenses. And so, in essence, we've traded earnings
7 improvement for cash flow, or the other way around,
8 however you want to look at it.

9 And if I might add, we are not unmindful of
10 the impact that our rate increase of three years ago had,
11 particularly in some of the outstate districts, St. Joe
12 for example. And we had reached an agreement in this case
13 on a revenue neutral basis for rate design purposes, and
14 we thought that if we could improve the bottom line and at
15 the same time not impact our customers any more than we
16 absolutely had to, on the heels of the 2000 rate case,
17 that that had some positive, at least, customer relations
18 benefit.

19 COMMISSIONER MURRAY: So are you saying
20 that by the depreciation method that is being employed,
21 that improved the bottom line?

22 MR. ENGLAND: Yes, ma'am.

23 COMMISSIONER MURRAY: By trading earning
24 improvement for cash flow?

25 MR. ENGLAND: Yes.

1 COMMISSIONER MURRAY: Okay. I have a
2 follow-up question to that, then, because part of the
3 company's position in the case was testimony filed by
4 Mr. Spanos. In his surrebuttal testimony on page 6, he
5 indicated that this method would -- he said, the risk of
6 future customers overpaying is substantially increased.

7 Is that the case here? Are we -- are we
8 providing that future customers may overpay as a result of
9 this depreciation and net salvage treatment?

10 MR. ENGLAND: It's certainly a possibility,
11 but obviously we won't know until the future comes. What
12 we're doing here is deferring for a period of time
13 recovery of the net cost of removal. We're going to
14 capture it as an expense. And Mr. Schwarz is exactly
15 right, in the next rate case we believe we're free to
16 advocate again our original position that we had in this
17 case or, for that matter, if we think it's appropriate,
18 continue to accept Staff's method.

19 By settling the case we do not undo or back
20 away from some of the opinions that we've expressed in our
21 testimony, but Mr. Snodgrass hit the nail on the head.
22 Litigation has its risks, and we assessed those for
23 purposes of this case and under the circumstances, as I
24 mentioned to you before, the impact on rates, impact on
25 earnings, we concluded that at this point in time it was

1 the best opportunity for the company to make the best of
2 the situation.

3 COMMISSIONER MURRAY: Are you -- in
4 entering into this Stipulation & Agreement, is the company
5 agreeing that Staff's method of the treatment of cost of
6 removal and net salvage is the appropriate treatment for
7 ratemaking purposes?

8 MR. ENGLAND: No, I don't believe we are.
9 We are agreeing to book their depreciation rates and we're
10 agreeing to expense the net cost of removal, but I don't
11 believe we're agreeing to the appropriateness of that
12 methodology, if you will.

13 COMMISSIONER MURRAY: So acceptance of the
14 Stipulation & Agreement is based on all of the things that
15 were in the agreement, is that --

16 MR. ENGLAND: Absolutely.

17 COMMISSIONER MURRAY: -- put together; is
18 that right?

19 MR. ENGLAND: Uh-huh.

20 COMMISSIONER MURRAY: And it does not make
21 a statement, I'm assuming you're saying, and correct me if
22 I'm wrong, but I'm assuming you're saying it makes no
23 statement as to the company's position on the methodology
24 for the treatment of net salvage cost of removal?

25 MR. ENGLAND: That's correct.

1 COMMISSIONER MURRAY: And is it the
2 company's position that with this bottom line improvement
3 that you cited earlier, that the revenue requirement
4 provided here is great enough to allow those promised
5 improvements in the years '04, '05 and '06?

6 MR. ENGLAND: If we didn't think we could
7 do it, we wouldn't have entered into this stipulation,
8 keeping in mind that we are free to file that ISRS after
9 December 16th, 2005, and I would anticipate that that
10 filing would capture all of the improvements made to that
11 point in time or at least whenever that test period end
12 utilized for that filing would be. So it's not a loss, if
13 you will. It's more of a deferral of recovery.

14 COMMISSIONER MURRAY: And I know there were
15 a lot of -- there was a lot of time and effort put into
16 trying to correct some of the impact of the last rate case
17 in terms of rate design, and apparently by entering into
18 this agreement all of the affected parties agreed that
19 there was been an equitable adjustment in the area of rate
20 design that at least significantly reduces the impact of
21 the last rate case. Is that -- Mr. Coffman, would you
22 like to --

23 MR. COFFMAN: Yes. I don't recall if you
24 were here to hear all the answers of the rate design
25 stipulation presentation we made, but it was even more

1 difficult than negotiating this stipulation, but that I do
2 believe did satisfy all the parties. I don't know that it
3 -- I would agree in St. Joe that it goes -- it
4 significantly reduces the dramatic rate shock to the
5 various customer classes there, but it does go back in the
6 right direction, negotiated to the point where everyone
7 was willing to agree to it.

8 And thankfully, because there is not a rate
9 increase in this case, those particular impacts even to
10 residential and small business classes where there are
11 some increase are not going to be so severe as to cause
12 the kind of rate shock as happened in the last case.

13 And if you have that rate design settlement
14 with you, I'd point out something that has been of some
15 confusion to the folks. It is important to look at the
16 last column there. There are various volumetric
17 percentage changes, but the overall change to the class is
18 in the last column there, the largest, of course, being in
19 St. Joe and I guess to one particular class in Parkville.
20 Most classes in most districts you're not going to see
21 very noticeable changes.

22 COMMISSIONER MURRAY: Okay. I assume if
23 anybody has anything else to add, you'll speak up or if
24 you have anything in disagreement on that issue, you'd say
25 so now. Hearing nothing.

1 I think that's all the questions I have.

2 Thank you.

3 JUDGE THOMPSON: Thank you, Commissioner.

4 Chairman Gaw?

5 CHAIRMAN GAW: I have just a small question

6 about the -- I'm not totally clear about what this does to

7 Brunswick, because when we did the rate design --

8 MR. CONRAD: Is anybody here from

9 Brunswick?

10 CHAIRMAN GAW: When we had the rate design,

11 I understood that there could be some impact to Brunswick

12 if revenue stayed the same, and I'm understanding in

13 reading this that there basically is no overall impact to

14 Brunswick, and I'm trying to understand whether or not --

15 exactly what the final answer is with the two pieces put

16 together, whoever can answer that.

17 MR. COFFMAN: If you have the rate design

18 settlement with you, Attachment 1A shows that Brunswick

19 essentially will not be -- well, let's see. There was

20 a -- I guess we do need to look in conjunction with --

21 what we did, there's no additional change in the revenue

22 requirement stipulation. Every change is within the rate

23 design settlement, but there is a transfer from the

24 St. Louis County district to the Brunswick district.

25 CHAIRMAN GAW: I'm familiar with that. I'm

1 just -- because when we answered the questions on the
2 design, the rate design issue, we didn't have the revenue
3 issue resolved, I'm just looking for somebody to put those
4 two pieces together for me now.

5 MR. COFFMAN: Well, the revenue requirement
6 stipulation makes no change, no additional change to what
7 was agreed to in the rate design.

8 CHAIRMAN GAW: The numbers, as far as the
9 numbers are concerned, can I look in the rate design and
10 see what the outcome is now based upon what was
11 anticipated in the rate design stip? Is that what you're
12 saying?

13 MR. ENGLAND: If I may?

14 CHAIRMAN GAW: Please.

15 MR. ENGLAND: You're exactly right, the
16 rates contained in Attachment 1A to the rate design
17 stipulation would be the rates that would roll out as a
18 result of the revenue requirements.

19 CHAIRMAN GAW: That makes more sense to me.
20 There were some comments made in the last -- within the
21 last part of this stipulation that I thought might have
22 varied from that. I didn't expect that to be what was
23 really happening. I just wanted to clear it up.

24 MR. ENGLAND: And for your information,
25 with the exception of Joplin, that would be the same for

1 all the other districts.

2 CHAIRMAN GAW: Mr. Deutsch?

3 MR. DEUTSCH: Yes, your Honor.

4 CHAIRMAN GAW: How's Joplin doing?

5 MR. DEUTSCH: My friends in Joplin are

6 great.

7 CHAIRMAN GAW: Are they -- I know they're

8 probably never going to be overjoyed, but are they -- how

9 do they feel about this?

10 MR. DEUTSCH: They're pleased with this

11 settlement. Just to clarify, in case there was any doubt

12 about earlier pronouncements, the settlement deals with

13 this case and with these rates on a going-forward basis.

14 We agree with all of that. We still have the little

15 matter of the -- I forget the number of the earlier 2000

16 case.

17 CHAIRMAN GAW: Yes.

18 MR. DEUTSCH: That is still waiting, and

19 we're still interested in seeing that.

20 CHAIRMAN GAW: We're going to see about

21 getting something done with that. I was hoping maybe

22 there might be some resolution of this whole big picture.

23 Obviously that's not going to occur.

24 MR. DEUTSCH: Not yet.

25 CHAIRMAN GAW: Anyway, but as far as this

1 part of the equation is concerned, Joplin is satisfied?
2 Obviously they signed off on it.

3 MR. DEUTSCH: Joplin is satisfied. The
4 decrease that we received is not all that could be
5 demanded or given, but it's fair and resolves the issues
6 and that's what we're interested in. So we're happy with
7 the stipulation and the agreement.

8 CHAIRMAN GAW: Thank you. I might -- since
9 Commissioner Murray put the company on the hot seat about
10 why they would concede their position \$20 million, I have
11 to put the Staff in a similar position and ask them, what
12 happened to your 20 million in at least -- what was that,
13 a \$20 million decrease that I think the original position
14 was? You might help explain to me how come you could
15 compromise away that portion of your position.

16 MR. SNODGRASS: Commissioner Gaw, I think
17 we have Steve Rackers here to give you some input on that.

18 CHAIRMAN GAW: Oh, you're going to do that.
19 (Laughter.)

20 MR. SNODGRASS: I think we can respond to
21 that.

22 CHAIRMAN GAW: Is that a we being
23 Mr. Rackers can respond to that?

24 MR. SNODGRASS: Steve, come on up here.

25 CHAIRMAN GAW: I don't need to put him on

1 the stand. If you can give me -- give me your analysis
2 would be sufficient. If you want to put him up there,
3 that's fine.

4 MR. SNODGRASS: Well, I think that Staff
5 sees value in the total settlement, and that there's value
6 in depreciation, there's value in the rate moratorium,
7 there's value in the ISRS situation, and all of those
8 things combined to offset the complaint, and the
9 litigation risk that we saw in this case combined for us
10 to take this position in this Stipulation & Agreement.

11 CHAIRMAN GAW: Is there anything you can
12 point to that was -- what was the major part of your-all's
13 adjustment money-wise, dollar-wise in your original
14 position?

15 MR. SNODGRASS: I would say depreciation
16 would be the major element and the money issue.

17 CHAIRMAN GAW: Is there -- the depreciation
18 issue you're capturing in the settlement, correct?

19 MR. SCHWARZ: Yes.

20 CHAIRMAN GAW: So what -- of what's left,
21 what is it that would account for the -- for the money
22 that put you into this current position? Is it
23 acquiescence on rate of return? I know that some of those
24 things are difficult to detail on a settlement.

25 MR. SCHWARZ: There was considerable

1 litigation risk. I think if you recall, for instance, the
2 pensions issues, it's kind of an all or nothing issue, and
3 it was, I don't know, 5 or \$7 million as I recall. I
4 haven't looked at the numbers recently. That was
5 certainly at least in my mind a significant item.

6 CHAIRMAN GAW: The Staff is satisfied the
7 settlement is fair? I'm sure you said that before I came
8 in here. I apologize for being late.

9 MR. SCHWARZ: Yes, sir.

10 CHAIRMAN GAW: Public Counsel?

11 MR. COFFMAN: Thank you, your Honor. I
12 would say that the moratoriums are of considerable value
13 to ratepayers. Obviously with the vast gulf between the
14 recommendations in this case, it was difficult to reach an
15 agreement. Obviously the company was reluctant to lower
16 its rates. We were reluctant to agree to any rate
17 increase given the evidence before us.

18 The moratoriums allowed us to bridge that
19 difference. We would not have agreed to a rate in-- or no
20 change in rates. That is, we would have insisted on a
21 rate reduction without these moratoriums, the moratorium
22 on the general rate case being through the end of 2005
23 before a case could be filed.

24 And since the St. Louis County area was the
25 area that showed the most need for a reduction, it's very

1 important that they also have the ISRS moratorium in
2 conjunction with the infrastructure commitment. The
3 infrastructure system will not, we think, suffer beyond
4 the point where service is no longer safe and adequate
5 with these commitments, and at least that surcharge would
6 not appear on bills until later.

7 Based on these timings, the ISRS would
8 likely hit consumers' bills before any change in the rates
9 based on the next general rate case, barring some
10 emergency or dramatic change in events. But that was
11 obviously very important and was the thing that allowed us
12 to reach this stipulation. Also of value were the various
13 other items that have been talked about in the stip.

14 And, of course, the affiliate transaction
15 rule I don't know has been mentioned. I think an
16 affiliate transaction rule for water companies is long
17 overdue. Hopefully this will get it going.

18 CHAIRMAN GAW: Tell me a little bit about
19 that part of the settlement very quickly if you could on
20 the affiliate transaction rule.

21 MR. COFFMAN: That's on page 4, paragraph
22 6. Simply states that the company, Public Counsel and
23 Staff will use best efforts to see that a rule regarding
24 affiliate transactions is promulgated by the Commission no
25 later than April 16th of 2005, and the company agrees to

1 provide certain information involving other statutes and
2 Commission rules around the country.

3 We've advocated that there be an affiliate
4 transaction rule for water at the time the Commission
5 considered gas and electric. We hope that the Commission
6 will consider something along the same lines.

7 CHAIRMAN GAW: Company's okay with that?
8 Is there -- did the company have an objection to that to
9 begin with?

10 MR. ENGLAND: I'm not sure.

11 CHAIRMAN GAW: Okay. That's fine.

12 MR. COFFMAN: There were issues relating to
13 affiliate transaction in the case.

14 MR. ENGLAND: I think there were some
15 objections. I don't know how strenuous they were.

16 CHAIRMAN GAW: I'm familiar with some of
17 the discovery things that came about in regard to
18 affiliates, and I guess from a going-forward basis
19 standpoint, I was curious about whether or not this is
20 something the company has major problems as a general
21 topic is concerned. But I know the details of things will
22 have to be --

23 MR. ENGLAND: That's a good question. I
24 mean, generally I don't know it's something we have great
25 heartburn with. As I say, the devil's in the details.

1 Depending on what the rule says, we may have major
2 heartburn. And one of our commitments here is to produce
3 rules regarding affiliate transactions that affiliates of
4 this company are subject to in other jurisdictions. So
5 we're not unused to them, and I don't know that I'd say
6 that we're categorically opposed to them, and what this
7 stipulation allows us to do is hopefully have some input
8 with Staff and Public Counsel into the development of
9 those rules.

10 CHAIRMAN GAW: Would we be talking about
11 a -- have you got any concept of the time frame of the
12 window used to try to bring something to the Commission to
13 review? Are we talking about three months, more, less?

14 MR. ENGLAND: I can't tell you. I can tell
15 you, by the way, that we're running a little bit behind on
16 our first commitment to produce the rules from the other
17 states, but we've talked to the parties about a bit of a
18 delay, I think, until the end of next week to do that, and
19 they have no problem with it. So after we do that, I'm
20 sure they'll want some time to review it.

21 There'll obviously have to be meetings to
22 get together and start talking about the framework, but I
23 would think at a minimum it would be 90 days before there
24 would be --

25 CHAIRMAN GAW: Something that we --

1 MR. ENGLAND: -- a draft.

2 CHAIRMAN GAW: -- could take a look at on a
3 preliminary stage?

4 MR. ENGLAND: I mean, I'm only speaking off
5 the top of my head.

6 CHAIRMAN GAW: I'm really not looking for a
7 specific commitment but a range. I'd like for that not to
8 be lingering out there without us riding herd over making
9 sure it's moving along.

10 MR. COFFMAN: 90 days from today seems like
11 a fair target date.

12 MR. SNODGRASS: And there was a date,
13 Commissioner, set in the Stipulation itself, page 4,
14 paragraph 6, affiliate transaction rule. Company, OPC and
15 Staff will use their best efforts to see that a rule
16 regarding affiliate transactions is promulgated by the
17 Commission no later than April 16, 2005.

18 CHAIRMAN GAW: Yeah. I'm trying to see
19 some deadlines or some goals that we might have to get
20 things moving along on the informal side of things,
21 because the end result, we've got to plan out -- you all
22 know that -- we have to plan out months in advance to get
23 these rules completed by a certain date.

24 Is it fair -- is it fair to say that it
25 would be difficult if not impossible for you-all to give

1 me an idea about what kind of a rate of return we're
2 getting out of this case?

3 MR. COFFMAN: I think that may be unfair.

4 CHAIRMAN GAW: Not possible?

5 MR. ENGLAND: I don't think -- I'm not
6 going to say it's not possible, but I certainly don't
7 know.

8 MR. COFFMAN: It depends on how you
9 calculate.

10 CHAIRMAN GAW: I know we've run into this,
11 but sometimes I can get some positions from different
12 parties about what they think the range is. On this one,
13 I'm not sure that's very easy at all.

14 MR. ENGLAND: Well, as you can imagine,
15 depending on whose perspective and how you get to the
16 number, it could be a very wide range.

17 CHAIRMAN GAW: Yes, it could. You-all
18 really haven't talked about that yourselves, have you?

19 MR. ENGLAND: No. And I think the fact
20 that we didn't talk about it probably is one of the
21 reasons that we're able to come to this agreement.

22 CHAIRMAN GAW: I understand. This
23 settlement is basically a bottom line settlement?

24 MR. SCHWARZ: Yes.

25 MR. SNODGRASS: Yes.

1 CHAIRMAN GAW: That's where everybody is,
2 bottom line to the company, bottle line to the consumer?
3 MR. ENGLAND: Correct.
4 MR. SNODGRASS: Correct.
5 CHAIRMAN GAW: Mr. Conrad, your clients --
6 your clients are overjoyed?
7 MR. CONRAD: I was going to propose a range
8 somewhere between 2 and 15 percent.
9 CHAIRMAN GAW: That's very helpful,
10 Mr. Conrad. Thank you.
11 MR. CONRAD: Yes, sir. The essence of a
12 compromise is everybody who signs on to it or accepts it
13 feels that they're being, shall we say, equally
14 disadvantaged.
15 CHAIRMAN GAW: I saw your quote in the
16 paper somewhere. That's close to it.
17 MR. CONRAD: You're one up on me because I
18 haven't been able to keep up with them. There is another
19 version of that quote which --
20 CHAIRMAN GAW: Isn't printable?
21 MR. CONRAD: It really wouldn't fit here.
22 But the settlement has no mother, has no
23 father. Parties just come together. I think we've tended
24 to call these types of animals black boxes in that --
25 maybe Pandora's box would be better if you start looking

1 inside them.

2 CHAIRMAN GAW: I'm not asking very many
3 questions right now. I'm looking forward.

4 MR. CONRAD: And I don't mean to be at all,
5 I think counsel for the company used the term flip,
6 because we certainly agree and support the Commission's
7 responsibility and its obligation to look at this from
8 what I would say is a 10,000 foot view, say does this --
9 is this consistent with public interest. Here you have a
10 large group of very diverse parties who are saying that
11 this is acceptable.

12 CHAIRMAN GAW: That's not lost on me.
13 Judge, I don't think I have any more questions from my
14 perspective. Commissioner Murray may.

15 JUDGE THOMPSON: Commissioner Murray?

16 COMMISSIONER MURRAY: I have a couple more.
17 Thank you.

18 I'm not quite sure how to ask this, but in
19 that the company asked for a \$20 million increase
20 initially and Staff came back with a complaint for 19 to
21 \$20 million overearnings, and the settlement is like right
22 in the middle to keep the company where it was before
23 anything happened, basically, except maybe a little bit
24 lower revenue, is Staff agreeing that the company can
25 continue to overearn because of the things that were

1 conceded to?

2 MR. SCHWARZ: No, I don't believe that's --

3 I don't believe that's the case. I think that, as

4 Mr. Rackers reminded me, the true-up would have added

5 another approximately \$5 million to Staff's case, which

6 brings it down to \$15 million. The difference between the

7 Staff and the company on rate of return was 8 to \$10

8 million. The difference on pensions was, I don't know, 5

9 to \$7 million. So the litigation risk is --

10 COMMISSIONER MURRAY: I understand that.

11 I'm asking you, though, you were willing to accept a

12 settlement to avoid the litigation risk?

13 MR. SCHWARZ: Yes.

14 COMMISSIONER MURRAY: But the litigation

15 risk is that you would lose. Your position was that the

16 company was overearning. Do you still think the company

17 is overearning?

18 MR. SCHWARZ: No. The Staff would and has

19 suggested to the Commission that the rates proposed and

20 the revenues recommended will result in just and

21 reasonable rates at the present time.

22 COMMISSIONER MURRAY: So although you

23 believed at one point that they were overearning 19 to

24 \$21 million and now they're going to earn just slightly

25 less than what they were earning at that time, they will

1 not be overearning?

2 MR. SCHWARZ: That's -- the Staff's
3 position is that the revenue requirement settlement and
4 the rate design settlement in this case result in just and
5 reasonable rates for the company's customers. I don't
6 think that Staff necessarily views that there -- that
7 there is a single number, for instance, accurate to three
8 decimals that will tell you what reasonable return on
9 equity is and that a number which differs in the third
10 decimal position is unreasonable.

11 I think that there's a range of
12 reasonableness, and I think that this settlement results
13 in rates that are definitely within the range of
14 reasonable.

15 COMMISSIONER MURRAY: Okay. Assume -- I'm
16 just thinking of perceptions and future cases and things
17 like that. Let's just take as an example if in the future
18 the Staff filed a complaint case against a company and
19 said it was overearning \$10 million. Well, if the company
20 then -- I'm doing a reverse scenario here. The company
21 then claimed to be needing a \$10 million increase. There
22 would be this risk of litigation on both sides, right,
23 risk of losing on both sides?

24 MR. SCHWARZ: Yeah.

25 COMMISSIONER MURRAY: So that there might

1 be a compromise somewhere in the middle?

2 MR. SCHWARZ: Yes.

3 COMMISSIONER MURRAY: And if the reverse
4 were the case, like it is here, a company comes in for an
5 increase of say \$10 million and the Staff says, oh, no,
6 you're overearning \$10 million, then there's pressure on
7 both sides to kind of come back to the status quo; is that
8 right?

9 MR. SCHWARZ: I think that the parties have
10 to analyze the relative strengths and weaknesses of each
11 other's positions and take into account as well what they
12 might expect from the decision-maker and, yes, analyze the
13 likely outcomes in those terms.

14 And I think that if you have one party on
15 one edge of reasonable, of what's reasonable and another
16 on the opposite, that reasonable certainly extends into
17 the middle as well, and I -- I think that it's not
18 unexpected that parties and positions and results
19 gravitate toward the middle rather than to the extremes.

20 COMMISSIONER MURRAY: And what -- I
21 certainly would never want to discourage settlement
22 proceedings, but I do have a concern that a settlement of
23 this nature might result in an incentive to in the future
24 do that kind of opposite filing, a request for a rate
25 increase be offset by an overearnings complaint and vice

1 versa, with the idea that somewhere in the middle there's
2 going to be a settlement because that creates the risk,
3 you know. I don't think that would be a good outcome.

4 MR. SCHWARZ: I think I understand your
5 point, and I think that restated it might be that does the
6 Commission's approving settlements like this provide
7 encouragement to parties in the future to take extreme
8 positions? I certainly hope not.

9 I also believe that when either the company
10 or Public Counsel or the Staff perceives that rates at a
11 particular utility aren't appropriate, they should take
12 some action to bring rates back into what they perceive to
13 be the range of reasonable rates. And I think that it's
14 incumbent on the process that everyone understands that
15 the other parties have different views of where in the
16 range of reasonable rates customer rates ought to be set.

17 And given the current framework of things,
18 I think that that's -- it's certainly a legitimate
19 concern. But I certainly hope that through the process of
20 discovery and the filing of testimony and rebuttal
21 testimony and surrebuttal testimony, that by the time you
22 approach hearing, the parties and the Commission can have
23 some idea of a narrower band of what's reasonable.

24 And certainly if the parties or the
25 Commission is left with the impression that the other side

1 is bringing forward positions that are beyond the pail,
2 that aren't reasonable, that don't pass depending on your
3 predilection the laugh test or the smell test, that those
4 things over time will have their consequences as well.

5 So I think that to the extent that we're
6 all engaged in the process and for the foreseeable future
7 at least none of us can disengage from the process, that
8 that adds an element of reasonableness to the process.

9 COMMISSIONER MURRAY: Certainly the goal of
10 the Commission is to set just and reasonable rates and not
11 to set rates based upon which party has the greater
12 leverage or is perceived to have the greater leverage in
13 settlement negotiations. So it's -- you know, we have to
14 seriously consider settlement agreements as well as if
15 this entire case had been litigated. And if -- I don't
16 know if anybody else wants to comment on the fact that
17 perceptions might be as I stated them earlier.

18 Mr. Coffman?

19 MR. COFFMAN: Thank you, Commissioner. I
20 can tell you that when I look at a case, I don't -- I
21 don't take the two extremes and divide by two and assume
22 that that's where it goes. There are a surprising number
23 of cases that often find their way to that middle area.

24 But we do assess litigation risk and the
25 value of cases issue by issue, and I have seen cases where

1 utility companies in my opinion have shot for the moon and
2 asked for a lot more than what I think would ever be
3 possible or justifiable. I certainly understand a utility
4 company putting the adjustments in their case that they
5 believe are valid. And I think certainly the same goes
6 for proposed rate decreases, you put in everything that
7 you can swear is fair from your perspective, you put that
8 in the case.

9 We certainly didn't look at the litigation
10 risk in this case based on what's the middle ground
11 between the two extremes. My opinion is that
12 Missouri-American Water Company was overearning during the
13 test year. It's my opinion they were overearning even
14 during the period they were recovering ISRS, and that
15 concerns me, but that's the law now.

16 But I think this might help you understand.
17 Again, the moratorium is key to us in this proposed
18 settlement. And one thing that I do, and I don't know
19 that any other party does that, but when we look at
20 whether rates are going to be fair, even without a
21 moratorium, we look at the present value over the many.
22 Moratorium you save certainly over the next two years,
23 give or take, and can look at that, and whereas this may
24 not be a rate that we would necessarily think was the best
25 rate or the fairest rate, you know, next month when these

1 rates could go into effect, over the two years I think
2 that over this period we certainly believe this will be a
3 just and reasonable rate.

4 I don't know if that helps, but just
5 thought I'd share a little bit how we look at things.

6 COMMISSIONER MURRAY: Thank you. I think
7 that's all I have at this time. Thank you.

8 JUDGE THOMPSON: Anyone else have anything?

9 MR. COOPER: Your Honor, before we go off
10 the record, if that's --

11 JUDGE THOMPSON: Do you have a buck to
12 pass, Mr. Cooper?

13 MR. COOPER: No, I don't. I'll have to
14 carry this one.

15 In response earlier to one of Chairman
16 Gaw's questions, I responded that a security AAO was on a
17 20-year amortization, and I was in error. While there
18 were proposals for a 20-year amortization, the Commission
19 ultimately ordered a 10-year amortization. I just wanted
20 to take the opportunity to correct that. I don't think it
21 changes the overall substance of my comments, but I wanted
22 to correct that.

23 JUDGE THOMPSON: Thank you, Mr. Cooper.
24 Anyone else?

25 Hearing nothing further, the hearing will

1 be adjourned. Thank you.
2 WHEREUPON, the on-the-record presentation
3 was concluded.
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