

EVIDENTIARY HEARING - Vol. 15 3/5/2018

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING

MARCH 5, 2018

Jefferson City, Missouri

Volume 15

In the Matter of Missouri-)
American Water Company's) File No. WR-2017-0285, et al.
Request for Authority to)
Implement General Rate)
Increase for Water and)
Sewer Service Provided In)
Missouri Service Areas.)

KIM S. BURTON, Presiding,
REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
WILLIAM KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
COMMISSIONERS

REPORTED BY:
REBECCA L. TUGGLE, CCR, RPR, CSR
ALARIS LITIGATION SERVICES

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1 JUDGE BURTON: Let's go ahead and go on the
2 record. Today is March 5, 2018. The time is
3 approximately 9:00 o'clock in the morning. The
4 Commission has set this time for presentations on two
5 stipulations and agreements that were submitted to the
6 Commission, as well as beginning of the remaining
7 issues in an evidentiary hearing in the matter of
8 Missouri-American Water Company's request for
9 authority to implement a general rate increase for the
10 water and sewer service provided in Missouri service
11 areas.

12 This is File No. WR-2017-0285, et al. My
13 name is Kim Burton and I am a regulatory law judge
14 with the Missouri Public Service Commission. At this
15 time, we will ask the parties to enter their
16 appearance for the record and we will begin with
17 Missouri-American Water Company.

18 MR. COOPER: Thank you, Your Honor.
19 Dean Cooper, William England, III, and Diana Carter
20 from the law firm of Brydon, Swearngen & England P.C.
21 on behalf of Missouri-American Water Company. Also,
22 Mr. Timothy Luft of Missouri-American Water Company on
23 behalf of the company. And the court reporter has the
24 addresses.

25 JUDGE BURTON: Okay. Thank you, Mr. Cooper.

1 Staff of the Missouri Public Service
2 Commission.

3 MR. WESTEN: Thank you, Judge. Good
4 morning. My name is Jacob Westen and along with
5 Ms. Casi Aslin, Ms. Whitney Payne, Ms.
6 Alexandra Klaus, we are representatives of Staff for
7 the Commission this morning. Our information has been
8 provided to the court reporter.

9 JUDGE BURTON: Thank you.
10 Office of the Public Counsel.

11 MR. SMITH: Yes. Ryan Smith with the Office
12 of the Public Counsel. My information has also been
13 provided in advance.

14 JUDGE BURTON: Midwest Energy Consumers
15 Group.
16 Consumers Counsel of Missouri.

17 MR. COFFMAN: Yes. John B. Coffman
18 appearing on behalf of the Consumers Counsel of
19 Missouri.

20 JUDGE BURTON: Thank you.
21 Okay. And I was previously informed that
22 counsel for the City of St. Joseph would be
23 unavailable today, but he is expected to appear here
24 on Wednesday when we hear further discussions on the
25 rate base issues.

1 Next, Triumph Foods, LLC.

2 MR. HARDEN: Yes. Joshua Harden with the
3 law firm of Stinson Leonard Street, 1201 Walnut
4 Street, Suite 2900, Kansas City, Missouri 64106, on
5 behalf of Triumph Foods, LLC.

6 JUDGE BURTON: Thank you.

7 Missouri Industrial Energy Consumers.

8 MR. MILLS: On behalf of the Missouri
9 Industrial Energy Consumers, my name is Lewis Mills.
10 My address is 221 Bolivar, Jefferson City, Missouri
11 65101.

12 JUDGE BURTON: Missouri Department of
13 Economic Development, Division of Energy.

14 MR. POSTON: Marc Poston appearing for the
15 Missouri Division of Energy.

16 JUDGE BURTON: Now, we also have the City of
17 Riverside.

18 MR. BEDNAR: Yes. Joe Bednar and Keith
19 Wenzel, Spencer Fane. We represent the City of
20 Riverside. Previously provided the reporter with
21 information. Thank you.

22 JUDGE BURTON: Public Water Supply Districts
23 No. 1 of Andrew County and Public Supply Districts
24 No. 2 of Andrew County.

25 MR. DORITY: Thank you, Judge. Larry DORITY

1 and James Fischer, Fischer & Dority PC, appearing on
2 behalf of Public Water Supply Districts No. 1 and 2 of
3 Andrew County. And the court reporter has our
4 information. Thank you.

5 JUDGE BURTON: Thank you.

6 City of Jefferson City, Missouri.

7 MR. COMLEY: Good morning, Judge Burton. On
8 behalf of the City of Jefferson, let the record
9 reflect the entry of Mark W. Comley of Newman, Comley
10 & Ruth P.C. Our business address has been given to
11 the reporter.

12 JUDGE BURTON: Thank you.

13 Now, certain parties have previously
14 requested to be excused from the entirety of the
15 evidentiary hearing but reserve the right to submit
16 briefs. That request was granted for the Empire
17 District Electric Company, Kansas City Power & Light
18 Company, KCP&L Greater Missouri Operations Company,
19 Union Electric Company, D/B/A Ameren Missouri, and
20 Utility Workers Union of America Local 335. In
21 addition, the City of Warrensburg had requested to be
22 excused from the presentation today, and I believe we
23 have one more. City of --

24 MS. BELL: Joplin.

25 JUDGE BURTON: Joplin.

1 MS. BELL: Thank you. Stephanie Bell and
2 Marc Ellinger on behalf of the City of Joplin and we
3 would likewise request to be excused, except for on
4 Wednesday with rate designs.

5 JUDGE BURTON: That request is granted. And
6 does the court reporter have your information?

7 MS. BELL: Yes. Thank you.

8 JUDGE BURTON: Thank you.

9 Now, are there any other parties that I may
10 have missed?

11 Okay. Seeing no hands.

12 It's my understanding that since we do have
13 two stipulations and agreements that were presented
14 for the Commission's consideration, we'll begin with
15 one that was first filed, and I believe that one
16 involves the issues concerning the City of Jefferson
17 City. So we'll go ahead and begin with Mr. Luft.

18 MR. LUFT: Judge, Tim Luft,
19 Missouri-American, petitioners. We have a stipulation
20 with the City of Jefferson, worked together with Mark
21 Comley, their counsel. They have some specific issues
22 that they intervened in this case and they wanted to
23 be addressed.

24 We enjoyed a good relationship with the City
25 of Jefferson, but there are a few things that they

1 wanted us to take a look at. That includes the
2 coordination on water main replacement, some private
3 fire service rates. We're going to have meetings with
4 regard to those. There's some pressure issues with
5 the Cedar City area, the area around the airport.
6 We're going to do some work before July of this year
7 to try and address those issues.

8 And then there's some smaller water mains
9 that both the City and the Company feel that need to
10 be replaced; so we've developed a timeline to replace
11 those.

12 JUDGE BURTON: Okay. Thank you. Any
13 questions for the bench?

14 CHAIRMAN HALL: No questions.

15 COMMISSIONER KENNEY: No, thank you.

16 JUDGE BURTON: Thank you, Mr. Luft.

17 MR. COMLEY: Judge Burton, would you give me
18 leave to address for just a moment?

19 JUDGE BURTON: Yes, absolutely, Mr. Comley.

20 MR. COMLEY: Pursuant to paragraph 7 of the
21 stipulation, the parties agreed that we could
22 conditionally offer our prefile testimony of
23 Chief Schofield and Britt Smith. And you've given the
24 assignments for us, or a block of numbers, and I have
25 premarked that testimony, and I've brought one copy

1 for the court reporter.

2 What I'd like to do is offer that
3 conditionally to the Commission at this point. It's
4 on the condition that you would approve the
5 stipulation without any modifications. So it's
6 conditionally relevant, I'll say it that way. But I
7 would offer -- let me make sure I've got the numbers
8 right -- Exhibits 325, 326, 327, and 328 into the
9 record at this point.

10 JUDGE BURTON: And for the record, would you
11 identify whose testimony --

12 MR. COMLEY: Yes.

13 JUDGE BURTON: -- goes with which number?

14 MR. COMLEY: Exhibit 325 is the direct
15 testimony of Chief Schofield. Exhibit 326 is the
16 surrebuttal. Exhibit 327 is the direct testimony of
17 Britt Smith, and 328 is Mr. Smith's surrebuttal.

18 JUDGE BURTON: Exhibits 325 through 328 have
19 been offered. Are there any objections to their
20 admission to the record?

21 MR. WESTEN: No objection, Your Honor.

22 JUDGE BURTON: We'll go ahead and admit
23 those into the record.

24 (CITY OF JEFFERSON CITY EXHIBITS 325 THROUGH
25 328 WERE RECEIVED IN EVIDENCE.)

1 MR. COMLEY: Thank you very much. One more
2 thing. I know that Jefferson City, along with the
3 City of Warrensburg and St. Joseph, joined together to
4 sponsor the testimony of Mike McGarry and he is a rate
5 design witness. He is scheduled to testify before you
6 on Thursday. The attorneys for St. Joseph and
7 Warrensburg will be presenting the opening remarks on
8 that issue and they will also be conducting his
9 examination and the cross-examination of the opposing
10 witnesses from other parties.

11 Jefferson has no other issues in the case.
12 And like others, I'm going to ask you leave, if I
13 could be excused from the remainder of the hearing?

14 JUDGE BURTON: Well, let me first check to
15 see if there are any questions from the Commission.

16 CHAIRMAN HALL: No questions.

17 COMMISSIONER KENNEY: No.

18 JUDGE BURTON: Thank you. You're excused.

19 Did any other party wish to make a
20 presentation on a -- this first stipulation and
21 agreement concerning the City of Jefferson City's
22 issues?

23 All right. Seeing none, we will now move on
24 to the main stipulation and agreement. And,
25 Mr. Cooper, are you going to be making a presentation?

1 MR. COOPER: I will. Thank you, Judge.

2 As you're probably aware from the review of
3 the primary -- what I would call the primary
4 stipulation agreement that's been filed with the
5 Commission -- we have a stipulation and agreement
6 before you that was signed by Missouri-American, the
7 Staff, the Office of the Public Counsel, MIEC, MECG,
8 Triumph Foods, and Division of Energy. And, further,
9 the remaining parties that are not signatories have
10 affirmatively stated that they have no objection to
11 that stipulation accordingly.

12 It certainly can be treated as a unanimous
13 stipulation in accordance with Commission Rule
14 4CSR240-2.115. You're also aware -- I'm sure that
15 you've seen the schedule -- the stipulation does not
16 settle all issues in this case. There remain several
17 issues that will require your attention this week.
18 Most prominently, issues related to Missouri-Americans
19 lead service line replacement program and rate design
20 in this case.

21 However, this stipulation agreement goes a
22 long way towards resolving many, many issues in this
23 case that have been previously identified. In key
24 part, the stipulation addresses total revenue
25 requirement in conjunction with billing determinants

1 and the tax cut and jobs act of 2017.

2 From the Company's point of view, the
3 \$318-million revenue requirement identified in the
4 stipulation represents an 8 percent increase over
5 revenues authorized in the last rate case and a
6 14 percent increase over the Company's present rate
7 revenues, while also providing for recognition of
8 approximately \$18 million of customer savings
9 associated with the reduction in the corporate tax
10 rate.

11 The stipulation further --

12 CHAIRMAN HALL: I'm sorry. What was that
13 number again, the last number?

14 MR. COOPER: 18 million, recognition of
15 18 million in customer savings for the reduction of
16 corporate tax rate.

17 The stipulation further specifies how ISRS
18 will be treated going forward, specifies treatment of
19 pensions and OPEPs going forward, provides for certain
20 reporting on the part of Missouri-American on an
21 annual basis. It establishes depreciation rates and
22 miscellaneous service charges for the Company.
23 Resolves the RSM affiliate transaction rule, tank
24 painting tracker, low income tariff, and special
25 contracts issues among the parties for this case, and

1 provides a working docket to further address inclining
2 block rates and includes specific subjects and
3 information to be addressed by that group.

4 Missouri-American believes that the
5 stipulation presents a just and reasonable resolution
6 of those issues addressed by this document and would
7 request that the Commission approve that stipulation
8 and agreement.

9 JUDGE BURTON: Thank you.

10 CHAIRMAN HALL: Good morning.

11 MR. COOPER: Good morning.

12 CHAIRMAN HALL: Were you counsel of record
13 in Missouri-American's last rate case?

14 MR. COOPER: One of them, yes.

15 CHAIRMAN HALL: Do you have the report and
16 order in that case available to you?

17 MR. COOPER: I may have. I don't have it at
18 the podium.

19 Yes, Chairman.

20 CHAIRMAN HALL: What did this Commission say
21 about inclining block rates in that order?

22 MR. COOPER: Well, without turning to it,
23 the Commission --

24 CHAIRMAN HALL: Page 41.

25 MR. COOPER: In the next case, the

1 Commission asked the parties to file information on
2 inclining block rates so the Commission can consider
3 the information in setting just and reasonable rates
4 in that case.

5 CHAIRMAN HALL: Do you believe the Company
6 complied with that direct instruction in that order?

7 MR. COOPER: Well, we certainly do. We
8 filed information in the direct testimony and followed
9 it up with additional information in later rounds of
10 testimony.

11 CHAIRMAN HALL: What information did you
12 supply? Because from what I could tell, all you did
13 was explain why we shouldn't do it, when this
14 Commission very clearly said we are interested in
15 inclining block rates and we want you to provide us
16 with the information that we need to make the policy
17 decision as to whether or not we want to establish
18 inclining block rates.

19 What we got from the Company, what we got
20 from Staff, what we got from all the parties, was
21 telling us why we shouldn't do it. I call that
22 flaunting the Commission. We directly asked for
23 information so we could make a policy decision. I
24 don't think you did that.

25 MR. COOPER: Certainly I understand your

1 position, Chairman.

2 CHAIRMAN HALL: My position is that we take
3 a recess, that you guys get together, talk about how
4 you could comply with this Commission's 5-0 order from
5 May 26 of 2016, when we asked you to provide us with
6 the information necessary to make the policy decision
7 as to whether or not inclining block rates are
8 appropriate.

9 I'll be back in a minute.

10 JUDGE BURTON: Why don't we take a recess
11 and we'll go off the record and we'll see how much
12 time is needed.

13 MR. COOPER: Thank you.

14 JUDGE BURTON: Thank you.

15 (Whereupon, a break was taken.)

16 JUDGE BURTON: Let's go ahead and go back on
17 the record.

18 Is there anything that the parties would
19 like to address to the Commission?

20 MR. ENGLAND: Thank you, Judge.

21 Tripp England on behalf of Missouri-American Water
22 Company. Let me begin, first of all, by apologizing,
23 Chairman Hall and commissioners, for not having
24 provided the information that you obviously wanted on
25 inclining block rates.

1 That information is, I don't think, readily
2 available right now and certainly not in this record
3 that we believe -- and I let the parties speak for
4 themselves -- that's necessary to appropriately design
5 inclining block rates.

6 We worked very hard, as my partner
7 Dean Cooper said, to fashion this stipulation that has
8 a lot of different parts. And the inclining block
9 section was not easily arrived at, but the parties
10 believe that the best way to address it was to create
11 a working group on a going-forward basis to develop
12 more granular information as indicated in the
13 stipulation and agreement.

14 The inclining block issue also entails the
15 revenue stabilization mechanism; so it's a little bit
16 like pulling a thread on your sweater. I'm not sure
17 how many other unintended consequences will result if
18 we move down this -- down this avenue.

19 Nevertheless, we've kind of looked to you to
20 see if there's something we can do to -- in this case,
21 or as we've indicated here, we've got a collaborative
22 that we've during the break discussed. And not that
23 we were going to take a lot of time to do that anyway,
24 but we've recommitted to moving quickly with the
25 collaborative to determine or develop the granularity

1 of the information we think is necessary to make an
2 informed decision on inclining block rates.

3 So I look to you all as to what exactly it
4 is you would like either in this case or moving
5 forward.

6 CHAIRMAN HALL: This really isn't about
7 inclining block rates. This is not really about rate
8 design. What this is about is this Commission in a
9 5-0 vote approved an order instructing the parties to
10 do something. It doesn't matter what that was. You
11 guys didn't do it. You did not do what we
12 specifically asked you to do. I'm surprised that any
13 of you are surprised at our reaction.

14 Having said that, when we issued the order
15 back in 2016, what we intended for you to do was to
16 get together and put together billing determinants,
17 put together a plan so that at this rate case, you
18 have that at our disposal to make a policy
19 determination as to the appropriate rate structure.
20 And now, 18 months later, you're saying we didn't do
21 what you asked us to do but we will over the interim,
22 we will before the next rate case.

23 Let me ask you this. Mr. Jenkins, in some
24 of his written testimony, proposed a pilot project in
25 Joplin, I believe. And he had some rationale for why

1 that would be the appropriate place to do such a
2 pilot. Would that blow up the stipulation?

3 MR. ENGLAND: I'll let Joplin's
4 representative speak for Joplin. So I know she has
5 feelings on that issue.

6 CHAIRMAN HALL: Let me ask you first. Would
7 it blow it up on behalf of Missouri-American?

8 MR. ENGLAND: Well, probably not. But it
9 was also coupled with the revenue stabilization
10 mechanism because the concern is, it's obvious with an
11 inclining block-rate structure, there's going to be a
12 customer response, we believe. We're afraid that the
13 response will be conservation. We won't achieve
14 the --

15 CHAIRMAN HALL: We want the response to be
16 conservation.

17 MR. ENGLAND: I understand that. Other
18 parties are concerned that we're going to make too
19 much money, that the customers aren't going to be well
20 enough educated and they're actually going to use
21 water and end up with a terribly high bill, we're
22 going to have more revenues than we're entitled to.
23 So if the pilot, in our opinion, is tied inexorably to
24 some sort of revenue stabilization or tracker
25 mechanism to make sure we don't over-earn, if you

1 will, or under-earn in that situation.

2 Keep in mind, in our last case, we went in
3 Joplin and in the District 2, the St. Joseph area,
4 from a declining block-rate structure to a flat-rate
5 structure. So customers in those high-use,
6 residential customers in those districts have already
7 experienced a significantly greater increase in
8 their -- in their usage just based on moving to a
9 higher rate.

10 CHAIRMAN HALL: And how did that impact
11 consumption?

12 MR. ENGLAND: Well, it's -- the Company's --
13 it didn't help our declining use. If anything, it
14 contributed to it.

15 CHAIRMAN HALL: So it did -- so it did
16 promote conservation?

17 MR. ENGLAND: I can't say that, Your Honor.

18 CHAIRMAN HALL: You can't have it both ways.
19 You can't say that it promotes instability and then at
20 the same time that it's not going to have any effect,
21 that it's going to promote a conservation and it's
22 going to cost us money but it's not going to work. I
23 mean, it's one or the other.

24 MR. ENGLAND: Well, I'm saying the Company
25 is concerned that it will have an impact and actually

1 reduce revenues. What I'm saying is other parties are
2 concerned that it will have an impact and it'll
3 increase revenues because people will not respond
4 quickly enough.

5 CHAIRMAN HALL: Let's hear from --

6 MS. BELL: Commissioners, just on behalf of
7 the City of Joplin on the pilot program itself, I just
8 wanted to explain why Joplin cannot agree to the pilot
9 program at this point.

10 One, Mr. England already pointed out in the
11 last case there were differing rate structures in
12 different communities, and so we don't believe that
13 Joplin is the right place for the pilot program
14 because some communities were already at a flat rate.
15 They kept that flat rate. Joplin actually went from
16 declining block rates to the flat rate.

17 So just in the last case, there was a huge
18 rate shift there on customers who have -- who are high
19 users. And so implementing an inclining block in a
20 community that just went from declining to flat, we
21 feel like there are other communities, specifically
22 those with the flat rate before, that might be less
23 affected by that.

24 And the other point is just from the
25 projections that we're seeing based on the billing

1 determinants, Joplin, I think, rate A is looking at
2 approximately a 50 percent increase on the volume
3 metric charge. And when we look at that, Joplin
4 itself has almost a 300 percent increase since 2000.
5 And so on residential users, even those high-end
6 users, are already looking at a 50 percent increase,
7 adding inclining block on that would -- I mean, some
8 would call 50 percent a rate shock, but adding
9 inclining block on top of the 50 percent increase
10 would really be a hardship to the people of Joplin.

11 CHAIRMAN HALL: Thank you.

12 MS. BELL: Thank you.

13 CHAIRMAN HALL: Does Staff have a proposal?

14 MR. WESTEN: Morning, Commissioners. Good
15 morning, Chairman, Judge. Staff -- Staff again
16 apologizes for not having the information that was
17 sought. That is a failing of the parties to produce
18 that information to the Commission to make this
19 decision.

20 Staff doesn't have a separate proposal from
21 what Mr. Tripp discussed -- Mr. Tripp -- Mr. England
22 discussed. And the basis is essentially this. The
23 one point of consensus that all of the parties have on
24 this issue is that we do not have the information.
25 And, again, I understand it was the Commission's

1 directive in the last case to have us get together to
2 provide that information and collect it. But it is a
3 true concern that without it, that we cannot put
4 forward a proposal or information for the Commission
5 to consider that would lead to just and reasonable
6 rates.

7 And so moving forward a working
8 collaborative as proposed by the parties that is
9 truncated in time so we can get the information
10 together quickly and present that to you, we think is
11 the best case to going forward at this point.

12 And understanding it's not ideal, not from
13 the Commission's perspective and we understand that.
14 And, again, we apologize for not having that
15 information for you, but when you talk about inclining
16 block rates, you're talking about trying to adjust
17 people's behavior. And it's not just standard
18 behavior. It's behavior that may have become
19 engrained in habit; when they do their laundry, how
20 often or frequently they shower, other uses that are
21 involved with residential use.

22 And even within a residential group, you
23 have low users and high users and middle users. And
24 without a careful analysis of the different levels of
25 use, there's always going to be a concern that you're

1 going to balance incorrectly the incentives and
2 disincentives for those customers.

3 And the best way to ensure that there is
4 less risk to those customers is to make sure that we
5 got all the data that we need and that we analyzed it
6 correctly and we can put forward something to the
7 Commission. In a collaborative matter with a work
8 group, we can discuss things when we're not focused on
9 trying to get certain issues resolved for hearing.
10 That way we can have an honest conversation about the
11 information as we're trying to present something.

12 CHAIRMAN HALL: Is there another community
13 that might provide a viable test pilot project?

14 MR. WESTEN: There has been -- I can tell
15 you that there's some discussion within the parties
16 for that. I don't know if we have a specific proposal
17 for a particular location at this time. Partly
18 because those potential service areas are not
19 necessarily represented in this proceeding, and we
20 would need to make sure that their interests are
21 properly represented and addressed. So we would need
22 to reach out to those groups and identify why we think
23 they're appropriate, and make sure that they have a
24 say in the matter.

25 MR. BEDNAR: Mr. Chairman, I've talked to

1 the parties about me talking to my client. I've got
2 kind of a unique set of circumstances because
3 Riverside just makes up a part of the Platte County
4 Water District. But I've offered to have a discussion
5 with the other mayors, but they need more information
6 as to the negative collateral consequences that --

7 CHAIRMAN HALL: Or the positive collateral.

8 MR. BEDNAR: Right. Right. But, you know,
9 as elected officials, they're going to be sensitive to
10 whether or not it ends up further increasing their
11 rates. And they just need information, much as you
12 do, need information to determine -- they'll be making
13 a decision to go forward with inclining block rates
14 without the information that you don't have. So, I
15 mean, there's a risk. That's all I'm saying.

16 And for an intervener to do that is, you
17 know -- I mean, all the risk is on them. And we
18 certainly don't have the resources, you know, today to
19 be able to get them prepared for all that. So we need
20 some time to talk with the Company and Public Counsel
21 and Staff to talk to the mayor and the councilmen to
22 say, hey, is this something you'd be interested in,
23 and see what they say to make an informed decision.

24 CHAIRMAN HALL: Well, I would suggest that
25 some of those discussions should probably occur. The

1 Company should work with the rest of the parties to
2 look for a suitable location for such a pilot. And I
3 look forward to hearing what you guys come up with.

4 I'll also have one other just side comment
5 for Staff, and that is I was really surprised in your
6 class cost of service and rate design report to see
7 Professor Beecher cited for essentially opposition to
8 inclining block rates, when I have heard her speak on
9 multiple occasions and she's a strong proponent.

10 Went back and looked at the article that you
11 cited, and the article overall is quite supportive of
12 inclining block rates. And I find it inappropriate to
13 pull out a sentence from that article and cite it for
14 the proposition that inclining block rates don't work.
15 So I would -- I would request that Staff not make that
16 kind of mistake again in the future.

17 MR. WESTEN: Duly noted, Commissioner --
18 Chairman.

19 COMMISSIONER KENNEY: Hey, Judge, what's the
20 operation of law date?

21 JUDGE BURTON: I believe it's May 28th.

22 COMMISSIONER RUPP: I have a proposal. I
23 suggest we just vote no on the stipulation, continue
24 to have this hearing, we all vote no, and then you
25 come back 11 months with a new rate case and you

1 include the information that you should have brought
2 on this one. I'm sure the \$24-million rate increase,
3 that people would love not to have that for another 11
4 months.

5 And I would say don't you ever come back and
6 ignore one of our words because somebody read this and
7 someone chose to ignore it. It wasn't like it was
8 hidden in our order. Someone read it and said, yeah,
9 you know, we don't have to do that.

10 How many times in agenda have you heard us
11 talk about kicking the can down the road? So on a 5-0
12 order, you purposely ignored it and your response was
13 to kick the can down the road. Well, let's have a --
14 you know, let's have an interim committee. Let's have
15 a policy working group. And then to find out that,
16 Staff, you had your report and you manipulated it so
17 that you could get the policy you wanted.

18 We set the policy. If I -- if we could --
19 if I could find a legal way to just cancel this whole
20 rate case hearing, that's what I would do. I mean,
21 it's like you guys want to play a game of chicken.
22 Come up there, well, what are they going to do if we
23 don't do it? What? Are they really going to say no?
24 I mean, my God, what would happen to our bond rating?
25 What would happen to our stuff if we -- if they said

1 no? So that's my proposal.

2 JUDGE BURTON: Do any other parties have any
3 presentations or statements they would like to make to
4 the Commission concerning this stipulation and
5 agreement?

6 Okay.

7 COMMISSIONER KENNEY: Judge, I think you --
8 you've heard Chairman Hall and Commissioner Rupp. Why
9 don't you find out -- we'll just -- I mean, we'll just
10 pass on the stip right now. Why don't you find out on
11 the schedule going forward, if we don't accept the
12 stip, how many more days we need and see where it's
13 located. I think we're going to have a couple days
14 extra next week.

15 JUDGE BURTON: I believe that --

16 COMMISSIONER KENNEY: Or why don't you look
17 into that and let us know?

18 JUDGE BURTON: I can do that. In the
19 meantime, why don't we take a brief five-minute
20 recess, and then we will begin with presentations --
21 opening statements on the lead service line
22 replacement issues and we'll begin hearing testimony.

23 (Whereupon, a brief break was taken.)

24 JUDGE BURTON: Let's go ahead and go back on
25 the record. It's approximately 11:12 a.m., and the

1 parties will present opening statements on the issue
2 of the lead service line replacements. I would remind
3 everyone who's here to please silence your electronic
4 devices before we begin.

5 And you have the floor, Mr. Cooper.

6 MR. COOPER: Thank you, Your Honor.

7 OPENING STATEMENT BY MR. COOPER

8 MR. COOPER: It seems like not that long ago
9 that we were here discussing lead service line
10 replacement with the Commission in the course and --
11 in fact, and on November 30th of last year, the
12 Commission issued an order in WU-2017-0296 where it
13 granted Missouri-American an accounting authority
14 order to allow it to defer and book to USOA Account
15 186 its costs associated with the replacement of
16 customer lead service lines that were completed
17 between January 1 of 2017 and May 31st, essentially,
18 of 2018 or May 28th, the operation of law date.

19 We're here today to kind of step forward
20 from that order and to address what to do, first, in
21 regard to the recovery in the amounts that have been
22 deferred pursuant to your order in that prior case, as
23 well as to address how Missouri-American should
24 proceed in regard to the lead service line replacement
25 program going forward and how the costs -- if it does

1 proceed with that program, how those costs they're
2 incurring on a going-forward basis should be recorded.

3 Now, as background -- and I think we have at
4 least one new commissioner who's not present in the
5 room today but who wasn't here when we did this last
6 case -- I've handed out a diagram that's included
7 in -- it's kind of a blow-up of a diagram that's
8 included in the testimony of Missouri-American witness
9 Gary Naumick. And just as I say, it's kind of a
10 refresher, you know, what portion of the service line
11 is owned by the customer differs within
12 Missouri-American's territory.

13 The top diagram is a diagram of what the
14 case is outside of St. Louis County. And in that
15 area, the customer owns the service line only from the
16 company meter or the property line to the premise.
17 Within St. Louis County, which is the bottom diagram,
18 the customer owns the entire service line from the
19 main to the premise.

20 Now, there are references in the testimony
21 to both full lead service line replacement and partial
22 lead service line replacement. In the -- the outside
23 of St. Louis County diagram, a partial replacement
24 would only include the part of the line between the
25 main and the property line or the meter, that sort of

1 dashed line there.

2 In St. Louis County, the partial replacement
3 would really be just a function of operational
4 necessity related to the process of disconnecting the
5 service line from the main and reconnecting it to the
6 main. And a full replacement in both situations would
7 include everything from the main to the -- essentially
8 to the premise of the house in that diagram.

9 Missouri-American estimates, based on
10 existing data from the Company's tap cards and field
11 experience, that approximately 30,000 of the service
12 lines in its service territory are lead across the
13 state. Lead, of course, can enter drinking water when
14 pipes that contain lead corrode are disturbed, and a
15 removal of lead service lines in contact with drinking
16 water provides an opportunity to significantly reduce
17 the potential risk of exposure to the lead in drinking
18 water.

19 Lead service lines can be encountered on
20 either the utility side or the customer side during
21 water main construction and relocation projects or
22 service line repairs. Missouri-American's program
23 proposes to replace these lead service lines when
24 they're encountered during main replacements.

25 I think that removing lead service lines in

1 their entirety will complement the other mitigation
2 work the Company performs, including providing stable
3 water quality and treatment to minimize corrosion,
4 compliance sampling, and following good management
5 practices.

6 The Company's treatment and sampling efforts
7 have effectively reduced potential lead exposure from
8 drinking water. However, as the research regarding
9 potential exposure to lead has been further developed
10 and refined, the Company has determined that it should
11 take additional steps to further mitigate potential
12 customer exposure to lead in drinking water; hence,
13 the proposal here.

14 The growing body of research indicates that
15 partial lead service line replacement in the physical
16 disturbance of the lead service line have the
17 potential to increase lead levels following
18 replacement, not partial replacement. So now, when
19 the Company encounters the lead service line during
20 the course of its main replacement projects, the
21 Company believes all segments of lead in the service
22 line should be replaced but -- both any lead portions
23 owned by the Company and the lead portions owned by
24 the customer or the property owner.

25 Now, the Company is proposing that going

1 forward, customer-owned lead service line replacements
2 be considered to be a part of those restoration costs
3 that are routinely incurred on infrastructure
4 replacement. Doing so is appropriate for safety
5 reasons when the service line is disturbed by the main
6 replacement process.

7 Replacing such lead service lines in
8 conjunction with main replacements is cost efficient
9 or cost effective, efficient, and, again, the Company
10 believes a responsible way to address the health and
11 safety concerns associated with lead service lines.

12 Now, as to the existing deferral, as I
13 mentioned, is one of the questions for the Commission
14 in this case. The lead service line replacements that
15 have been performed from January 1, 2017, through
16 December 31 of 2018, and that are included in the
17 information -- the true-up information in -- the MAWC
18 provided in this case total approximately
19 \$1.4 million.

20 If this program continues, of course, this
21 number will ramp up as the weather warms and the
22 construction season gets underway this year. But MAWC
23 proposes that for the expenditures deferred pursuant
24 to the existing AAO, that the unamortized balance of
25 the deferral be included in rate base, and the balance

1 amortized over the average service life for service
2 lines consistent with what they would have been in
3 Account 345; so that -- that life rate is 65 years,
4 and the Company believes would agree with the last
5 depreciation study approved by the Commission.

6 The Company further recommends that the --
7 what it would call the stub period, that period from
8 January 1st of this year through the -- essentially
9 the end of May of this year of the lead service line
10 AAO be transferred into Account 345 services and be
11 included in plant ineligible for potential recovery in
12 its next rate case.

13 On a going-forward basis, and that being
14 those expenditures or those costs after the end of May
15 of this year, MAWC proposes that the costs associated
16 with the replacement of customer-owned lead service
17 lines be recorded in uniform system of accounts,
18 Account Number 345, services account.

19 Again, going back to what I mentioned
20 before, the Company's position is that these costs are
21 a part of installation costs similar to other
22 restoration cost items, such as disturbed pavement,
23 pavement base, sidewalks, curbing, that are already
24 associated with main installation.

25 In this case, the customer-owned line is

1 restored or replaced with new materials for safety
2 reasons to mitigate the potential that's been
3 increased by the risk of lead contamination following
4 physical disturbances related to that infrastructure
5 work.

6 OPC Witness Robinett offered comments at his
7 surrebuttal testimony suggesting as an alternative how
8 to treat depreciation expense should the Commission
9 agree with the Company's proposal to record
10 customer-owned lead service line replacement costs
11 into Account 345.

12 He suggests that in that situation, the
13 Commission should establish a subaccount within
14 Account 345 to separately track the expenditures for
15 the replacement of customer-owned lead service lines
16 and utilize the existing life rate of 65 years to
17 depreciate those costs.

18 The company agrees with this -- with this
19 alternative approach that the Commission agreed to and
20 allowed the Company book into the 345. Staff has
21 recommended that the lead service line replacement
22 costs associated with customer service or
23 customer-owned service lines be reported in Account
24 186 with the deferred amounts amortized over a 10-year
25 period and the unamortized balance included in rate

1 base.

2 MAWC appreciates the Staff. Company
3 believes was proposed a methodology that, in theory,
4 would include both a form of return of and return on
5 those -- those expenditures. However, the very nature
6 of Account 186, deferrals, adds uncertainty to the
7 ultimate recovery of such amounts. It would make it
8 difficult for the Company to fully commit to the
9 necessary investment and, hence, the Company's
10 proposal -- continuing proposal to book -- book these
11 items into Account 345.

12 It had come up in our prior case, but the
13 question about, well, what if -- what if we go a
14 different direction is present again in the testimony
15 in this case. And I think no surprise from what's
16 been said before, but if Missouri-American does not
17 receive a return of and on related to the investments,
18 it's first choice would be to do its best to avoid
19 areas with lead service lines and postpone main
20 placement projects with where it thinks those lines
21 may exist to avoid the risk of potential exposure to
22 lead associated with the partial replacements.

23 Now, there's -- are, of course, several
24 downsides associated with this, to include the fact
25 that delaying main replacement projects can increase

1 the number of main breaks and leaks over time, which
2 can be costly and disruptive to customers in the
3 community. But, you know, further, that if these main
4 replacements were to go forward in that fashion, you
5 know, a great opportunity for replacement of lead
6 service lines is missed because we would miss the cost
7 effective basis of or opportunity to get to those at
8 the same time as the Company is in the street and
9 doing work in those areas already.

10 COMMISSIONER KENNEY: Excuse me a minute.

11 MR. COOPER: Yes.

12 COMMISSIONER KENNEY: Did I hear you say --
13 because I've always looked at this as the Company
14 doing a good service by going and replacing those
15 lines. Did I hear you say that if the Company was not
16 given a return on replacing lines that they do not
17 own, that the Company would shy away from replacing
18 those lines and go somewhere else?

19 MR. COOPER: That's absolutely correct,
20 Your Honor.

21 COMMISSIONER KENNEY: Thank you.

22 MR. COOPER: I think that no matter how you
23 look at it, it's money that would have to be expended
24 by the Company. It's money that if placed in a
25 different -- if invested in a different way would

1 return -- receive a return on. And so the absence of
2 that return on would certainly influence the Company's
3 decision-making.

4 The issue of lawfulness of what the Company
5 has proposed has been raised by the Office of the
6 Public Counsel. I think, among other things, OPC has
7 argued that Missouri-American's tariff does not permit
8 it to replace customer-owned service lines. In the
9 Company's view, none of the tariff sheets or none of
10 the tariff provisions cited by OPC prohibit
11 Missouri-American from replacing a customer water
12 service line in this circumstance.

13 Now, this is for good reason. For example,
14 as I kind of alluded to before, in St. Louis County,
15 almost every main replacement, lead or not, it
16 requires some replacement of a portion of the customer
17 water service line in order to complete the main
18 replacement because that customer-owned service line
19 goes right up to the main in the process of
20 disconnecting, reconnecting. It just drives some
21 level of repair and replacement that's necessary to
22 that process.

23 Those partial customer-owned service line
24 replacements are already treated as installation costs
25 under the USOA, as I believe was mentioned in Staff

1 witness Merciel's surrebuttal testimony. Now, while
2 the Company does not own the property being restored
3 and others would be responsible on a going-forward
4 basis for their maintenance or repair, the Company
5 incurs and books those, what it would think of as also
6 restoration costs, as a part of its plan accounts.

7 Ultimately, the Company believes that the
8 lead service line replacements do not violate its
9 tariffs for these reasons and nor is it necessary for
10 Missouri-American to change its tariffs to move
11 forward as proposed.

12 The Office of Public Counsel also renews in
13 its case this proposal for a pilot study associated
14 with the replacement of customer-owned lead service
15 lines. The pilot study includes a cap on replacement
16 costs and an AAO for only those going-forward costs
17 incurred by the Company. Thus, suggesting that those
18 replacement costs already incurred and to be incurred
19 between now and the effective date of an order in this
20 case should be expensed and not recovered in rates.

21 The pilot study proposed by OPC is quite
22 extensive. It would involve -- it would be a two-year
23 pilot study to explore the feasibility, legality, and
24 associated policy implications of full-lead service
25 line replacement across Missouri-American's entire

1 service territory and the State of Missouri with the
2 results presented to the Missouri Public Service
3 Commission and the Missouri legislature and the
4 Missouri Governor's Office for consideration.

5 There are a variety of policy tracks
6 identified in that proposal, an advisory committee led
7 by a third-party consultant, scoping analysis, a
8 two-year lead service line replacement pilot program
9 with certain specified testing and modeling, a review
10 and summary of the advisory committee's thoughts and
11 various ancillary considerations, such as potential
12 job creation, lead paint soil abatement and potential
13 funding sources for all this.

14 Moreover, it's unclear to the Company what
15 would happen at the end of this pilot study process.
16 As I said before, OPC proposes that the results be
17 given to the Commission, to the legislature, to the
18 Governor's office. What would happen next and when
19 would be anybody's guess. And we just do not believe
20 there's any compelling reason for the Commission to
21 start an independent march down this -- this pilot
22 study path.

23 Missouri-American Witness Naumick has
24 detailed the extensive and detailed research and study
25 that has already been performed by many governmental

1 organizations, private foundations, and other groups
2 to include the lead service line replacement
3 collaborative. And he can speak to that if you have
4 additional interest in that. Hiring a third party to
5 essentially repeat this work makes little sense.

6 Further, Missouri-American, in conjunction
7 with American Water, has done substantial work to
8 develop its processes and procedures associated with
9 the lead service line replacement program. It just --
10 again, this is a process that just doesn't need to
11 start over from scratch.

12 In the list of issues that was presented to
13 the Commission under LSLR activity, there were several
14 late added items for the Commission consideration that
15 were identified as little i through little xi. The
16 first -- the first 10 of those, little i through
17 little x, are items that have been considered by
18 Missouri-American in the development of its program or
19 are being considered as a part of its program.
20 And Missouri-American Witnesses Naumick and Aiton would be the
21 appropriate persons to ask about these items if there are
22 additional questions.

23 Item xi is a question in regard to
24 allocation of costs related to the lead service line
25 replacement program. Missouri-American Witnesses

1 Jenkins and Heppenstall can address this item or this
2 issue. And I would -- I would note that
3 Ms. Heppenstall will appear later in the week and
4 would be available at that time for questions to her
5 in regard to lead service line replacement
6 allocations.

7 However, at a high level, Missouri-American
8 believes that this issue would be adequately addressed
9 by the accounting process it has proposed. The
10 Company has proposed to record customer-owned lead
11 service line restoration costs in Account 345. And
12 it's our belief that in a cost-of-service study, this
13 account is allocated based upon something called
14 Factor 9 which allocates costs based on the relevant
15 cost of service by size and customer classification,
16 and resulting in allocation to the customer classes
17 for whom the work has -- has been performed. So,
18 again, I think the Factor 9 reference certainly is
19 something that Ms. Heppenstall can speak further to.

20 In conclusion, Missouri-American believes
21 its proposal is based on the following fact: That the
22 one pathway of human exposure that a water utility can
23 resolve is the removal of lead service lines, and
24 that's what the Company is proposing to do. The
25 Company is recommending the replacement of lead

1 service lines because of the potential risk of
2 elevated lead levels when a service line is disturbed.

3 And as testimony in this case explains, the
4 most cost effective way to address this potential risk
5 is to replace the lead service line at the time of the
6 disruption, in this case, as the Company is performing
7 its main replacements. Missouri-American asks that
8 the investment required to perform lead service line
9 replacements in this way be treated like any other
10 capital investment, and believes that doing so will
11 allow the proposed lead service line replacement
12 program to move forward in a responsible and efficient
13 manner.

14 That's all I have.

15 CHAIRMAN HALL: I have a couple of
16 questions. Let me start with this. Do you have a
17 witness who would be able to provide testimony on the
18 St. Louis County water service line repair program?

19 MR. COOPER: The program that's accomplished
20 by statute?

21 CHAIRMAN HALL: Yes.

22 MR. COOPER: I believe that we do have
23 witnesses that would be familiar with that. Probably
24 Mr. Aiton.

25 CHAIRMAN HALL: And would he also be able to

1 describe any interactions with the director of Public
2 Works of St. Louis County with regard to the program?

3 MR. COOPER: I certainly believe he would be
4 the appropriate person to ask about that.

5 CHAIRMAN HALL: And what about the legality
6 of covering some of the -- of these costs through that
7 program? Is that a legal issue for you as opposed to
8 your witness?

9 MR. COOPER: It probably is a legal issue
10 that should be addressed by me or someone from the --
11 on the attorneys' side, yes.

12 CHAIRMAN HALL: Could you do so?

13 MR. COOPER: Well, what is the particular --

14 CHAIRMAN HALL: I'm trying to understand --
15 I mean, there's a fund there that St. Louis County
16 residents and ratepayers pay into that I'm wondering
17 if it could be accessed for some of these lead
18 customer-owned service line replacements.

19 MR. COOPER: Right. It's certainly
20 something that the Company has looked at and discussed
21 with the County. And as I alluded to before, I
22 believe that's a program that's established by
23 statute, and it is -- I think my memory is it was
24 required to be approved by a vote of people in the
25 County before it went into place.

1 I believe that there's a limit on the amount
2 that can be charged, essentially, to each customer for
3 the purposes of the program. And I think that the
4 amount being charged to the customers is at the high
5 end of what was allowed by the statute.

6 So one question that has come up is, you
7 know, setting aside whether they can do lead service
8 line replacements or in what circumstances they're
9 going to do lead service line replacements, you know,
10 is there sufficient money in that fund to cover those
11 because it's going to come at an additional cost. And
12 if there's not, what's it going to take to ramp up the
13 funds.

14 And I think one of the impediments that
15 we've run into is what I described before, that I
16 think probably to ramp up the funds, that you're going
17 to have to go back to the legislature and change the
18 statute and then go back to the people and get another
19 vote. So one level of issues. But having said that,
20 there is interaction going on with the County and,
21 again, I believe Mr. Aiton can describe how it's being
22 treated at this point in time.

23 CHAIRMAN HALL: So you don't believe that
24 there is any kind of prohibition on using that fund
25 for this purpose?

1 MR. COOPER: Well, there would be some
2 prohibition, but I hate to go much farther here. I
3 think that it is an easier question when you have a
4 leak in a service line and that service line is
5 discovered to be lead. It's an easier question. It's
6 an easier situation to use those funds for than if you
7 tried to use it as a blanket replacement just going
8 down -- down the street; so -- But we can explore that
9 more fully in briefing or in another form, if you'd
10 like to.

11 CHAIRMAN HALL: Okay. Thank you.

12 COMMISSIONER KENNEY: Just a couple
13 questions briefly.

14 St. Louis County, are the meters in the
15 house?

16 MR. COOPER: I think some are. Again,
17 Mr. Aiton would have a better feel for --

18 COMMISSIONER KENNEY: You say there are
19 approximately 30,000 lead lines that need to be
20 replaced?

21 MR. COOPER: The Company is estimating right
22 now 30,000 statewide, and I believe half of which are
23 St. Louis County and half of which are outside of
24 St. Louis County.

25 COMMISSIONER KENNEY: So half would be in

1 St. Louis County; so, roughly, 15,000 lines. Okay.

2 All right. That's all I needed. Thank you.

3 JUDGE BURTON: Thank you, Mr. Cooper.

4 Now, I know the parties have indicated
5 that -- a list for opening statements, but there is
6 reference to if no witnesses were listed for a party,
7 they might jump in between Missouri-American and
8 Staff. I was going to follow the schedule with Staff,
9 MIEC, DE, and then OPC, and then any other remaining
10 parties that wish to make an opening statement, unless
11 the parties prefer another option.

12 That being said, I believe we are ready for
13 you, Mr. Westen.

14 OPENING STATEMENT BY MS. ASLIN

15 MS. ASLIN: Good morning. In addressing the
16 issues relating to lead service line replacements, I
17 will keep my comments brief as these issues were
18 argued at length when Missouri-American requested an
19 AAO in case WU-2017-0296.

20 While this is a new case where new
21 information about Missouri-American's lead service
22 line replacement practices will be presented, most of
23 the witnesses testifying on this issue today also
24 testified at the AAO hearing and make references to
25 that case in their prefiled testimony.

1 While the Commission's decision in the AAO
2 was limited to approval of deferral of cost, the
3 public policy concerns raised in that case are still
4 present. The report and order in that case issued on
5 November 30, 2017, states that the public policy
6 related to lead and drinking water and its adverse
7 health effects is particular -- particularly
8 persuasive in this case.

9 Missouri-American's lead service line
10 replacement program adheres to the recommended method
11 of lead removal and eliminates the risk of lead
12 contaminate that exists with partial lead service line
13 replacement. Missouri-American's lead service line
14 replacement practices continue to adhere to the same
15 standards that were discussed less than six months
16 ago, leading Staff to conclude that Missouri-American
17 should continue to replace customer-owned lead service
18 lines while performing broader main repair and
19 replacement work.

20 There are also 11 subissues which were
21 proposed after the filing of surrebuttal in this case
22 relating to the issue of if and how lead service line
23 replacement should continue. Staff takes no position
24 on these issues. However, to the extent that they may
25 relate to OPC's proposed pilot program, Staff is

1 opposed to potential limitation being placed on
2 Missouri-American's current practices.

3 Conceptually, Staff has no issue with
4 reasonable restrictions placed on Missouri-American's
5 lead service line replacement practices. However, it
6 is not clear at this time how these potential
7 restrictions would actually cut costs or improve the
8 Company's current practices. Staff is also concerned
9 that OPC's proposed pilot program with these subissues
10 could be overreaching to the extent that it may affect
11 the Company from a management perspective.

12 Lastly, you will hear different views today
13 on what recovery approach, if proven, should be
14 adopted from the AAO amount from the previous case,
15 and what the Commission should authorize in this case
16 for the recovery of future lead service line
17 replacements.

18 Staff's position is that the Commission
19 should adopt Staff's proposal to amortize the AAO
20 balance over 10 years. The amount should not be
21 treated as a Missouri-American-owned plant and
22 service, as these costs are associated with customer
23 property that Missouri-American will neither own nor
24 maintain in the future. These costs should continue
25 to be reported in NARUC USOA Account 186.

1 Going forward, the Commission should
2 authorize Missouri-American to record future lead
3 service line replacements with the same accounting
4 treatment as stated above and approved in the AAO
5 case. Replacements taking place after May of 2018
6 should continue to be reported in Account 186 with
7 recovery addressed in future rate cases.

8 Staff also recommends that Missouri-American
9 be required to submit annual plans detailing the
10 status of the program with updates as necessary.

11 Staff witnesses Jim Merciel and Amanda McMellen will
12 be testifying on these issues today. If you have any
13 questions, I'd be happy to answer them.

14 CHAIRMAN HALL: What is Staff's position on
15 whether there should be carrying costs associated with
16 the Account 186 going forward?

17 MS. ASLIN: Off the top of my head, I'm not
18 sure of that, but I believe Amanda McMellen would be
19 able to answer that.

20 CHAIRMAN HALL: Okay. Thank you.

21 JUDGE BURTON: Thank you.

22 OPENING STATEMENT BY MR. MILLS

23 MR. MILLS: Good morning. May it please the
24 Commission. Lewis Mills on behalf of Missouri
25 Industrial Energy Consumers.

1 Our position on this issue is limited to the
2 question of allocation or assignment of the costs.
3 There are only two parties that have proposed a
4 solution to the question. One is the MIEC, and we
5 have proposed that those costs should be directly
6 assigned to the classes in which the -- to which the
7 service lines relate.

8 The other proposal is the Company's proposal
9 which they then would be allocated according to the
10 Factor 9, as you heard from Mr. Cooper, which would
11 follow the allocation that those sorts of plan
12 accounts would follow.

13 In general, from a rate-making standpoint,
14 when possible, costs should always be directly
15 assigned rather than allocated because direct
16 assignment is the most accurate way to assign the
17 costs to the cost causers. Allocations are
18 necessarily and, by definition, a second best and in a
19 way to try to approximate the assignment. So it's our
20 position that direct assignment is the best and is the
21 way it should be done in this case.

22 I'd be happy to answer any questions.

23 JUDGE BURTON: Thank you.

24 Mr. Poston.

25 OPENING STATEMENT BY MR. POSTON

1 MR. POSTON: Please the Commission.

2 My name is Marc Poston. I represent
3 Missouri Division of Energy. And continuing the lead
4 line replacement program is the most important outcome
5 that we hope to see from this case on this issue
6 because the risks of not addressing this issue are too
7 severe. Evidence in the case indicates the Company
8 has 30,000 lead service lines, as you've heard.
9 Evidence in the case also shows there are children in
10 the Company service with elevated levels of blood --
11 of lead in their blood. And evidence in this case
12 shows that there is no safe level of lead content in a
13 child's blood. Zero.

14 So we would agree that a lead service line
15 may not be the only cause of lead poisoning, but we
16 also know it's possibly the largest contributor of
17 lead in Missouri's drinking water. The best path
18 forward is to continue replacing lead lines when
19 found, but we would suggest a better path may also
20 include prioritizing lead line replacements in a way
21 that focuses on at-risk populations and those
22 low-income customers without the means to incur the
23 cost necessary to replace their service lines
24 themselves. This could occur in addition to the
25 program where the lead lines are discovered during

1 main replacement and replaced.

2 We all know that the crisis in Flint,
3 Michigan, has been the source for an increased focus
4 on lead contamination in water. And we recognize the
5 issues in Flint are different than the issues that we
6 have here. But one thing we may want to learn from
7 Michigan is the liability concern of doing little when
8 problems are known. There were multiple class-action
9 lawsuits filed in Michigan regarding the Flint water
10 against the City, against state officials and the
11 Governor. There's 21 different law firms involved in
12 those cases. And the lawsuits claimed the officials
13 knew of the problem but failed to act.

14 So we encourage you to order the water
15 Company to continue with its program. We also support
16 further study in collaboration on this issue to
17 determine best practices moving forward.

18 JUDGE BURTON: I have a question. Did any
19 of those lawsuits involve issues with partial
20 replacements?

21 MR. POSTON: I do not know. In the lead AAO
22 case, the Department of Economic Development, Attorney
23 Mr. Brian Bear (phonetic) explained to you a concern
24 that the department has with lead service line issues
25 and the impacts that it could have on economic

1 development.

2 A major infrastructure issue such as
3 potential lead contamination in the water system is
4 not something that would encourage economic
5 development in the water company service area and
6 could discourage development. We doubt Flint saw an
7 increase in economic development after the negative
8 publicity that it received regarding its water.

9 In conclusion, the Division of Energy
10 encourages you to order the Company to continue
11 replacing lead service lines. We have one witness,
12 Mr. Martin Hyman, with testimony supporting the
13 program. Mr. Hyman also testified in the lead line
14 AAO case and maintains a consistent opinion in this
15 case. He'll be taking the witness stand hopefully
16 today if you have any questions for him.

17 That concludes my prepared remarks. And I
18 thank you for your time.

19 CHAIRMAN HALL: Thank you.

20 JUDGE BURTON: Thank you. I believe Office
21 of Public Counsel has a presentation, or someone else?

22 OPENING STATEMENT BY MR. SMITH

23 MR. SMITH: Commissioners, Judge, all
24 counselors, OPC, as you know, represents the
25 ratepayers of Missouri. This issue is about truth.

1 This issue is about that truth cannot harm a cause
2 that is just. Fear can feed falsehoods. My hope is
3 for the truth to be revealed in this proceeding
4 through your review of the testimony, through asking
5 good questions, through reviewing the parties' briefs.
6 And my hope is that you'll keep an open mind. OPC has
7 hope that you also reject imprudent expenditures of
8 past and present. And we hope that the Commission
9 considers alternatives for the future.

10 To be more specific, OPC believes the
11 Company's several hundred replacements of lead service
12 lines performed, in our opinion, in violation of the
13 Company's tariffs should be denied. The Company's
14 current proposal should also be denied. If the
15 Commission is uncomfortable with denying all aspects
16 of lead service line replacement, OPC proposes at
17 least -- at the very least, this issue deserves more
18 attention than the parties have given it.

19 So throughout our testimony, I guess you'd
20 say we're one of the only parties who I feel is --
21 is -- has the courage to ask questions. And it's
22 confusing and it's troubling to me personally, and to
23 the ratepayers, I think it is also. They want to know
24 why for the last 30 years of perfect compliance with
25 the lead and copper rule, why does this company need

1 to replace customer-owned lines for a subclass of
2 customers.

3 This is a bias in favor of one customer
4 class. We know that there is nothing that mandates
5 the utility's action. But let us assume it is a
6 desired action. Are the costs worth it? The
7 ratepayers want to know if the costs are worth it.

8 But don't be mistaken, costs are not the
9 only issue, and that's what I want to stress. We
10 should not be afraid to talk about things other than
11 accounting treatment, other than a strict engineering
12 exercise. There are multiple policies issues at stake
13 and there are stakeholders that are absent who we
14 desperately need and the Company desperately needs but
15 refuses to engage with.

16 I have several points. I'd like to discuss
17 six in detail. The first of which is the costs; the
18 second of which is the benefits; the third is
19 perceived delays; the fourth is perceived redundant
20 information; the fifth, stakeholder input; the sixth,
21 I'll discuss further unknowns. So we've got cost and
22 benefits, perceived delays, redundant info,
23 stakeholder input, and unknowns. It's a lot of
24 information, but OPC really believes this issue
25 deserves attention.

1 As I said before, this case is about truth.
2 Let's not be afraid of the truth. And what's the
3 truth about the cost? The truth is that the Company's
4 proposal is high. It's very high. In fact, OPC
5 estimates that the cost could be as high as
6 \$210 million right now. Why \$210 million? Well,
7 here's why. Company witness Mr. Bruce Aiton has
8 produced evolving cost estimates. In fact, we're on
9 his third strike now.

10 Initially, in his first strike, he projected
11 that the estimates for a lead line replacement might
12 be between \$3,000 and \$5,500. That was in the WU case
13 or the AAO case. Now, \$1,500 is a wide margin of
14 error for a company, and so even with that wide margin
15 of error, his cost estimates changed.

16 In his surrebuttal testimony of the WU case,
17 the cost changed to \$6,000. So that's about double
18 the low end of his cost estimate. Now, in the
19 surrebuttal in this case -- and keep in mind not much
20 testimony was provided until the very end by the
21 Company on surrebuttal. So OPC didn't have, you know,
22 really an opportunity to respond to that. But at the
23 time of the surrebuttal, the Company said, well, we
24 spent about 1.75 million for 250 lines, but they dare
25 did not speak the quotient. The quotient gives you

1 the \$7,000 cost estimate.

2 So \$7,000 is -- I think the Company uses the
3 term, quote, refined, end quote, number. 7,000
4 lines -- we still aren't sure that 30,000 line --
5 \$7,000 per line, excuse me, we're still basing 30,000
6 lines on an estimate. So \$210 million are the cost to
7 be borne by this project. But wait a second,
8 Mr. Jenkins also would like the company to earn a
9 profit. So \$210 million is actually lower than the
10 overall cost. And about that profit, Mr. Jenkins
11 claims that the NARUC USOA provides capitalization of
12 restoration cost.

13 Well, Mr. John Robinett, an OPC witness, in
14 his testimony talked about that account. And if you
15 look at the black ink of part A of Account 345, what
16 you will see is those costs shall include costs
17 leading up to the customer premise. So they lead up
18 to the customer premise, like the sidewalk. They keep
19 talking about this sidewalk, how it's the best example
20 of a non-company-owned asset they earn a return on.
21 Well, that's because 345 says that you can do that.
22 But they have a limitation up to the customer premise.

23 So I assume the Company will be requesting
24 30,000 or so various waivers of the NARUC USOA, which,
25 I guess, the Commission consider. And keep in mind,

1 the USOA under Account 101, the general principle is
2 that companies don't earn a return on property that
3 they don't own. So the account Mr. Jenkins is also
4 referring to is specifically an exception, and as I
5 explained earlier, that exception doesn't apply.

6 There's also a legal question. 393.270.5
7 allows for a reasonable average return upon the value
8 the property actually used in the public service. Is
9 property of a customer's line for the exclusive
10 benefit of a customer, is that in the public service
11 or is that just for the exclusive benefit of a
12 customer?

13 So those issues also don't go to the tariff
14 violations, which OPC has alleged. And I heard today
15 that the Company has no plan to change their tariff.
16 I mean, even out of an abundance of caution, wouldn't
17 you want to change the tariff? I mean, if you're
18 really doing this right, wouldn't you want to put
19 questions aside and add more certainty?

20 Well, that -- the Company doesn't feel they
21 need to do that. So the costs are becoming perhaps
22 more certain, but they're still out there. So let's
23 also be truthful about the benefits. Let's talk about
24 the benefits. So from OPC's perspective, what we
25 understand the benefit to be is that these lead lines

1 would be eradicated; right? So what is the benefit
2 associated with that? Well, it's important to have
3 context, right, when we talk about lead issue. We
4 need to understand the benefits.

5 So in the 1980s, motor vehicles were the
6 main source of -- excuse me -- of lead particulates in
7 lead exposure by humans. We used gasoline that
8 contained lead and the motor vehicle emissions caused
9 a lot of lead. It wasn't good. And in around the
10 1980s, that began to be phased out. And in about
11 1996, there was an outright ban and leaded gasoline
12 caused -- that -- that reduction was huge. It was
13 hugely significant.

14 So today what is the most common source? Is
15 it a lead service line? No. That isn't what the
16 evidence suggests. The most common source is actually
17 lead contaminated dust from deteriorated lead paint.

18 And I thought this was pretty interesting in
19 Dr. Marke's testimony. Apparently, on warmer days,
20 you have kids that go out into the yard and they play,
21 just like we all did, and actually their blood lead
22 levels -- excuse me -- are correlated with that
23 because they're outside and they're -- you know, in
24 that there's dust and there's soil contamination, and
25 so you actually see a correlation there. And so I

1 found that to be an interesting part of the context.

2 And is my slide show --

3 JUDGE BURTON: It is. It's showing behind
4 you.

5 MR. SMITH: Okay. So this slide -- and I
6 realize it's always troubling to see. Does everyone
7 have a copy? Okay. This gives you, in OPC's opinion,
8 some perspective on lead blood levels throughout
9 history and the different events that have
10 significantly been successful in reducing lead
11 contamination.

12 Many of the parties to this case have
13 discussed the City of Flint, Michigan. Now, prior to
14 this case, I'll admit, I was -- I was one of those
15 people who didn't know a lot about Flint, Michigan,
16 other than what I had heard in the press. I had heard
17 something about lead. I had heard that it had become
18 a criminal situation, and I had heard that there was a
19 crisis and I knew it had to do with the water.

20 Well, through this case, I learned a lot
21 more. Flint should not be used as fear. Flint should
22 be used as a source of truth. Here's what I learned
23 about Flint by reading Dr. Marke's testimony. In
24 April 2013, city officials in Flint, Michigan,
25 switched water sources from Lake Huron to the Flint

1 River to save money. And when they did it, that
2 different water source was not treated. It was more
3 corrosive. Now, I don't think the Company's alleging
4 that that's going to happen, but it presents sort of a
5 worst case scenario.

6 Now, there are lots of details about, I
7 guess, how the Flint story broke, and I'll leave those
8 details to Dr. Marke's testimony, or if you have
9 questions, I invite you to ask him directly. But what
10 I was interested in was the aftermath. If one were to
11 have taken the Flint case at face value, one would
12 have expected kind of a large bump in blood lead
13 levels.

14 So this is another slide here, and you'll
15 see a small uptick, right, as between when Flint
16 switched, and you'll notice that's under 90 percent
17 of -- of the individuals there. The Commission should
18 also know that the percentage of children with
19 elevated blood lead levels in the City of Flint were
20 far less than the State of Michigan, as a whole,
21 during the water crisis.

22 Did you hear that? So the Commission should
23 know that the percentage of children with elevated
24 blood lead levels in the City of Flint is far less
25 than the State of Michigan, as a whole, during the

1 water crisis.

2 The CDC has some recommendations and they
3 give what I just told you some context because what
4 is -- what is -- what are these numbers, five, ten,
5 15? To me, I didn't really know that until I looked
6 at this. And I understand that 15 -- that 15 is sort
7 of the UPA action level. And then below that,
8 everyone is right, that no amount of lead in the water
9 is safe.

10 But what does the CDC recommend based on
11 different levels of blood lead -- blood lead levels?
12 And here's what it says: It's basically nutritional
13 counseling. You want to follow up and monitor calcium
14 and iron intake. So that's for the vast majority of
15 people in Flint, that's what was there. And keep in
16 mind, even with Flint, do we really know it was the
17 result of the lead service lines? I mean, no, we
18 don't actually. There's a lot more to learn there.

19 So I would ask you to consider all those
20 things when you're considering the benefits. Right?
21 When you consider the benefits, consider the context.

22 OPC also notes that the Staff of the
23 Missouri Public Service Commission presented to this
24 Commission a report on lead levels in the State of
25 Missouri. Apparently, they contacted the Department

1 of Natural Resources, who OPC thinks should be a
2 stakeholder in this discussion, but is not in this
3 case.

4 And do you know our representatives informed
5 Staff that quote: "Lead contamination is, in general,
6 not a problem in Missouri because utilities are
7 following the lead and copper rule and produce
8 non-corrosive water"?

9 In other words, they're treating their water
10 just like they have for 30 years.

11 Mr. Bruce Aiton, in his own testimony, has
12 talked about perfect compliance with the lead and
13 copper rule. Given the uncertain benefits, let's be
14 open to the idea that maybe these benefits are not
15 exceeding the cost despite OPC being the only party
16 with the courage to raise this issue. Maybe we might
17 consider doing a cost benefit study to figuring out
18 more specifics. The Company hasn't done such a study,
19 not that OPC has seen.

20 Third, let's be truthful about what is being
21 delayed exactly. There's a lot of talk about we don't
22 want to delay health benefits. Now, this is an
23 interesting statement considering for the last 30
24 years, the Company's sterling record but lack of
25 action, but all of the sudden, this is an immediate

1 problem that must not be delayed. This needs to be
2 rammed through right here, right now, and this is
3 confusing for me.

4 Missouri-American says that OPC's pilot
5 would unduly delay. Staff thinks that OPC's pilot
6 would unduly delay. Well, I'm not sure those
7 parties -- maybe they read the testimony, but that's
8 not what OPC's testimony says. OPC's pilot project
9 would actually provide a way to continue replacements
10 but cap it at an amount. That amount is double, more
11 than double, the expenditures that were incurred by
12 the Company in the 2017 calendar year.

13 So OPC's pilot is very generous. And rather
14 than discussing this or being open to the idea, the
15 Company talks about delay. Now, 10 years is what the
16 Company says. And the Company hasn't really explained
17 how they're going to replace 30,000 lines in 10 years.
18 I mean, is that itself an appropriate metric? They're
19 going to replace tens of thousand of service lines in
20 this time period? Other states have set longer
21 periods.

22 Indiana, I believe, has set around 24 years
23 maybe. I'll defer you to Dr. Marke for specifically
24 the time period. But as I understand it, the Company
25 ties the replacement of lead service lines to the

1 replacement of water mains. If they're tied together,
2 how can you possibly replace 30,000 lines in 10 years
3 unless you're prematurely retiring water lines? And
4 that hasn't been addressed by the Company.

5 Fourth, let's be truthful about the
6 Company's claim that OPC purports to seek redundant
7 information. I believe Staff makes a similar claim.
8 Well, look, Dr. Marke will be the first to admit he
9 does not have all the answers. The nation is
10 admitting as much. They don't have all the answers.
11 But, apparently, the Company thinks that we don't need
12 to study this. And had OPC only looked at the lead
13 service line replacement collaborative like they
14 looked at, they would know that everything OPC is
15 suggesting here really isn't anything different than
16 what's being done nationally.

17 Well, OPC did look at what they're doing.
18 And, actually, on the lead service line replacement
19 collaborative, it's interesting. On their website,
20 for getting started, what do they recommend utilities
21 to do? There it says: Water utilities in the process
22 of planning a proactive lead service line replacement
23 should consider an initiative of reviewing ways to
24 accelerate an existing initiative, will find it useful
25 to engage local leaders, state agencies, and others

1 early to get perspectives. And you can form an
2 advisory group to discuss options and/or an internal
3 team to help coordinate the planning process. People
4 won't always agree.

5 What else does it say? It talks about the
6 collaborative process. Hey, look, what the Company
7 says OPC ignored is starting to look exactly like
8 what -- it's starting to look exactly like what OPC
9 looked at. So the lead service line collaborative
10 also talks about a process of engaging all voices,
11 doing scoping, identifying partners, building
12 consensus, making decisions.

13 You know, I get the sense that the Company
14 just thinks this is -- you know, they don't need to do
15 this. You know, we consider -- we're considering
16 this. Well, if you're considering it, be serious
17 about it. Put it into test mode. Give us a plan.
18 Show us your findings. They haven't done that.

19 And the Company should be okay with
20 admitting they don't know all the answers. That's
21 okay. A lot of the utilities are in the same
22 situation.

23 Now, Missouri-American has the unique
24 perspective of being able to control the narrative
25 somewhat because they are owned by American Water.

1 And what happens at American Water does, in some
2 sense, control the narrative nationwide. So they can
3 use that to their advantage, but it doesn't always
4 work. So you do have different states at varying
5 levels of progress; Pennsylvania, Indiana, New Jersey.

6 So, fifth -- And I'm wrapping up. I realize
7 I've been long. I'm not sure if I'll beat Tim -- Tim
8 Opitz who gave a -- what I've been calling it the
9 Magnum Opitz or...

10 But, fifth, let's talk about the diverse
11 stakeholders. The diverse stakeholders are simply not
12 here. They're not here. DNR is not here. The
13 Department of Health and Senior Services aren't here.
14 Real estate professionals aren't here. Federal
15 agencies aren't here. Environmental groups aren't
16 here. Nonprofits aren't here. Local and elected
17 officials are here to some degree. And I guess you
18 have Missouri-American, Staff, OPC -- sorry,
19 Missouri-American, Staff, OPC, MIEC, and MECG, and
20 some of the other cities, and that's good. I'm sure I
21 left other people off. I apologize.

22 But let's engage the stakeholders. Let's do
23 this meaningfully. If we're going to do it, let's do
24 it right. And it may be helpful to even look outside
25 the state. Like look at Indiana. Indiana just passed

1 a new legislation on lead service line replacements.
2 It requires a number of customer safeguards that
3 include a plan that is more detailed, much more
4 detailed, than what the Company has presented.

5 The plan includes such things as
6 availability of grants or low-interest loans.
7 Description of how the replacement of the
8 customer-owned service line will be accomplished.
9 Estimated savings and costs per service line, that
10 would be realized. There's scoping discussions.
11 There's 10 or so, and at the end of this, I'll have
12 Dr. Marke pass out, to those who are interested,
13 copies of this legislation.

14 At the conclusion of the plan, then it goes
15 to the Commission and the Commission decides is this
16 reasonable? Is this prudent? And, you know, you
17 might want to have a local public hearing thrown in
18 there so people in the public can voice their
19 concerns.

20 So I'm on my last issue here that I want to
21 discuss, and that's in the actual list of issues. A
22 lot of people said these were added at the last
23 minute. Well, I don't think there was any -- you
24 know, these seem to be, to us, to have been filed
25 concurrent with the list of issues; so I'm not sure

1 these were added toward the end. But to the extent
2 they were, I mean, don't you think they deserve merit?
3 Don't you think we ought to be asking these questions?
4 Shouldn't a prudent utility be asking these questions?
5 And I know the utility said, well, we're considering
6 it. Put that in the testimony. Put that in your
7 plan. Show us that you're considering this. Show us
8 your findings.

9 Those issues -- I'll let you look at them.
10 OPC really takes the position that these are the sorts
11 of issues we absolutely need to be discussing in
12 this -- you can call it collaborative, you can call it
13 a pilot study, but these are the sorts of issues, and
14 I'm sure there are others, that need to be looked at.

15 And let's also get sort of a supervisor to
16 make sure all these stakeholders follow some semblance
17 of a structure. Let's get an independent third party
18 to give direction to these parties and seriously look
19 at this. Ratepayers deserve it. This Commission
20 deserves it. Ratepayers want to know that these costs
21 are worth it.

22 Thank you.

23 COMMISSIONER KENNEY: Briefly. Just
24 briefly. I've got a question for you. I think those
25 are all good ideas. It would be nice if other

1 stakeholders were involved, but they aren't.

2 JUDGE BURTON: Is your microphone on?

3 COMMISSIONER KENNEY: Yes, it's on.

4 But they aren't involved in it at their
5 choice; right? I mean, anybody can -- anybody can
6 intervene in this case. So -- But my question to you
7 is: What do you do tomorrow? Do we just stop
8 replacing lines? Or what do you do tomorrow when we
9 know that if we have lead service line and it's
10 disrupted, that it can corrode and lead gets into the
11 water? We know that through study. So what is your
12 suggestion when we get to that situation? Just cap it
13 and don't do anything?

14 MR. SMITH: Well, the end "don't do
15 anything" presumes a conclusion that may not be -- may
16 or may not be true; so --

17 COMMISSIONER KENNEY: What may or may not be
18 true?

19 MR. SMITH: Well, the do nothing part of it.

20 COMMISSIONER KENNEY: Well, that the line
21 would corrode or that the line may -- when the lead --
22 when the service line gets disturbed, studies show
23 that that -- that causes lead to be released into the
24 water; correct?

25 MR. SMITH: And you know what would be one

1 thing that's complementary, and this is no longer an
2 issue in the case, but we had an issue that dealt with
3 coordination of local municipalities. And when there
4 are construction projects -- and, actually, I think
5 this is in Dr. Marke's testimony -- there was
6 construction around here and there were some
7 consequences of that construction. You know, whenever
8 there's construction that could disrupt lines -- and I
9 don't want to get into that here because it is
10 confidential, but --

11 COMMISSIONER KENNEY: Okay. You're
12 talking -- are we talking Jefferson City; so -- but
13 I'm not talking about Jefferson City.

14 MR. SMITH: Yeah, we think better
15 coordination with municipalities is something that --

16 COMMISSIONER KENNEY: But that's -- so what
17 does that have to do -- better coordination, what does
18 that have do with the lead service line that's
19 disturbed? Whatever -- even if there's coordination,
20 what does that have -- I mean, Dr. Marke, in his
21 testimony, said that, you know, poverty -- or lead --
22 lead in children are more based on poverty than
23 anything else.

24 MR. SMITH: Well, I think he discussed a few
25 options. One is you can have a map. I know other

1 American Water subsidiaries have like a map of
2 construction and --

3 COMMISSIONER KENNEY: Okay. But -- so
4 you're saying only -- but that doesn't have to do with
5 anything with the service line that's being disturbed.
6 Even if you go with the City and you work with the map
7 and you work with it, you're in St. Louis County, that
8 line gets -- gets replaced, it's going to be
9 disturbed, whether you work with the City, whether you
10 have a plan with the County, whether you work in
11 coordination, it still gets disturbed.

12 MR. SMITH: Is your question should
13 customers be notified?

14 COMMISSIONER KENNEY: Yeah, sure we should
15 notify them. But you say leave that service line.
16 Just hook it back up and don't do anything and take
17 chances that no lead gets put into the water? Or
18 should -- or when we know lead's probably going to be
19 dispersed into the water? What's OPC's position then?
20 Just don't replace it?

21 MR. SMITH: Well, I think our position is we
22 need to be shown that the cost and benefits match
23 first. Okay. But also, our position is that this is
24 exactly what you're talking about, the questions
25 you're having. These are the things that could be

1 fleshed out. And within that project --

2 COMMISSIONER KENNEY: Those things have
3 already been fleshed out. This is a -- this is a
4 direct line that's going to be replaced, whether it
5 costs 3,000 or 6,000. And there's -- anybody that's
6 been in construction realizes that there are many
7 different facets that take effect in that, that it
8 changes the cost of things. Rock, anything. It's
9 just like tree limbs, you name it, other utilities.

10 But what about that line that's disturbed no
11 matter what the circumstances is, no matter who you
12 work with, even if you take into effect all your
13 different issues, what about that service line? Are
14 you saying don't replace it at any -- at any cost? Or
15 just hook it back up, or what? That's my question to
16 you.

17 MR. SMITH: Well, when you say, "hook it
18 back up" and you're also talking about construction,
19 are you assuming --

20 COMMISSIONER KENNEY: You replace the main
21 out front, you have a service line that needs to be
22 reconnected. You can either reconnect it and allow
23 lead to be dispersed into the line or you replace it.
24 OPC's position on that situation is what? Or do you
25 not have a position?

1 MR. SMITH: So I think our entire position
2 is to let's get good practices around this.

3 COMMISSIONER KENNEY: Okay. So you're just
4 not going to answer my question.

5 MR. SMITH: Well, the pilot project
6 itself --

7 COMMISSIONER KENNEY: I'm not talking about
8 a pilot project.

9 MR. SMITH: Okay.

10 COMMISSIONER KENNEY: I've been very clear.
11 We have -- we're replacing lines. Here's lines that
12 get -- Okay. I'll put it this way. There's a leak in
13 a main, okay? And we have to replace that, and it's
14 an old main. We dig it up and we see where we have to
15 replace it. There's a service line connected to it
16 and we know that service line is going to be -- going
17 to be disturbed and that main gets replaced. Is OPC's
18 position we should just reconnect that service line
19 with a "patch it" right there or to replace it?

20 MR. SMITH: Well, when you say -- you use
21 the word "just" as a qualification; right? So I don't
22 think our position --

23 COMMISSIONER KENNEY: I'm not an attorney;
24 so I -- yeah, my two kids are.

25 MR. SMITH: Our position is to just -- just

1 to do that. One thing that might consider if you
2 don't do the main replacement --

3 COMMISSIONER KENNEY: You're going to have
4 to replace it because of the leak.

5 MR. SMITH: Or the line. I'm sorry. The
6 line replacement.

7 COMMISSIONER KENNEY: You don't have to
8 replace the line --

9 MR. SMITH: Right.

10 COMMISSIONER KENNEY: -- because you hook it
11 back up.

12 MR. SMITH: You could hook it back up. And
13 what you could also do, if you were concerned about
14 those particulates, you could create a filter. As I
15 understand from the transcript of the last case -- I
16 think it was Mr. Naumick, but I'll ask him again,
17 about how long it takes the line to be cleared. And I
18 understand it's -- research ranges, it can be a few
19 hours, it can be a few days, but that line gets --
20 gets cleared from what I understand.

21 COMMISSIONER KENNEY: Gets cleared from
22 what?

23 MR. SMITH: From the lead particulates that
24 --

25 COMMISSIONER KENNEY: You're saying once

1 it's disturbed, the inner -- inner pipe does not begin
2 to deteriorate?

3 MR. SMITH: When you say "begin to
4 deteriorate," do you --

5 COMMISSIONER KENNEY: When you disturb that
6 pipe, oftentimes it starts to -- you're going to have
7 a deterioration. It's just going to continue to leach
8 out lead.

9 MR. SMITH: No, that's not true. It won't
10 leach lead into perpetuity after --

11 COMMISSIONER KENNEY: I'm not saying --

12 MR. SMITH: Okay.

13 COMMISSIONER KENNEY: Okay. But it --
14 it's going -- it can do it for a lot longer than a few
15 days.

16 MR. SMITH: Commissioner, would it be okay
17 with you --

18 COMMISSIONER KENNEY: Do you want me to talk
19 to Dr. Marke?

20 MR. SMITH: -- if I deferred this to Dr.
21 Marke? He is an expert on this.

22 COMMISSIONER KENNEY: All right. That's
23 okay.

24 MR. SMITH: I, unfortunately, am a mere
25 attorney.

1 COMMISSIONER KENNEY: Thank you.

2 JUDGE BURTON: Thank you. Are there any
3 other parties that wish to make opening statements on
4 the lead service line replacement issues?

5 MR. COMLEY: Your Honor, on behalf of the
6 Public Water Supply Districts and in the interest of
7 time, I would waive an opening, and with your
8 permission simply indicate that we would -- our
9 position would be that we would endorse the positions
10 espoused by Mr. Mills. And we don't have a witness on
11 this particular issue, but I may have some questions
12 for Ms. Heppenstall and Mr. Collins, and it's my
13 understanding that they will be appearing later this
14 week.

15 JUDGE BURTON: Yes, sir.

16 Anyone else?

17 OPENING STATEMENT BY MR. COFFMAN

18 MR. COFFMAN: Just briefly. On behalf of
19 Consumers Council of Missouri, we support the Office
20 of Public Counsel, and I believe that they have a lot
21 of helpful data and information on this. We are
22 also -- if there is going to be a use of public funds
23 to address what is a very important health matter, we
24 also think that there should be an investigation of
25 the interaction with the St. Louis County main line

1 replacement program. We think that is the type of
2 program that would be really well-suited to this
3 public health problem.

4 Rather than having rates based on
5 investments that the utility doesn't own and dealing
6 with the main replacements, we think it's a much more
7 comprehensive approach and one that is similar to that
8 successful program that's going on now in St. Louis
9 County.

10 That's all we have.

11 JUDGE BURTON: Thank you.

12 Anyone else?

13 Then what I would like to do is take a
14 recess for lunch and then we will return to have
15 testimony on this. But I would ask the parties to
16 remain after we go off the record just to discuss
17 procedural issues with scheduling potential other days
18 for hearings, okay?

19 That being said, we will take a break until
20 1:30.

21 (Whereupon, a lunch break was taken.)

22 JUDGE BURTON: Let's go ahead and go back on
23 the record, and I believe we are ready for
24 Missouri-American to call their first witness.

25 MR. COOPER: We would call

1 Mr. James Jenkins.

2 JUDGE BURTON: Okay.

3 JAMES JENKINS,

4 having been duly sworn, testifies as follows:

5 JUDGE BURTON: You may be seated.

6 EXAMINATION

7 DIRECT EXAMINATION BY MR. COOPER:

8 **Q Would you please state your name.**

9 A James Jenkins.

10 **Q By whom are you employed, in what capacity?**

11 A I'm employed by American Water Works Service
12 Company. I'm vice president of regulatory services.

13 **Q Have you cause to be prepared for the**
14 **purposes of this proceeding certain direct rebuttal**
15 **testimony, revenue requirement rebuttal testimony,**
16 **rate design and surrebuttal testimony in**
17 **question-and-answer form?**

18 A Yes.

19 **Q Is it your understanding that that testimony**
20 **has been marked as Exhibits 18, 19, 20P for public,**
21 **20C for confidential and 21 respectively?**

22 A Yes.

23 **Q Do you have any changes that you would like**
24 **to make to that testimony at this time?**

25 A I do not.

1 Q If I were to ask you the questions which are
2 contained in Exhibits 18, 19, 20P, 20C, 21 today,
3 would your answers be the same?

4 A They would.

5 Q Are those answers true and correct to the
6 best of your information, knowledge, and belief?

7 A Yes.

8 MR. COOPER: Your Honor, we would offer the
9 exhibits referenced, 18, 19, 20P, 20C, 21, into
10 evidence and tender Mr. Jenkins for cross-examination.

11 JUDGE BURTON: Okay. Exhibits 18, 19, 20
12 and the P and C version and 21 have been offered. Are
13 there any objections?

14 Seeing none, those exhibits are admitted.

15 (COMPANY'S EXHIBITS 18, 19, 20P, 20C and 21
16 WERE RECEIVED IN EVIDENCE.)

17 JUDGE BURTON: And I believe Triumph has
18 asked to be excused for the remainder of today's
19 testimony. So I believe we have the Public Water
20 Supply Districts.

21 MR. COMLEY: No questions, Judge.

22 Thank you.

23 JUDGE BURTON: Division of Energy?

24 MR. LUFT: No questions.

25 JUDGE BURTON: MIEC?

1 MR. MILLS: No questions. Thank you.

2 JUDGE BURTON: City of Riverside?

3 MR. BEDNAR: No questions, Your Honor.

4 JUDGE BURTON: Jefferson City?

5 City of Joplin?

6 Consumer Councils?

7 Staff?

8 MS. ASLIN: Thank you.

9 EXAMINATION

10 CROSS-EXAMINATION BY MS. ASLIN:

11 Q Good afternoon. In various places in your
12 testimony, specifically in your revenue requirement
13 rebuttal and in your surrebuttal, you refer to
14 replacing customer-owned lead service lines as similar
15 to restoration or incidental costs; is that correct?

16 A I did.

17 Q All right. So how is replacing
18 customer-owned lead service lines similar to
19 restoration or incidental costs associated with
20 Account 345?

21 A Yeah. The uniform system of accounts
22 provides guidance within Account 345 that speaks to
23 the disturbance of pavement which then links into --
24 in initiating a public health concern. In essence,
25 the service line is damaged. In order to restore that

1 and the costs related to that, those are the costs
2 that you incur and are eligible for capitalization.

3 **Q So would it be -- would it be fair to**
4 **characterize these incidental or restoration costs --**
5 **would you say that they're associated with normal**
6 **day-to-day repair activities that the Company**
7 **undertakes?**

8 A They're associated with our infrastructure
9 program as we encounter and disturb service lines.

10 JUDGE BURTON: Mr. Jenkins, could I ask you
11 to please move the microphone closer to you.

12 THE WITNESS: Sorry.

13 As we encounter and we disturb service
14 lines, then the relative costs associated with that
15 would be capitalized to Account 34.

16 **Q (By Ms. Aslin) All right. Could I get you**
17 **to -- do you have your surrebuttal testimony with you?**

18 A I do.

19 **Q All right. Could I get you to turn to page**
20 **48?**

21 A Yes.

22 **Q And on that page starting at line 9 to the**
23 **question: "Do you agree with Staff's recommendation**
24 **to defer collection of current lead service line**
25 **replacement costs?"**

1 **You answered: "No. There is no basis for a**
2 **continuing deferral of these known costs. They're**
3 **recoverable costs in this case and should be collected**
4 **as a current expenditure. The denial of current cost**
5 **recovery for these expenses, which the Commission has**
6 **acknowledged are necessary and desirable, would simply**
7 **increase costs and safety risks for customers."**

8 **Is that correct? The first paragraph of**
9 **that answer is --**

10 A Yes.

11 **Q -- states that? So based on your testimony,**
12 **are these costs considered expenses and not plant?**

13 A These costs, we'd classify them as
14 restoration costs. And they're costs associated with
15 restoring the service line to a safe condition. So
16 the relative expenditures with it in those categories
17 we believe should be capitalized consistent with the
18 uniform system accounts application and Account 345.

19 **Q So you would not consider those to be plant**
20 **expenses, those expenses to be plant?**

21 A I would consider them to be a restoration
22 cost which is eligible for capital treatment pursuant
23 to the uniform system accounts.

24 **Q Do you believe that Staff is recommending**
25 **denial of current cost recovery?**

1 A Can you define what "current cost recovery"
2 means?

3 **Q Current cost recovery. The current costs**
4 **that are being expended for the lead service line**
5 **replacement program.**

6 A I'm uncertain entirely what Staff is
7 recommending for current costs. The Staff is allowed,
8 through the true-up mechanism, approximately
9 \$1.4 million, the cost that we've incurred in the
10 past. But in terms of going-forward position, that's
11 where I'm a little uncertain in terms of the clarity
12 around what Staff's recommendation is for that.

13 **Q Okay. And back to that question on page --**
14 **question and answer on page 48 of your surrebuttal,**
15 **you mention safety risks for customers. How would**
16 **denial of current cost recovery increase costs and**
17 **safety risks for customers?**

18 A Could you repeat that question?

19 **Q So in your surrebuttal, it says: "The**
20 **denial of current cost recovery for these expenses,**
21 **which the Commission has acknowledged are necessary**
22 **and desirable, would simply increase costs and safety**
23 **risks for customers."**

24 How would that increase safety risks for
25 customers?

1 A Well, if you were to deny the costs, then we
2 wouldn't be in a position to actually offer that
3 service and restore those facilities.

4 **Q Okay. How is the Company currently booking**
5 **the costs associated with the lead service line**
6 **replacement program?**

7 A Currently we're recording it into Account
8 186.

9 **Q So just a moment. And if we could go back**
10 **to page 48 of your surrebuttal testimony. So starting**
11 **at line 16 continuing through the next page, line 7,**
12 **you mentioned the possible Company requests for**
13 **ongoing deferral or AAO. Has any witness in this case**
14 **specifically recommended that the Company request an**
15 **additional ongoing deferral or AAO for future of lead**
16 **service line related costs?**

17 A I am not aware of any witness that has done
18 that.

19 **Q And if the lead service line costs are**
20 **allowed to be booked in 345, are carrying costs**
21 **included in that?**

22 A No. If they're recorded in Account 345,
23 what would happen is when the construction is
24 completed and a relative cost associated with that
25 would be recorded into plant, it would begin to be

1 depreciated. And then in the next subsequent rate
2 case, the cost of that plant reduced from depreciation
3 would be included in rate base and get a return on a
4 going-forward basis and that's when the carrying costs
5 would be allowed --

6 **Q Thank you.**

7 A -- or recommended.

8 MS. ASLIN: No further questions.

9 JUDGE BURTON: OPC?

10 MR. SMITH: Thank you, Judge.

11 EXAMINATION

12 CROSS-EXAMINATION BY MR. SMITH:

13 **Q You were here for my opening?**

14 A I was.

15 **Q And you've read through the testimony of OPC
16 Witness Robinett; correct?**

17 A I have.

18 **Q And you saw the part of Account 345, that
19 part A that says: "Leading up to the customer
20 premise"?**

21 A I'm familiar with that testimony, yes.

22 **Q Okay. And would you agree that that would
23 be a limitation on that account?**

24 A No.

25 **Q Okay. You don't agree to that?**

1 A No.

2 **Q Do you agree the plain black ink of part A**
3 **says: Costs shall include -- some of -- costs shall**
4 **include followed by leading up to the customers'**
5 **premise.**

6 **You don't think that's a limitation?**

7 A That -- that is included in the first
8 section of 345.

9 **Q I'm just asking is it a limitation?**

10 A I don't believe it's a limitation, given how
11 the uniform system of accounts works, given the --

12 **Q Just yes or no.**

13 A No.

14 **Q Okay. Does Missouri-American Water Company**
15 **own service line that they install?**

16 A On the customers' side?

17 **Q On the customers' side, correct.**

18 A No. Our recommendation is not to own the
19 customers' side lead service lines.

20 **Q Is there any sort of an ownership, like an**
21 **easement or something else like that?**

22 A I'm not aware of any.

23 **Q Are you aware of the phenomenon of customers**
24 **who have already replaced a lead service line?**

25 A No.

1 **Q So do you think that some customers have**
2 **replaced their own lead service line?**

3 A I don't know.

4 **Q Do you think it's probable that some of the**
5 **customers replaced their own lead service line?**

6 A I don't know.

7 **Q Let's assume they have.**

8 A Okay.

9 **Q The Company isn't planning to reimburse**
10 **those customer with ratepayer proceeds or with**
11 **shareholder proceeds; correct?**

12 A Correct.

13 **Q And so those customers are stuck with the**
14 **cost?**

15 A Yes. They would have incurred the cost
16 themselves.

17 **Q Do you think it's unfair to treat customers**
18 **differently in that respect?**

19 A The way that -- I wouldn't say we're
20 treating customers differently. We've identified an
21 issue. We've identified a safety issue, and on a
22 going-forward basis we're working to treat all
23 customers the same.

24 **Q For years, hasn't Missouri-American**
25 **communicated with its customers that the service lines**

1 **are the responsibility of the customers? The**
2 **customer-owned service lines are their responsibility?**

3 A I don't know specifically. We have somebody
4 in operations that's here, Bruce Aiton, that could
5 address our communication with the customers in the
6 past.

7 Q **Let me clarify what you don't know. You**
8 **don't know whether the Company has ever communicated**
9 **whose responsibility it is for the customer-owned**
10 **portion of the service line?**

11 A No, the customer -- I do know that.

12 Q **Okay. And has the Company ever stated that**
13 **to your knowledge?**

14 A Stated that the customers are responsible
15 for their portion of the service line?

16 Q **Yes.**

17 A Yes, I'm sure they have.

18 Q **Okay. You stated that with some confidence?**

19 A Yes.

20 Q **And, you know, 30 years would you say**
21 **they've been doing that? More?**

22 A I've been in the business for 30 years, 25
23 to be exact, but -- and that's the way -- that's my
24 understanding, yes.

25 Q **So during your entire career, the**

1 communication from the utility to the customer was,
2 "That line is your responsibility"?

3 A Yes.

4 Q So, in that sense, this would represent a
5 departure from the practice that's occurred throughout
6 your entire career?

7 A I think it's --

8 Q I'm sorry. Yes or no?

9 A Yes.

10 Q Does the Company have a plan for customers
11 with copper or iron service lines?

12 A I'm sure we have a plan, but that would be
13 best addressed through our operational witness,
14 Mr. Aiton.

15 Q When you say, "I'm sure we have a plan,"
16 have you seen a plan?

17 A Let me rephrase it. How we address copper
18 lines should be referred to Mr. Aiton.

19 Q What about iron lines?

20 A The same, yes.

21 Q Okay. Galvanized?

22 A Yes.

23 Q Worn out and depreciated lines?

24 A Pardon me?

25 Q Worn out and depreciated customer service

1 **lines.**

2 A I don't understand what you mean by that.

3 **Q If there's a line that's worn out and**
4 **depreciated, the Company isn't planning to replace**
5 **that line for the customer, are they, to your**
6 **knowledge?**

7 A No. Only if we disrupt their service line
8 through the operation of infrastructure replacement.

9 **Q Does American Water have a nonregulated**
10 **service Company that offers insurance coverage for**
11 **customer service lines?**

12 A Yes.

13 **Q And what is the name of that nonregulated**
14 **company?**

15 A Homeowners Services.

16 **Q And that's an affiliate?**

17 A Yes.

18 **Q And what type of insurance do they offer?**

19 A I don't know.

20 **Q But you do know that it offers insurance for**
21 **service lines?**

22 A I'm aware of the program, but I've not been
23 involved in the development of that insurance
24 offering, nor have I ever read anything specifically
25 on it.

1 **Q** **To your knowledge, does the Company conduct**
2 **any pretesting of the water prior to removal of the**
3 **lead service line?**

4 A That I don't know, and that would be best
5 addressed by Company Witness Aiton.

6 **Q** **As I understand it for Account 345, those**
7 **restoration costs are related to main replacements; is**
8 **that correct?**

9 A Primarily aging infrastructure replacements,
10 yes.

11 **Q** **What about main repairs? Is that it for**
12 **Account 345?**

13 A No. No.

14 **Q** **Okay. So if the Company encounters a lead**
15 **service line in the course of a repair, unless that**
16 **main needs to be replaced, it wouldn't be proper to**
17 **book it in that account; right?**

18 A No. So with respect to an emergency
19 situation in which repairs -- repairs are generally
20 expensed; right?

21 **Q** **Right.**

22 A But with respect to if we ran into a
23 emergency situation which disrupted the service line,
24 then, in my opinion, that would be eligible for those
25 restoration costs to be capitalized.

1 **Q I'm sorry. An emergency expense?**

2 A If there was an emergency repair and part of
3 that repair disrupted a service line, in my opinion,
4 the expenditures associated with that service line --
5 completing that service line or fixing the service
6 line, restoring it to a safe condition, I do think
7 that would be eligible.

8 **Q Can you cite to your authority for that**
9 **opinion?**

10 A Just the uniform system of accounts.

11 **Q Just generally?**

12 A Yeah, generally. If you look at --

13 **Q The entire thing?**

14 A Well, no. Specifically, the uniform system
15 of accounts does address components of construction.
16 And within components of construction, there's
17 instructions with respect to damages. And when a
18 utility damages third parties' assets, those costs are
19 eligible to be capitalized. And you find that within
20 the 345 account. You also find that within the 343
21 account. So I think that's where -- just from my
22 professional experience of how that's been treated.

23 **Q So only in that discrete situation would --**
24 **in your opinion, only for that discrete situation;**
25 **correct? To your knowledge, on the stand right now.**

1 A Well, it would -- it would address -- I'm
2 having trouble with the word "discrete."

3 **Q Okay.**

4 A But in terms of that example, for an
5 emergency main repair, that I think that would be
6 eligible to be included in Account 345 services.

7 **Q But only if it caused damage to the customer**
8 **on the service line?**

9 A If you were to disrupt -- disrupt the
10 customer-owned service line and, in essence, damage
11 the service line, then yes.

12 MR. SMITH: Okay. No further questions.
13 Thank you.

14 JUDGE BURTON: Question from the bench?

15 CHAIRMAN HALL: Yeah.

16 EXAMINATION

17 QUESTIONS BY CHAIRMAN HALL:

18 **Q Good afternoon.**

19 A Good afternoon.

20 **Q I have a question about the stipulation and**
21 **agreement that includes \$318 million as a total**
22 **revenue requirement. And I'm trying to understand,**
23 **does that include some component of lead service line**
24 **replacement?**

25 A My understanding, no.

1 **Q So whatever decision the Commission makes on**
2 **this issue would add to that revenue requirement?**

3 A Correct. It would add to the revenue
4 requirement. Or if the Commission decided that that
5 wasn't a recoverable item, there'd be no change to the
6 revenue requirement.

7 **Q Okay. So expenses related to this program**
8 **are currently being booked in Account 186; is that**
9 **correct?**

10 A Yes.

11 **Q And that will be trued up as to what date?**

12 A Right now it's trued up through 12/31/2017.
13 Approximates about \$1.4 million. And then the amount
14 from January 1st, '18, up and to the effective date of
15 the rate order.

16 **Q 5/31?**

17 A 5/31. Our recommendation is that we would
18 stop any -- any of the carrying cost interest on
19 that -- on those items or amounts, and then record
20 that into plant service 345 and then we would carry
21 that and start depreciating those asset --

22 **Q I'm sorry. I need to move a little**
23 **slower --**

24 A Okay. Yeah.

25 **Q -- the way your brain works. Okay.**

1 **So from January 1st to May 31st, the costs**
2 **for this program would go into 345 and you would --**
3 **according to the Company's position, you would start**
4 **getting a return on that investment as well?**

5 A No. I'll be happy to explain.

6 **Q Please.**

7 A Okay. What would happen is right now the
8 Commission's authority has allowed us to record
9 amounts into 186 and include a carrying cost at a
10 short-term debt rate from -- in this example, January
11 through May 31st. And then what we're recommending is
12 that we close that account, the total amount that was
13 in that balance at 5/31/2018, we would recommend
14 putting that into a plant service account, Account
15 345, begin amortizing that over 65 years. That
16 amortization would have no carrying cost.

17 **Q I'm going to just stop you there. You**
18 **really mean "depreciate," don't you?**

19 A I mean "depreciate." Thank you.

20 **Q Okay. Keep going.**

21 A So what would happen is when it got into the
22 plant account, is it would start depreciating over 65
23 years. And, in effect, we would carry that until the
24 next rate filing and the net or undepreciated balance
25 we would be recommending, like we do with any other

1 plant investment, putting that into the rate base and
2 seeking a return on it.

3 **Q So you would -- you would not be getting in**
4 **this case a return on the investment up through**
5 **May 31st?**

6 A A short-term interest return on the
7 investment between January 1st through May 31, 2018,
8 yes, we would not. And we'd stop carrying costs. In
9 essence, those charges would be with an asset that's
10 in service. We'd start depreciating over 65 years.
11 And then the undepreciated balance at the next rate
12 case, we would seek recovery like any other plant, the
13 balance, and seek a return on and...

14 So the only part that impacts us with the
15 settlement is through 12/31/17. That -- that impacts
16 the settlement -- settlement numbers, whatever the
17 Commission decides with that amortization. We've
18 recommended a 65-year amortization on that to help
19 spread the costs across a longer period to help with
20 just the overall revenue requirement impact.

21 **Q Okay. If the Commission were to determine**
22 **that it was appropriate to get a return of this**
23 **investment, but not a return on this investment, I**
24 **believe your counsel indicated that the Company might**
25 **modify a lead service line replacement program?**

1 A Yes.

2 Q How so?

3 A Yeah. If the -- if the Commission was to
4 determine that we were to get recovery of -- which
5 means the depreciation -- and then not get a return
6 on, that really puts us in a situation where we're --
7 where we're having to, in essence, provide an
8 interest-free loan for however long period that
9 recovery of is.

10 So what we would do in that situation --
11 really hope we don't get in that situation. But if in
12 that situation, what we would do is try to avoid lead
13 service line restoration costs. So we try to avoid
14 situations in which we had to replace a lead service
15 line.

16 Q Though you do have a statutory obligation to
17 provide a safe and reliable service. And your
18 testimony here is acute, that you believe that there's
19 a health hazard faced by your customers related to
20 those service lines?

21 A Yeah. I think in the -- in terms of the --
22 the operational aspects of that -- because I get a
23 little bit outside of my field in terms of how we
24 would address that. That would be best addressed by
25 Bruce Aiton in terms of how we would encounter and

1 implement an avoidance approach.

2 CHAIRMAN HALL: Okay. Thank you.

3 EXAMINATION

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q Good afternoon. Just briefly. We're
6 talking about the 1.748 million around the AAO or is
7 it --

8 A At 12/31/17, it's 1.4 million.

9 Q Okay. 1.4. And then going forward from
10 January to May, there's been approximately 7.2 million
11 in replacement?

12 A The exact numbers you can get --

13 Q Similar?

14 A -- from Bruce Aiton.

15 Q Okay.

16 A But, directionally, we're speaking of
17 needing to -- or having to ramp up the investment and
18 ultimately, you know, as -- as Bruce Aiton has
19 mentioned, it could be up to \$15 million a year.

20 Q Fifteen to 18 million, about 3,000 lines?

21 A Yes.

22 Q So based on the Company's estimate, maybe up
23 to 10 years worth of replacement time?

24 A Yes.

25 COMMISSIONER KENNEY: Okay. Thank you.

1 EXAMINATION

2 QUESTIONS BY JUDGE BURTON:

3 Q I just have a few questions for you. You
4 were saying that the Company wants this to be placed
5 in the uniform system of accounts. Can you just
6 clarify for the record what you mean by "uniform
7 system of accounts" and which one?

8 A Yes. Currently, the Commission utilizes the
9 1976 version of the uniform system of accounts. And
10 what I was making reference to is that there are plant
11 instructions within the uniform system of accounts,
12 and specifically those plant instructions do speak to
13 the area of damages. And in -- and, essentially, that
14 any expenditures that are incurred with respect to
15 damages to third-party assets are eligible for
16 capitalization.

17 So that's some of the guidance you get from
18 the instructions and specifically in terms of
19 recording the -- these costs incurred to restore the
20 service lines, our recommendation, or my
21 recommendation, is to record those into Account 345.

22 Q Okay. And there are three portions to
23 Account 345; correct? There's an A, a B, and a C?

24 A Right.

25 Q Which portion do you think these types of

1 **replacements of customer lines would fall into?**

2 A It'd fall under C. So there's items. Let
3 me go to that and look.

4 Q Because I'm seeing, and correct me if I'm
5 wrong, for A it says: "This account shall include the
6 cost installed of service pipes and accessories
7 leading to the customers' premises."

8 A Correct.

9 Q And B says: "A complete service begins with
10 a connection on the main and extends to, but does not
11 include, the connection with the customer's meter.
12 The stub service extends from the main to the property
13 line or the curb stop."

14 A Yes. And then it goes on to identify items
15 that are representative of costs that would be
16 incurred.

17 Q I'm looking at C next.

18 A Okay.

19 Q I'm going to interrupt you real quick.

20 This says C: "Services which have been used
21 but have become inactive shall be retired from utility
22 plant and serviced immediately if there is no prospect
23 for reuse, and, in any event, shall be retired by the
24 end of the second year following that during which the
25 service became inactive unless reused in the interim."

1 A That's correct.

2 Q That is from the correct version of uniform
3 **system of accounts for Class A and B, water utilities**
4 **1973, the 1976 revision?**

5 A Yes.

6 Q And Missouri-American would qualify as a
7 **Class A and B water utility; right?**

8 A Yes.

9 Q Okay. So this would be under C, you were
10 **stating?**

11 A Well, it really falls under the costs
12 installed of service pipes and accessories leading to
13 the customer's premises. So it would fall under an
14 item that's eligible for recovery.

15 Q Under A?

16 A Under A.

17 Q Okay. Where it says "accessories leading to
18 **the customer's premises"?**

19 A Correct.

20 Q And these lines are on the customers'
21 **premises, other than perhaps St. Louis County where a**
22 **part of it is under the street as well?**

23 A That's true.

24 Q Okay. Now, you mentioned the homeowners
25 **service program, I believe, whenever you were**

1 **questioned by OPC about the insurance program that's**
2 **an affiliate?**

3 A Yes.

4 **Q Would that be American Water Resources?**

5 A I think it's American Water Enterprises.

6 **Q Okay. And would --**

7 A But it's part of the American Water
8 affiliate interest.

9 **Q Okay. And that provides an insurance for**
10 **customers throughout the country or just through**
11 **Missouri?**

12 A Throughout the country, and in Missouri, it
13 would be outside St. Louis County.

14 **Q Okay. Outside of St. Louis County?**

15 A Yes.

16 **Q And do you have any idea of how many**
17 **Missouri-American customers are currently customers**
18 **also of this other program?**

19 A I do not.

20 **Q And that program covers problems, let's say,**
21 **with water leaks, with the customer line, or repair**
22 **needs for the customer line?**

23 A You know, generally, customers would need
24 to -- would have to sign up for it, but -- would have
25 to sign up for it, yes.

1 **Q** And that's a paid volunteer program that any
2 **customer --**

3 **A** Correct.

4 **Q** Has there been any attempts by
5 **Missouri-American to coordinate with American Water**
6 **Resources or Homeowners Services Program or this other**
7 **company, whatever the name might be, about saying,**
8 **listen, we have these old lines, these old mains, that**
9 **are worn down and they're leaking and we need to do**
10 **repairs, and we imagine that the customer lines are**
11 **also leaking and need repairs; so we can coordinate**
12 **and do repairs at the same time?**

13 **A** I don't know. And I think that question
14 would be best addressed to Bruce Aiton who handles
15 those issues from an operational perspective.

16 **Q** Okay. Are you familiar with how many
17 **residential customers Missouri-American has within the**
18 **state?**

19 **A** Like a little over 400,000.

20 **Q** Approximately, how many of those are located
21 **in St. Louis County?**

22 **A** I think about 386,000.

23 **Q** Are in St. Louis County?

24 **A** St. Louis County. And then the other two
25 districts -- District 1 and 2 have approximately

1 40,000; so my math might be a little short on the
2 400,000.

3 JUDGE BURTON: Okay. Thank you.

4 COMMISSIONER KENNEY: I just have one other
5 question.

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q I just have one question because I'm not
9 versed on it or not -- excuse me -- familiar with it.
10 That restoration goes in plant service?

11 A Yes, and -- from our perspective, yes.

12 Q So then you -- if you were to dig up a
13 sidewalk or, let's say, some older part of a street
14 and you restore that, that work would go into plant
15 service?

16 A Yes. And we've been doing that for decades
17 to the extent that we've disturbed or damaged
18 third-party assets. And I think it's pretty clear,
19 from my reading of the uniform system of accounts and
20 the application, is that's where we record those
21 costs.

22 COMMISSIONER KENNEY: Okay. Thank you.

23 JUDGE BURTON: Any recross from Staff?

24 MS. ASLIN: Yes. Thank you. Just a few
25 questions.

1 EXAMINATION

2 RECROSS-EXAMINATION BY MS. ASLIN:

3 Q In response to a question, you referred to
4 damages cause is a part of the main replacement.
5 Could you clarify what you mean by that?

6 A Okay. I'm certain that Mr. Aiton, who
7 follows me, can speak to it, you know, better from an
8 operational perspective. But, you know, generally
9 speaking, if we're replacing an infrastructure, aging
10 infrastructure down a street, what we're likely going
11 to encounter is disturb the service line, and
12 disturbing that service line with respect to the lead
13 particles and a possibility for that to get in the
14 water supply. That's the issue. And I refer to that
15 as disturbed as well as, in essence, damages of that
16 service line because we need to restore it to a safe
17 condition.

18 Q Okay. And in response to a question from
19 Chairman Hall, you referred to these lead service line
20 replacements as an asset in service. Do you recall
21 that?

22 A Not exactly.

23 Q Would you qualify them as an asset in
24 service?

25 A Oh, if -- once we restore the customer-owned

1 lead service line because we've disrupted it, those
2 expenditures, in my opinion, should be recorded in 345
3 and would be an asset that we would depreciate.

4 **Q But how are they a Missouri-American asset**
5 **in service if Missouri-American doesn't own the line?**

6 A Well, that -- that's, you know, my
7 interpretation of how uniform system of accounts
8 works. If you go back to the components of
9 constructions, which was plant -- plant guidance, it
10 specifically talks about expenditures that incur --
11 that are incurred when you damage third parties, that
12 those are expenditures that are eligible for
13 capitalization.

14 And when you look at Account 345, one of the
15 items that's listed, and those items are
16 representative, is when you disturb pavement and the
17 associated cost with that. So that's how I get to
18 those costs being recorded into part of the project
19 costs themselves and, thus, it would be an asset.

20 **Q So it is your interpretation of Account 345**
21 **that these lines qualify as an asset in service?**

22 A Yes.

23 **Q And -- But would it be possible for someone**
24 **else to interpret that account in a different way?**

25 A Perhaps.

1 MS. ASLIN: Thank you.

2 JUDGE BURTON: Public Counsel.

3 MR. SMITH: Yes.

4 EXAMINATION

5 RE-CROSS-EXAMINATION BY MR. SMITH:

6 Q There were some questions from the bench
7 about costs. What was the cost that you referenced?

8 A million-four; is that right?

9 A Yes.

10 Q Did you read Mr. Aiton's surrebuttal
11 testimony?

12 A I did.

13 Q Do you have it with you?

14 A I don't, but he'll be correcting that number
15 if that's your next question.

16 Q Okay. So the number in his testimony, you
17 understand, is his third cost estimate?

18 A I'm not aware of how many cost estimates
19 that he's made.

20 Q Okay. Will you agree the number in his
21 testimony is 1,748,978?

22 A Yes.

23 Q So that number went down somehow?

24 A Yes.

25 Q So this would be the fourth -- I'm sorry.

1 **You don't know how many revisions. Where did you get**
2 **the million-four number? Is that something he told**
3 **you or did you look at the data?**

4 A No. That's what we have recorded on our
5 books and we've provided that in, I think, a data
6 request response as part of the true-up.

7 Q **Okay. But no sort of correction has been**
8 **made to the testimony yet, but you said that it will**
9 **be?**

10 A I think it's forthcoming, yes.

11 Q **Okay. I also thought I heard, when**
12 **answering question from the bench, that the Company --**
13 **one of the reasons the Company wanted to include these**
14 **costs in plant was because it would help spread the**
15 **cost out over a longer period of time; is that right?**

16 A Yes. A 65-year amortization we believe
17 accomplishes that.

18 Q **Well, a 65-year amortization, that's not**
19 **originally what the Company proposed; correct?**

20 A Correct.

21 Q **And OPC Witness Mr. Robinett pointed out**
22 **that the original depreciation life was inaccurate?**

23 A Well, I think I would address it this way,
24 is I think the OPC witness made some very good points
25 in surrebuttal. And one of the things that I hadn't

1 factored in is to treat expenditures for restorations
2 as a subaccount. And as soon as I read that in
3 surrebuttal, I thought that was a very fair
4 representation of how that should be treated and
5 that's the reasons we revised our position on it
6 today.

7 **Q Now, if the goal is to spread the cost out**
8 **over a longer period of time, couldn't that be done**
9 **through an amortization?**

10 A It could.

11 **Q Okay. Have you heard the saying "when**
12 **you're a hammer, everything's a nail"?**

13 A No.

14 **Q Well --**

15 A Heard of others, but not that one.

16 **Q When you're talking about damages to a lead**
17 **service line, is it possible there might be other**
18 **fixes, other tools that could be used, other than**
19 **replacing a lead service line? Is it possible?**

20 A I don't know.

21 **Q You don't know. Okay.**

22 MR. SMITH: No further questions.

23 JUDGE BURTON: Redirect?

24 MR. COOPER: Thank you, Your Honor.

25 EXAMINATION

1 REDIRECT-EXAMINATION BY MR. COOPER:

2 Q Mr. Jenkins, you had described, I think a
3 couple times, your connection to the uniform system of
4 accounts and what you referred to as damages or
5 disturbances of the line?

6 A Yes.

7 Q Can you give us a little bit more detail
8 where that's coming from? I mean, I assume we start
9 in -- in Account 345, I think you -- it was pointed
10 out that, you know, the cost installed is referenced
11 in Account 345, sub-provision A. And are there
12 other -- is there another section of the USOA that
13 helps define what costs means?

14 A Yes.

15 Q And what is that?

16 A You can find that within the uniform system
17 of accounts. There's a section referred to as utility
18 plant instructions.

19 Q And when you look at the utility plant
20 instructions, is there a section that -- that defines
21 what the components of cost will be?

22 A Yes. Section 8.

23 Q Well, let's back up. More generally, is
24 there a section that defines the components of
25 construction cost?

1 A Yeah. Within the utility planning
2 instructions, item No. 3 titled: "Components of
3 Construction Cost."

4 **Q And then within that Components of**
5 **Construction Cost, is there a particular section that**
6 **you're looking at when you tell us that -- that**
7 **disturbed property, the cost of that, fixing that,**
8 **fits within the cost?**

9 A Yes, and that's item 8.

10 **Q Which defines what?**

11 A It defines -- the actual reference is
12 injuries and damages and it says: "Injuries and
13 damages includes expenditures or losses in connection
14 with construction work on account of injuries to
15 persons and damages to property of others."

16 And it goes on. I can read it if I need to.

17 **Q That's good enough for now.**

18 **In your answer to Chairman Hall, you talked**
19 **about, I think, both amounts that have been deferred**
20 **between January 1 of 2017 and December 31 of 2017. I**
21 **think that's one category; is that correct?**

22 A Yes.

23 **Q And then there was a second category of**
24 **amounts that have been, or will be deferred, I**
25 **suppose, from January 1 of 2018 to May 31 of 2018; is**

1 **that correct?**

2 A Yes.

3 **Q And could you differentiate for us your**
4 **recommendation as to those two -- two items?**

5 A Yes. With respect to the settlement and
6 the -- in this case, we've agreed with the parties
7 to -- to accumulate those costs through 12/31/17, and
8 address that through however the Commission decides to
9 address that, and the impact on the case would --
10 would be reflected in addition to the \$318 million
11 amount.

12 Then with respect to the costs from
13 January 1st through May 31st, and pursuant to
14 Commission order, since that's been allowed to be
15 recorded into Account 186, is we'd stop the carrying
16 cost in terms of the interest component on it at
17 May 31st. And then our recommendation is to record --
18 transfer that balance at that time to Account 345, and
19 then upon transfer, it would begin to be amortized.

20 And then on a going-forward basis, since
21 this program is going to continue, and in terms of
22 disrupting and damaging service lines as we replace
23 aging infrastructure, our recommendations on a
24 going-forward basis to record those restoration costs
25 into the Account 345.

1 And as we incurred those restoration costs,
2 we wouldn't be capitalizing any interest on that --
3 those costs as incurred because basically through the
4 guidance of the uniform system of accounts, you
5 wouldn't capitalize a carrying cost, like an allowance
6 for funds used during construction because the
7 construction cycle wouldn't last more than 30 days.
8 So I wouldn't anticipate any carrying costs to be
9 accumulated on those balances.

10 **Q You were asked some questions about an**
11 **American Water subsidiary that provides service line**
12 **protection or a service line protection program. Do**
13 **you remember those?**

14 A Yes.

15 **Q And you've been with the Company for some**
16 **time; correct?**

17 A Yes.

18 **Q Do you remember any past scrutiny before**
19 **this Commission in terms of Missouri-American's**
20 **communication with that entity, perhaps even the**
21 **Company being discouraged from discussions with that**
22 **entity?**

23 A My memory's pretty good. I'd say yes, I
24 recall that.

25 **Q Okay. And that resulted in issues in prior**

1 **rate cases; correct?**

2 A That's correct.

3 **Q You were asked questions by Staff counsel**
4 **about your surrebuttal and some discussion about, I**
5 **think, the phrase that's in your testimony is "defer**
6 **collection." Does that refer to uncertainty related**
7 **to recovery of Account 186 --**

8 A Yes.

9 **Q -- amounts? Could you explain that, please?**

10 A Yes. When items get included in
11 Account 186, it definitely raises a level of
12 uncertainty and -- and just overall clarity in terms
13 of how the Commission is going to treat those costs on
14 an ongoing basis. And as we accelerate and increase
15 the program, that risk, you know, raises from our
16 perspective.

17 And, you know, from my experience, the
18 amounts that are in that 186 from rate case to rate
19 case are subject to quite a bit of scrutiny in terms
20 of change and -- and if we have to go down a path of
21 reseeking the AAO authority, we have to go through,
22 you know, a pretty complicated proceeding. So that's
23 my background with respect to...

24 MR. COOPER: That's all the questions I
25 have, Your Honor.

1 JUDGE BURTON: You're excused.

2 Company may call its next witness.

3 MR. COOPER: We call Mr. Gary Naumick.

4 GARY NAUMICK,

5 having been duly sworn, testifies as follows:

6 JUDGE BURTON: You may be seated.

7 EXAMINATION

8 DIRECT EXAMINATION BY MR. COOPER:

9 Q Please state your name.

10 A My name is Gary Naumick. Last name
11 N-a-u-m-i-c-k.

12 Q By whom are you employed and in what
13 capacity?

14 A I'm employed by American Water Works Service
15 Company in the capacity of the vice president of
16 corporate engineering.

17 Q Have you cause to be prepared for purposes
18 of this proceeding certain rebuttal testimony, revenue
19 requirement in question-and-answer form?

20 A Yes.

21 Q Is it your understanding that that testimony
22 has been marked as Exhibit 27 for identification?

23 A Yes.

24 Q Do you have any changes that you would like
25 to make to that testimony at this time?

1 A No.

2 Q If I ask you questions which are contained
3 in Exhibit 27 today, would your answers be the same?

4 A Yes.

5 Q Are those answers true and correct to the
6 best of your information, knowledge and belief?

7 A Yes, they are.

8 MR. COOPER: Your Honor, I would offer
9 Exhibit 27 into evidence and tender the witness for
10 cross-examination.

11 JUDGE BURTON: Exhibit 27 has been offered.
12 Are there any objections?

13 MR. SMITH: No objection.

14 JUDGE BURTON: Exhibit 27 is admitted.

15 (COMPANY'S EXHIBIT NO. 27 WAS RECEIVED IN
16 EVIDENCE.)

17 JUDGE BURTON: Any questions from MIEC?

18 MR. MILLS: No questions.

19 JUDGE BURTON: Jump to Staff then.

20 MS. ASLIN: No questions.

21 JUDGE BURTON: Public Counsel?

22 MR. SMITH: Thank you.

23 EXAMINATION

24 CROSS-EXAMINATION BY MR. SMITH:

25 Q Mr. Naumick, I assume you were in the room

1 **when I was asking those same questions -- or I'm**
2 **sorry -- when I was examining Mr. Jenkins?**

3 A I was in the room, yes.

4 Q **Okay. I had asked about whether the Company**
5 **tests the water prior to a lead service line**
6 **replacement. Do you recall that?**

7 A Actually, I did step out. I do not recall
8 that question.

9 Q **Okay. Are you aware of whether the Company**
10 **tests a homeowner's water prior to doing a lead**
11 **service line replacement?**

12 A I would defer what Missouri-American is
13 doing to Mr. Aiton. I do not believe they test prior
14 to replacement is made.

15 Q **You were involved in the AAO case?**

16 A Yes.

17 Q **Correct? And you were cross-examined by my**
18 **former co-worker Mr. Opitz. Do you recall that?**

19 A I do.

20 Q **And do you recall being asked about how long**
21 **it takes to return to a stable condition if a partial**
22 **replacement is conducted?**

23 A I don't remember the specific question,
24 but...

25 Q **Do you remember what the answer would be?**

1 A I generally -- are you asking me to know the
2 answer that I gave at that time or a general question?

3 **Q Do you recall answering that there's some**
4 **research, it could be hours or potentially days?**

5 A I'll accept that that's what I said, subject
6 to checking.

7 **Q Okay. So in a partial lead service line**
8 **replacement, in order for a line to be stable, it**
9 **takes some time, and the research suggests hours or**
10 **potentially days. Is that fair?**

11 A It can, yeah. It's not an exact situation
12 and it can be somewhat mitigated through the flushing
13 and so forth, but it's not a precise thing that
14 happens in X minutes or X hours or even X days.

15 **Q So it's a -- I guess a short-term situation?**

16 A Again, some research has shown some samples
17 that goes beyond that two weeks and weeks and months.
18 In many cases, it returns pretty -- pretty quickly.
19 But there is -- some of the research has it as long
20 as, you know, a period of months.

21 **Q And could that be possibly accounting for**
22 **such variables as the internal plumbing of a**
23 **customer's home?**

24 A It can be the whole physical, as well as
25 chemical reaction that goes on. A scale of -- a scale

1 that may encompass lead gets broken off and they may
2 break off at a random time in the future.

3 **Q So the -- I guess some of the research has**
4 **shown that kind of a worst case scenario would be a**
5 **couple of weeks?**

6 A Again, I've seen some that's beyond that. A
7 lot of it is shorter than that.

8 **Q A lot of it. You would agree that**
9 **Missouri-American doesn't have a complete or a perfect**
10 **inventory of lead service lines; correct?**

11 A It's not perfect. I think the feeling is
12 it's directionally -- directionally good and getting
13 better all the time. It is obviously not perfect.

14 **Q I'm not sure this got fleshed out in the**
15 **last hearing so I'm going to ask about it again. Do**
16 **you recall questions about the York Water Company in**
17 **Pennsylvania?**

18 A I do recall a question about that.

19 **Q Are you aware that the York Water Company**
20 **only reimbursed owners \$1,250?**

21 A I'm not specifically aware of it. I don't
22 have reason to disagree with what you said. I'm not
23 real familiar with the York -- the York decision.

24 **Q Are you aware, or do you recall, that the**
25 **York Water Company was in violation of the lead and**

1 **copper rule?**

2 A That's my understanding, yes.

3 **Q Are you aware of any remaining amounts that**
4 **weren't paid in excess of \$1,250 that the York Water**
5 **Company would help to offer no-interest finance**
6 **payment plans for customers?**

7 A Again, I'm not familiar with it in that
8 level of detail.

9 **Q You've read Dr. Markes' testimony?**

10 A Yes.

11 **Q So are you familiar with the Madison,**
12 **Wisconsin, example he cited to?**

13 A I am generally familiar with it. I can't
14 say I've, you know, recently boned up on the details
15 of it. I know about the, you know, situation there.

16 **Q Wouldn't you agree that the utility agreed**
17 **to cover up to \$1,000 in that situation?**

18 A I don't know. I don't have any reason to
19 dispute what you're saying, but I don't know
20 firsthand.

21 **Q Would you agree for any amount over, there**
22 **was an offer by the utility to provide a low-income**
23 **customer with a loan with a repayment deferred until**
24 **the property was sold?**

25 A Again, I don't know that, or at least don't

1 know or recall that level of detail about their
2 program.

3 **Q If I were to tell you that level of detail**
4 **was contained in the testimony of Dr. Marke, would you**
5 **agree with me?**

6 A I don't have any reason to disagree.

7 **Q And wasn't that Madison utility also in**
8 **violation of the lead and copper rule?**

9 A That I don't -- again, don't remember.

10 **Q Do you recall that after lead service line**
11 **replacement in Madison, several years after, it was**
12 **found that the lead levels -- there were still high**
13 **lead levels for some homes?**

14 A Again, I don't know the details. I know --
15 I know, generally, the Madison situation was
16 particularly unique because they, I believe, did not
17 practice corrosion control and had a reason they
18 didn't want to. Again, I'm not expertly familiar with
19 that -- that case study, but I know that the issue of
20 corrosion control was a specific central piece of the
21 Madison situation.

22 **Q And does Missouri-American Water perform**
23 **proper corrosion control?**

24 A Performs proper corrosion control and/or
25 uses the natural chemistry of the water to produce a

1 water that's not corrosive.

2 Q And doesn't the water content also create
3 sort of a coating?

4 A Again, a -- yeah, a noncorrosive supply
5 would put -- over time would put a coat on the
6 interior pipe.

7 Q And that would protect it from lead
8 contaminants being leached in; correct?

9 A It does help, yes.

10 Q And, in fact, for 30 years,
11 Missouri-American Water has been in compliance with
12 the lead and copper rule?

13 A I believe so, yes.

14 Q After reviewing all of the testimony, do you
15 still believe that OPC's pilot proposal would be
16 either duplicative or inconsistent with the lead
17 service line replacement collaborative?

18 A Yes.

19 Q Did you read Dr. Markes' direct testimony in
20 this case?

21 A I did.

22 Q All right. And do you have that with you?

23 A I believe I do. It's what -- oh, well, I
24 have his surrebuttal testimony with me.

25 Q Do you have his surrebuttal testimony from

1 **the AAO case?**

2 A I don't believe I have that with me.

3 I've got it.

4 **Q All right. Do you have a copy of page 11 of**
5 **Dr. Markes' -- I guess I could phrase this two ways --**
6 **either his schedule GM-4 attached to his direct**
7 **testimony or a copy of his surrebuttal testimony from**
8 **the WU-2017-0296 case?**

9 A Yes.

10 **Q Okay. And do you see lines 17 through 22**
11 **there?**

12 A Yes.

13 **Q And have you reviewed this testimony?**

14 A Yes.

15 MR. COOPER: Excuse me. What page are you
16 on, Counsel?

17 MR. SMITH: Yes, page 11. I believe it
18 could also be referred to as 14/49. I guess it
19 depends because --

20 MR. COOPER: I'm there. Got it. Thank you.

21 MR. SMITH: No problem.

22 **Q (By Mr. Smith) All right. Now, I'm sorry.**
23 **I lost my train of thought.**

24 **You reviewed this testimony?**

25 A I just read what you directed me to, yes.

1 **Q** **Did you review this testimony prior to this**
2 **hearing?**

3 A Yes.

4 **Q** **Okay. What about -- I mean, what it says --**
5 **does that seem to say that a starting point would be**
6 **to form an advisory group to discuss options?**

7 A Well, we were well beyond the starting
8 point. And I would say what it says: "Engaging local
9 leaders, state agencies, others to gain perspectives
10 and expertise."

11 We have been doing this quite extensively.
12 Folks like myself doing it on the national level,
13 talking to EPA, others, nationally. I would --

14 **Q** **Can I --**

15 A -- defer to Mr. Aiton about what they're
16 doing within the state and talking to local health
17 departments and so forth.

18 **Q** **So were those findings from these alleged**
19 **conversations that you had put in some sort of report**
20 **or testimony?**

21 A I believe Mr. Aiton describes some of them.
22 We've described our program and --

23 **Q** **Well --**

24 A Really we've --

25 **Q** **Just asking a question, if they're put in**

1 **the report or were they put in testimony of some sort?**

2 A I believe I may have referred to it in
3 generality. I don't think I attached specific
4 examples of discussions, but we've been doing it
5 continuously for -- for several years.

6 **Q Did you engage with the epidemiologists,**
7 **state's epi -- epidemiologists? I can't say that**
8 **word. I'm sorry.**

9 A We have been in working groups with
10 children's health advisory groups, the universities,
11 other utilities, EPA, CDC, and so forth, really
12 running the gamut of folks that are involved in this
13 situation.

14 **Q Have you been engaged in any conversations**
15 **at the Missouri level?**

16 A I have not specifically.

17 **Q Okay. So there's -- what other American**
18 **water utilities are doing this?**

19 A Doing this?

20 **Q Yeah, this sort of engagement that you're**
21 **talking about.**

22 A Moving forward, Indiana, Illinois,
23 New Jersey, Pennsylvania. So, again, a lot of
24 activity going on in multiple states.

25 **Q Okay. And has there been approval, to your**

1 **knowledge?**

2 A They're in different -- they're in different
3 states. There was a legislation in Indiana.

4 **Q To your knowledge --**

5 A There are pending cases.

6 **Q I'm sorry. To your knowledge, has there
7 been approval? To your knowledge.**

8 A Not to my knowledge. I don't follow all the
9 nuances of the regulatory steps. As I said, there's
10 activity both legislatively and regulatory in a number
11 of states.

12 **Q Okay. I'm going to mark an exhibit. I
13 think OPC -- this will be our first exhibit, but I
14 believe the number will be 227. Does that sound
15 right? I'll hand a copy to the court reporter.**

16 **All right. Are you familiar with that
17 statute?**

18 A I am generally familiar. This is the
19 Indiana legislation; correct?

20 **Q Could you identify it? Yeah.**

21 A Yes.

22 **Q Okay. And what is -- please identify it.**

23 A I'm not sure what you mean. You want me to
24 read the title?

25 **Q Yes, please. Please.**

1 A Burns -- Indiana -- I don't even know what
2 the abbreviations are, but I know it's the Indiana
3 legislation about lead service lines. I don't know
4 what these abbreviations are.

5 **Q And how do you know that? You've seen it**
6 **before?**

7 A I've seen the contents of this, yeah.

8 **Q Okay. And can you describe what the**
9 **legislation says in Indiana?**

10 A Well, it asks for kind of some details about
11 what and how much -- about the program, the number of
12 lead service lines that are estimated in the utility
13 range to be -- to be done annually. You can see there
14 are 10 different items, mostly factual about the plant
15 program.

16 **Q And at the end, the Commission would approve**
17 **the plan if it's reasonable in the public interest.**
18 **True?**

19 A I believe so, yes.

20 **Q To the best of your knowledge, is this a**
21 **true and correct copy of that piece of legislation?**

22 A To the best of my knowledge, yes.

23 **Q That statute? Okay.**

24 MR. SMITH: I'll offer to admit that exhibit
25 at this time.

1 JUDGE BURTON: I'm just identifying that as
2 the Indiana Code 8-1-31.6-6. Exhibit 227 has been
3 offered. Are there any objections?

4 MR. WESTEN: Just a question actually.

5 Ryan, is this -- this is -- this is actually
6 passed legislation that's been signed into law?

7 MR. SMITH: Yes.

8 MR. WESTEN: Staff has no objection.

9 MR. COOPER: I don't know if I have an
10 objection, Your Honor. I guess I would encourage you
11 to maybe just take administrative notice of the
12 Indiana statute number, and then to the extent -- that
13 would give us chance to -- to take a look and make
14 sure we've got the complete statute before us. But
15 that would be my suggestion to you. But it's not
16 really admitted into evidence, but perhaps take --
17 take notice of the Indiana statute, if you would.

18 JUDGE BURTON: Do you have an objection to
19 it being admitted subject to any addendum for
20 clarification for anything that's missing?

21 MR. COOPER: No, I do not.

22 JUDGE BURTON: Okay. Then I would prefer to
23 just go ahead and admit it for the record. Exhibit
24 227 is offered and admitted.

25 (STAFF'S EXHIBIT NO. 227 WAS RECEIVED IN

1 EVIDENCE.)

2 Q (By Mr. Smith) So there are a number of, I
3 guess, questions in the plan that need to be answered
4 in Indiana; correct?

5 A Correct.

6 Q And a little bit different than the approach
7 Missouri-American Water is taking. Fair?

8 A Not really. The things that are in here
9 are -- are the same way we're running the program
10 in -- in Missouri. In Indiana, they're articulated in
11 answer to these questions, but they're really the
12 same -- the same steps -- process that we're taking
13 forward here.

14 Q I mean, where's the Company's plan then?
15 Was that submitted? Did I miss that?

16 A Again, a lot of details. I know, as an
17 example, in one of Mr. Aiton's testimonies, I lose
18 track whether it's AAO or this, but there was a very
19 large detailed flowchart of what to do if -- when you
20 see a lead line in construction, do this, how we do
21 the sampling, how we do the flushing, how we do the
22 communication. We've developed a whole battery of
23 customer communications for each step in the process,
24 so -- And I know a lot of that was -- and, again, I
25 don't know all of what was in what parts of what file

1 testimony -- but that's all part of the program.

2 Q All right. Are you generally familiar with
3 American Water's research on lead line removal?

4 A Yes.

5 Q Are you familiar with the studies conducted
6 by the parent in New Jersey and in Illinois?

7 A Yes. Generally, yes.

8 Q I'm going to butcher the name but who's
9 Dr. Mark LeChevallier? Can you help me with the name?

10 A Dr. Mark LeChevallier, now retired, was our
11 head of research.

12 Q All right. And did you read our Dr. Markes'
13 surrebuttal testimony in this case, WR-2017-0285?

14 A Yes.

15 Q Do you have that in front of you?

16 A Yes.

17 Q Okay. Would you turn to page 22?

18 A Twenty-two, yes.

19 Q All right. Are you there?

20 A Yes.

21 Q And you've reviewed this in advance, I
22 assume?

23 A Yes.

24 Q Okay. Lines 1 through 10 -- sorry, 1
25 through 13 -- do you generally agree with these

1 **statements?**

2 A No.

3 **Q What about lines 1 through 5?**

4 A No. I mean, first, I really don't
5 understand it. I don't understand the context and so
6 no, I don't -- I don't know what the context of it or
7 what it really says or means.

8 **Q Do you have reason -- do you think it's**
9 **untrue?**

10 A It's something Dr. LeChevallier may have
11 said on a phone call. In what context, or did he say
12 it, I -- I'm not really willing to validate it, not
13 having been there or not talking to Dr. LeChevallier
14 about it.

15 **Q Okay. Fair enough. Fair enough. Thank**
16 **you.**

17 MR. SMITH: No further questions.

18 JUDGE BURTON: Questions from the bench?

19 CHAIRMAN HALL: Yeah.

20 EXAMINATION

21 QUESTIONS BY COMMISSIONER HALL:

22 **Q Afternoon.**

23 A Hi, Judge Hall.

24 **Q Are you involved in Missouri-American's**
25 **formation of its main replacement program?**

1 A Just in an overall review step process. Not
2 in the -- in the weeds, not in detail.

3 **Q Who's in the weeds?**

4 A Bruce Aiton.

5 CHAIRMAN HALL: Okay. Thank you.

6 COMMISSIONER KENNEY: Yes. Thank you.

7 EXAMINATION

8 QUESTIONS BY CHAIRMAN KENNEY:

9 **Q Bimetallic. Is that right, Bimetallic**
10 **corrosion? Okay. How does that work?**

11 A The -- I'll try my best. Would be putting
12 two dissimilar metals next to each other and having
13 the corrosion of ions from one to the other.

14 **Q The what? Ions? The corrosion of ions?**

15 A Well, the liberating of ions. So in other
16 words, the discharge of the metal by corrosion.

17 **Q Does one metal give more ionized -- causes**
18 **the other -- the way I understand part of this is that**
19 **two metal -- that causes -- that the lead pipe would**
20 **lose some of its ions and so the lead can leach out**
21 **into the water.**

22 A Yeah. Yes.

23 **Q That -- is that a short-term effect or can**
24 **that be a longer-term effect?**

25 A That would be a longer-term effect, which in

1 construction, you would try to mitigate by not
2 allowing kind of a galvanic path between those metals
3 to interact with each other.

4 **Q So how would you do that if we -- if the**
5 **Company comes across a lead pipe when they're**
6 **replacing the mains, would they -- and they don't**
7 **replace that lead pipe, would they have tried to**
8 **connect a different fitting to it?**

9 A You would. You would either connect plastic
10 to the lead or you would have a -- I believe it's
11 called a dielectric coupling to break the galvanic
12 contact.

13 COMMISSIONER KENNEY: Okay. Thank you.

14 JUDGE BURTON: Any recross?

15 MR. SMITH: No, thank you.

16 JUDGE BURTON: Redirect?

17 MR. COOPER: Thank you, Your Honor.

18 EXAMINATION

19 REDIRECT EXAMINATION BY MR. COOPER:

20 **Q Mr. Naumick, you were asked some questions**
21 **about Mr. Markes -- or Dr. Markes surrebuttal**
22 **testimony and a conversation that purports to be**
23 **described there. Were you a part of that telephone**
24 **call?**

25 A I was not.

1 **Q Would you be surprised if the American Water**
2 **person referenced there said there was no difference**
3 **between partial and full lead service line**
4 **replacement?**

5 A Yes. And, in fact, I know that the pilots
6 were about full replacements. The goal of the pilots
7 was to really tighten up and validate protocols about
8 exactly how to flush, exactly when to sample, how many
9 times. So they were -- they were piloting of some
10 full samples. So they were not piloting partials.

11 And, again, having been with Dr.
12 LeChevallier many times, no, he would not. I believe
13 he would have said there's no difference between
14 partials and fulls.

15 **Q So the pilots that would have been**
16 **referenced would not have -- have been testing the**
17 **difference between partial and full?**

18 A Correct. Again, that was not the purpose of
19 them. That was not the sample set.

20 **Q Are you aware of research that does show a**
21 **difference between partial and full replacements?**

22 A Yes.

23 **Q Okay. Could you describe that for us?**

24 A It's -- you know, there's a multitude of
25 that, multitude of external research by universities

1 and others showing that the higher prevalence and
2 persistence of lead after a partial as compared to
3 after a full service line.

4 **Q Mr. Smith also had pointed you to some**
5 **testimony that referenced a stage of this process as**
6 **forming an advisory group. And I think you said**
7 **you're beyond that step. Could you explain to us what**
8 **you mean by the fact that you're beyond that step?**

9 A Again, and we're advancing it, the work and
10 the sampling and the learning in Missouri and in other
11 states and -- and as we go, we're learning. As you
12 could imagine, in the field, you start to run into all
13 the odd situations, and so we're -- we're refining,
14 developing plans for those odd situations, but we've
15 really established a pretty strong working protocol of
16 the activity.

17 And, again, the follow-up activity that I
18 described, the education, the flushing of the line to
19 clear sediment after a full replacement and then the
20 follow up sampling. So, again, we've gone a long ways
21 down, and we are constantly talking really with all
22 the experts across the country to keep up with
23 activity that's going on and to continue to learn from
24 that.

25 **Q So not only has that been developed, but**

1 **it's been developed in coordination with others?**

2 A Absolutely.

3 **Q You were asked some questions about how**
4 **coating on the inside of the pipes may protect from**
5 **lead contamination. What kinds of things can -- if**
6 **any, can disrupt that coating or change that**
7 **protection?**

8 A Again, the one we talked most primary is
9 the -- you know, the replacement of the main and
10 having to disconnect the main and reconnect and just
11 that physical disruption. There could be other things
12 out of our control. The work of another utility, for
13 instance, nearby. Potentially, even something that
14 the homeowner does on the property, a tree -- you
15 know, a tree, taking out a tree or somebody grinding
16 out a stump or something that can cause a physical
17 disruption nearby.

18 **Q You were asked questions about York Water**
19 **and then Madison, Wisconsin. Are either of those**
20 **systems subsidiaries of American Water Company?**

21 A No, they're not.

22 **Q You were asked several questions by**
23 **Mr. Smith about how long it takes a lead pipe to**
24 **return to stable condition after partial replacement.**
25 **And I think you talked about various lengths of time.**

1 **Why is your answer not exact?**

2 A Because there's -- there's research showing
3 some variation, as well as just the fact this physical
4 activity, there was a disruption and there's
5 particulate matter that's been disrupted or has
6 resettled and something could just trigger -- trigger
7 particulate lead to have a random spike back into the
8 water.

9 **Q Just a lot of different circumstances out**
10 **there when you start talking about service lines, lead**
11 **service lines?**

12 A Yeah. I mean, it could be something where,
13 for some reason, the customer turns on the water real
14 heavily in the house and it's a flow volume that
15 hasn't been experienced that can just pull off some of
16 the particulate.

17 MR. COOPER: That's all the questions I
18 have, Your Honor.

19 JUDGE BURTON: You're excused.

20 THE WITNESS: Thank you.

21 JUDGE BURTON: Company can call its next
22 witness.

23 MR. COOPER: Missouri-American would call
24 Mr. Bruce Aiton.

25 BRUCE AITON,

1 having been duly sworn, testifies as follows:

2 JUDGE BURTON: Thank you.

3 EXAMINATION

4 DIRECT EXAMINATION BY MR. COOPER:

5 **Q Please state your name.**

6 A Bruce Aiton, A-i-t-o-n.

7 **Q And by whom are you employed and in what**
8 **capacity?**

9 A Missouri-American Water. I'm director of
10 engineering for the State.

11 **Q Have you cause to be prepared for the**
12 **purposes of this case direct testimony, rebuttal**
13 **testimony, revenue requirement, and surrebuttal**
14 **testimony in question-and-answer form?**

15 A Yes.

16 **Q Is it your understanding that testimony has**
17 **been marked as Exhibits 1P for public, 1C for**
18 **confidential, 2 and 3?**

19 A Yes.

20 **Q Do you have any changes that you would like**
21 **to make to that testimony at this time?**

22 A I do. Actually, two pieces, both on the
23 same page in my surrebuttal testimony. On line --
24 page 6, line 3, the number 250 should be 240. And
25 then the dollar value that was referenced earlier from

1 the 1.7 million should be 1,420,494.91.

2 JUDGE BURTON: I'm sorry. Would you repeat
3 that number?

4 THE WITNESS: 1,420,494.91.

5 Q (By Mr. Cooper) Are there any other changes
6 that you would like to make to your testimony?

7 A No, sir.

8 Q If I were to ask you the questions that are
9 contained in Exhibits 1P, 1C, 2, and 3 today, would
10 your answers as amended be the same?

11 A Yes, sir.

12 Q Are those answers as now amended true and
13 correct to the best of your information, knowledge,
14 and belief?

15 A Yes, sir.

16 MR. COOPER: Your Honor, we would offer
17 Exhibits 1P, 1C, 2, and 3 into evidence and tender
18 Mr. Aiton for cross-examination.

19 JUDGE BURTON: Exhibits 1 through 3 have
20 been offered. Are there any objections?

21 MR. SMITH: I think I'm going to object on
22 the basis of not understanding the change that was
23 made and what the grounds for that was, but I think if
24 I explore that, that would probably resolve my --

25 JUDGE BURTON: Do you want to clarify that

1 now or do you want to --

2 MR. SMITH: Yeah, I think -- well, yeah,
3 that'd work for me.

4 EXAMINATION

5 VOIR DIRE EXAMINATION BY MR. SMITH:

6 **Q Mr. Aiton, what is the basis for the change**
7 **in these figures?**

8 A The 250 actually was through the end of
9 January, not through the end of December, and so we
10 redact that back to the end of December number, the
11 240. And the 1.7 million, I'll say is a mistake. I
12 asked the wrong accountant. The actual number from
13 our accounting group that was filed elsewhere in the
14 record is the 1.4 number.

15 **Q So the number that you just recently cited,**
16 **is that also based on a conversation, or what is that**
17 **number based on?**

18 A It's based on what was then had been filed
19 by the Company in the -- in the rate structure, I
20 believe, and, yes, in the conversation with other
21 accountants, that was the number that had been used.

22 **Q So it was based on a conversation with the**
23 **accountants?**

24 A Yes.

25 **Q Have you reviewed the data that -- that**

1 **forms the foundation of those conversations?**

2 A Yes. Yes.

3 **Q And you've tabulated the data and you agreed**
4 **with it?**

5 A I looked at the data and I agree with it.

6 MR. SMITH: Okay. Subject --

7 JUDGE BURTON: To cross-examination. Okay.

8 Exhibits 1P, 1C, 2, and 3 have been offered and are
9 admitted.

10 (COMPANY'S EXHIBITS 1P, 1C, 2, AND 3
11 WERE RECEIVED IN EVIDENCE.)

12 JUDGE BURTON: Any cross from the Public
13 Water Supply Districts?

14 MR. COMLEY: No, thank you, Judge.

15 JUDGE BURTON: Division of Energy?

16 MR. POSTON: No, thank you.

17 JUDGE BURTON: MIEC.

18 MR. MILLS: No questions.

19 JUDGE BURTON: Staff.

20 MR. WESTEN: Very briefly, Judge. Thank
21 you.

22 EXAMINATION

23 CROSS-EXAMINATION BY MR. WESTEN:

24 **Q Good afternoon, Mr. Aiton.**

25 A Hello.

1 Q My name is Jacob Westen. I am the attorney
2 who has helped to represent Staff in this case. I
3 imagine you probably received DRs with my name on
4 them.

5 I want to ask you a few questions about
6 operations. As the previous witnesses have indicated,
7 you're the operations guy?

8 A Yes.

9 Q So it's fair to call you the operations guy?

10 A That's fine. No problem.

11 Q All right. Real briefly, you're the
12 individual who is responsible for the estimate of the
13 approximately 33,000 lead service lines in Missouri?

14 A Yes. With my staff, yes.

15 Q Okay. So you supervised the individuals who
16 did that?

17 A Yes.

18 Q Okay. And if I recall correctly, you
19 provided some testimony on this item in the AAO case
20 WU-2017-0296. Does that sound correct?

21 A Yes, sir.

22 Q And I think you stated that the basis for
23 that estimate is on company experience and tap cards;
24 is that correct?

25 A Yes, sir.

1 **Q Am I leaving anything out?**

2 A No. Not substantially, no. We have tap
3 card records for much of the system. And in other
4 locations, say in Parkville, for example, those tap
5 card records were lost in previous floods and so we no
6 longer have that data. It was never transferred to be
7 in electronic format.

8 So that's where the staff experience of
9 having worked in the system for a number of years and
10 looking at a number of systems, you know, taps and
11 their experience of where they think that there might
12 be lead service lines.

13 **Q So the majority of the estimation is**
14 **actually outside of the St. Louis area?**

15 A No. The majority of the estimation, yes, it
16 would be outside. It would be in Mexico and
17 Parkville, in particular.

18 **Q Okay. And I think I recall, but, again,**
19 **just very briefly. A tap card is an actual written**
20 **card that identifies the size, the material and the**
21 **date and method of installation of different**
22 **components, either the customer service line or other**
23 **parts of the main; is that correct?**

24 A That's correct.

25 **Q Okay. Were you present for Mr. Jenkins'**

1 testimony earlier this afternoon?

2 A Yes, sir.

3 Q Okay. And I believe Mr. Jenkins referred to
4 treating the repairs as incidental to and I -- they
5 are part of the damage and disturbances that happen to
6 customer service lines. Were you present for that?

7 A Yes, sir.

8 Q Does that phrase, "incidental to," does that
9 have meaning for you as an operations guy?

10 A Not -- not specifically, but it's -- when
11 you're replacing the main, whether it's through a
12 break or through planned replacement, you will affect
13 that service line by cutting it and reconnecting it to
14 the main. So in that reference, then, yeah, it would
15 be a part of that.

16 Q It's part of the replacement?

17 A Part of the replacement process, correct.

18 Q Is it also part of the repair process if
19 mains are repaired?

20 A If there's a service line that would be
21 adjacent to that or really directly impacted by that,
22 then potentially yes.

23 Q Okay. Now, this is a -- this might seem
24 like a nitpicky question, but I'm very interested in
25 it. Does the damage or disturbance occur because of

1 the main replacement or is that damage or disturbance
2 that has happened prior to the main being replaced?
3 Does that question make sense to you?

4 A I believe so. I would say that it's because
5 of the main replacement.

6 Q Okay. So --

7 A I mean, other than in the case of a break.

8 Q Right.

9 A If there's a main break specifically that
10 would impact that adjacent service, then that would be
11 that case.

12 Q Okay. The -- Mr. Jenkins referenced part of
13 the reason why he believed that customer-owned service
14 line replacements could be accounted for in
15 Account 345 is that -- because it would be done in
16 response to emergency replacements. Do you recall
17 that testimony?

18 A Yes.

19 Q And my understanding is that
20 Missouri-American doesn't just replace mains during
21 emergency situations --

22 A That's correct.

23 Q -- am I right? So I also understand that
24 Missouri-American has replaced lead -- customer-owned
25 lead service lines in nonemergency situations where

1 **mains are being repaired or replaced; is that correct?**

2 A I'm sorry. Would you say that one more
3 time?

4 **Q Sure. Missouri-American has replaced the**
5 **customer-owned lead service line in situations where**
6 **mains have not -- mains have been replaced, but there**
7 **was not an emergency; is that correct?**

8 A That's correct. That's the majority of
9 those, yes.

10 **Q It's the majority of those; right?**

11 A Yes.

12 **Q In fact, I think -- and I believe Mr. -- his**
13 **name escapes me, the previous witness who was just up,**
14 **he mentioned that --**

15 A Naumick.

16 **Q Naumick. Thank you. He mentioned that you**
17 **actually have a flowchart of when repairs occur and**
18 **replacements occur.**

19 A To address and to try to give field
20 personnel a direction based on variety of situations,
21 yes.

22 **Q And are you familiar enough with your**
23 **flowchart? Should I direct you to it?**

24 A It's probably too small in here to actually
25 read it, but we'll try.

1 Q Okay. So for reference for other
2 counselors, I'm looking at Mr. Aiton's Schedule BWA3,
3 which is attached to his direct testimony. This is
4 previously marked schedule BASR2 in the AAO case. You
5 can just let me know when you got there.

6 A Sorry. Give me just a minute.

7 Q Sure.

8 A Okay. Which page?

9 Q This is page 1 of 9.

10 A Okay.

11 Q And I'm looking at a flowchart that says:
12 "Water mains/service line renewal." And it says:
13 "Basic workflow" in tiny font underneath that title,
14 "Version," it looks like "May 18, 2017"?

15 A Yes, sir.

16 Q And this flowchart actually has two
17 different types of work anticipated. Planned work,
18 which is the main call, and then unplanned work, which
19 I'm assuming is the emergencies. And just
20 reiterating, your experience has been the majority of
21 the lead service line replacements have occurred --
22 customer-owned lead service line replacements have
23 occurred as standard work, not during emergency
24 situations?

25 A That's correct.

1 Q Okay. Are you familiar with -- are you an
2 accountant? Do you have any accountant training?

3 A No, sir, I'm an engineer.

4 Q So it would be -- you would not be able to
5 answer a question about the proper booking of these
6 kinds of operations into Account 345 or that are
7 asking those types of questions?

8 A No -- no, sir, I defer those to Mr. Jenkins.

9 Q Okay. The work that Missouri-American does
10 that is a part of the main replacement, that is your
11 understanding at least, gets booked as that work
12 replacements incidental to main replacement?

13 A Yes, sir.

14 Q And gets recovered as part of that process?

15 A Yes.

16 Q Where is the limit for Missouri-American
17 where it stops being an incidental replacement on a
18 customer-owned service line -- or it stops being an
19 incidental replacement -- I'm sorry -- on any service
20 line?

21 A Well, I'll give you a different scenario
22 that may help speak to that. There are times when in
23 the replacement of a line, we actually relocate it
24 from, say, a backyard main to a front yard main or
25 in-the-street main. And in those situations, we

1 actually replace that service line also. So separate
2 from whether it's lead or not, we actually replace
3 those. So I wouldn't say that there's necessarily a
4 limit. It's -- it's what's in the best interest of
5 the public and to provide that service to the
6 customers.

7 **Q In the example you just gave, you're talking**
8 **about entire relocation of a service line from a**
9 **customer's home to the main?**

10 A If we move the main from, say, backyard to
11 the front yard, yes, we would replace that entire
12 service line.

13 **Q In that scenario, do you also notify the**
14 **customer and ask them permission to replace their own**
15 **portion of the service line?**

16 A Yes, we do because we have to be on their
17 property and we need that, you know, permission to
18 access the property.

19 **Q This might be a little bit of a stretch, but**
20 **that -- just that scenario doesn't strike me as a**
21 **common occurrence.**

22 A It's less common.

23 **Q Okay. And that type of example also sounds**
24 **like the type of work that occurs outside of the**
25 **Company's easement?**

1 A Well, we would have an existing easement in
2 the backyard and we would be abandoning that easement
3 and moving the main to the street.

4 **Q And that's part of the reason why you have**
5 **to ask the customer's permission?**

6 A Correct.

7 **Q So in scenarios where work is done, but it's**
8 **not outside of an easement, do you ask the customer**
9 **permission to replace those lines?**

10 A Would you repeat that one more time?

11 **Q In work on a main where you are having to**
12 **adjust a customer connection, not the customer-owned**
13 **portion, but a connection to the main and that occurs**
14 **within the easement, do you ask permission?**

15 A We don't really ask permission, but we do
16 notify all customers before we start work in a
17 particular block prior to that work happening so
18 they're aware of what's going on, but not -- not
19 necessarily their permission to do that.

20 **Q Okay. Have you read Mr. Merciel's testimony**
21 **in this case?**

22 A Yes.

23 **Q And Mr. Merciel's testimony references a**
24 **reporting requirement that he proposes involving the**
25 **lead program.**

1 A Yes, sir.

2 Q And in my reading of your testimony, you
3 took some issue with this proposal, but not total
4 issue. Can you explain if you have any objection to
5 Staff's reporting requirement?

6 A Generally, no -- no -- no major objections.
7 We can provide them what we plan to do and what we
8 have done.

9 Q And that's -- that's an annual reporting of
10 the planned work that you will do and the annual
11 reporting of the work that you have done through
12 process; correct?

13 A Correct.

14 MR. WESTEN: Okay. No further questions.
15 Thank you.

16 JUDGE BURTON: OPC?

17 MR. SMITH: Yes. Thank you.

18 EXAMINATION

19 CROSS-EXAMINATION BY MR. SMITH:

20 Q In terms of measuring the benefit that
21 customers will receive for this, is the Company
22 testing the water lead levels prior to replacing lead
23 service lines?

24 A Not really prior because at that point they
25 have not been disturbed yet.

1 **Q So there's no benchmark --**

2 A Other than -- I'm sorry -- other than as
3 part of the lead and copper rule where we would
4 regularly test as part of that overall program.

5 **Q So for those customers who are the**
6 **recipients of new lead line, there's no benchmark upon**
7 **which to measure the punitive benefit of a lead**
8 **service line replacement; isn't that correct?**

9 A Well, the benefit would be the long-term
10 protection of not having any exposure to lead.

11 **Q They wouldn't have any exposure to lead?**

12 A Not from that source.

13 **Q So there could be other sources?**

14 A Source of paint, which is the predominant
15 source of contamination or high blood levels.

16 **Q And interior plumbing, too; correct?**

17 A That's a potential. It's much smaller. In
18 our experience in the 250 that we've done, we've never
19 seen lead plumbing inside the house.

20 **Q But what about --**

21 A There is a solder --

22 **Q -- light fixtures or solder?**

23 A Yeah.

24 **Q There's that.**

25 A There's potential lead solder at individual

1 joints or lead in the fixtures that would be leached
2 out of the bronze that's actually there.

3 **Q What about blood levels? Are those measured**
4 **prior to installing a lead service line?**

5 A Not specifically. We did have conversation
6 with the Department of Health where they have high
7 blood lead levels. We told them what we were going to
8 be doing. And they basically said that they don't
9 view that our water as being a particular source; so
10 drive on and replace the lines. They thought it was a
11 good idea, but not -- they didn't feel like they had
12 had any particular...

13 **Q I'm sorry. Did you just say that -- who did**
14 **you speak with?**

15 A We spoke to the Department of Health.

16 **Q And they told you it wouldn't have any**
17 **impact on blood lead levels?**

18 A They -- they told us that the primary --
19 they believed that the primary source of high blood
20 levels in Missouri was paint, not our pipe, because,
21 again, we haven't had any negative results in our --
22 in our lead testing.

23 **Q Do you agree with that conclusion?**

24 A I think that it's in the near term, yes. If
25 we continue to disturb pipes, service lines without

1 replacing them, I think that that risk goes up.

2 **Q When there is construction or main**
3 **replacement, if there is any lead leaching, couldn't**
4 **that be mitigated through a temporary filter?**

5 A Well, my experience, and the testimony of
6 Mr. Naumick before in the AAO period as well, is that
7 filters are a stop gap and they wear out over a period
8 of time, and depending on the specific filter, it's --
9 it's imperfect and it doesn't eliminate the issue
10 because if that line is --

11 **Q I appreciate the lengthy response. I'm just**
12 **trying to get, you know, could a filter be a**
13 **mitigation factor?**

14 A It would be a temporary mitigation at best.

15 **Q Okay. You agree with that. And costs could**
16 **be 50 bucks, maybe?**

17 A If you -- for like a pitcher filter, but it
18 wouldn't affect whether people were drinking out of,
19 say, the bathroom faucet instead of the kitchen
20 faucet. It wouldn't be -- it's not a perfect plan.

21 **Q Have you had any conversations to determine**
22 **any cases of waterborne lead poisoning from**
23 **Missouri-American Water customers?**

24 A I'm sorry. Say that one more time.

25 **Q Yeah. Have you had any communications which**

1 would provide information to you about frequency of --
2 of waterborne lead poisoning?

3 A I've spoken to our water quality staff
4 and -- and to confirm that we've not failed any lead
5 sampling out of the lead and copper rule.

6 Q So to your knowledge, there has been no
7 waterborne lead poisoning?

8 A That's correct.

9 Q Okay. And I keep repeating this, but it --
10 just repeat it one more time. Isn't it true that for
11 the last 30 years, Missouri-American has had perfect
12 compliance with the lead and copper rule?

13 A Yes, sir.

14 Q Does that mean they're treating their water?

15 A Yes, we do.

16 Q So what occurred in Flint should not occur
17 in Missouri; correct?

18 A I believe that's true, but that also doesn't
19 address the partial lead lines and the replacement in
20 there and the disturbance when we're replacing main.

21 Q Do you believe that -- excuse me. Strike
22 that.

23 In your testimony, in your direct, you -- at
24 page 4, lines 18 to 20 -- you don't have to go there
25 necessarily unless you'd like to follow along -- but

1 **isn't it true you indicate the primary mitigation to**
2 **potential exposure of lead in drinking water is stable**
3 **water quality and treatment?**

4 A Yes.

5 **Q In other words, a lead service line**
6 **replacement is not the primary mitigation to potential**
7 **exposure of lead in drinking water; correct?**

8 A I would say that there's two -- two
9 components. One is that --

10 **Q I'm sorry. Is it the primary?**

11 A I think the best --

12 **Q Is it --**

13 A -- protection is the treatment of water.
14 Correct.

15 **Q Okay.**

16 A The treatment of water actually may not
17 protect from the other pieces to --

18 **Q There's not a question.**

19 A -- lead solder or the fixtures.

20 JUDGE BURTON: Let's please, for the court
21 reporter's sake, try not to talk over each other.

22 THE WITNESS: Sorry.

23 **Q (By Mr. Smith) So Mr. Naumick had indicated**
24 **he doesn't know how many times you've produced cost**
25 **estimates. Would you agree this is your fourth cost**

1 **estimate and filed testimony between the AAO case and**
2 **this case, the WR-2017-0285?**

3 A I wouldn't say it's a fourth cost estimate.
4 I did provide testimony earlier that revised the
5 estimate to around 6,000. We are all the time looking
6 to optimize the cost. Actually, if you go from what
7 you said earlier, the ratio of the 1.4 million, it
8 actually is just over 5,000 per -- 5,900. So it's
9 right in the range of the 6,000 that I had revised my
10 earlier testimony to. We're still working to revise
11 that, and it varies depending on the individual
12 service. It's not a precise every -- every service is
13 going to cost X.

14 Q Mr. Aiton, I appreciate you wanting to fully
15 answer my questions, but I'm not necessarily asking a
16 narrative question that requires lots of words. Your
17 counsel will have the opportunity to redirect you.

18 A Okay.

19 Q So you would agree that there were four
20 different cost totals presented in your testimony?

21 A I don't know that I would say four, but
22 there -- it has been a moving target. Fair enough.

23 Q Would the first -- the first occurrence of
24 this would have occurred in your direct of the WU
25 case; correct?

1 A That's correct. At that time, we had some
2 preliminary quotes from -- from a plumber that gave us
3 the 3- to 5,000 range.

4 **Q And -- Right. Three to 5 -- 5,500. I'm**
5 **sorry.**

6 A Okay.

7 **Q Right?**

8 A Yes.

9 **Q Then in surrebuttal, it changed again. Is**
10 **that true?**

11 A Changed to the 6,000.

12 **Q And in the -- Let me clarify the record.**
13 **The surrebuttal and the AAO case, it changed to 6,000;**
14 **correct?**

15 A I believe so. That's correct.

16 **Q In the surrebuttal in WR-2017-0285, the**
17 **number changed to 7,000; correct?**

18 A No, I don't believe it did. That was based
19 on the totals, not on individual services. And as I
20 just said, the actual number should have been
21 1.4 million and actually is right in range with the
22 6,000 that I had said before.

23 **Q So in your surrebuttal testimony before it**
24 **was amended, you would agree that the number was**
25 **\$1,748,978; right?**

1 A That was an incorrect number, but, yes,
2 that's what I put in there.

3 **Q Would you agree there's lots of incorrect**
4 **numbers?**

5 A No, sir.

6 **Q Well, if we take the quotient of that along**
7 **with 250 lines, you'd agree that number equals 7,000?**

8 A Yes, it does, but --

9 **Q So those are three occurrences; correct?**
10 **Three different changes?**

11 A Well, that's not the intent of that
12 testimony, but sure.

13 **Q And then the fourth change came today;**
14 **correct?**

15 A The fourth change was a correction to what
16 we've actually spent and the actual number of lines,
17 and it does change it. And tomorrow we put in another
18 line and it will change it again because it's working
19 with contractors to optimize that cost. And even
20 one -- on one side of the street versus the opposite
21 side of the street will cost a different number
22 because this one they're able to tunnel and that one
23 they can't.

24 **Q Do you agree there could be value to study**
25 **these costs in more detail than what was contained in**

1 **your testimony?**

2 A That's why we started out slow, and we
3 believe that now we have the cost down to that
4 reasonable range before we ramp up to the, say, 3,000
5 a year.

6 **Q Okay. Do you agree there's value in**
7 **studying these costs beyond the scope of this**
8 **testimony?**

9 A I believe that we've already been doing that
10 and that's part of the iteration that you see.

11 **Q Do you believe there's value in studying**
12 **these costs beyond the scope of this testimony, yes or**
13 **no?**

14 MR. COOPER: I would object. I think he's
15 answered the question.

16 MR. SMITH: I was looking for a yes or no
17 and I felt like I got a narrative.

18 THE WITNESS: I'll say that we'll be looking
19 at this for the next 10 years to always try to refine
20 that cost to be low and as efficient as possible.

21 **Q (By Mr. Smith) Okay. I will -- I will leave**
22 **that issue for a moment.**

23 **Now, you do a lot of construction**
24 **management?**

25 A Not directly at this point, but yes.

1 **Q You have in your career?**

2 A I have in my career over the overall
3 investment program, yes.

4 **Q And you're familiar with keeping to a
5 budget?**

6 A Yes, sir.

7 **Q You don't believe that the ratepayers would
8 give you an unlimited budget, do you?**

9 A No, sir.

10 **Q Are you familiar with managing construction
11 projects on a timeline?**

12 A Yes, sir.

13 **Q Now, if someone were to shrink your
14 timeline, tell your crew to do the same amount of work
15 in less time, does that put a strain on your team's
16 resources?**

17 A Depends.

18 **Q All other things being equal, would it put a
19 strain on your team's resources?**

20 A Again, it would depend on the amount of
21 change in time and otherwise. It may just help drive
22 efficiency.

23 **Q On June 30, 2017, I understand the Company
24 filed their direct testimony in this case?**

25 A Okay.

1 Q Do you agree with that?

2 A Sure.

3 Q Where was the direct testimony on the lead
4 service line replacement?

5 A The lead service line replacement was
6 actually pending on the AAO because it wasn't -- the
7 AAO had not been approved yet and so it wasn't in
8 there at that time.

9 Q So there was no lead service line
10 replacement testimony in your direct?

11 A Pending review, I will agree to that.

12 Q And when did direct testimony get filed in
13 WU-2017-0351? Was it August?

14 A Yes. August 1st.

15 Q So we had OPC and other parties and other --
16 whoever wanted to review the Company's proposal had 30
17 or 40 less days to review that proposal. Would you
18 agree?

19 A Approximately 30, but yes.

20 Q Did the filing of an AAO case preclude the
21 Company, to the best of your knowledge, from filing
22 direct testimony on this subject?

23 MR. COOPER: Objection. The witness is not
24 an attorney. It sounds like a legal question to me.

25 MR. SMITH: I did qualify it with "to the

1 best of his knowledge."

2 JUDGE BURTON: I'm going to go ahead and
3 sustain that objection. Let's move on.

4 Q (By Mr. Smith) All right. So let's discuss
5 another aspect of timelines since you're familiar with
6 managing timelines. Company states they want to
7 replace all lead service lines in 10 years?

8 A That would be optimum, yes.

9 Q When you say that it would be optimum, do
10 you mean that it might not be 10 years?

11 A It might not be 10 years.

12 Q Could it be 20 years?

13 A Not by me because somebody else would have
14 to be doing it, but...

15 Q Good answer. You think 10 years is a quick
16 timeframe?

17 A I don't actually with the amount of other
18 pipe replacement we do. That would be, roughly, 3,000
19 per year and we're on track to do that this year and
20 that's -- we believe that's a reasonable number.

21 Q Is the Company only going to replace lead
22 service lines in the context of main replacements?

23 A That's what we put forth at this point, yes.

24 Q Well, how would a Company replace lead
25 service lines on a main that wasn't fully appreciated?

1 A Well, the individual mains are not
2 depreciated on individual basis. They're depreciated
3 as an asset class.

4 **Q So there could be, on an individual basis,**
5 **very under-depreciated water mains that would have to**
6 **be retired?**

7 A I would say no because of the time window
8 that those mains and the lead services were installed.
9 Lead services were installed, you know, I'll say
10 through the '50s or maybe even into the early '60s.
11 No precise date that we have. And the mains that are
12 in that time window would also be aged, either from
13 a -- from a condition or just pure age.

14 **Q Has the Company not replaced any mains**
15 **wherein they observed lead service lines?**

16 A We probably have over the last several
17 years.

18 **Q What about over the last main -- I don't**
19 **know -- 10, 20, 30 years?**

20 A Main replacement really began in -- in the
21 St. Louis systems -- not St. Louis systems -- but
22 Missouri systems in the mid '90s. And, really, if you
23 count, say, the ISRS passing in 2003, then, really, in
24 the last 15 years.

25 **Q And with the ISRS in St. Louis County, the**

1 **practice was partial lead service line replacement?**

2 A At the time, yes.

3 Q **So there are mains in St. Louis County that**
4 **are new that have lead service lines?**

5 A There are, and the disturbance has already
6 happened.

7 Q **So how can that -- how can the Company**
8 **feasibly replace 30,000 -- all 30,000 lines in 10**
9 **years if the lines in St. Louis County through the**
10 **ISRS -- and when I say "lines" there, I meant mains --**
11 **were installed so recently?**

12 A That 30,000 doesn't include any that have
13 been changed out in the past because we don't -- we
14 don't keep those records. At that time, we didn't
15 keep those records.

16 Q **I'm sorry. You did not keep records of any**
17 **of the lead service lines while you were doing the**
18 **main replacements?**

19 A We didn't own those lead service lines and
20 we had no obligation to maintain those records. When
21 we changed out the line and changed out that partial
22 service, we changed the tap card information to be
23 whatever we changed that service to be.

24 Q **So for the St. Louis County customers that**
25 **had lead service lines, when the Company did their**

1 **main replacements, no documents were kept?**

2 A That's -- that's generally correct, yeah.
3 We'd have to go back to the original tap cards and
4 review those.

5 **Q Why? Why weren't records kept?**

6 A We don't own that data and we don't own that
7 service line.

8 **Q But if you believe --**

9 A Why would you keep records on something
10 that, really, at that time wasn't your responsibility?

11 **Q Did you not believe the lead service line to**
12 **be harmful?**

13 A Not at that point in time they did not.
14 That was -- that came to light later through the
15 current investigations and the more recent studies.

16 **Q So there was a lead and copper rule. When**
17 **was that passed?**

18 A I'd have to review exactly when that was
19 passed or when it was arised last, but that did not
20 address the customer-owned lead -- the lead service
21 lines.

22 **Q Was there a singular cathartic event that**
23 **changed the Company's approach?**

24 A I would say that as an industry-wide, the
25 issues that were raised in Flint, and to a lesser

1 extent prior to that in Washington DC and in Durham,
2 North Carolina, all three of those cities and the
3 elevated lead levels in those locations raised the
4 industry's awareness of the issue.

5 **Q What does ISRS stand for?**

6 A Infrastructure replacement --

7 **Q That's okay.**

8 A Sorry.

9 **Q It took me a very long while to figure that**
10 **out and I still stumble. Would you agree that it's**
11 **the infrastructure system replacement surcharge?**

12 A Yes.

13 **Q And so St. Louis County customers have had**
14 **to bear this surcharge exclusively; correct?**

15 A That's correct.

16 **Q And we said that Missouri-American had its**
17 **ISRS for how long? Fifteen years?**

18 A Since 2003 was when it originally passed.
19 It wouldn't be a full 15 years yet, but close.

20 JUDGE BURTON: Mr. Smith, I'm going to
21 interrupt you briefly.

22 MR. SMITH: Sure.

23 JUDGE BURTON: How much longer do you
24 imagine you're going to have on your
25 cross-examination?

1 MR. SMITH: Do you want to take a break?

2 JUDGE BURTON: Yes.

3 MR. SMITH: Yeah, that would be good.

4 JUDGE BURTON: Why don't we take a recess
5 and we will come back on the record at 4:00 o'clock.

6 (Whereupon, a brief break was taken.)

7 JUDGE BURTON: Okay. Let's go ahead and go
8 back on the record.

9 I believe, Mr. Smith, you were finishing up
10 your cross-examination.

11 MR. SMITH: Thank you.

12 **Q (By Mr. Smith) I believe we were discussing**
13 **the ISRS. Do you recall that?**

14 A Yes, sir.

15 **Q Would you agree with me that**
16 **Missouri-American has regularly sought recovery of an**
17 **amount near the ISRS maximum of their 10 percent of**
18 **revenue minimum?**

19 A No.

20 **Q You would not agree with that?**

21 A No. It would have been well under that most
22 of those 15 years.

23 **Q What about the most recent ones?**

24 A Well, the most recent one would -- defined
25 by what? We did one last year that was well under

1 that number and then we didn't do any in the previous
2 year because of litigation that was ongoing.

3 **Q Wasn't there a Supreme Court case recently**
4 **in which the Company was attempting to carry forward**
5 **an amount of ISRS expenditures beyond the minimum into**
6 **a future year?**

7 A I'm not aware of that.

8 **Q Do you have any idea how many millions of**
9 **dollars have been collected through St. Louis County**
10 **ratepayers since 2003?**

11 A I don't know that precise number, no.

12 **Q Can you say with confidence that it would be**
13 **over \$100 million?**

14 A Yes.

15 **Q Okay. Over \$150 million?**

16 A Again, I don't know the precise number.

17 **Q You had mentioned earlier that the Company**
18 **did not keep records of customer-owned lead service**
19 **lines, I guess, in the past 15 years through the ISRS;**
20 **correct?**

21 A We have the original tap cards, the hard tap
22 cards. But in that time window, we actually had
23 electronically changed those and so we have -- in that
24 electronic process when we change the service, we
25 change the material that was indicated in that

1 electronic record. But we have the original hard copy
2 tap cards that we would have to go back and review.

3 **Q But you didn't update those; correct?**

4 A We did not update those.

5 **Q Today are you updating them?**

6 A We're updating them because today we're
7 actually changing out that service completely.

8 **Q Okay. When did you start actually keeping**
9 **records of lead service lines, customer-owned lead**
10 **service lines?**

11 A We have records of customer-owned lead
12 service lines on the tap cards that date back to 1920s
13 and beyond. But the changing of that data when we
14 replace the main is what we didn't -- we didn't track.

15 **Q And when did you start tracking them?**

16 A We're only tracking it now because we're
17 changing out that material in its entirety.
18 Otherwise, it was galvanized and we're changing it to
19 copper as part of the main replacement. We still put
20 that it's copper because that portion beyond what
21 we -- what we touch or beyond what we own, again, is
22 not really our responsibility to sustain.

23 **Q I think you said you were tracking it now.**
24 **Is -- do you have a date when you started to track and**
25 **update the tap records?**

1 A We always updated the tap records to
2 whatever that new tap is. So if it was lead and we've
3 put it in that when we were doing the partials and we
4 changed it to copper, we change that information to
5 copper. We did not track that -- that distance beyond
6 what we -- what we had changed.

7 **Q You mean --**

8 A So had it been lead or had it been
9 galvanized, we didn't sustain that record.

10 **Q In other words, you updated the Company**
11 **side, but you did not update the information for the**
12 **customer side?**

13 A Even -- even in St. Louis County where there
14 is no Company side, we -- we changed that record.

15 **Q So you did update it for the customer side?**

16 A But we didn't update to the rest of what the
17 rest of the service was made out of. We only updated
18 that portion that we changed.

19 **Q So the customer side would not have been a**
20 **portion you changed; right?**

21 A Correct. That's correct.

22 **Q So that part was not updated?**

23 A That's correct.

24 **Q Okay. And the Company started updating that**
25 **when?**

1 A We're -- we're -- for the most part, we're
2 still not updating that. It just is -- now as we
3 change it, it reflects the entire service line if
4 we're -- if we're affecting the entire service line.

5 **Q So if you don't change it, but you observe**
6 **it, you currently are not updating the tap record for**
7 **the customer-owned line?**

8 A I believe that's accurate, if I understand
9 your question.

10 **Q When construction projects were occurring**
11 **back in '03 or '04, did the Company communicate with**
12 **its customers based on -- based on those tap records,**
13 **precautions to take, things like that?**

14 A It wasn't really known in the industry at
15 the time and that predates my work with
16 Missouri-American Water. I can't speak to whether
17 they -- what communication they had.

18 **Q Going forward, does the Company believe that**
19 **Missouri-American Water has duty to disclose what it**
20 **perceives as a health risk, such as the presence of**
21 **lead service lines from tap records?**

22 A Again, I'll say generally yes. But the tap
23 record information is not precise, as you mentioned
24 earlier. We have come across ones that we believe
25 would be lead, but somebody else had already changed

1 it to copper. So we don't want to unnecessarily put
2 that information out there prematurely until we know
3 this data request to that effect. And as we -- as we
4 come across it and we confirm it, we do communicate it
5 to the homeowner.

6 **Q You do communicate to the homeowner**
7 **currently; correct?**

8 A When we -- when we confirm that it is a lead
9 service line, yes, sir.

10 **Q But back in 2003 when you observed lead**
11 **service lines, or 2004, observations of those lead**
12 **service lines were not communicated to the customer,**
13 **to your knowledge?**

14 A Again, that predates my time here. I can't
15 speak to it.

16 **Q Is there anyone from the Company who could**
17 **speak to it?**

18 A Possibly.

19 **Q So when you -- you say it's disclosed, but**
20 **you also say you don't want to put information out**
21 **there prematurely, if a customer calls you and they**
22 **want to know what the tap record reflects and you can**
23 **verify their identity, do you have a policy in place**
24 **for how to handle that?**

25 A We would tell them what we believe their

1 service line is, yes.

2 Q Okay. And could a buyer of a home find that
3 information or only the customer?

4 A The customer at this point.

5 Q Okay. This was asked in the AAO case, but I
6 would like to see if there's any sort of an update.
7 If a customer refuses a lead service line replacement,
8 does the Company have any plan on whether or when to
9 notify a future customer of the existence of a lead
10 service line?

11 A We are tracking that information. There
12 have only been a couple and if somebody asks we will
13 tell them. We're not -- we're not part of any
14 transactional information until somebody calls to set
15 up a new service.

16 Q You mentioned earlier in cross-examination
17 that you spoke with the Department of Health and Human
18 Services?

19 A Our water quality staff did, yes.

20 Q Did they express any sort of concern over
21 OSHA standards?

22 A No.

23 Q No?

24 A No, we follow OSHA standards.

25 Q I have a couple of exhibits. I believe this

1 **would be 228 and 229.**

2 **If we can have just a minute. We're trying**
3 **to make sure I didn't carry this back up with me at**
4 **break or something.**

5 JUDGE BURTON: Okay. Mr. Smith, can you
6 continue with your questioning on another issue and
7 maybe direct someone from Public Counsel's office to
8 bring it down?

9 MR. SMITH: I can. Good suggestion.

10 JUDGE BURTON: Thank you.

11 **Q (By Mr. Smith) Mr. Aiton, did you see the**
12 **issue list?**

13 A Yes.

14 **Q Okay. You're familiar with the questions on**
15 **it?**

16 A Generally, yes.

17 **Q Understand what's in this statement, but I'd**
18 **like sort of a status update from you just having**
19 **knowledge in the field. Has the Company put in place**
20 **a plan on prioritization of at-risk populations, to**
21 **your knowledge?**

22 A Yes, but at the same time, we -- I believe
23 what I stated, and it might be in one of the DRs, but
24 is that until that line is disturbed, there's not
25 necessarily an immediate risk to the people in

1 that -- that premise.

2 **Q Do you think road construction is an**
3 **immediate risk?**

4 A It can be and not necessarily. Typically,
5 the mains are 4- or 5-foot deep and the pressures that
6 road construction would -- would exert are pretty
7 nominal at that point. We do coordinate with
8 municipalities with respect to road construction, and
9 often either replace the mains at the same time, or in
10 the case here in Jeff City, we did replace lead
11 service lines when they were working on Capitol Street
12 over here.

13 **Q So has the Company submitted any sort of**
14 **comprehensive written plan addressing each of these**
15 **issues?**

16 A Well, I think -- I believe we have. We have
17 our plan. We have the flowcharts that are there.
18 We're prioritizing the mains over the -- over the next
19 several years. The prioritization of mains, as you
20 might expect, is a complex process, both in
21 coordination with the various municipalities that we
22 work with, looking at where the lead service lines are
23 at, where also leaks have happened; so prioritizing
24 all of those things in conjunction with areas that we
25 know have at-risk populations. So we're looking at

1 all of that data at one time.

2 **Q And when you say you're looking at all of**
3 **that data at one time, you're saying the plan looks at**
4 **all of that data at one time?**

5 A Yes, sir.

6 **Q Does the plan speak to providing test kits**
7 **so people can test the water quality that they have?**

8 A We don't provide test kits to people outside
9 of where we're planning to replace a service line.
10 The actual testing of lead, other than through the
11 lead and copper rule which you actually provide
12 bottles to customer to take that sample, there's some
13 nuances in education that have to happen to make sure
14 that that sample is taken correctly.

15 **Q Has the Company done a cost-benefit**
16 **analysis?**

17 A We really didn't. And, again, back to some
18 of the earlier stuff. We -- for us, the benefit is
19 that long-term protection of public health and,
20 really, elimination of risk and that's that hierarchy
21 of protection. Water treatment is one we talked
22 about. Eliminating the risk is a much better
23 protection.

24 **Q So the benefit is more of an opinion?**

25 A The benefit, in my opinion, is what's the

1 potential risk and what's the benefit to the
2 individual who may or may not be -- experienced lead
3 poisoning. And if we can eliminate the risk of even
4 one person getting it from our sources, then we should
5 do that. Those pieces that we have in our control, we
6 should exercise.

7 **Q Have you explored alternative financing?**
8 **For example, rather than Missouri-American's**
9 **ratepayers funding the cost, some sort of low-interest**
10 **loan program?**

11 A We have looked at a state-revolving fund
12 program and they've told us that we're not eligible
13 for that in this particular case for this particular
14 set of assets.

15 **Q Well, not the state-revolving fund plan, but**
16 **more of a low-interest loan?**

17 A That's about as low as you can get versus
18 what we already experience as a Class A Company,
19 but...

20 **Q You're talking about the Company would take**
21 **out that loan?**

22 A If Missouri-American Water would be a
23 candidate for other SRF funding, but not for this
24 particular piece.

25 **Q I guess my question was more about a**

1 **customer loan.**

2 A Again, I think the cost of that loan would
3 be much higher. And we're -- I mean, to loan that to
4 the customer, we're not a bank. That's not...

5 **Q It'd be higher than the profit -- the**
6 **full-weighted average return?**

7 A I -- again, that would be a question for
8 somebody else.

9 **Q Does the Company plan account for excess**
10 **costs related to unusual site restoration?**

11 A It does and the flowchart actually reflects
12 that as well. We actually do look at individual site
13 locations. We try to mitigate those when they come
14 up. The same as we would in a main replacement. Any
15 main replacement project, we try to route that main to
16 be as effective as possible, route around trees or
17 other utilities and those things so we minimize those
18 cost impacts.

19 **Q Should the Company be required to remove all**
20 **lead service lines including vacant properties?**

21 A Well, again, for a vacant property is what
22 we do currently is we try to contact the owner. We
23 would -- so the plan does address that, yes. We
24 would -- at this point, if it's completely vacant or
25 been vacant for an extended period of time, we would

1 cut and cap that. And if somebody applies for a new
2 service in the future, we would then work on putting
3 in the new service.

4 **Q And from what I understand, the Company does**
5 **replace lead service lines for inactive accounts?**

6 A We -- there's been one.

7 **Q So is that a yes?**

8 A Yes. Because the person was still there.
9 It was not a vacant building. It was just an account
10 that was in arrears. We were able to contact the
11 owner and get the requisite permissions, and we did
12 replace that because at some point they'll turn that
13 service back on.

14 **Q Why lead as opposed to galvanized pipes or**
15 **iron lines or even copper lines?**

16 A Because of the known public health risk.
17 The drinking water from an iron line doesn't have the
18 same public health risk that a lead line and doesn't
19 have the same public health risk as a copper line or a
20 PVC line.

21 **Q You're aware in Flint the iron with**
22 **corrosive elements can breed Legionella; correct?**

23 A It's more related to temperature, but...

24 **Q You'd agree with that?**

25 A I'm not -- I'm not knowledgeable about

1 Legionella to speak to that specifically.

2 **Q Legionnaires?**

3 A Legionnaires. I mean, I have very limited
4 knowledge of those. That would be best asked to
5 somebody else.

6 **Q So when you say it's a health benefit,**
7 **that's not based on any sort of formal education or --**

8 A It's --

9 **Q -- training?**

10 A -- based on reading the industry research
11 that -- and knowledge of specific risk related to
12 lead.

13 **Q Okay. And where was that and what**
14 **authorities did you include in your testimony that --**

15 A I didn't. Mr. Naumick has multiple sources
16 in his testimony and I read much of that.

17 MR. SMITH: I think we're nearing the end
18 here, but I did want to get in a couple of exhibits.
19 If it's okay, maybe we -- counsel for the Company and
20 I had previously discussed these exhibits and I
21 understand potentially there could be a stipulation
22 on -- or maybe?

23 MR. COOPER: Your Honor, can you give us
24 just a couple minutes off the record?

25 JUDGE BURTON: Certainly.

1 (Whereupon, brief discussions were held off
2 the record.)

3 JUDGE BURTON: Okay. We'll go ahead and go
4 back on the record.

5 Mr. Smith, I believe there were some
6 exhibits that you were looking to offer.

7 MR. SMITH: Yes. I have two exhibits. One
8 of which is confidential. The confidential I'll mark
9 as 229 and the public I'll mark as 228.

10 JUDGE BURTON: Okay. And they're the same
11 documents. It's just a separate version or like are
12 they confidential?

13 MR. SMITH: Different documents.

14 JUDGE BURTON: Okay. So to be clear, the
15 legal-sized version is going to be Exhibit 229?

16 MR. SMITH: Yes.

17 MR. COOPER: Now, 29 is the confidential
18 one. Did you say that already?

19 MR. SMITH: Yes.

20 JUDGE BURTON: Yes.

21 **Q (By Mr. Smith) All right. Mr. Aiton, I**
22 **just -- just a minute.**

23 **Okay. Mr. Aiton, you've received a copy of**
24 **Exhibits 228 and 229; is that correct?**

25 **A Yes.**

1 **Q** **Okay. And without divulging any**
2 **confidential details of those documents, can you**
3 **identify Exhibit 228 first?**

4 A I'm sorry. Mine don't indicate which is
5 which; so which -- is that the --

6 **Q** **The --**

7 A The spreadsheet?

8 **Q** **The other one. Yes.**

9 A The other one. Okay. This is the data
10 request from the OPC that was received on
11 February 13th.

12 **Q** **Okay. And isn't it true you're the**
13 **responsible witness who provided the answer to this**
14 **data request?**

15 A Yes.

16 **Q** **Okay. And when you've had time to review**
17 **that, would you please let me know?**

18 A I'm familiar with it.

19 **Q** **Does that appear --**

20 MR. COOPER: Mr. Smith, I don't know. I
21 guess we didn't close this down, but we don't have any
22 objection to admission of these two exhibits; so...

23 MR. SMITH: Okay. Well, I guess I would
24 skip the authentication and move to offer each of
25 these exhibits.

1 JUDGE BURTON: Okay. Exhibits 228 and 229
2 have been offered and are admitted.

3 (STAFF'S EXHIBITS 228 AND 229 WERE RECEIVED IN
4 EVIDENCE.)

5 Q (By Mr. Smith) Okay. So the document we
6 were just referencing, I think that bottom bullet
7 point relates to the one inactive customer; correct?

8 A Yes.

9 Q And I think we probably already established
10 that -- just for clarity, it is true that the Company
11 does not currently collect the customer's water --
12 they don't do a water test actually?

13 A Prior to replacing the service line, that's
14 correct.

15 MR. SMITH: Okay. And that is all the
16 questions I have. Thank you, Mr. Aiton.

17 THE WITNESS: Okay. Thank you.

18 JUDGE BURTON: Questions from the bench?

19 EXAMINATION

20 QUESTIONS BY CHAIRMAN HALL:

21 Q Good afternoon.

22 A Good afternoon, sir.

23 Q Are you familiar with the St. Louis County
24 water service line repair program?

25 A Yes.

1 **Q And do you have an opinion as to whether or**
2 **not that fund could be used to cover any of the costs**
3 **related to customer-owned lead service line**
4 **replacements within St. Louis County?**

5 A We did meet with the St. Louis County
6 people, and my understanding of the ordinance --

7 **Q By the St. Louis County people, do you mean**
8 **the director of Public Works or somebody under his or**
9 **her direction?**

10 A Yes.

11 **Q Okay.**

12 A And the ordinance there actually said that
13 elective replacement is not authorized by that
14 ordinance. Their view at the time was that it could
15 not be -- what they did do, as we elevated the issue
16 with them, if there's a leak in a lead service line,
17 they are currently replacing that. So, in essence,
18 they are using those funds to replace, but only as
19 it's a leak.

20 **Q And do you have any records on how many**
21 **replacements there's been under this program?**

22 A The number that I was told, and, again, I
23 don't have very specific records, but that they've
24 replaced about 175 through 2017.

25 **Q And do you know if, I guess, an attorney**

1 with St. Louis -- I'm sorry -- with Missouri-American
2 made a determination that that legal analysis was
3 correct, that -- that this program could not be used
4 to cover the costs?

5 A Other than just reading the ordinance -- and
6 I've seen the ordinance, and it says that elective
7 replacement of lead service lines is not eligible
8 under the program.

9 Q Election by whom?

10 A I think by the homeowner because the
11 homeowner has to apply for that funding.

12 Q Okay. In response to some questions from
13 Public Counsel, you indicated that there were some
14 main replacements done starting in the mid 1990s that
15 did not include customer-owned lead service line
16 replacement; is that correct?

17 A I don't recall that specific, but correct.

18 Q So does the Company have any plan going
19 forward as to how to handle those customer-owned lead
20 service lines?

21 A Well, generally, our plan is as we replace
22 mains is to replace --

23 Q Those mains are already replaced.

24 A I understand that. I was just going to get
25 to it. Just that once we're done with the

1 preponderance of them, which is the ones that are
2 still existing, then we would go back and review that
3 and see whether -- you know, what the best path
4 forward would be to replace those that had been
5 touched before.

6 **Q Have you notified those customers?**

7 A No, because as I mentioned earlier, we don't
8 really have a precise record without going back
9 through the individual tap cards, which is -- for
10 St. Louis County, in particular, is pretty voluminous.
11 It's 430,000 or so.

12 **Q Do you have any kind of estimate whatsoever**
13 **as to the number of customer-owned lead service lines**
14 **that would fall into this?**

15 A That had been replaced as a partial? No, I
16 don't at this point.

17 **Q Looking through the flowcharts that are**
18 **attached to your rebuttal testimony, which, at least**
19 **it's my understanding, that this is the extent of at**
20 **least a written version of the Company's lead service**
21 **line replacement plan?**

22 A It's one facet of it, yes.

23 **Q What other facets are there?**

24 A We have another document that was submitted
25 through the data request that is a -- I'll say a more

1 concise written directive just to our staff and to
2 contractors.

3 **Q Could I get a copy of that?**

4 MR. COOPER: Yes. Chairman, we have copies
5 and -- do you want it right now?

6 CHAIRMAN HALL: Sure.

7 MR. COOPER: It was something that we had
8 planned to go ahead and offer on redirect.

9 CHAIRMAN HALL: Well, I'm helping you out.

10 THE WITNESS: As you see, the flowchart's
11 long; so --

12 CHAIRMAN HALL: Thank you.

13 JUDGE BURTON: Mr. Cooper, is this going to
14 be marked as Exhibit 40?

15 MR. COOPER: It certainly can be. That
16 would be our next number.

17 JUDGE BURTON: Okay. The Company is
18 offering it for admission at this time?

19 MR. COOPER: We would, yes, Your Honor.

20 JUDGE BURTON: Any objections?

21 MR. SMITH: No objection.

22 JUDGE BURTON: I'm going to mark this just
23 as a description data information request OPC 00016
24 and it is Exhibit 40. It has been offered and
25 admitted.

1 (COMPANY'S EXHIBIT 40

2 WAS RECEIVED IN EVIDENCE.)

3 Q (By Chairman Hall) My understanding is that
4 the customer-owned lead service line replacement is
5 essentially a by-product of the main replacement plan
6 wherever -- wherever -- I'm sorry. Is that a "yes"?

7 A I would say yes.

8 Q Okay. So wherever -- so wherever the
9 Company is doing main replacements, when it -- when it
10 discovers service line, lead service lines, that's
11 when it would replace those?

12 A In general, yes. We also would proactively
13 look at where we believe lead service lines to be and
14 increase those -- those mains as part of the
15 prioritization process.

16 Q Okay. Well, that's actually what I was
17 getting at is -- is I didn't see anything in the
18 flowcharts attached to your rebuttal, and I'm not
19 seeing anything in this Exhibit 40 that outlines the
20 main replacement program. Did I -- did I miss
21 something?

22 A Probably not.

23 Q Okay. Well, where is the main replacement
24 program? Is that -- is that a document that exists?

25 A It does. And as I mentioned earlier, we

1 have that priority -- prioritization model, and that's
2 really -- we prioritize those mains on an ongoing
3 basis.

4 **Q Okay. Well, I'm really interested in**
5 **understanding that priorit -- prioritization model.**

6 A Okay.

7 **Q So what -- what are the mains that you are**
8 **prioritizing?**

9 A So let's say four components primarily. We
10 coordinate with the various municipalities. For
11 example, in St. Louis County, there are a little over
12 90 municipalities. If they have a road project going
13 on, then we will coordinate with them, too, if
14 appropriate, replace the main in conjunction with
15 their road project. That offers cost improvement over
16 the long term and a better working relationship with
17 municipalities and we're not going to dig up a new
18 street. So we do that. That's one component of that.

19 **Q And does that also save or reduce the**
20 **expense?**

21 A Yes, it does because ultimately we have left
22 fewer restoration costs. We don't necessarily have to
23 replace the pavement because they're coming through
24 and replacing the pavement already; so that's part of
25 our coordination.

1 **Q** Well, that would decrease the costs of the
2 **main replacement. Does it also decrease the cost of**
3 **the service line replacement?**

4 A It would as well for the same reasons.

5 **Q** **Okay. All right. So that's one of the --**

6 A One of those is -- and what's the driving
7 force behind ISRS is the high number of main breaks
8 and the type of pipe that's in -- particularly in
9 St. Louis County with corrosive soil. But even
10 outside of St. Louis County, the age of the systems
11 require replacement of pipes, that we look at which
12 pipes have leaks and we believe are in the most need
13 of repair. Multiple leaks, for example, on a single
14 block or a single stretch would raise that in the
15 priority process.

16 In addition to that, now we're adding the
17 presence of lead service lines. So two mains, both
18 have the same number of leaks. One has lead service
19 lines, one may not. We would probably prioritize the
20 lead service lines, particularly if it has an at-risk
21 population on that block. So that's what we look at
22 primarily around the breaks and then also lead service
23 lines.

24 **Q** **So road construction coordination with**
25 **municipalities, existence of leaks, and presence of**

1 lead service line are the three main criteria that you
2 are using -- the Company's using to -- to prioritize
3 main replacements?

4 A Correct.

5 Q Are you also more interested in doing them
6 in St. Louis because -- because they're ISRS eligible?

7 A No, not at this point. Maybe past practice,
8 but, no, we're really looking to get to that 1 percent
9 pipe replacement across the state.

10 Q Okay. Could you -- could you tell me how
11 that prioritization process might change if the -- if
12 the Commission were to determine that the Company is
13 only entitled to a return of its investment and not a
14 return on its investment?

15 A Well, we do have a limited amount of
16 capital. I think we discussed maybe in the AAO case
17 that if we're not getting a return on that, then it
18 becomes a challenge for us of -- but with the
19 fiduciary responsibility to maximize that; so we do
20 look at both of those.

21 Q So which of those three criteria -- how
22 would it affect the use of those three criteria to
23 determine the priority for main replacement?

24 A Well, we may actually go to avoiding those
25 areas with lead if we're -- if we -- if we can't -- it

1 doesn't make good fiduciary sense.

2 **Q So you would do main replacement where there**
3 **is no lead?**

4 A That would be the optimum, yes.

5 **Q So where -- where does that exist?**

6 A Oh, it exists in many places. We have
7 4,700 miles of main. So we have -- there are places
8 that don't really have lead. Joplin, for example,
9 doesn't have really any lead services to speak of,
10 just because that area they didn't put those in. They
11 may have a lead gooseneck, which would be our
12 responsibility to replace anyway. It's on our side of
13 the ownership. But the service lines themselves down
14 in that area are galvanized.

15 **Q So where else? Anywhere else in the state?**

16 A The best information I have, there's not
17 many lead service lines in Parkville. St. Joe has a
18 lot. St. Louis has quite a few. Mexico, again, we
19 don't have much data, but we've estimated how many we
20 think we have there. Jefferson City has some, but not
21 a lot. There are areas in St. Louis as well, even
22 that it has that same age of cast iron main, that one
23 block will have lead service lines and one won't
24 looking at the -- at the maps and the best information
25 that we have.

1 **Q So does -- does leaving those -- those lead**
2 **service lines in place present any -- any concern for**
3 **you?**

4 A It does because while we may not be
5 disturbing it through a main replacement project in
6 the new term, at some point they may become a problem.
7 And it also doesn't protect the customers if somebody
8 else is disturbing that line. Say a different utility
9 is digging through that area, it's -- the best
10 practice, in my opinion, is to replace those lines
11 proactively.

12 **Q I would agree.**

13 A Thank you.

14 CHAIRMAN HALL: I have no further questions.
15 Thank you.

16 COMMISSIONER KENNEY: No questions. Thank
17 you.

18 JUDGE BURTON: Staff?

19 MR. WESTEN: No questions.

20 JUDGE BURTON: Public Counsel?

21 EXAMINATION

22 RE-CROSS-EXAMINATION BY MR. SMITH:

23 **Q Yeah, I think just one here.**

24 **Where is this main replacement plan in your**
25 **testimony?**

1 first page in your answer, there's a reference to
2 where that information was provided previously. Do
3 you see that?

4 A Yes.

5 Q Where was that information provided
6 previously?

7 A It was part of the AAO case as a -- as a
8 previous data request from the PSC, data request No.
9 12.

10 Q And -- Okay. And if you flip over to
11 page 2, what date was that requested? Do you see
12 that?

13 A June 2nd.

14 Q Of what year?

15 A Of 2017.

16 Q The -- I guess what I would call the plan
17 document at page 6 of 14, can you turn over to that?

18 A Yes, sir.

19 Q You see there's a subtitle that says:
20 "St. Louis Operations"?

21 A Yes, sir.

22 Q Is this plan only applicable to the
23 St. Louis operations?

24 A No. It's generally the plan we're using
25 everywhere in the state.

1 **Q** Going back to the -- Well, nevermind. Leave
2 that alone.

3 You were asked a couple times about whether
4 the Company tests prior to the replacement of a lead
5 service line, and I think you said that the Company
6 does not. However, when do you test during the lead
7 service line replacement process?

8 **A** We test directly after the line is replaced.
9 We do a flush and a test, and then again within 24 to
10 72 hours, we do another test to -- it's really an
11 internal governance test to ensure that we've removed
12 that and the line's free.

13 **Q** You were asked some questions about filters.
14 I think you started to talk about the limitations of
15 filters and moved on -- got moved on to another
16 question, but would you like to explain a little bit
17 about the limitation of filters in homes?

18 **A** For example, the cheap version which would
19 be that pitcher. It doesn't really address that --
20 the entire issue and has a fairly short life depending
21 on the number of contaminates or suspended solids that
22 would come through that filter. It's difficult to
23 predict exactly what the life of that would be. Not
24 more than a month for sure.

25 **Q** You were asked questions about the Company's

1 **cost estimates and how they developed over time.**
2 **Could you describe for us the process you've gone**
3 **through to try to control those costs?**

4 A Well, that -- the original estimate was --
5 as I say, was just a quick quote from the local to
6 offer a order of magnitude of where the overall cost
7 of the program would be. As we proceeded forward with
8 the original, the initial few replacements, those
9 costs were coming in quite high.

10 We actually then competed that work across a
11 number of contractors, particularly in St. Louis
12 County. Outside of St. Louis County, much work is
13 actually done by our own crews. But in St. Louis
14 County, it's required that a licensed plumber to do
15 that work. So we competed that work actually now
16 twice and again to refine that number and to negotiate
17 it down to a lower number.

18 **Q And has the result of that process been some**
19 **actual contracts that have firmed up those prices?**

20 A Yes.

21 MR. COOPER: One moment, Your Honor.

22 That's all the questions I have.

23 JUDGE BURTON: Thank you. You're excused.

24 I know that we do have another witness
25 identified on this issue, at least for the Company,

1 but Heppenstall is not available today. So I believe
2 that next on the list will be Staff's witnesses.

3 MS. ASLIN: Staff calls Jim Merciel.

4 JIM MERCIEL,

5 having been duly sworn, testifies as follows:

6 JUDGE BURTON: You may be seated.

7 EXAMINATION

8 DIRECT EXAMINATION BY MS. ASLIN:

9 Q Would you please state your name.

10 A James Merciel, M-e-r-c-i-e-l.

11 Q And how are you employed?

12 A I'm employed at the Public Service
13 Commission on the staff in the water and sewer
14 department.

15 Q And did you prepare or cause to be
16 prepared -- just a moment -- rebuttal testimony marked
17 as Staff Exhibit 108 and surrebuttal testimony marked
18 as Staff Exhibit 125?

19 A Yes.

20 Q Do you have any changes or corrections to
21 that testimony?

22 A No, I don't.

23 Q And are the answers contained in that
24 testimony true and correct to the best of your
25 knowledge and belief?

1 A Yes.

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

4 A Yes.

5 MS. ASLIN: Judge, I move for the admission
6 of Exhibits 108 and 125.

7 JUDGE BURTON: Exhibits 108 and 125 are
8 offered. Are there any objections?

9 Seeing none, they are admitted.

10 (STAFF'S EXHIBITS 108 AND
11 125 WERE RECEIVED IN EVIDENCE.)

12 MS. ASLIN: I tender the witness for cross.

13 JUDGE BURTON: Mr. Mills, did you have any
14 questions for this witness?

15 MR. MILLS: No questions. Thank you.

16 JUDGE BURTON: Mr. Poston?

17 MR. POSTON: No questions.

18 JUDGE BURTON: Public Counsel?

19 MR. SMITH: Just a few.

20 EXAMINATION

21 CROSS-EXAMINATION BY MR. SMITH:

22 **Q Mr. Merciel, do you believe that the 30,000**
23 **number is understated?**

24 A I don't have any reason to believe it's
25 understated. It is an estimate and it's -- it's --

1 I'm sure it's a round -- a round number of the
2 estimate.

3 **Q I think in your testimony -- trying to find**
4 **it -- you indicate something to the effect that in**
5 **Staff's opinion, that the costs do not exceed the**
6 **benefits?**

7 A Costs don't exceed the benefits? I don't
8 remember saying that.

9 **Q In your opinion, do you feel like you have a**
10 **good understanding of what the costs will be to this**
11 **project?**

12 A I would answer yes with a -- further saying
13 that this is a -- this is a new activity undertaken by
14 this utility or most any utility. And so I think
15 just -- just -- service line replacement is not new,
16 but ordinarily it's -- it's -- it's an individual
17 customer undertaking the task.

18 This is a case where this company is going
19 down the street replacing a number of them in the
20 context of other work that's going on. In the context
21 that it's being done, this is a new activity. So I
22 think we're all learning what the cost is going to be
23 and how to deal with it and what's going to happen
24 with it.

25 **Q So when you say we are all learning about**

1 **the cost, do you feel like we have a good handling of**
2 **that?**

3 A I'm sorry?

4 Q **Do you feel like we have a good handle for**
5 **what the cost will be?**

6 A Well, yes. I think we're -- yeah. Yes, I
7 think we do have. But it's not -- it's not one final
8 cost that you can project into the future. I think
9 Mr. Aiton spoke to that and what I heard him say I
10 would agree with. This is -- this is developing and
11 being updated continually.

12 Q **Did you offer -- author, in part or in its**
13 **entirety, the Staff report to the Public Service**
14 **Commission on lead in the State of Missouri?**

15 A I did in part. I had a large hand in it,
16 but I wasn't the only one.

17 Q **Who are the other authors of that report?**

18 A The other primary one was Martin Hummel who
19 was in our department. He's retired now. Actually,
20 as I recall, he started the draft and the rest of us
21 worked on it from there. There were probably four or
22 five of us that had input. Martin and I probably did
23 a lot of the -- a lot of the technical work in it.

24 Q **Do you recall in my opening I had quoted**
25 **from the report in which Staff had put into the report**

1 a representation from the Department of Natural
2 Resources?

3 A Yes.

4 Q Okay. Were you the one who made that
5 communication?

6 A I did. I did talk to -- there is -- there's
7 one person that heads up their lead and copper rule at
8 the Department of Natural Resources, and I had spoken
9 with him, actually, I think a number of times.

10 Q And do you agree with the quote that lead
11 contamination is, in general, not a problem in
12 Missouri because utilities are following the lead and
13 copper rule and produce noncorrosive water?

14 A Yes. And I'm going to point out the first
15 part you said, lead contamination is not a problem,
16 we're not problem-free. There are some utilities that
17 have problems with the lead and copper rule, don't
18 meet it. One of them is one of our regulated
19 utilities has some issues. So beyond that,
20 contamination is a problem, that doesn't mean we don't
21 have a risk of having a problem.

22 Q To your knowledge, have any of the parties
23 put forward witnesses with a medical background that
24 could explain the extent of any benefit of removal of
25 the lead service line?

1 A There have not been any witnesses on the
2 cases here, but there has been quite a bit of
3 documentation evidence in a number of people's
4 testimonies from a number of the parties. This is a
5 national debate, national topic of discussion.
6 It's -- it's in the news fairly frequently,
7 particularly industrial news. I've never ran across
8 anybody who -- who -- who believes that replacing
9 lead -- or I should say removing lead from water
10 components is not a good idea.

11 **Q Not a good idea in the sense that all other**
12 **things being held equal?**

13 A Well, what I mean is, if there's any lead
14 there, you should get it out.

15 **Q All -- at any cost?**

16 A Well -- well, that's another part of the
17 debate.

18 **Q Exactly.**

19 A But lead in the water -- water components is
20 not a good idea. That's -- that's the best I can
21 answer that question. Can you afford to take it out?
22 You know, what's it going to take to do it? That's
23 where we have to work through what the problem is.

24 **Q Okay.**

25 A But I've never heard anybody saying, yeah,

1 there's lead there, but it's not really a problem.
2 Don't worry about it. All the stuff you hear in the
3 news, you hear about lead poisoning, it's not a
4 problem. Don't worry about.

5 I've never heard anybody advocate that.

6 **Q Isn't that exactly what DNR said and that**
7 **you put in your report that, quote -- I can give you**
8 **the quote again, but lead contamination is, in**
9 **general, not a problem?**

10 A That means we don't have a problem that
11 exists. Utilities are taking care of it. Again, it
12 doesn't mean we don't have a risk. But as far as
13 sending contaminated water, again, there's lead
14 components, there's a risk, but as far as sending
15 contaminated water to customers that's -- it's meeting
16 existing rules.

17 **Q When you say, "it's meeting existing rules,"**
18 **you're not aware of any mandate for the Company to**
19 **replace lead service lines?**

20 A Correct. There is no such mandate.

21 **Q Okay.**

22 A I want to back up a little bit and just add
23 where -- where we don't have a widespread problem with
24 contamination. And, again, there are a few utilities
25 that do have some problems. That's different than

1 some of the other ones that we've been talking about
2 here on the record, such as York, Pennsylvania. They
3 didn't meet the lead and copper rule. They did have a
4 contamination issue. And that's true of some of the
5 other utilities. So around the country it does happen
6 and they do have to take some action. And that's
7 prompting a lot of the activity around the country,
8 not all of it, but -- but a proactive -- you know,
9 there are also groups. I think the EPA is looking at
10 it. They haven't made any rules, but there is --
11 there is thinking nationally that anything you can do
12 to get lead out is a good thing.

13 **Q And there's no mandate?**

14 A No mandate.

15 **Q Okay. Thank you.**

16 A Well, short of not meeting the lead and
17 copper rule, that kind of changes the picture.

18 MR. SMITH: Thank you, Mr. Merciel. No
19 further questions.

20 JUDGE BURTON: Missouri-American?

21 MR. COOPER: No questions.

22 JUDGE BURTON: Any questions from the bench?

23 EXAMINATION

24 QUESTIONS BY CHAIRMAN HALL:

25 **Q Good afternoon.**

1 A Good afternoon.

2 Q **So you heard -- you were in the hearing room**
3 **when Mr. Aiton explained the Company's main**
4 **replacement program and how they prioritize that**
5 **program?**

6 A Yes.

7 Q **Are you familiar with the Company's main**
8 **replacement program?**

9 A Well, I would -- I would say sort of I am.
10 You know, this goes back to the mid '90s. And I was
11 around then when county main breaks -- you know, it
12 was decided that this Company needs to ramp up the
13 main replacement program. And I should say this is
14 when it was St. Louis County Water Company and that
15 was really the system that was being addressed at the
16 time.

17 So prior to that, the Company -- St. Louis
18 County Water Company had a rather rudimentary
19 replacement program, you know, fairly simple, no
20 computer modeling. They were doing some replacement,
21 but they started getting more sophisticated with it.
22 And now that Missouri-American is involved with that
23 system and some of the other ones, they've kind of
24 tweaked it up, for lack of a better term.

25 Even -- even the idea he -- he was saying

1 lead service lines is one of their factors now. Well,
2 that -- it hasn't always been the case. That's
3 something that they modified it. So -- so realizing
4 they kind of tweaked up some of their decision-making,
5 I haven't been involved with all those decisions.

6 **Q So you've never seen a document that**
7 **outlines the main replacement program?**

8 A Not recently. I haven't seen one since the
9 mid '90s when we were developing a replacement program
10 for St. Louis County Water Company.

11 **Q So the --**

12 A I think they probably have one; I just
13 haven't seen it.

14 **Q So the extent of your understanding of that**
15 **program is really what was provided in oral testimony**
16 **here today?**

17 A That plus my experience with the issue.

18 **Q Based upon what you've heard today about the**
19 **main replacement program, does it seem reasonable to**
20 **you?**

21 A Yes.

22 **Q Are there any other factors that you would**
23 **recommend that -- that the Company consider or that**
24 **the Commission consider?**

25 A Not really. I -- I -- I don't remember if

1 he mentioned critical customers as one of the points.
2 He might have said it, but if he did, I don't remember
3 it.

4 **Q I don't believe he said it.**

5 A Okay. Well, I think that's one of their
6 points, too. Like, for example, if there's a hospital
7 and if that hospital is experiencing frequent water
8 outages because of main breaks, that might be one of
9 the factors that they look at. But I think they're
10 doing that. He may not have said it, but I think
11 they're doing that. And beyond that, frequent main
12 breaks, increasing main breaks on any -- any specific
13 section, and now with lead service lines, I think he
14 pretty well covered it.

15 **Q You mentioned some possible modeling that**
16 **might occur as part of this program. What did you**
17 **mean?**

18 A Well, it's a -- it's a theory, and I looked
19 at it quite a bit a number of years ago. There's a
20 theory that is water mains age mostly due to
21 corrosion, but once main breaks start, you'll -- they
22 start -- the frequency increases exponentially. In
23 reality, it doesn't always happen that way. A lot of
24 times, it does, but it doesn't always. But the idea
25 was to basically plot -- plot your main breaks on a

1 map with -- with dates and -- and just watch the
2 development of it. And at some point, it becomes cost
3 beneficial to replace the main rather than to continue
4 repairing it.

5 There was a researcher, and I can't remember
6 his name, but he did come here either for a meeting or
7 he might have even provided testimony on how to
8 develop a modeling program like that.

9 **Q Do you believe that the Company is using**
10 **such a program?**

11 A I think they're doing something similar to
12 that, yeah, developed from what was -- again, this is
13 back in the '90s when this was being worked on and I
14 think they're -- they're doing something like that.

15 **Q If -- if -- if there was a main where there**
16 **was significant leakage occurring, would you believe**
17 **that it would be imprudent of the Company to not**
18 **replace it?**

19 A Well, I guess it means -- depends on what
20 you mean by "significant."

21 **Q You tell me.**

22 A Yeah. Well --

23 **Q At some point. At some point --**

24 A Certainly at some point. At some point.
25 That's where if -- your question was about leakage.

1 Determining an amount sometimes could be hard to do.
2 Most often we count the main breaks, what it costs to
3 repair it, and what the outages for customers,
4 disruption of traffic, you know. A lot of times,
5 they'll have to close half a street off, and a lot of
6 times, those are the factors where you determine,
7 well, this one -- this one's worth it just to make
8 this replacement rather than continue repairing it.

9 **Q Would it concern you if the Company changed**
10 **its main replacement program in response to a**
11 **Commission order in this case such that it prioritized**
12 **mains where there is not lead service lines?**

13 A I think I would have a concern with it
14 because it could impact distribution system
15 performance. If they're -- if they're avoiding the
16 lead service lines, then -- then I would -- I would
17 hope the Company would not let it get out of hand, but
18 you could have a situation where -- where you are
19 having frequent breaks, frequent disruptions and
20 outages, and I think we risk that getting out of hand.

21 **Q Now, you -- you've heard that the Company**
22 **has indicated that it would -- it would consider such**
23 **a change to its main?**

24 A Yes, I did.

25 **Q Does Staff continue to hold its position**

1 **that in light of that testimony, that the Commission**
2 **should not allow a return on that investment?**

3 A Yeah, that -- yeah, getting into the
4 accounting, and I'll defer most of it to our staff
5 auditor, but I will say Staff has a conceptual problem
6 with including plant that the Company doesn't own in
7 their -- with their plant assets.

8 Q **Right. And I was intending to ask other**
9 **Staff witnesses about that.**

10 A Okay.

11 Q **I'm just wondering does -- does Staff**
12 **continue to hold the position that it is inappropriate**
13 **to -- to award a return on an investment if that**
14 **results in a modification of the prioritization for**
15 **the main replacement program?**

16 A Well, if there's -- I'm not sure I
17 understood exactly what you said there.

18 Q **My understanding is that -- that your**
19 **testimony is that the current main replacement**
20 **program, prioritization is appropriate?**

21 A Yes.

22 Q **And you've also said that it would concern**
23 **you if that was modified so that it -- so that they**
24 **would prioritize mains where there are no lead service**
25 **lines?**

1 A Yes.

2 Q So now I'm wondering does that cause you --
3 does that cause Staff to change its position on
4 whether or not a return on this investment is
5 appropriate? And if that's something that you can't
6 answer, I understand.

7 A Okay. I don't think I can speak to that
8 change on behalf of Staff. I will say it causes a
9 concern. Whether Staff would change a position, I
10 don't think I'm the one to answer that.

11 Q Do you believe that \$6,000 per service line,
12 customer-owned service line replacement, is a -- is
13 a -- is a reasonable number?

14 A I think it's a reasonable number to use. I
15 don't think it's quite that simple. That's -- that's
16 the -- St. Louis largely drives the average cost just
17 because there's so many of them. But, of course, in
18 St. Louis, it's going to be more expensive because the
19 customer service lines also cross streets and connect
20 to the mains; whereas, in other service areas, you're
21 only talking about what's in the customer's yard, in
22 the customer's property.

23 So, inherently, St. Louis is going to be a
24 higher cost. Kind of depends on the assumptions you
25 want to -- you want to use to look at the costs. In

1 other service areas, the Company owns part of it and
2 the customer owns part of it, and that total thing
3 might cost almost as much as St. Louis.

4 But part of it's going to be Company
5 property, and it would be booked as a company-owned
6 service line. So do we include that or not when we're
7 looking at this? You know, as far as just
8 customer-owned, it's -- it's -- it's different in
9 other service areas.

10 **Q Okay.**

11 A But that number, from what I've seen -- and,
12 again, this is a fairly new activity. I think, as
13 Mr. Aiton said, I do agree with him, this is -- it's a
14 developing situation and -- and our analysis is
15 developing, but from what I see right now, the answer
16 to the question is yes, I think the \$6,000 is
17 appropriate.

18 **Q Are you aware of any new technology maybe**
19 **coming down the pike that might allow for a reduction**
20 **in that cost, such as maybe some kind of liner for the**
21 **lead service lines as opposed to a replacement?**

22 A I did see something about a liner somebody
23 was trying to develop, and this has been some time
24 ago, I'm going to say within the past year. And I
25 heard of it once and I haven't seen anything about it

1 since then.

2 Q Okay. So --

3 A I don't know what the status is.

4 Q So -- and I believe you testified to that
5 effect in the AAO case. So since then, you don't --
6 you haven't received any additional --

7 A I -- I haven't seen anything new on it,
8 correct.

9 CHAIRMAN HALL: I have no further questions.
10 Thank you.

11 COMMISSIONER KENNEY: No questions.

12 EXAMINATION

13 QUESTIONS BY JUDGE BURTON:

14 Q I have a few questions for you.

15 Could you please just describe for the
16 record what type of age range are we talking about for
17 these lead service lines, the customer-owned? How old
18 are they?

19 A I'd say the majority range from being built
20 in the 1920s up to the probably late '40s or '50s. I
21 don't know -- I don't know how old the newest one is.
22 I've heard up in the '50s and maybe even into the
23 '60s. I think those are probably rare. Could have
24 some -- some from before 1920, but those are -- those
25 are probably more rare, too. Just -- just from

1 knowing the St. Louis County area, that's just a --
2 just my assessment. No, I don't have any numbers to
3 back it up.

4 **Q Would you expect to see more leaks in those**
5 **lines, in those customer lead service lines?**

6 A Customer lead service lines? Not really.
7 It's -- it's -- if it wasn't for the health hazard,
8 lead is actually pretty good -- pretty good material.
9 It's tough. It doesn't -- all that we're talking
10 about, corrosion contaminating the water, but -- but,
11 you know, you see some old ones and they're actually
12 in pretty good condition. And so -- so no, it's -- it
13 seems to last as well as -- about as well as anything
14 out there.

15 **Q And what percentage would you say in the**
16 **state that are lead service would be in the St. Louis**
17 **County area versus other parts of the state? Have you**
18 **done any analysis or just reviewed --**

19 A No, I haven't. I really don't have any idea
20 how to answer that. I don't have any idea.

21 JUDGE BURTON: Okay. Thank you.

22 Any recross from OPC?

23 MR. SMITH: Just a bit. Thank you.

24 EXAMINATION

25 RECROSS-EXAMINATION BY MR. SMITH:

1 **Q** **There was some discussion with the chairman**
2 **about prioritization of mains. Do you recall that?**

3 A Yes.

4 **Q** **To your knowledge, when Missouri-American**
5 **Water did partial lead service line replacements, did**
6 **they deprioritize mains with lead service lines?**

7 A No. Lead really wasn't -- to my knowledge,
8 lead was not part of the picture as far as determining
9 any main placements prior to about a year ago.

10 **Q** **So for decades, there was no depriorization,**
11 **to your knowledge, of mains with lead service lines?**

12 A Correct.

13 **Q** **And this new priority that I guess is**
14 **conditional on the Commission giving a full-weighted**
15 **average cost of capital is new to you?**

16 A It's -- it's as new as the lead replacement
17 issue, yes.

18 **Q** **Okay.**

19 A This -- this whole -- the whole issue, what
20 we're talking about, is a fairly new issue. The
21 accounting is accounting, whether you should replace
22 them. Yeah, this is all new.

23 MR. SMITH: Okay. No further questions.

24 Thanks.

25 JUDGE BURTON: Missouri-American.

1 MR. COOPER: No questions.

2 JUDGE BURTON: Staff, redirect?

3 MS. ASLIN: Just briefly.

4 EXAMINATION

5 REDIRECT-EXAMINATION BY MS. ASLIN:

6 Q Mr. Merciel, Chairman Hall had asked you
7 about whether you had seen Company plans as far as
8 replacing main replacements or lead service lines. I
9 believe you said you hadn't seen any such thing since
10 the '90s. Do you recall that?

11 A Yes.

12 Q In the Missouri-American's Exhibit 40 that
13 was admitted just earlier this afternoon --

14 MR. WESTEN: Did you see a copy?

15 Q (By Ms. Aslin) Did you see a copy of that?

16 A Is that the -- yeah, I did. I didn't read
17 it page for page.

18 Q All right. If you would turn to that second
19 page there. That's a DR from -- that was issued by
20 you and attached to it is plans for service line
21 replacement.

22 Do you recall receiving that?

23 A Yes.

24 Q So you have seen some sort of program plans
25 since the '90s?

1 A Well, Chairman Hall's question was about
2 main replacements, not service line replacements.

3 **Q Okay.**

4 A This is about service line replacements.

5 **Q All right. Thank you.**

6 A And, yeah, the issue is main replacements.

7 MS. ASLIN: Okay. No further questions.

8 JUDGE BURTON: Thank you. You're excused.

9 THE WITNESS: Okay.

10 JUDGE BURTON: It is 5:17 right now. I
11 don't know how much -- questions we have for the next
12 witness, but I believe they're still doing repairs in
13 the -- on the -- would Staff like to call their next
14 witness? Or do you want -- do the parties want to
15 recess until tomorrow morning? The Commission is at
16 your disposal.

17 MR. COOPER: Let's recess until tomorrow
18 morning, Your Honor.

19 JUDGE BURTON: Okay. Fair enough. We are
20 scheduled to begin tomorrow at 8:30. If the parties
21 want to meet before we go on the record to discuss the
22 procedural issues as far as scheduling, let me know.
23 Otherwise, when we also go off the record today, I
24 believe I can talk about potential hearing dates for
25 next week as well.

1 That being said, let's go ahead and adjourn
2 for the day.

3 (Whereupon, the Public Service Commission hearing was
4 recessed at 5:19 p.m.)

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REPORTER CERTIFICATE

I, REBECCA L. TUGGLE, a Registered Professional Reporter, Certified Court Reporter, and Certified Shorthand Reporter within and for the State of Missouri, do hereby certify that the PSC hearing held on March 5, 2018, commenced at the Missouri Public Service Commission, 200 Madison Street, Jefferson City, MO 65101; that said hearing was reported by myself, translated and proofread using computer-aided transcription; and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time the proceedings were had.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this hearing was taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

Dated this 12th day of March, 2018.



Rebecca L. Tuggle, RPR, CCR, CSR

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